REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

RR No. 07-03;
BIR Ruling No. OT-284-2022
OT 058.2023
MAY 19 2023

TARRIELA TAGAO ONA & ASSOCIATES
8th Floor Strata 2000 Building
Emerald Avenue, Ortigas Center
Pasig City, 1600

Attention: **ATTY. SOLO V. TIBE**
Counsel

Gentlemen:

This refers to your request for a ruling that your client's parcel of land is a capital asset and is therefore subject to the imposition of the six percent (6%) Capital Gains Tax (CGT) under Section 24 (D) of the National Internal Revenue Code (Tax Code) of 1997, as amended.

As represented, **GUZMAN INSTITUTE OF ELECTRONICS, INC. (GIEI)** is registered with the Philippines Securities and Exchange Commission (SEC), with SEC Registration No. (primarily to offer technical and vocational courses to the public. With several competing offers flooding the market, GIEI had to close down its operations. It is shown to have submitted its last enrollment report on December 19, 2000 and has since ceased its operations.

To pay off its contractual obligations, GIEI sold the subject property in 2018. However, the vendee used the expanded withholding tax (EWT) instead of the CGT in the payment of transfer taxes.

In reply, please be informed that Revenue Regulations No. 07-03 provides that:

"SEC. 2. DEFINITION OF TERMS. – For purposes of these Regulations, the following terms shall be defined as follows:

a. Capital assets shall refer to all real properties held by a taxpayer, whether or not connected with his trade or business, and which are not included among the real properties considered as ordinary assets under Sec. 39(A)(1) of the Code.

b. Ordinary assets shall refer to all real properties specifically excluded from the definition of capital assets under Sec. 39(A)(1) of the Code, namely:

1. Stock in trade of a taxpayer or other real property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year; or

2. Real property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business; or

3. Real property used in trade or business (i.e., buildings and/or improvements) of a character which is subject to the allowance for depreciation provided for under Sec. 34(F) of the Code; or

4. **Real property used in trade or business of the taxpayer.**

   Real properties acquired by banks through foreclosure sales are considered as their ordinary assets. However, banks shall not be considered as habitually engaged in the real estate business for purposes of determining the applicable rate of withholding tax imposed under Sec. 2.57.2(J) of Revenue Regulations No. 2-98, as amended.

xxx xxx xxx

SEC. 3. GUIDELINES IN DETERMINING WHETHER A PARTICULAR REAL PROPERTY IS A CAPITAL ASSET OR ORDINARY ASSET.-

a. xxx xxx xxx

b. Taxpayer not engaged in the real estate business. - **In the case of a taxpayer not engaged in the real estate business, real properties, whether land, building, or other improvements, which are used or being used or have been previously used in the trade or business of the taxpayer shall be considered as ordinary assets.** These include buildings and/or improvements subject to depreciation and lands used in the trade or business of the taxpayer.

A depreciable asset does not lose its character as an ordinary asset, for purposes of the instant provision, even if it becomes fully depreciated, or there is failure to take depreciation during the period of ownership.

Monetary consideration or the presence or absence of profit in the operation of the property is not significant in the characterization of the property. So long as the property is or has been used for business purposes, whether for the benefit of the owner or any of its members or stockholders, it shall still be considered as an ordinary asset. Real property used by an exempt corporation in its exempt operations, such as a corporation included in the enumeration of Section 30 of the Code, shall not be considered used for business purposes, and therefore, considered as capital asset under these Regulations.

xxx xxx xxx

e. Treatment of abandoned and idle real properties. - Real properties formerly forming part of the stock in trade of a taxpayer engaged in the real estate business, or formerly being used in the trade or business of a taxpayer engaged or not engaged in the real estate business, which were

later on abandoned and became idle, shall continue to be treated as ordinary assets. Real property initially acquired by a taxpayer engaged in the real estate business shall not result in its conversion into a capital asset even if the same is subsequently abandoned or becomes idle.

Provided however, that properties classified as ordinary assets for being used in business by a taxpayer engaged in business other than real estate business as defined in Section 2 (g) hereof are automatically converted into capital assets upon showing of proof that the same have not been used in business for more than two (2) years prior to the consummation of the taxable transactions involving said properties." (Emphasis and underscoring supplied)

Based on the above-quoted provisions, it is clear that a real property may only be considered as a capital asset if it does not fall within the properties considered as ordinary assets. For a taxpayer not engaged in real estate business, any property used in trade or in the business is considered as an ordinary asset unless it is converted into a capital asset by virtue of the automatic conversion that takes place when a property has been abandoned or becomes idle for more than two (2) years.

This office has consistently ruled that a property that has become idle, vacant, and is not actually used in business is considered as a capital asset and the gain presumed to have been realized from its sale is subject to CGT when sold[1].

In this case, however, it has been discovered by this office that the subject property was not idle for 2 years prior to the time of sale. The rule specifically requires that the property not be used in business for more than 2 years prior to the consummation of the taxable transaction. Upon examination of the documents submitted to this office, it was found that a boarding house was in operation in the said property and was only demolished in the year 2018. Since the properties were only sold in 2018, the property could not be converted to a capital asset.

Therefore, to answer your request, it is ruled by this office that your client's parcel of land is an ordinary asset and subject to EWT and not CGT.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
007861

K-1-SLO

[1] BIR Ruling No. OT-284-2022