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

Section 24 (D) (1), 98 (A), and 188 of the National Internal Revenue Code (Tax Code) of 1997, as amended
BIR Ruling No. 377-17, BIR Ruling No. 633-12

OT- 062-2024
OCT 18 2024

MARISSA DIAMZON QUERRI

Dear Madame:

This refers to your letter requesting for confirmation that the transfer of conjugal properties in your name and your common children by reason of Declaration of Nullity of Marriage is not subject to capital gains tax (CGT), documentary stamp tax (DST) and/or donor's tax.

Background:

It is represented that you were previously married to Mr. Dean T. Baes (Mr. Baes). However, in 2011, you filed a petition for Declaration of Nullity of Marriage entitled "Marissa Querri-Baes vs. Dean T. Baes" in Civil Case No. . Thereafter, a decision granting the petition was issued by the Regional Trial Court of Manila – Branch 38 on October 25, 2016 and attained finality on August 22, 2017. During the course of the marriage, the following properties were acquired:

1. a townhouse located at Sta. Cruz, Manila under Transfer Certificate of Title (TCT) No. of the Registry of Deeds of Manila;
2. a condominium unit at Avida San Lazaro Tower 4. Sta. Cruz, Manila under Condominium Certificate of Title of the Registry of Deeds of Manila;
3. a house and lot located in Bloomfields Subdivision, Novaliches, Quezon City, under of the Registry of Deeds of Quezon City; and
4. a lot located in Northfields Subdivision, Malolos, Bulacan, under TCT No. of the Registry of Deeds of West Bulacan.

Collectively, these shall be referred to as "the Properties."

Likewise, in the same decision, the Court forfeited the share of Mr. Baes in favor of the common children, pursuant to par. 4 of Article 147 of the Family Code of the Philippines, wherein the share in the co-ownership of the guilty spouse in a void marriage shall be forfeited in favor of the common children. The court also ordered that his share be equally divided and be transferred and registered under the names of his children, namely, Diane Mae Q. Baes, Dean Joshua Q. Baes, and Dominic Dean Q. Baes. Thus, this request for confirmation.

Discussion:

In reply, please be informed as follows:

Section 24 (D) (1) of the National Internal Revenue Code (Tax Code) of 1997, as amended, provides:

> *"(D) Capital Gains from Sale of Real Property. –*
> *(1) In General. – The provisions of Section 39(B) notwithstanding, a final tax of six percent (6%) based on the gross selling price of current fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, is hereby imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines, classified as capital assets, including pacto de retro sales and other forms of conditional sales, by individuals, including estates and trusts: Provided, That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned or controlled corporations shall be determined either under Section 24 (A) or under this Subsection, at the option of taxpayer; x x x"*

Considering that the transfer, adjudication, or distribution of the above-mentioned conjugal properties in your favor is not pursuant to a sale, hence, without monetary consideration, the said transfer, adjudication, or distribution is therefore not subject to the CGT imposed under the above-mentioned provision. Neither is the said transfer, adjudication, or distribution subject to the donor's tax imposed under Section 98 of the same Tax Code; there being no donative intent on your part or that of Mr. Baes because the transfer, adjudication, or distribution is made only in compliance with your property settlement, which was approved by the court.

It must be emphasized, however, that the Properties acquired by both parties must be divided **equally** between them in order not to consider the distribution as conveyance of property but simply as partition or segregation of that part of the property that belongs to the co-owners. Should one co-owner get a share more than the other co-owner, the excess thereof is considered "other disposition" of property subject to CGT and DST under Section 24 (D) (1) of the Tax Code of 1997, as amended (*BIR Ruling No. 377-2017 dated August 14, 2017).*

The adjudication of the Properties to the children shall be considered a delivery of their presumptive legitimes pursuant to Article 50 of the Family Code, as amended, and therefore not subject to the CGT imposed under the above-mentioned provision. However, an annotation of the transmission of such properties to the children as their presumptive legitimes must be made in the corresponding TCTs covering such realties, for estate tax purposes. The said properties being considered as advances on the children's legitimes pursuant to Article 51 of the Family Code, as amended, shall be included as part of the gross estate and subject to the estate tax, if any, upon the death of either you or Mr. Baes. The Properties shall be included in your and Mr. Baes' estate, divided equally, as said Properties are co-owned.

Finally, the transfer of the properties in your name, Mr. Baes and your common children, made in accordance with the court decision, is not subject to DST pursuant to Section 185 of Revenue Regulations No. 26, otherwise known as the Revised Documentary Stamp

Regulations, which provides that the conveyance of a real property without monetary consideration is not subject to the payment of DST. The notarial certification is, however, subject to the DST of fifteen pesos (P15.00)[1] imposed under Section 188 of the Same Code, (*BIR Ruling No. 633-2012 dated November 26, 2012 and BIR Ruling No. 377-2017 dated August 14, 2017).*

Conclusion:

In sum, the transfer of the conjugal properties in your name and your common children by reason of the Declaration of Nullity of Marriage with Mr. Baes is not subject to CGT, DST, and/or donor's tax.

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.

Very truly yours,

ROMEO D. LUMAQUI, JR.
Commissioner of Internal Revenue

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[1] Now P30.00 under the TRAIN Law.