**November 14, 2016**

# BIR RULING NO. 389-16

RA 10752; Secs. 24 (D) (1) & 196 of the NIRC, as amended

*Department of Public Works and Highways*
*Central Office*
Manila

Attention: *Estrella T. Decena-Zaldivar*
*Director IV, Legal Service*

Gentlemen :

This refers to your letter dated October 26, 2016 requesting for official computation of capital gains tax (CGT) and documentary stamps tax (DST) in connection with the negotiated contracts entered into by the Department of Public Works and Highways (DPWH) under Republic Act (RA) No. 10752.

It is represented that your legal staff, Atty. Girlie C. Mahinay-Mendoza inquired with Revenue District Office (RDO) No. 24-Valenzuela on the correct computation of the CGT and DST on the negotiated sale of property under RA No. 10752; that the RDO No. 24-Valenzuela submitted an official computation for the said taxes, grossing up the Net Actual Consideration (NAC) from 92.5% to arrive at the Actual Consideration (AC), formulated as follows:

AC = NAC + CGT + DST

AC = NAC + 6% AC + 1.5% AC

AC = NAC + 7.5% AC

92.5% AC = NAC

Therefore: AC = NAC/92.5

and that you would like to seek on opinion/confirmation if the above formula is applicable to

Copyright 2020 CD Technologies Asia, Inc.

all BIR District Offices and to all related transactions under RA No. 10752.

In reply, please be informed that Section 5 (c) of RA No. 10752, provides that:

*Sec. 5. Rules on Negotiated Sale. — . . .*

*(c) With regard to the taxes and fees relative to the transfer of title of the property to the Republic of the Philippines through negotiated sale, the implementing agency shall pay, for the account of the seller, the capital gains tax, as well as the documentary stamp tax, transfer tax and registration fees, while the owner shall pay any unpaid real property tax.*

The above Section is implemented by Section 6.9 of the Implementing Rules and Regulations of RA No. 10752, which provides that:

*"6.9. Taxes and Fees. —*

*As provided in Section 5(c) of the Act, the IA shall pay for account of the seller/owner, the Capital Gains Tax (CGT), as well as the Documentary Stamp Tax (DST), transfer tax and registration fees, while the owner shall pay any unpaid real property tax.*

*The IA shall pay the CGT to the Bureau of Internal Revenue (BIR) based on the actual consideration stated in the Deed of Sale, as expressed below:*

*AC = NAC + CGT*

*Where:*

*AC = Actual Consideration indicated in the Deed of Sale to be appropriated and paid out by the IA for the negotiated sale,*

*NAC = Compensation Price as offered by the IA to the property owner in accordance with Section 6.1 of this IRR, net of CGT, and*

*CGT = Capital Gains Tax to be paid by the IA to the BIR, for the account of the owner.*

*Since CGT = x% of AC,*

*Then NAC = AC - CGT = 100% AC - x% AC = (100% - x%) AC,*

*and, therefore, AC = NAC (100% - x%)*

*Annex B shows an illustrative example in computing the AC, NAC, and CGT for a hypothetical property affected by a ROW to be acquired through negotiated sale.*

Copyright 2020 CD Technologies Asia, Inc.

*The above provisions pertaining to CGT does not apply to the sale of property classified as ordinary assets. The latter is subject to the existing BIR rules and regulations.*

*In addition, the DST, transfer tax and registration fees for the negotiated sale shall be paid by the IA in accordance with pertinent laws and regulations. Upon the request of the property owner, the IA shall remit to the LGU concerned the amount corresponding to any unpaid real property tax, subject to the deduction of this amount from the total negotiated price, provided that the said amount is not more than the negotiated price."*

Section 5 (c) of RA No. 10752 must be read in relation to Sections 24 (D) (1) and 196 of the Tax Code of 1997, as amended, which provide that:

*"Section 24. Income Tax Rates. —*

*(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, classified as capital assets, including pacto de retro sales and other forms of conditional sales, by individuals, including estates and trusts: . . . ." (Emphasis supplied)*

xxx xxx xxx

*SEC. 196. Stamp tax on Deeds of Sale and Conveyances of Real Property. — On all conveyances, deeds, instruments, or writings, other than grants, patents or original certificates of adjudication issued by the Government, whereby any land, tenement, or other realty sold shall be granted, assigned, transferred or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax, at the rates herein below prescribed, based on the consideration contracted to be paid for such realty or on its fair market value determined in accordance with Section 6(E) of this Code, whichever is higher: Provided, That when one of the contracting parties is the Government the tax herein imposed shall be based on the actual consideration.*

Hence, the tax base of CGT, in case of negotiated transfer of right-of-way site or location for National Government Infrastructure Projects shall be gross selling price or zonal value of the real property as determined in accordance with Section 6 (E) of the Tax Code of 1997, as amended, whichever is higher.

Copyright 2020 CD Technologies Asia, Inc.

Thus for purposes of computing the CGT, the following formula shall be observed:

AC = NAC + CGT

Where:

NAC = gross selling price or the fair market value (FMV) as determined by the BIR Commissioner or the FMV as shown in the schedule of values of the Provincial and City Assessors, whichever is highest.

With regard to the computation of the DST, Sec. 196 of the Tax Code of 1997, as amended, provides that when one of the contracting parties is the Government, the DST shall be based on the actual consideration thereof. Thus, the following formula shall be followed:

AC = NAC + DST

Where:

NAC = gross selling price.

Accordingly, this Office affirms the official computation of RDO No. 24-Valenzuela by grossing up the NAC from 92.5% to arrive at the AC.

Please be guided accordingly.

Very truly yours,

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

Copyright 2020 CD Technologies Asia, Inc.