November 15, 2018

BIR RULING NO. 1326-18

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

BPI Family Savings Bank
BPI Family Savings Bank Center,
Paseo de Roxas cor. Dela Rosa St.,
Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated February 16, 2017, requesting the issuance of a ruling, relative to the Deed of Exchange executed by and between BPI Family Savings Bank, Inc. ("BPI" for brevity) and BBB, CCC, DDD, EEE, and FFF ("the BCDEFs" for brevity).

Background:

BPI, a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, is the lawful and registered owner of a parcel of land located at Lot 19, Block 2, San Pablo Subdivision, Bagong Bayan, Malolos City, Bulacan, with a total area of two hundred sixteen (216) square meters, more or less, with all improvements thereon, by virtue of the foreclosure of the real estate mortgage over the property, and is covered by Transfer Certificate of Title (TCT) No. 039-2012005685 of the Register of Deeds for the Province of Bulacan. On the other hand, the BCDEFs are the registered owners of a parcel of land located at Lot 18, Block 2, San Pablo Subdivision, Bagong Bayan, Malolos City, Bulacan, with a total area of two hundred sixteen (216) square meters, more or less, with all improvements thereon, and is covered by TCT No. 149443 of the Register of Deeds for the Province of Bulacan.

However, based on the relocation survey and trace back of the titles, it was revealed that there was a mistake in the construction of the improvements, such that the improvements occupied by BPI is on lot covered by TCT No. T-149443, while the improvements occupied by the Bulaongs is on lot covered by TCT No. 039-2012005685. Thus, a Deed of Exchange was executed and was notarized on April 15, 2016, whereby

Copyright 2020 CD Technologies Asia, Inc.

BPI and the Bulaongs agree to exchange the properties between themselves on an as-is where-is basis in order to preserve the improvements respectively introduced in the subject properties. 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
>
> *(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 Deed of Exchange executed by and between BPI and the BCDEFs, 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.

Copyright 2020 CD Technologies Asia, Inc.

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.

Copyright 2020 CD Technologies Asia, Inc.