**June 8, 2021**

# BIR RULING NO. OT-197-21

Sections 24 (D) (1) and 196 of the National Internal Revenue Code of 1997, as amended; BIR Ruling Nos. 703-201 & OT-019-20

*AAA*

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Madam :

This refers to your letter dated March 11, 2020 requesting for confirmation of your opinion that the buy-back transaction involving Magallanes Residences Condominium Unit 510, Bldg. 2, Barcelona, between you 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.

It is represented that you acquired the aforesaid condominium unit sometime in October 2013 through the in-house financing of DMC-UPDI. Eventually, you procured a loan from Philippine Savings Bank (PS Bank) in order to pay the outstanding balance of the aforesaid condominium unit. Considering that the balance of the loan as of March 11, 2020 is _____ (Php_____), you feel that the amount of _____ (P_____) that you will receive in exchange for your condominium unit pursuant to the buy-back transaction is inadequate as compared to the amount that you invested in the condominium unit. Hence, in order to help diminish any further costs that you may incur, you seek confirmation that the buy-back transaction is exempt from CGT.

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

"Sec. 24. Income Tax Rates. —

xxx xxx xxx

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

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(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."

What is involved in this case is a sale of the condominium unit from you, 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 amended. (BIR Ruling No. OT-019-20)

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,

**(SGD.) CAESAR R. DULAY**
*Commissioner of Internal Revenue*

## Footnotes

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

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