REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Sections 24 (D) (1) and 196 of the National Internal Revenue Code of 1997, as amended;
BIR Ruling No. 703-2019
CT- 093-
APR

BERNADETTE B. CASINABE

Davao City, Metro Manila, Philippines

Madam:

This refers to your letter dated March 09, 2020 requesting for confirmation of your opinion that the buy-back transactions involving various Magallanes Residences Condominium Units between their respective condominium unit owners and developer DMC Urban Property Developers, Inc. (DMC-UPDI) is not subject to Capital Gains Tax (CGT) imposed under Section 24 (D) (1) of the National Internal Revenue Code ("Tax Code") of 1997, as amended and Documentary Stamp Tax (DST) under Section 196 of the Tax Code of 1997, as amended.

It is represented that Magallanes Residence Condominium is composed of three buildings, namely, Valencia, Barcelona and Toledo. On October 2019, Davao City suffered from a series of earthquakes. Due to substantial structural damages, the Office of the City Building Official of Davao City declared that Valencia and Barcelona buildings were unfit for occupancy. Other projects by DMC-UPDI in Davao City also suffered considerable structural damage. On December 15, 2019, Davao City suffered from a stronger earthquake and the Toledo building was also "red-tagged" due to major structural cracks on the beams and slabs.

Due to this, unit owners of Magallanes Residences Condominium went into a series of negotiations with DMC-UPDI. Eventually, DMC-UPDI agreed to enter into a buy-back transaction with the aforesaid unit owners whereas DMC-UPDI will purchase back the condominium units from their owners at 125% of the total contract price by which the unit owners had purchased the aforesaid units.

Due to the fear of the possible dangers that may befall you if you continue to live in a building which is structurally compromised, you accepted the offer from DMC-UPDI to purchase back from you your condominium unit.

Thus, in order to help diminish any further costs that you may incur, you seek confirmation that the aforesaid buy-back transactions are exempted from CGT and DST.

In reply, please be informed that Section 24 (D) (1) of the Tax Code of 1997, as amended, provides:

"Sec. 24. Income Tax Rates. –

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(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 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." (Emphasis supplied)

What is involved in this case is a sale of the condominium unit from the unit owner, the seller, to DMC-UPDI, which is the buyer. Thus, the subject transaction is subject to CGT regardless of whether a gain was in fact realized considering that Section 24 (D)(1) of the Tax Code of 1997, as amended, imposes CGT upon capital gains which is presumed to have been realized.

Also, the buy-back transaction, being a disposition of real property under Section 24 (D)(1) of the Tax Code of 1997, as amended, is likewise subject to the documentary stamp taxes imposed in Section 188 and Section 196 of the same Code.

As repeatedly held by the Supreme Court, "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 law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted."[1]

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

K-1-FR-20-0246

[1] *Sea-Land Service, Inc. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 122605, April 30, 2001.*