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

Section 24 (D) (1) of the National Internal revenue Code of 1997, as amended.
BIR Ruling No. 1326-2018
OT-017-2020
JAN 2 2 2020

TAN, TAN SALUTAN & VEGA LAW FIRM
2nd Floor COPE Bldg., 34 D. C.M.,
Recto St., Davao City

Attention : **ATTY. REYNALDO G. SALUTAN**

Gentlemen:

This refers to your letter, with attachments, dated July 11, 2019, requesting for Certificate of Tax Exemption from the payment of capital gains tax (CGT) and documentary stamp tax (DST) relative to the Deed of Exchange, executed by and among Annabelle M. Tan, Joel Peter M. Tan, Michael Paul P. Tan, and Jason Peter P. Tan, for the purpose of correcting mistakes in their respective titles.

It is represented that Annabelle M. Tan and Joel Peter M. Tan are the registered owners of the parcel of land located at Quimpo Boulevard, Matina, Davao City, containing an area of Four Hundred Seventy-Four square meters (474 sq. m.) covered by TCT No.

On the other hand, Michael Paul P. Tan and Jason Peter P. Tan are the owners of the adjoining property containing an area of Four Hundred Seventy-Five square meters (475 sq. m.) covered by TCT No.

It is further represented that the above Parties mutually made a mistake by constructing buildings and introducing improvements on the other's property.

In connection with the foregoing, you are requesting for a Certificate of Tax Exemption with regard to the tax consequences of the correction and/or registration of the exchange of properties.

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

*"**SEC. 24. Income Tax Rates.** –___*

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(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*

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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 disposition 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)

In the case of *Salud vs. Commissioner of Internal Revenue*[1], the Court of Tax Appeals had the occasion to rule that the National Internal Revenue Code of 1997, 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 National Internal Revenue Code of 1997, as amended, unless specifically excluded therefrom or subject to another tax treatment pursuant to different provisions of the Same Code. Thus, the Deed of Exchange executed by Annabelle M. Tan, Joel Peter M. Tan, Michael Paul P. Tan & Jason Peter P. Tan, in the absence of specific law excluding it from the coverage of Section 24 (D) (1) of the National Internal Revenue Code of 1997, as amended, is deemed included within the purview of the said provision. Therefore, it shall be subject to the CGT imposed therein.

Moreover, the conveyance being a disposition of real property under Section 24 (D) (1) of the National Internal Revenue Code of 1997, as amended, is likewise subject to the DST imposed in Sections 188 and 196 of the Same Code.

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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[1] CTA EB Case No. 412 dated April 30, 2009.
[2] Black's Law Dictionary, 6th Edition.