April 13, 2018

BIR RULING NO. 697-18

Section 24 (D) and Section 196 of the Tax Code, as amended

AAA

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Madam :

This refers to your letter dated April 19, 2013 requesting exemption from capital gains tax (CGT) and documentary stamp tax (DST) on the transfer of a conjugal property covered by TCT No. 76883 to **AAA** pursuant to an Agreement to dissolve the conjugal partnership of gains and for the separation of common properties.

Documents submitted to this Office show that BBB filed an action for declaration of nullity of marriage with the Regional Trial Court (RTC) of Quezon City Branch 94 against **AAA** on the ground of psychological incapacity to comply with the latter's marital obligations under Article 36 in relation to Article 68 of the Family Code of the Philippines, as amended; that pending resolution of the said civil action, the parties assisted by their counsel, entered into an agreement to settle the dissolution of conjugal partnership, legitimate support and custody of their children; that based on the said agreement, the RTC issued a Partial Decision and/or Omnibus Resolution dated November 7, 1997, which, among others, transferred the property covered by TCT No. 76883 to **AAA** to wit:

"I

Dissolution of Conjugal Partnership

The parties declare that they own the following properties, to wit:

1. A house and lot situated at No. 20 Zalameda Street, Corinthian Gardens, Quezon City, with assessed value of P540,000.00;

2. ***A house and lot situated at 11 Apollo Street, Acropolis Green, Libis, Quezon City, with assessed value of P198,000.00;***

3. A residential lot situated at Ayala Alabang with assessed value of

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P268,840.00;

4. A residential lot at Park Ridge, Antipolo, Rizal with assessed value of P45,560.00;

5. An office condominium located at Pacific Center Condominium with a zonal valuation of 2,491,000.00 (under monthly amortization, no assessed value).

The parties agree to dissolve their conjugal partnership and assigned their conjugal properties as follows:

To the Husband:

1. The House and Lot situated at No. 20 Zalameda Street, Corinthian Gardens, Quezon City with assessed value of 540,000.00;

2. A residential lot at Parkridge, Antipolo, Rizal with assessed value of 45,560.00.

To the Wife:

1. A House and Lot situated at 11 Apollo Street, Acropolis Green, Libis, Quezon City, with assessed value of P198,000.00.

The parties agree that they shall each undertake to effect the necessary transfer of the title to the subject properties in their respective names and in this regard, shall be responsible for the taxes, registration fees and other expenses to effect such transfer." (Emphasis Supplied)

On August 20, 1998, the RTC rendered Judgement declaring the marriage null and void *ab initio* and ordering, among others, the dissolution/liquidation of the marriage and the property relation of the parties. On October 20, 1998, the RTC issued a Certificate of Finality of the aforesaid Judgment.

In reply, please be informed that Section 24 (D) (1) of the Tax Code of 1997, as amended, provides:

"(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

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or controlled corporations shall be determined either under Section 24 (A) or under this Subsection, at the option of the taxpayer;"

In this case, the transfer of the subject property is a result of the liquidation, partition and distribution of the conjugal properties which the Court has decided upon pursuant to the provisions of the Family Code of the Philippines. Pertinent portions of said provision states:

"ART. 43. The termination of the subsequent marriage referred to in the preceding Article shall produce the following effects:

xxx xxx xxx

(2) The absolute community of property or the conjugal partnership, as the case may be, shall be dissolved and liquidated, . . ."

"Art. 50. The effects provided for by paragraphs (2), (3), (4) and (5) of Article 43 and by Article 44 shall also apply in the proper cases to marriages which are declared void *ab initio* or annulled by final judgment under Articles 40 and 45."

Thus, in view of the Court-approved dissolution and liquidation of your conjugal properties and considering that the transfer, adjudication or distribution of the above-mentioned conjugal properties in your favor and in that of your spouse is not a result of a sale, exchange, or other disposition contemplated under Section 24 (D) (1) of the Tax Code of 1997, as amended, but as a consequence of a court order declaring the nullity of your marriage, the said transfer, adjudication or distribution therefore is not subject to the capital gains tax.

Under Section 98 of the 1997 Tax Code, as amended, it is provided that there shall be levied, assessed, collected and paid upon the transfer by any person, resident or nonresident, of the property by gift, a tax, computed as provided in Section 99 of the same Code. The aforesaid provision, however, will not apply in this case there being no donative intent on your part and that of your spouse because the transfer is made only in compliance with your property settlement which was approved by the court.

Moreover, said transfer of conjugal property is not subject to DST since the monetary consideration from which said tax is based is wanting.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

(SGD.) CAESAR R. DULAY

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