BUREAU OF INTERNAL REVENUE
RECORDS MGT. DIVISION
11:10 P.M.
MAR 19 2018
RECEIVED

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Date: March 19, 2018

REVENUE MEMORANDUM CIRCULAR NO. 19-2018

SUBJECT : *Basis Of Capital Gains and Documentary Stamp Taxes In Sales Transactions Of Real Property Previously Mortgaged At A Value Higher Than Its Zonal Or Fair Market Value*

TO : *All Internal Revenue Officials, Employees and Others Concerned*

This Circular is issued to clarify the basis for the computation of Capital Gains Tax (CGT) and Documentary Stamp Taxes (DST) in a sales transaction of previously mortgaged real property.

BACKGROUND

Some revenue district offices compute the CGT and DST in real property sales transactions based on amounts other than what is set by law. In sales transactions involving previously mortgaged properties, certain revenue district offices have computed the CGT and DST on the transactions based on the mortgage value previously appraised and not on the values set in Sections 24(D)(1) and Section 196 in relation to Section 6(E) of the National Internal Revenue Code of 1997, as amended (Tax Code).

CLARIFICATION

The provisions of the National Internal Revenue Code of 1997, as amended, (Tax Code) is explicit when it provided for the basis of the computations of CGT and DST on the sale of real property. The provisions state:

"**SECTION 24.** ***Income Tax Rates.*** —

"(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;"

"**SECTION 196.** ***Stamp Tax on Deeds of Sale and Conveyances of Real Property.*** — On all conveyances, deeds, instruments, or writings, other than grants, patents or original certificates of adjudication issued by the Government, whereby any land, tenement or other realty sold shall be granted, assigned, transferred or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax, at the rates herein below prescribed, **based on the consideration contracted to be paid**

for such realty or on its fair market value determined in accordance with Section 6(E) of this Code, whichever is higher: *Provided*, That when one of the contracting parties is the Government, the tax herein imposed shall be based on the actual consideration: xxx"

From the foregoing it is clear that the only basis for the computation of the CGT and the DST are: (1) the gross selling price or the consideration contracted to be paid for such realty; and (2) fair market value determined in accordance with Section 6(E) of the Tax Code.

It should be noted that the term "fair market value" as used in the provisions is qualified by the phrase "determined in accordance with Section 6(E) of this Code". Section 6(E) of Tax Code provides:

"**SECTION 6.** ***Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.*** —

xxx xxx xxx

"(E) *Authority of the Commissioner to Prescribe Real Property Values.* — The Commissioner is hereby authorized to divide the Philippines into different zones or areas and shall, upon consultation with competent appraisers both from the private and public sectors, determine the fair market value of real properties located in each zone or area. For purposes of computing any internal revenue tax, the value of the property shall be, whichever is the higher of:

"(1) the fair market value as determined by the Commissioner; or

"(2) the fair market value as shown in the schedule of values of the Provincial and City Assessors."

In practice, the fair market value as determined by the Commissioner is commonly known as the Zonal Value.

From the foregoing, the term "fair market value" is classified further to the:

a) Zonal Value set by the Commissioner of Internal Revenue and published in department orders; and
b) Fair market value as shown in the schedule of the provincial or city assessors.

Thus, revenue district officers cannot veer away from the provisions of the law and consider the mortgage value of a property previously set.

All other issuance inconsistent herewith are hereby repealed or modified accordingly. All concerned revenue officials and employees are hereby enjoined to give this Circular as wide a publicity as possible.

This Circular takes effect immediately.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

014680

K1-NRA

BUREAU OF INTERNAL REVENUE
RECORDS MGT. DIVISION
11:10 P.M.
MAR 19 2018
RECEIVED