July 24, 2018

BIR RULING NO. 1109-18

Section 24 (D) of the NIRC of 1997, as amended; BIR Ruling No. 355-2014; BIR Ruling No. 299-2014

AAA, BBB and CCC

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Sir/Mesdames :

This refers to your letter dated September 19, 2016, requesting exemption from payment of capital gains tax (CGT), penalty and interest, relative to the Deed of Conveyance dated April 19, 2011, executed by Noel C. Lindo, Sheriff IV, Regional Trial Court (RTC), National Capital Judicial Region, Branch 83, Quezon City, in favor of CCC, BBB, and AAA.

Background:

On October 4, 2002, DDD, BBB, EEE, FFF, GGG, HHH, III, JJJ, AAA, KKK, LLL, MMM, NNN, OOO, PPP, QQQ, RRR, SSS, and TTT (collectively known as the "Plaintiffs") filed a complaint against UUU, doing business under the name and style of Somaryor General Merchandize, VVV, WWW, and XXX before the RTC, National Capital Judicial Region, Branch 83, Quezon City docketed as Civil Case No. Q-02-47941.

On November 18, 2004, the RTC, National Capital Judicial Region, Branch 83, Quezon City, rendered a decision in favor of the Plaintiffs and against defendants UUU and VVV. On motion of the plaintiffs which was granted on June 6, 2007 and pursuant to the provisions of Sec. 33, Rule 39 of the Revised Rules of Court of the Philippines, the Branch Sheriff was directed to execute a Deed of Conveyance on a property sold on execution to partially satisfy the judgment on the said case.

By virtue of the said resolution and the Special Power of Attorney submitted, Noel C. Lindo, Branch Sheriff, executed a Deed of Conveyance dated April 19, 2011, in favor of CCC, BBB, and AAA in behalf of all the plaintiffs, their heirs and assigns over a property covered by Transfer Certificate of Title (TCT) No. N-238566 of the Registry of Deeds for Quezon City. However, the Plaintiffs were not able to raise money for the

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transfer of the title to their names due to financial difficulties encountered by them. Hence, this request.

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.*** —
>
> xxx xxx xxx
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> *(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."* (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 National Internal Revenue Code of 1997, as amended. Thus, the Deed of Conveyance dated April 19, 2011, executed by Noel C. Lindo, Branch Sheriff, in favor of CCC, BBB, and AAA, in the absence of a 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 capital gains tax (CGT) imposed therein.

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

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With regard to the penalty which may be assessed for the delay in the transfer of the title to your names, you may file for abatement of penalty pursuant to Section 204 of the National Internal Revenue Code of 1997, as amended, as implemented by Revenue Regulations (RR) No. 13-2001.

Please be guided accordingly.

Very truly yours,

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

Footnotes

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

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