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

Section 24 (D) of the Tax Code, as amended
RMO No. 41-91
BIR Ruling No. 319-2018
OT-068-2023
JUN 06 2023

ATTY. ANICIA CONCEPCION-MARQUEZ
Units 106-107 Phoenix Bldg.
Fausta Road, Bgy. Mabolo
City of Malolos, Bulacan

Madam:

This refers to your request for the issuance of a ruling on the basis for computing the capital gains tax (CGT) to be paid by the owner of a parcel of land acquired by the Department of Public Works and Highways (DPWH).

Documents show that the Republic of the Philippines (ROP), through the DPWH, expropriated a parcel of land situated in Valenzuela City and covered by Transfer Certificate of Tile No. registered under the name of Broad Sector Attained Assets, Inc. Said property will be used for the construction of the NLEX-Harbor Link Project (Segment 9), a national government infrastructure project intended to provide faster and comfortable travel to the motoring public from the North Luzon Expressway to MacArthur Highway.

On September 30, 2011, the ROP, through the DPWH, filed an expropriation case against Broad Sector Attained Assets, Inc. over the subject property. After trial on the merits, the trial court rendered its decision fixing the just compensation at Php per square meter. On appeal, the Court of Appeals reduced the award to Php per square meter and the same amount became final as per entry of judgment issued by the Supreme Court in GR No. . It is further represented that the current zonal value of the subject property is Php per square meter.

In compliance with the requirements for payment of the just compensation, a Deed of Conveyance was executed by and between the land owner and the DPWH wherein the price of the subject property is Php) per square meter pursuant to the aforementioned decision of the Court of Appeals.

In this regard, you are now requesting for a ruling on the basis of computing CGT in case of an expropriated sale.

In reply, ***Section 24 (D) of the National Internal Revenue Code of 1997 (Tax Code), as amended***, states that a final tax of six percent (6%) based on the gross selling price, fair

market value (FMV) or zonal value, whichever is higher, shall be imposed upon capital gains presumed to have been realized from the sale, exchange or other disposition of real property.

However, ***Revenue Memorandum Order (RMO) No. 41-1991***[1] provides an exception on the basis of the six percent (6%) CGT in case of an expropriated sale. In case the State or any of its instrumentalities acquires property through expropriation proceedings, the final tax of six percent (6%) or CGT shall be based on the just compensation as determined by proper authorities, to *wit*:

> *"In all cases involving sale, exchange, or any disposition of real property, the tax base for documentary stamp tax purposes shall be the same as the tax base used in the computation of the capital gains tax which means, gross selling price, fair market value, or zonal value of the real property, whichever is higher, except in the following instances, where actual consideration appearing in the Deed of Sale shall be an acceptable tax base in the computation of not only the capital gains tax but also of the documentary stamp tax, viz:*
>
> *xxx xxx. xxx*
>
> *5. When the State or any of its instrumentalities in the exercise of its power of eminent domain, **acquires through expropriation proceedings**, private real property for public use upon payment of "just compensation" to the owner. **Both capital gains tax and documentary stamp tax shall be computed based on said "just compensation" as actual consideration."***
> (Underscoring and emphasis ours)

In relation thereto, in ***BIR Ruling No. 319-18***[2] this Office had the occasion to rule that:

> *"The subject property is a parcel of land described as partly sugarland and residential which may be deemed to be a capital asset co-owned by spouses AAA and BBB and CCC. This property was subjected to expropriation by the DPWH for the construction of its project in 1977, hence, the sale/transfer of the said property shall be subject to capital gains and documentary stamp taxes computed based on the actual consideration or "just compensation" stated in the Deed of Sale, for expropriation done through negotiated sale, or in the document pertaining to the expropriation if taking of property was made through an expropriation proceeding."*

It is undisputed that the Court of Appeals determined that the FMV of the subject property for purposes of determining just compensation is Php per square meter and the amount become final as per entry of judgement issued by the Supreme Court. Also, the said amount was reflected in the Deed of Conveyance executed by and between the ROP and Broad Sector Attained Assets, Inc. Thus, the basis for computing the CGT and documentary stamp tax (DST) shall be the just compensation as determined by the Court and reflected in the Deed of Conveyance.

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[1] Determination of the Tax Base of Sales, Exchange or Any Disposition or Conveyance of Real Property for Documentary Stamp Tax Purposes
[2] March 6, 2018

In view of the foregoing, the basis for computing the CGT of the subject property acquired by the DPWH for the construction of the NLEX-Harbor Link Project (Segment 9) shall be the Php per square meters just compensation as determined by the Court of Appeals and reflected in the Deed of Conveyance.

The 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. LUMAGUI, JR.
Commissioner of Internal Revenue
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