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

Sections 24(D)(1), 188 and 196 of the Tax Code
BIR Ruling No. 456-2017; BIR Ruling No. 758-2019
OT-073-2023
JUN 07 2023

LEONCIO B. HERNANDEZ

Philippines

Re: Request for Tax Exemption Ruling

Gentlemen:

This refers to your request for a ruling whether the reconveyance made by Mr. Mariano Alvarez ("**Mr. Alvarez**") to Mr. Leoncio B. Hernandez ("**Mr. Hernandez**") of a property located in is taxable.

It is represented that Mr. Alvarez appears to be the registered owner of an untitled land containing an area of more or less Eleven Thousand Seven Hundred Six (11,706) square meters of agricultural land and Four Hundred (400) square meters of residential land, based on Tax Declaration No. ; (collectively, the "**Property**");[1] that Mr. Alvarez acknowledges that Mr. Hernandez is the rightful owner of a portion of Property consisting of Two Thousand Two Hundred Twenty Eight square meters ("**Transferred Property**") and the same was wrongfully and erroneously registered in his name;[2] and to rectify the error, Mr. Alvarez voluntarily gave, ceded, and transferred the Transferred Property to Mr. Hernandez and the latter accepted the same without any consideration.[3]

In reply, please be informed that Section 24 (D) (1) of the National Internal Revenue Code of 1997, as amended ("**Tax Code**"), states that:

"SEC. 24 – Income Tax Rates. –

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(D) Capital Gains from Sale of Real Property. —

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[1] Issued by Engr. Eduardo B. Cedo, Jr. on October 17, 2013.
[2] Per Deed of Donation between Mr. Alvarez and Mr. Hernandez, dated December 20, 2013.
[3] Per Deed of Donation between Mr. Alvarez and Mr. Hernandez, dated December 20, 2013.

(1) In General. — The provisions of Section 39(B) notwithstanding, a final tax of six percent (6%) based on the gross selling price or 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 the taxpayer." (Underscoring supplied)

In the case of *Salud vs. Commissioner of Internal Revenue*,[4] the Court of Tax Appeals had the ruled that the Tax Code does not define nor qualify the phrase "other disposition." It is clear, plain and therefore must be applied without attempted or strained interpretation. It shall be construed in its plain and simple meaning. "Disposition" means an act of transferring to the care or possession of another or the parting with, alienation of, or giving up a property.[5] Hence, it is clear that the phrase "other disposition" includes within its purview all kinds of dispositions of real property under Section 24 (D) (1) of Tax Code unless specifically excluded therefrom or subject to another tax treatment pursuant to other provisions of the Tax Code, or other special tax laws.[6]

Further, please note that since taxes are the lifeblood of the government, the doctrine of strict interpretation and construction of provisions granting tax exemption must be applied. Tax exemption cannot be created by implication because exemptions from taxation are highly disfavored in law and one who claims exemption from tax must be able to justify his claim by clearest grant of organic or statute law. To be exempted from payment of taxes, it is the taxpayer's duty to justify the exemption "by words too plain to be mistaken and too categorical to be misinterpreted. Laws granting exemption from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception. The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed.[7]

Applied in this case, a perusal of the Deed of Donation of Reconveyance of Unregistered Real Property (**"Deed"**) executed by Mr. Alvarez and Mr. Hernandez shows that Mr. Alvarez clearly voluntarily disposed or transferred the Transferred Property to Mr. Hernandez.

Such being the case, while it is true that the reconveyance of the Transferred Property through the Deed is without any monetary consideration, and that the same was made by the parties to rectify an error, nevertheless, considering that there is no specific law excluding the Deed from the coverage of Section 24 (D) (1) of the Tax Code, this Office hereby rules that the same is subject to the capital gains tax imposed therein.

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[4] CTA EB Case No. 412, April 30, 2009 (G.R. No. 187679, entry of judgment on July 8, 2010).
[5] Black's Law Dictionary, 6th Edition.
[6] BIR Ruling No. 456-17, September 25, 2017; BIR Ruling No. 758-19, December 9, 2019.
[7] BIR Ruling No. 296-11 dated August 12, 2011; University of the Philippines System Admin v. Commissioner of Internal Revenue, C.T.A. EB Case No. 1946 (C.T.A. Case No. 8397), November 18, 2020; Wonder Mechanical Engineering Corporation vs. Court of Tax Appeals, et al., G.R. Nos. L-22805 & L-27858 June 30, 1975.

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Moreover, since the reconveyance involves disposition of real property that falls squarely under Section 24 (D) of the Tax Code as discussed above, the same is likewise subject to the documentary stamp tax imposed in Section 188 and Section 196 of the Tax Code.

This ruling is issued on the basis of the foregoing facts as represented. However, if upon investigation it shall 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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