October 23, 2018

BIR RULING NO. 1302-18

Section 24 (D) (1) of the National Internal Revenue Code of 1997

Romulo Mabanta Buenaventura
Sayoc & De Los Angeles
21st Floor, Philamlife Tower
8767 Paseo de Roxas
Makati City 1226

Attention: *AAA*

_____

BBB

Gentlemen :

This refers to your letter dated April 11, 2017, requesting on behalf of your client CCC, for confirmation of your opinion that the distribution of the house and lot located at _____, covered by Transfer Certificate of Title (TCT) No. 145394 of the Register of Deeds of Muntinlupa, in equal shares between CCC, as his share in the community property, and his daughter DDD, as delivery of her presumptive legitime, pursuant to a court-approved settlement of properties, is not subject to capital gains tax (CGT), documentary stamp tax (DST), and donor's tax.

Background:

On September 15, 2008, CCC and EEE (the CCC spouses) were married in civil rites at the Regional Trial Court (RTC), Branch 60, Makati City, before then Presiding Judge Marissa Macaraig-Guillen. Since the CCC spouses did not execute a marriage settlement before or at the time of their marriage, their property regime is governed by the system of absolute community of property. On April 21, 2009 and during their marriage, DDD was born.

However, the CCC spouses eventually separated and have been living apart since

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March 2011. Thus, on September 7, 2016, the CCC spouses who were both Muslims, voluntarily executed a mutual divorce agreement under the principle of MUBARAAT (mutual divorce) under Article 46 of Presidential Decree (PD) No. 1083, otherwise known as the Code of Muslim Personal Laws of the Philippines.

Thereafter, the CCC spouses filed a Petition for the approval and registration of the mutual Divorce Agreement for the Voluntary Dissolution, Liquidation, and the Distribution of the Community Property with the 9th Shari'a Circuit Court (Municipalities of Butig Lumbayanague, S. Dumalondong, Lumbatan, Bayang, Tuburan), Fourth Shari'a Judicial District, Municipality of Lumbatan, Lanao del Sur, docketed as Civil Case No. 2016-95.

In their agreement to dissolve their absolute community property regime, the CCC spouses mutually agreed that:

> One-half (1/2) share of the house and lot located at _____, covered by TCT No. 145394 issued by the Register of Deeds of Muntinlupa, shall be exclusively owned by CCC, and the other one-half (1/2) share of the same property will be held in-trust by CCC for and in the name of DDD until she reaches the age of 35.

In a Decision dated November 15, 2016, which became final and executory on November 15, 2016, the Fourth Shari'a Judicial District, Municipality of Lumbatan, Lanao del Sur, approved and registered the CCC spouses' mutual divorce under Article 46 of PD No. 1083 and declared their marriage as severed. Also, the trial court approved the Agreement for the Voluntary Dissolution, Liquidation and Distribution of the Community Property.

In view of the foregoing, you now request for an opinion and tax ruling on the consequences of the above-mentioned court-approved agreement to distribute the house and lot located at _____, covered by TCT No. 145394 of the Register of Deeds of Muntinlupa, in equal shares between CCC, as his share in the community property, and his daughter DDD, as delivery of presumptive legitime.

In reply, please be informed that in a voluntary dissolution of the community property where the former spouses adjudicated to themselves separately the properties which belong to their community property as a consequence of the liquidation of the partnership, the parties merely segregated and adjudicated for their own individual and separate ownership the properties which, from the celebration of their marriage, rightfully belong to them. Therefore, in the instant case, since the parties merely appropriated to themselves their respective shares in the community property, the transfer of the one-half (1/2) of the house and lot covered by TCT No. 145394 issued by the Register of Deeds of Muntinlupa, to CCC is not subject to CGT imposed under Section 24 (D) (1) of the National Internal Revenue

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Code of 1997, as amended, nor to donor's tax imposed under Section 98 (A) of the same Code, there being no donative intent on the part of the CCC spouses.

Also, such transfer of the title to CCC is not subject to DST imposed under Section 196 of the National Internal Revenue Code of 1997, as amended.

However, the transfer of the other one-half (1/2) of the same property to DDD which will be held in-trust by CCC until she reaches the age of 35, shall be subject to CGT imposed under Section 24 (D) (1) of the National Internal Revenue Code of 1997, as amended, there being no provision in the Decision of the 9th Shari'a Circuit Court, Fourth Shari'a Judicial District, Municipality of Lumbatan, Lanao del Sur, in Civil Case No. 2016-95, that such is considered as a delivery of her presumptive legitime. Section 24 (D) (1) of the National Internal Revenue Code of 1997, as amended, states that:

> "*(D) Capital Gains from Sale of Real Property. —*
>
> ***(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 transfer of the other one-half (1/2) of house and lot covered by TCT No. 145394 issued by the Register of Deeds of Muntinlupa to DDD which will be held in-trust by CCC until she reaches the age of 35, in the absence of a specific law excluding it from the coverage of Section 24 (D)

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(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, such transfer 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 imposed in Section 188 and Section 196 of the National Internal Revenue Code of 1997, as amended.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.

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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