April 12, 2018

BIR RULING NO. 657-18

Sections 24 (D) (1), 188 and 196, NIRC;
BIR Ruling No. 216-2015

AAA

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Madam :

This refers to your letter dated August 31, 2010, which was indorsed by Legal Division, Revenue Region 8, Makati City, requesting exemption from capital gains and documentary stamp taxes on your exchange of properties without monetary consideration.

It is represented that you bought a condominium unit with a parking slot from Land Bank of the Philippines (LBP for brevity) of Unit _____ and Parking Slot No. _____ with floor areas of 77 sq.m. and 12.5 sq.m., respectively at _____ Makati City covered by CCT Nos. 66662 and 66658 of the Registry of Deeds for Makati City; that after the completion of the transaction, you noticed that the parking slot that was included in the sale was a tandem parking slot and not a solo parking slot as represented by the brokers of the LBP; that the brokers and Mr. Lito Bantug of Special Assets Department of the LBP acknowledged the mistake in identifying the parking slot and that due to the foregoing mistake, you and Land Bank of the Philippines, as represented by Gilda E. Pico, executed a Deed of Exchange on August 9, 2010 covering the parking slot no. B1-S035 with CCT no. 66658 located on the basement 1 Level consisting of an area of twelve and a half (12.5) sq.m and parking slot no. B1-S003 with CCT no. 66655 located on the basement 1 Level consisting of an area of twelve and a half (12.5) sq.m.

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 gains presumed to have been realized from the sale, exchange and other

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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 Sections 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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