November 15, 2018

BIR RULING NO. 1337-18

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

AAA

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Sir :

This refers to your letter dated January 13, 2016 inquiring whether or not the property awarded to you by virtue of a decision of the Court is subject to transfer tax.

Background:

1. Sometime in 1979, AAA (AAA) was employed by BBB (BBB) to be the caretaker of his property consisting of seven hundred fifty (750) square meters and an unfinished concrete building in Baguio City, without monetary consideration.

2. As a reward and recognition of the services of AAA as a caretaker, BBB allowed the former to build a shanty within his property and further promised and assured AAA that he will give and convey one hundred (100) square meters of the lot.

3. AAA accepted and relied on BBB's promise. Thus, in good faith, he built a shanty on the lower portion of the latter's property.

4. Sometime in 1998, BBB's property was issued a title. However, BBB reneged on his assurance and promises. On September 2000, he served AAA a written notice to vacate the said portion of lot and claimed ownership of the house built by AAA.

5. To protect his right, AAA filed a complaint against BBB with the issuance of a temporary restraining order, praying among other things that BBB cease and desist from demolishing the house of AAA, ordering him to execute the appropriate deed of conveyance and pay

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the services of AAA as caretaker for 21 years on *quantum meruit* basis.

6. The Regional Trial Court (RTC) of Baguio City, Branch 3, ruled that BBB should immediately execute the appropriate deed conveying unto AAA the one hundred (100) square meters. Both the Court of Appeals and the Supreme Court affirmed the decision of the RTC.

7. A Deed of Conveyance dated February 28, 2013 was then executed by the RTC Clerk of Court in favor of AAA. Hence, this query.

In reply, please be informed that 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 real property in favor of 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 imposed therein.

Moreover, the conveyance being a disposition of real property under Section 24

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(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.

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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