February 7, 2019

BIR RULING NO. 148-19

24 (D) (1); 57 (B); 196; 000-00

AAA

_____

_____

Dear AAA :

This refers to your letter dated June 4, 2018 requesting for a ruling whether the partition of a parcel of land co-owned by your clients is not subject to taxes except documentary stamp tax (DST).

As represented, the subject property is a parcel of land located in Laiya, San Juan, Batangas, with an area of 126,890 sq. m., more or less, and registered in the names of **BBB ("BBB"), CCC ("CCC"), Laiya Development Corporation (LDC)** and **Macaria Development Corporation (MDC)** under Transfer Certificate of Title (TCT) No. 053-2016003233 of the Register of Deeds of Batangas. As per TCT No. 053-2016003233, the following are the respective identified/specified shares of your clients in the subject property, though no physical segregation or division has been made:

BBB	29,480 sq. m.
CCC & BBB	33,093 sq. m.
Laiya Development Corporation	21,043 sq. m.
Macaria Development Corporation	43,274 sq. m.

BBB sold an undivided portion consisting of 1,022 sq. m. from his 29,480 sq. m. undivided share in the subject property to MDC while BBB and CCC jointly sold likewise an undivided portion consisting of 1,022 sq. m. from their 33,093 sq. m. undivided share in the subject property to MDC.

The corresponding taxes in the total amount of _____ Pesos (PhP_____) for the sale of 2,044 sq.m. to MDC were paid by BBB and CCC to the Bureau of Internal Revenue (BIR) in March 2017.

On January 5, 2017, your clients executed a Partition Agreement to end co-ownership of the subject property and to subdivide the same into twelve (12) lots. Pursuant to the said Partition Agreement, the subject property shall be subdivided and

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adjudicated in the following manner:

Lot No.	Lot Area (sq. m.)	Owner
1	7,000	LDC
2	7,000	LDC
3	8,000	BBB & CCC
4	7,043	LDC
5	3,457	BBB
6	8,000	BBB
7	8,000	BBB
8	9,001	BBB
9	24,071	BBB & CCC
10	8,596	MDC
11	35,012	MDC
12	1,710	MDC

In reply, please be informed that the juridical condition of co-ownership of things or right is terminated, among others, by the partition which converts into certain and definite parts the respective undivided shares of the co-owners (Art. 494, Civil Code). Moreover, under Article 496 of the Civil Code, partition may be made by agreement between the parties or by judicial proceedings. Partition shall be governed by the Rules of Court insofar as they are consistent with the Civil Code.

The BIR in numerous occasions has ruled that income, in a broad sense, means all wealth which flows into the taxpayer other than as a mere return of capital (Section 36, Revenue Regulations No. 2). If the transfer of Title from the co-owners is not a barter, exchange or other disposition of realty, no income is generated that will warrant the imposition of the capital gains tax (CGT) nor creditable withholding tax (CWT). Moreover, Section 185 of the Revised Documentary Stamp Tax Regulations (Regulations No. 26) provides that conveyances of realty not in connection with a sale, to trustees or other persons without consideration are not taxable.

In the present case, the shares of the co-owners are already identified/specified in TCT No. 053-2016003233, though not yet physically segregated/divided. When the co-owners partitioned the entire property, it resulted in either the increase or decrease of their respective previously identified/specified shares, as follows:

	Before Partition (sq. m.)	After Partition (sq. m.)	Increase/(Decrease) (sq. m.)
BBB	29,480	28,458	(1,022)
CCC & BBB	33,093	32,071	(1,022)
LDC	21,043	21,043	-
MDC	43,274	45,318	2,044

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It must be noted that the increase/decrease in the shares of the co-owners in the Partition Agreement was formalized through the Deed of Sale executed by CCC and CCC in favor of MDC transferring to the latter the 2,044 sq. m. portion of their shares. The gains derived from such sale are subject to applicable taxes which have already been paid in the amount of P_____ to the BIR in March, 2017.

In view thereof, this Office is of the opinion as it hereby holds that the division of properties between your clients is no longer subject to the CGT imposed under Section 24 (D) (1) of the Tax Code of 1997, as amended, nor to the CWT prescribed by Revenue Regulations No. 2-98, as amended by Revenue Regulations No. 11-2018, implementing Section 57 (B) of the Tax Code of 1997, as amended. Neither is it subject to the documentary stamp tax imposed under Section 196 of the Tax Code of 1997, as amended but only to the documentary stamp tax on notarial acknowledgment to said document in the amount of P30.00 [1] pursuant to Section 188 of the same Code.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained 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. R.A. No. 10963 increased the rate from P15.00 to P30.00 effective January 1, 2018.

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