REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

27 April 2017

REVENUE MEMORANDUM CIRCULAR NO. 35-2017

SUBJECT: Clarification on the Imposition of Capital Gains Tax on Sale, Exchange or other Disposition of Real Properties

TO : All Internal Revenue Officials and Employees and Other Concerned

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This Circular is being issued to clarify the imposition of Capital Gains Tax on the sales, exchanges or transfers of real properties classified as capital asset.

CLARIFICATION:

Pursuant to Sections 24(D)(1) and 27(D)(5) of the National Internal Revenue Code of 1997 (Tax Code), a final tax of six percent (6%) shall be imposed on capital gains presumed to have been realized by the seller from the sale, exchange or other disposition of real properties located in the Philippines, classified as capital assets, including pacto de retro sales and other forms of conditional sales based on the gross selling price or fair market value as determined in accordance with Section 6(E) of the Tax Code (i.e., the authority of the Commissioner to prescribe the real property values), whichever is higher.

The foregoing implies that in order to be liable for payment of capital gains tax, there must be presumed gain from the be sale, exchange or disposition of the real property.

The mere issuance of tax declaration without any sale, exchange, or disposition is not subject to capital gains tax. Likewise, there must be transfer of ownership that resulted from sale, disposition or conveyance of real property. The payment of the capital gains tax is dependent and is a direct consequence of the sale, transfer or exchange. It is not the transfer of ownership or possession per se that subjects the sale/transfer/exchange of the 6% capital gains tax but the profit or gain that was presumed to have been realized by the seller by means of said transfer as can be clearly seen from the provisions of Section 24(D)(1) and 25(D)(5) of the Tax Code.

Accordingly, mere issuance of tax declaration in the absence of any sale, exchange or other form of conveyance is not subject to capital gains tax.

All internal revenue officers and others concerned are hereby enjoined to be guided accordingly and to give this Circular as wide publicity as possible.

This Circular shall take effect immediately.

CAESAR R. DULAY
Commissioner of Internal Revenue

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BUREAU OF INTERNAL REVENUE
RECORDS MGT. DIVISION
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