November 8, 2016

BIR RULING NO. 372-16

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

AAA

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Dear AAA :

This refers to your letter dated January 11, 2016 requesting exemption on the exchange of properties made without any monetary consideration by and between BBB and CCC.

It is represented that BBB, (AAA) is the registered owner of a parcel of land covered by Transfer Certificate of Title (TCT) No. (132073) 43849, with an area of Two Hundred Ten square meters (210 sq.m.), more or less. On the other hand, CCC, (married to DDD) is the registered owner of a parcel of land covered by TCT No. (132074) 043850, also with an area of Two Hundred Twenty square meters (220 sq.m.), more or less. The above landowners later discovered that the lot covered by TCT No. (132073) 43849 was mistakenly possessed and occupied by CCC, while the lot covered by TCT No. (132074) 043850 was being occupied by BBB. In order to correct the foregoing mistake BBB and CCC executed a Deed of Exchange dated December 28, 2015 wherein they agreed to exchange their respective properties without any monetary consideration for the purpose of correcting the mistake.

Based on the foregoing representations, you are now requesting that the subject exchange of properties be exempted from applicable taxes.

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

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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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