December 9, 2019

BIR RULING NO. 759-19

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

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Madam :

This refers to your letter dated January 12, 2016 in behalf of your client BBB, seeking for legal opinion if there is a need to pay capital gains tax (CGT) and documentary stamp tax (DST) for the transfer and registration of certain properties from Spouses CCC and BBB to their children, DDD and EEE by virtue of a court order and as a result of the dissolution of the Absolute Community Property Regime.

Background:

On March 13, 2014, BBB filed a Petition for Nullification of Marriage against her husband, BBB. It was docketed as Civil Case No. 1338-FC, now pending before the Family Court Branch 4, Regional Trial Court of Baguio City, under the sala of Hon. Judge Mia Joy Oalaires * -Cawed.

The parties were referred to mediation for the settlement of the issues on dissolution of Absolute Community of Property Regime, Support, and Custody. Pursuant to the mediation, parties arrived at a Compromise Agreement, whereby most of the real properties they acquired during the marriage will be granted to their two common children, DDD and EEE.

On December 12, 2014, Hon. Judge Cawed approved the Compromise Agreement and issued a Partial Judgment. In the Partial Judgement, Judge Cawed approved the transfer of the following properties in the names of the common children, DDD and EEE, pro-indiviso, when DDD reaches eighteen (18) years of age:

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1. TCT No. 018-2013000537 consisting one (1) parcel of land and all improvements and appurtenances thereto measuring five hundred twenty-eight (528) square meters, more or less, situated at Dist. of Res. Sec. "H", Baguio City (vacant lot behind the new building);

2. TCT No. 879392 consisting of one (1) parcel of land and all improvements and appurtenances thereto measuring five hundred fifty-three (553) square meters, more or less, and building located along Magsaysay Avenue, Baguio City (New Building);

3. TCT No. T-69984 consisting of one (1) parcel of land and all improvements and appurtenances thereto, measuring five hundred thirty-seven (537) square meters, more or less, and building located at Old Lucban, Baguio City (Old Building); and

4. TCT No. 765577 consisting of one (1) parcel of land and all improvements and appurtenances thereto measuring five hundred nineteen (519) square meters, more or less, and building located at Old Lucban, Baguio City (Warehouse).

Hence, this request.

In reply, please be informed that Section 24 (D) (1) of the National Internal Revenue Code of 1997, as amended, states that:

"(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."* (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

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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 transfer of the real property in favor of the common children, DDD and EEE, 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 capital gains tax 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 imposed in Section 188 and Section 196 of the National Internal Revenue Code of 1997, as amended.

Please be guided accordingly.

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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