December 9, 2019

BIR RULING NO. 758-19

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

Torrena, Corsino & Associates
NB Mercado Bldg., Mc Arthur Highway (cor. Sandawa)
Matina, Davao City

Attention: *AAA*

Gentlemen :

This refers to your letter dated June 24, 2015 duly indorsed by Revenue Region No. 19-Davao City, requesting tax exemption on the Deed of Reconveyance and Assignment executed by and among BBB, CCC, DDD and EEE.

It is represented that FFF (married to GGG) executed a Deed of Donation involving the entire property covered by Transfer Certificate of Title (TCT) No. T-154932 (Lot 482-C-7-Z with an area of 496 sq. m.) in favor of BBB (Lot 482-C-7-Z-3 with an area of 124 sq. m.), CCC (Lot 482-C-7-Z-4 with an area of 124 sq. m.), DDD (Lot 482-C-7-Z-1 with an area of 124 sq. m.) and EEE (Lot 482-C-7-Z-2 with an area of 124 sq. m.); that TCT No. T-154932 was cancelled and new TCT Nos. 146-2010006357, 146-2010006358, 146-2010006355 and 146-2010006356 was issued to MBBB, CCC, DDD and EEE, respectively; that the parties later discovered that they occupied lots different from the lots in their respective titles; and that they decided to execute a Deed of Reconveyance and Assignment for the purpose of correcting the titles of the areas they were actually occupying.

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 disposition of real property located in the Philippines, classified as capital assets, including *pacto de*

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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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