November 19, 2018

BIR RULING NO. 1379-18

Section 24 (D) (1), NIRC; BIR Ruling No. 216-2015

AAA

_____

_____

BBB

_____

_____

Gentlemen :

This refers to your letter dated September 9, 2015 requesting exemption from capital gains and documentary stamp taxes on the exchange of properties without monetary consideration.

Documents submitted disclosed that on May 20, 2014, a Deed of Absolute Sale was executed by 9 Acres Property Development Corporation in favor of BBB, (married to CCC) where parcel of land with an area of 60 sq. m. covered by Transfer Certificate of Title (TCT) No. 004-2012002834 was sold to the latter for P_____; that TCT No. 004-2012002834 was cancelled and a new TCT No. 004-2015000795 was issued to BBB, (married to CCC); that on October 24, 2014, a Deed of Absolute Sale was executed by 9 Acres Property Development Corporation in favor of AAA, (married to DDD) where parcel of land with an area of 60 sq. m. covered by TCT No. 004-2012002835 was sold to the latter for P_____; that TCT No. 004-2012002835 was cancelled and a new TCT No. 004-2015000822 was issued to AAA, (married to DDD); that the parties later discovered that the Lot 17-B covered by TCT No. 004-2012002834 was possessed and occupied by AAA while Lot 17-C covered by TCT No. 004-2012002835 was occupied by BBB, when one of the units was checked by PNB in connection with a loan application; and that to correct the mistake, the parties agreed to correct the discrepancy in the lot description and they are willing to execute a Deed of Exchange.

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In reply, 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: . . . "

In the case of *Salud vs. CIR, CTA EB Case No. 412* dated April 30, 2009, the Court of Tax Appeals had occasion to rule that the 1997 Tax Code, 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 (Black's Law Dictionary, 6th Edition).

Applying the above ruling of the Court, 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)*

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)*

Please be guided accordingly.

Very truly yours,

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

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