June 20, 2019

BIR RULING NO. 353-19

Section 66, Republic Act (RA) No. 6657;
BIR Ruling No. 363-2017

AAA

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Madam :

This refers to your undated letter requesting for tax exemption pursuant to Republic Act (RA) 3844, as amended by RA 6389.

Based on the documents submitted, it shows that BBB is the registered owner of a parcel of land covered by Transfer Certificate of Title (TCT) No. T-000-0000000000 containing an area of Seven Thousand Eight Hundred Thirty-One (7,831) square meters; that on March 20, 2015, BBB executed a "Pagkakaloob" in favor of CCC, where the former conveys unto the latter the Five Thousand One Hundred Fifty (5,150) square meter portion of the above described property as disturbance compensation; that on January 04, 2016, the Department of Agrarian Reform, Laguna Province Office, issued a Certification stating that CCC is the tenant of the agricultural landholding owned by DDD covered by TCT No. T-000-0000000000.

In reply, please be informed that transfers of real property by way of Disturbance Compensation is exempt from capital gains tax (CGT) and documentary stamp tax (DST) pursuant to Section 66 of RA No. 6657 otherwise known as the "Comprehensive Agrarian Reform Law of 1988" which provides, *viz.*:

> *"Sec. 66. Exemption from Taxes and Fees of Land Transfers. — Transactions under this Act involving a transfer of ownership, whether from natural or juridical persons, shall be exempted from taxes arising from capital gains. These transactions shall also be exempted from the payment of registration fees, and all other taxes and fees for the conveyance or transfer thereof. Provided, that all arrearages in real property taxes, without penalty or interest, shall be deductible from the compensation to which the owner may be entitled."*

Also, Section 36 (1) of RA 3844, as amended by Section 7 of RA 6389, allows disturbance compensation to the tenant as a result of extinguishment of tenancy relationship by reason of the reclassification or conversion of the agricultural land into non-agricultural uses, to wit:

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> *"Sec. 36. Possession of Landholding; Exceptions. — Notwithstanding any agreement as to the period or future surrender, of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding, except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:*
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> > *"(1) The landholding is declared by the department head upon recommendation of the National Planning Commission to be suited for residential, commercial, industrial or some other urban purposes: Provided, That the agricultural lessee shall be entitled to disturbance compensation equivalent to five times the average of the gross harvests on his landholding during the last five preceding calendar years";*

Only Section 35 of RA 3844 was expressly repealed by RA 6657. Hence, disturbance compensation given to a tenant due to the extinguishment of tenancy relationship by reason of the reclassification or conversion of the agricultural land into non-agricultural uses, pursuant to Section 36 of RA 3844, as amended by RA 6389, is still considered one of the transactions contemplated under Section 66 of RA 6657.

It is noted, however, that based on the Certification [1] issued by the Department of Agrarian Reform, Region IV-A, Laguna Provincial Office, the lot covered by TCT No. T-000-0000000000, with an area of Seven Thousand Eight Hundred Thirty-One (7,831) square meters, is the retention area of BBB pursuant to the latter's right of retention on agricultural land/s covered by the Comprehensive Agrarian Reform Program (CARP) as provided under Section 6 of RA No. 6657. Being a retention area, said lot is outside the coverage of PD No. 27 and RA No. 6657. Moreover, disturbance compensation is allowed only when the land use is converted from agricultural into non-agricultural uses pursuant to Section 36 of RA No. 3844, as amended. The giving out of disturbance compensation in the form of land for any other reason is not covered by our agrarian laws. In the absence of any proof showing that the subject parcel of land has been converted into non-agricultural uses, the transfer of the same by way of disturbance compensation is not covered by RA No. 6657.

Accordingly, the transfer of the subject parcel of land in favor of BBB is not within the ambit of RA No. 6657, and, thus, subject to the CGT and DST. *(BIR Ruling 363-2017 dated August 09, 2017)*

Please be guided accordingly.

Very truly yours,

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

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Footnotes

1. Control Number 1403 acb-0166-7102.

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