April 4, 2019

BIR RULING NO. 233-19

Secs. 24 (D) (1), 196; BIR Ruling No. 286-18; BIR Ruling No. 423-16

AAA

_____

_____

Sir :

This refers to your letter dated March 5, 2018, which was indorsed by Revenue Region No. 16, Cagayan de Oro City dated March 23, 2018, requesting exemption from the payment of capital gains tax (CGT) and documentary stamp tax (DST) on the reconveyance of a real property based on a Deed of Declaration of Trust, consequent to a Judgment Based on Compromise Agreement rendered by the Regional Trial Court, 10th Judicial Region, Branch 24, Cagayan de Oro City.

It is represented that Transfer Certificate of Title (TCT) No. 137-2016003867 (the "Property" for brevity) was previously registered in your name covered by TCT No. T-73502. Your brother, BBB mortgaged the Property to Philippine National Bank ("PNB") and after foreclosure, was thereafter consolidated in PNB's name.

Subsequently, you filed a Complaint for Declaration of Nullity of Contracts, Damages with Application for Issuance of Temporary Restraining Order and/or the Issuance of Injunction before the Regional Trial Court of Cagayan de Oro City against PNB.

On February 1, 2017, a Compromise Agreement was executed among Spouses BBB and CCC, Spouses AAA and DDD, and Spouses EEE and FFF, as Plaintiffs and Philippine National Bank, as Defendant Bank. The salient condition in the Compromise Agreement states,

"SECTION 1. TERMS OF THE SETTLEMENT. —

1.1. The Plaintiff hereby acknowledge the validity of the Defendant Bank's ownership over the Properties.

1.2. The Defendant Bank shall sell, transfer, and convey the Properties covered by TCT Nos. 137-2016003866 and 137-2016003867 (collectively, the "Consolidated Properties") to Plaintiffs' nominees, [GGG ("GGG")] and _____ Family

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Corporation ("_____") (collectively, the "Buyers"), for the aggregate amount of PESOS: _____ (P_____), under the terms and conditions of the Deeds of Absolute Sale to be executed by the Defendant Bank and the Buyers, in form and substance hereto attached as Annexes "A" and "B". Simultaneous with the execution of this Agreement, the Defendant Bank shall cause the Buyers to execute the Deeds of Absolute Sale and shall immediately deliver the possession of the Consolidated Properties to the Buyers."

On the same day that the Compromise Agreement was executed by the aforementioned parties, a Deed of Absolute Sale covering the sale of TCT No. 137-2016003867 was likewise executed between PNB, as Seller, and GGG, as Buyer.

While on February 27, 2017, a Deed of Declaration of Trust was executed by and between AAA, as Trustor/Owner, and GGG, as Trustee/Nominee. The said Deed provides that: (1) the Trustor/Owner is the legal and beneficial owner of the Property covered by TCT 132-2016003867, currently in the name of PNB; (2) the Trustee/Nominee consented to be the buyer of the said Property from the registered owner, PNB, on behalf of the Trustor/Owner; (3) the Trustor/Owner, not the Trustee/Nominee, paid for the Property to be able to perfect and consummate the compromise; and (4) the trust arrangement was agreed owing to the advice of some officers of PNB, and it was decided by the Trustor/Owner and Trustee/Nominee that once the case entitled *Spouses [BBB and CCC], et al. vs. Philippine National Bank*, docketed as Civil Case No. 2000-114 in the RTC of Cagayan de Oro City is compromised and any and all claim/demands/actions or cases between the parties therein are settled and/or waived and the relevant compromise agreement is approved by the court, the Property will then be registered in the name of Trustor/Owner, at his full discretion.

Thereafter, on March 31, 2017, the Regional Trial Court of Cagayan de Oro City, Branch 24 rendered its decision in Civil Case No. 2000-114 entitled [*Spouses BBB and CCC, Spouses AAA and DDD, and Spouses EEE and FFF], as Complainants vs. Philippine National Bank, et al., as Defendants*, approving *in toto*, the Compromise Agreement entered into by and among the aforementioned parties.

In reply, we regret to inform you that your request for tax exemption cannot be granted for lack of legal basis.

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,

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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, CTA EB Case No. 412 dated April 30, 2009*, 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. *(Black's Law Dictionary, 6th Edition)*

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, or other special tax laws. Thus, the reconveyance or transfer of the real property covered by TCT No. 137-2016003867 in favor of AAA, pursuant to the Deed of Declaration of Trust, 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, the reconveyance of the subject real property from GGG. in favor of AAA, shall be subject to CGT imposed therein. *(BIR Ruling Nos. 286-18 dated February 27, 2018 and 423-16 dated December 7, 2016)*

Moreover, the reconveyance being a disposition of real property under Section 24 (D) (1) of the National Internal Revenue Code of 1997, as amended, is likewise subject to DST imposed in Section 188 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

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