REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

RR No. 7-2003; and Sec. 24 (D), of the Tax Code of 1997, as amended.	000-00 OT-114-2022	

Person to Contact: Chief, Law & Legislative Division
Tel. Nos. 926-55-36/927-09-63

Date: MAR 31 2022

DE GUZMAN SAN DIEGO MEJIA & HERNANDEZ LAW OFFICES
16th Floor, Trident Tower
312 Sen. Gil Puyat Avenue
Salcedo Village, Makati City

Attention: **Jose Emmanuel G. Hernandez**

Gentlemen:

This refers to your letter on behalf of your clients Maxine Dominic R. Lagdameo and Marken Joaquin R. Limjoco (the "Heirs"), requesting for a confirmatory ruling regarding the classification of inherited properties as capital assets for tax purposes pursuant to Section 3(f) of Revenue Regulations (RR) No. 7-2003.

Background:

The Heirs' mother, the late Marisol T. Ramirez ("Marisol"), died on September 13, 2020, leaving them as the only children and heirs. The Heirs inherited among others, the following adjacent properties located in Calle Industria, Brgy. Murphy, Bagumbayan, Quezon City, pursuant to the "*Deed of Extrajudicial Settlement of Estate of The Late Marisol T. Ramirez (For Real and Personal Properties)*" dated September 10, 2021, to wit:

1. A parcel of land designated as Lot 1 consisting of 3,836.10 sq. m., covered by Transfer Certificate of Title ("TCT") No. of the Registry of Deeds for Quezon City;

2. A parcel of land designated as Lot 2 consisting of 3,790 sq. m., out of which 3,454.55 sq. m. was owned by Marisol, while the remaining 335.45 is owned by Inti, Inc., covered by TCT No. of the Registry of Deeds for Quezon City; and

3. A parcel of land designated as Lot 3A consisting of 25,467 sq. m., out of which 9,225.1893 sq. m. was owned by Marisol, while the remaining 16,8107 is owned by Inti, Inc., covered by TCT No. of the Registry of Deeds for Quezon City.

All of the above properties have long been entangled in litigation, civil and criminal, filed by and against the previous owner thereof, Sea 'N' Sun Properties Corp. and related parties, the corporate term of which expired in 1998, with its assets distributed in liquidation to Marisol and Inti, Inc. in 2005. Hence the titles are under the names of Marisol and Inti, Inc. at the time of the former's untimely demise.

Suddenly confronted with the problem of having to settle Marisol's estate, particularly the substantial taxes that had to be paid to the government, the Heirs were constrained to agree to sell the above properties they inherited intestate from Marisol. The Heirs conditioned the sale in the dismissal and/or withdrawal of all pending civil and criminal cases. The buyer likewise demanded the same as a pre-condition to any acquisition of the properties in question.

For Lots 1 and 2, the Heirs and the buyer, LBL Primer Properties Incorporated ("LBL Prime") entered into and executed a Deed of Absolute Sale for Lot 1 and the 3,454.55 sq. m. Portion of Lot 2 dated November 25, 2021. The corresponding Certificates Authorizing Registration ("CAR") thereon have been issued upon the due payment of capital gains tax ("CGT") and documentary stamp tax ("DST").

For Lot 3A, the Heirs and LBL Prime negotiated for the sale and purchase of the lot on installment terms payable.

It is further represented that Marisol, being the predecessor in interest of the Heirs, was never engaged in the real estate business. The Heirs are also not engaged in the real estate business.

In view of the foregoing representations, a confirmatory ruling is being requested on whether or not the subject real properties are ordinary or capital assets for the purpose of determining the applicable taxes on the sale of the said properties to LBL Prime.

In reply, please be informed that the lots subject of sale to LBL Prime are capital assets in the hands of the Heirs in view of the transfers that have occurred from Sea 'N' Sun Properties Corp. to Marisol; and from Marisol to her Heirs. This is in accordance with the rule enshrined in Section 3 (f) of RR No. 7-2003, which states:

> *"SEC. 3. GUIDELINES IN DETERMINING WHETHER A PARTICULAR REAL PROPERTY IS A CAPITAL ASSET OR ORDINARY ASSET. –*
>
> *xxx xxx xxx*
>
> *f. Treatment of real properties that have been transferred to a buyer/transferee, whether the transfer is through sale, barter or exchange, inheritance, donation or declaration of property dividends.*
>
> *Real properties classified as capital or ordinary asset in the hands of the seller/transferor, may change their character in the*

hands of the buyer/transferee. The classification of such property in the hands of the buyer/transferee shall be determined in accordance with the following rules:

1. Real property transferred through succession or donation to the heir or donee who is not engaged in the real estate business with respect to the real property inherited or donated, and who does not subsequently use such property in trade or business, shall be considered as a ***capital asset*** *in the hands of the heir or donee.*

2. Real property received as dividend by the stockholders who are not engaged in the real estate business and who do not subsequently use such real property in trade or business shall be treated as ***capital assets*** *in the hands of the recipients even if the corporation which declared the real property dividend is engaged in real estate business.*

xxx xxx xxx"
(Emphasis and underscoring supplied)

Clearly, the subject lots became capital assets in the hands of Marisol when she received the same as liquidating dividends since, as represented, she was never engaged in the real estate business. Even assuming that the same were ordinary assets in the hands of Marisol, the same became capital assets in the hands of the Heirs when they received the same as inheritance pursuant to the above-cited provisions of RR No. 7-2003.

Accordingly, the sale of the subject lots by the Heirs to LBL Prime is subject to CGT imposed under Section 24 (D) (1) of the National Internal Revenue Code (Tax Code) of 1997, as amended, which provides that:

"SEC. 24. Income Tax Rates. –

xxx xxx xxx

(D) Capital Gain from the Sale of Real Property,

(1) In General. - The provision 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 xxx" (Underscoring supplied)

Based from the foregoing, the sale of the subject lots shall be subject to CGT based on the gross selling price or current fair market value as determined in accordance with Section 6 (E) of the Tax Code of 1997, as amended, whichever is higher. In this case, the CGT shall be based on the per sq. m., representing the current fair market value of the property as it is higher than the selling price. The difference between the selling price and the current fair market value of the subject properties is no longer subject to donor's tax because the determining factor in the computation of CGT negates any discrepancy as it is computed based on the higher value between the selling price and the fair market value of the property as determined in accordance with Section 6 (E) of the Tax Code of 1997, as amended.

This ruling[1] is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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[1] This ruling is without prejudice to the payment of applicable estate tax due, if any, on the estate of Marisol T. Ramirez