April 11, 2018

BIR RULING NO. 649-18

Sections 24 (D) (1) and 196 of the 1997 Tax Code, as amended; 000-00

AAA

_____

_____

Dear AAA,

This refers to your letter dated January 18, 2014, requesting legal opinion on whether you are entitled to the refund of the amount of Php_____ which you paid as capital gains tax (CGT) and documentary stamp tax (DST), inclusive of penalties and interest, on a real property conveyed to you by way of *dacion en pago*.

Documents submitted show that BBB ("BBB") obtained a loan from AAA ("AAA") in the amount of Php_____, secured by a collateral consisting of a real property situated in Coloong II, Valenzuela City covered by TCT No. V-36217, with an area of 500 square meters; that when the payment of the loan became due, BBB could not pay the same in cash, and, instead, offered to assign to AAA the above real property as payment; that AAA accepted said offer and the corresponding Deed of Assignment dated May 20, 2013 was executed by the parties to formalize the transfer of the subject property to AAA in payment for the loan amount of Php_____; that the BIR assessed the transfer of the property for CGT, with interest and penalty, in the amount of Php_____, and DST, with interest and penalty, in the amount of Php_____, or a total amount of Php_____; and that both the computations for the CGT and DST were based on the zonal value of Php_____ of the subject property.

In reply, please be informed that *dacion en pago* is a special mode of payment recognized under Article 1245 of the New Civil Code. Under the same provision of law, this transaction is governed by the law of sales. A contract of sale is defined in Article 1458 of the Civil Code, thus:

> *"Art. 1458. By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.*
>
> xxx xxx xxx"

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Based on said provision, a contract of sale has the following elements, to wit:

a) Consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price;

b) Determinate subject matter; and

c) Price certain in money or its equivalent. [1]

In a *dacion en pago* transaction, all of the above elements are present. When a creditor accepts the conveyance of a property by the debtor as payment for the loan, there is consent or meeting of the minds. The property conveyed is the determinate subject matter and the outstanding loan amount is the price. Thus, for tax purposes, since a conveyance of a real property by way of *dacion en pago* partakes the nature of a sale, then, it shall be subject to tax as a sale of real property. It is noted that the subject property is a capital asset of BBB, it being used for residential purpose. Hence, Section 24 (D) (1) of the 1997 Tax Code, as amended, applies:

> *"(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: 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"*; (Underscoring supplied)

It must be noted that the applicable 6% final tax is based on the gross selling price or current fair market as determined in accordance with Section 6 (E) of the 1997 Tax Code, as amended, without taking into consideration the actual gain derived by the seller/transferor from the transaction, as the same is already being presumed by law. Thus, the conveyance of the subject property by way of *dacion en pago* is subject to the CGT regardless of whether or not BBB actually derived gain or profit therefrom. Likewise, the said conveyance is also subject to DST pursuant to Section 196 of the 1997 Tax Code, as amended.

Accordingly, your request for the refund of the amount paid as CGT and DST is hereby denied for lack of legal basis.

Very truly yours,

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

Footnotes

1. *Reyes vs. Tuparan*, G.R. No. 188064 dated June 1, 2011.

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