REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Secs. 24; 98; 188; 196 of the Tax Code, as amended
BIR Ruling No. 760-19; BIR Ruling No. 456-17
OT- 126-2022
APR 04 2022

ERLINDA V. PANILONG
878 T. Villa Private Road
M.J. Cuenco Avenue, Cebu City

Madame:

This refers to your letter dated April 29, 2021, which was indorsed by the Regional Director of Revenue Region No. 13, Cebu City on May 21, 2021, and received by this Office on June 14, 2021, requesting for the issuance of Certificate Authorizing Registration (CAR) on the Deed of Reconveyance covering Lot No. 323-A under Transfer Certificate of Title (TCT) No. situated in Cebu City, (the "Property") pursuant to a court order issued by Regional Trial Court (RTC), 7th Judicial Region, Branch 09, Cebu City.

From the documents submitted, particularly the Order of the Regional Trial Court, 7th Judicial Region, Branch 09 of Cebu City in Civil Case No. CEB-16692, entitled *"Cristina C. Vda. De Villa, et. al. vs. Herminigildo Trinidad* ("Civil Case"), Deed of Reconveyance issued by the RTC and the Extrajudicial Settlement of the Estates of Cristina Vda. De Villa, Julian Villa, Jr., and Danilo Villa, it appears that the defendant, Herminigildo Trinidad was ordered to reconvey to the plaintiffs, Cristina C. Vda. De Villa, et. al. the subject Property, provided that the plaintiffs shall first pay to defendant the amount of P90,000.00, the consideration of the sale which is declared an equitable mortgage; the amount of P85,000.00 which defendant paid to the bank to free the property from the mortgage, the amount of P15,000.00 representing the expenses incurred by defendant in transferring the title of the property to his name or a total of P200,000.00, with interest at 12% per annum beginning March 18, 1982.

Thus, on February 5, 2008, per Court Order, a Deed of Reconveyance was executed by Chevin Quinon Vasquez, Clerk of Court V, RTC Branch 9, Cebu City, transferring and reconveying unto the plaintiffs, the title to Property.

In reply, please be informed as follows:

The transfer of the Property is not subject to donor's tax.

The transfer of the Property by way of a Deed of Reconveyance is a necessary consequence of the Order issued by the RTC, Branch 9, Cebu City and hence, there is no donative intent on the part of Herminigildo Trinidad, through the Clerk of Court of said RTC, Chevin Quinon Vasquez, to convey the Subject Property in favor of Cristina C. Vda. De Villa, Erlinda Villa-Panilong, Danilo Villa and Julian Villa, Jr. Such being the case, the aforesaid transfer is not subject to donor's tax imposed under Section 98 of the National Internal Revenue Code (Tax Code) of 1997, as amended. *(BIR Ruling No. 760-2019 dated December 9, 2019)*

The transfer of the Subject Property is subject to Capital Gains Tax (CGT).

Section 24(D)(1) of the Tax Code of 1997, as amended, provides, viz.:

> "SEC. 24. Income Tax Rates. –
>
> xxx xxx xxx
>
> (D) Capital Gains from Sale of Real Property. –
>
> (1) In General. – The provisions of Section 39 (B) notwithstanding, a final tax of 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 the 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: . . ." (emphasis supplied)

Although the reconveyance of the Property is pursuant to a court order, such transfer is covered by the clause "other dispositions of real property" under Section 24(D)(1) of the Tax Code, as amended, and therefore subject to the CGT imposed therein. Likewise, the Deed of Reconveyance, being in the nature of disposition of real property is subject to the documentary stamp taxes (DST) imposed under Sections 188 and 196 of the Tax Code, as amended. *(BIR Ruling Nos. 760-2019 dated December 9, 2019 and 456-2017 dated September 25, 2017)*

In the case of *Salud vs. Commissioner of Internal Revenue*[1], the Court of Tax Appeals had the occasion to rule that the Tax Code, as amended, 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 disposing; transferring to the care or possession of another; the parting with, alienation of, or giving up property[2].

Applying the above ruling of the Court, it is therefore clear that the phrase "other disposition" includes within its purview all kinds of dispositions of real property under Section 24 (D)(1) of the Tax Code, as amended, unless specifically excluded therefrom or subject to another tax treatment pursuant to different provisions of the Tax Code, as amended. Thus, the Deed of Reconveyance executed by the Clerk of Court of the above-mentioned RTC, in the absence of a specific law excluding it from the coverage of Section 24 (D)(1) of the Tax Code, as amended, is deemed included within the purview of the said provision. Therefore, it shall be subject to the CGT imposed therein.

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

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[1] CTA EB Case No. 412 dated April 30, 2009.

[2] Black's Law Dictionary, 6th Edition.

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he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted."[3]

Likewise, it should be emphasized, that any transfer or conveyance of portions of the Property from the plaintiffs to any of their heirs shall be subject to estate tax imposed under Sections 84, 85 and 86 of the Tax Code, as amended.

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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