January 18, 2019

BIR RULING NO. 119-19

Sec. 24 (D) (1) of the Tax Code of 1997, as amended; BIR Ruling No. 216-2015

Castillo Bravo & Associates
No. 4 Hectan Commercial Center
Barangay Halang, Calamba City 4027

Attention: *AAA*

Sir :

This refers to your letter dated September 8, 2016, filed in behalf of Sps. BBB & CCC and DDD, requesting for confirmation of your opinion that the transfer of properties by and between the enumerated parties, since it is one without consideration or cause, is not subject to Capital Gains Tax (CGT) imposed under Section 24 (D) (1) of the National Internal Revenue Code of 1997 nor to the creditable withholding tax under Section 57 (B) and to Documentary Stamp Tax (DST) imposed by Section 196 of the said Code.

It is represented that Sps. BBB and CCC purchased a parcel of land with an area of 118 square meters located at Landmark Subdivision, Barangay Majada (now Parian), Calamba City, Laguna from 21st Century Resources and Development Corporation. The said property is now registered in the name of Sps. BBB and CCC under Transfer Certificate of Title (TCT) No. T-729069. DDD, on the other hand, also purchased a parcel of land with an area of 118 square meters also located at Barangay Majada (now Parian), Calamba City, Laguna from 21st Century Resources and Development Corporation. The said property is now registered in the name of DDD under Transfer Certificate of Title (TCT) No. 060-2015024595. The two lots are adjacent with each other.

It is further represented that because the lots are adjoining and contain the same land area, Sps. BBB and CCC, through mistake and excusable negligence, constructed their residential house on the land owned by DDD instead of their own. Hence, to avoid legal problems, on October 6, 2016, Sps. BBB and CCC and DDD entered into a "Deed of Exchange" wherein both parties ceded the properties registered in their names in favor of each other.

You now request for the confirmation of your opinion that since the "swap" or exchange of properties has no consideration involved, and the parties did not gain from

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such exchange, there can be no basis for which capital gains tax and documentary stamp tax may be assessed and imposed. You are also of the opinion that since there are no funds in the custody of the parties involved from which withholding may be made, both parties cannot act as withholding agent. In support of your request, you submitted/attached the following documents:

1. Original copy of Deed of Exchange executed on October 6, 2016

2. Copy of vicinity map

3. Transfer Certificate of Title (TCT) No. T-729069

4. Transfer Certificate of Title (TCT) No. 060-2015024595

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

> *"Section 24 (D). Capital Gains from Sale of Real Property. — (1) In General. — The provision of Section 39 (B) notwithstanding, a final tax of 6% based on the gross selling price or current 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 and other dispositions 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: . . ."*

"Disposition" means an act of disposing; transferring to the care or possession of another; the parting with, alienation of, or giving up property *(Black's Law Dictionary, 6th Edition)*.

It is therefore clear that the phrase "other disposition" under Section 24 (D) (1) of the 1997 Tax Code includes within its purview all kinds of dispositions of real property unless specifically excluded therefrom or subject to another tax treatment pursuant to other provisions of the 1997 Tax Code or other special tax laws.

Foregoing considered, in the absence of an express statutory provision exempting from tax the herein exchange of properties, said transaction is subject to CGT under Section 24 (D) (1) of the 1997 Tax Code, as amended *(BIR Ruling No. 216-2015 dated June 19, 2015)* but not subject to creditable withholding tax pursuant to Revenue Regulations (RR) No. 6-2001 that is applicable to sale of ordinary assets as defined in RR No. 7-2003.

The conveyance, being a disposition of real property under Section 24 (D) (1) of the 1997 Tax Code, as amended, is likewise subject to the documentary stamp taxes imposed in Section 188 and Section 196 of the same Code. *(BIR Ruling No. 216-2015 dated June 19, 2015)*

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Please be guided accordingly.

Very truly yours,

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

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