March 15, 2018

BIR RULING NO. 528-18

Section 24 (D) of the NIRC of 1997, as amended; BIR Ruling No. 355-2014; BIR Ruling No. 299-2014

AAA

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Madam :

This refers to your letter dated August 11, 2016, requesting exemption from payment of capital gains tax (CGT), relative to the Deed of Exchange of Real Property executed by and between BBB and CCC ("the BBCC" for brevity) and Spouses DDD and AAA ("Sps. DDAA" for brevity).

Background:

EEE was the lawful and registered owner of a parcel of land situated at Barrio Tañong, Malabon City, covered by Transfer Certificate of Title (TCT) No. T-92321 of the Register of Deeds of Caloocan City (now Malabon City) containing an area of Seventy-Two (72) square meters. EEE had caused the subdivision of the said parcel of land into two (2) lots namely Lot 12-A and Lot 12-B as per subdivision plan and technical descriptions Psd-00-070539 duly approved by the Regional Director for Lands.

On September 25, 2013, a Deed of Absolute Sale was executed by and between EEE, Sps. DDAA, and the BBCC, whereby the former sold, transferred, and conveyed Lot 12-A, consisting of thirty-six (36) square meters, more or less, to Sps. DDAA, while Lot 12-B, also consisting of thirty-six (36) square meters, more or less, was sold, transferred, and conveyed to the BBCC. Thereafter, the Registry of Deeds for Malabon issued TCT No. 007-2014000328 under the name of Sps. DDAA, over Lot 12-A, and TCT No. 007-2014000329 under the name of the BBCC, over Lot 12-B.

On September 19, 2016, a Deed of Exchange of Real Property was executed by and between Sps. DDAA and the BBCC over TCT No. 007-2014000328 and TCT No. 007-2014000329, together with the improvements thereon. Hence, this request.

In reply, please be informed that Section 24 (D) (1) of the National Internal

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Revenue Code of 1997, as amended, states that:

> *"SEC. 24. Income Tax Rates. —*
>
> xxx xxx xxx
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> *(D) Capital Gains from Sale of Real Property. —*
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> *(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: 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*, [1] 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. [2]

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. Thus, the Deed of Exchange of Real Property, 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, it shall be subject to the CGT imposed therein.

Moreover, the conveyance being a disposition of real property under Section 24 (D) of the National Internal Revenue Code of 1997, as amended, is likewise subject to the documentary stamp taxes (DST) imposed in Section 188 and Section 196 of the National Internal Revenue Code of 1997, as amended.

Please be guided accordingly.

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Very truly yours,

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

Footnotes

1. CTA EB Case No. 412 dated April 30, 2009.
2. Black's Law Dictionary, 6th Edition.

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