November 15, 2018

BIR RULING NO. 1324-18

Section 24 (A); 24 (D) (1); Section 196 NIRC;
BIR Ruling No. 39-2012; BIR Ruling No.
21-2012

AAA

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Sir :

This refers to your letter received last September 12, 2018 requesting for an exemption on capital gains tax and documentary stamp tax on the exchange transaction between Spouses BBB and CCC ("Spouses BBB") and Spouses AAA and DDD ("Spouses AAA").

It is represented that Spouses AAA intentionally constructed a concrete fence surrounding Lot No. 28, Block 10 covered by Transfer Certificate of Title (TCT) No. 405607-R with an area of 558 square meters; that Spouses BBB intend to construct their residential house on Lot No. 26, Block 10 covered by TCT No. 704307-R with an area of 558 square meters; that before the construction took place, Spouses BBB caused said lot to relocate its boundaries; that it was later on found out that the property owned by Spouses BBB is surrounded by a concrete fence; that Spouses AAA were informed and it was discovered that the concrete fence was made on the property owned by Spouses BBB; that on September 3, 2018, Spouses AAA and Spouses BBB executed a "Deed of Exchange" wherein Spouses AAA exchanged the above-mentioned property with the property owned by Spouses BBB for the purpose of rectifying the mistake and without monetary consideration.

In reply, this Office regrets to inform that the request for exemption from imposition of capital gains tax and documentary stamp tax is denied for lack of legal basis.

Evidently, the "Deed of Exchange" dated September 3, 2018 was effected not to correct a mistake or inadvertent error attending the titling of the subject properties necessitating the exchange by or reconveyance to the rightful owner thereof but is more for the convenience of the parties. (BIR Ruling No. 39-12 dated February 1, 2012) There is

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neither an apparent nor inadvertent error committed in the titling to justify the exchange of properties considering that the lots were rightly distributed to both parties as evidenced by the correct TCTs issued for their respective lots. (BIR Ruling No. 39-12 dated February 1, 2012). Thus, it shall be treated as other disposition of real property subject to capital gains tax imposed under Section 24 (D) (1) of the 1997 Tax Code, as amended, or to the expanded withholding tax under Section 2.57.2 of Revenue Regulations No. 2-98, as amended in relation to Section 24 (A) of the same Code, depending on the classification of the property whether the properties exchanged are capital assets or ordinary assets of the parties. The Deed of Exchange shall also be subject to the documentary stamp tax imposed under Section 196 of the same Code, based on fair market value thereof as determined in accordance with Section 6 (E) of the 1997 Tax Code, whichever is higher. (BIR Ruling No. 021-12 dated January 11, 2012)

Please be guided accordingly.

Very truly yours,

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

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