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

OCT 03 2023

REVENUE MEMORANDUM CIRCULAR NO. 99-2023

TO : **All Revenue Officers and Others Concerned**

SUBJECT : **Clarifications on the Applicable Taxes Due on Sale of Real Property Considered as Ordinary Assets of the Seller and Other Relevant Matters**

In order to have a uniform application of tax laws and regulations pertaining to transfers/sales of real properties classified as "ordinary assets" across all offices processing electronic Certificate Authorizing Registration (eCAR), the following issues and concerns are hereby addressed, in a question and answer (Q and A) format, for the observance and guidance of all Revenue Officers and others concerned:

1. **How do we determine if the real property subject of sale is an "ordinary asset" on the part of the seller?**

   Answer: Revenue Regulations (RR) No. 7-2003 provides that real properties considered "ordinary asset" shall refer to all "real properties" specifically excluded from the definition of capital assets under Section 39(A)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended. These include the following:

   a. Stock in trade of a taxpayer or other real property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year; or
   b. Real property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business; or
   c. Real property used in trade or business (i.e., buildings and/or improvements) of a character which is subject to the allowance for depreciation provided under Sec. 34(F) of the NIRC of 1997, as amended; or
   d. Real properties used in trade or business of the taxpayer; or
   e. In the case of banks, real properties acquired through foreclosure sale.

2. **Are real properties seized by government in the exercise of its regulatory functions that were eventually sold through public auction considered "ordinary asset"?**

   Answer: No. Although it is part of the "inventory" of the government primarily held for sale, the real property in the hands of the government shall not be considered "stock in trade/inventory" in the ordinary course of trade or business.

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3. **Are sellers of real properties which are already covered by a Deed of Sale still required to issue "Sales Invoice" pursuant to Section 237 of the NIRC, as amended?**

   Answer: Only sellers of real properties classified as "ordinary assets" are required to issue Sales Invoice pursuant to Section 237 of the NIRC, as amended. However, in case of a VAT-registered taxpayer who is engaged solely in sale of service, as a consequence thereof, has only Authority to Print for Official Receipt (OR), the issuance of an OR covering the sale of its real property used in trade or business is permitted as the sale is merely incidental to its regular business operations.

4. **In relation to the answer to question #3, if the transaction shall be issued "Sales Invoice/official Receipt" by the seller, will the proceeds from the sale form part of the seller's gross sales?**

   Answer: If the seller's registered business is "real estate business", the sales shall form part of its gross sales. Otherwise, the sale of real property, though covered by a sales invoice, shall not form part of the gross sales, but the gain on the sale of such real property shall be declared as other taxable income which shall be declared in the seller's income tax return. The gain is computed by deducting the book value of the real property from the selling price indicated in the sales invoice. Any creditable tax withheld by the purchaser shall be claimed as tax credit.

5. **In relation to the answer to question #4, what shall be attached by the seller to the income tax return (ITR) as proof of tax credit that shall be deducted from the seller's tax due?**

   Answer: The copy of BIR Form No. 1606 with proof of payment of the Creditable Withholding Tax shall be attached to the ITR where the sales were declared by the seller.

6. **What are the requisite tax returns to be filed by the parties to the sale/transfer transaction involving real properties considered as "ordinary asset"?**

   Answer: If the real property is considered as "ordinary asset" of the transferor/seller, the tax returns to be filed are: (a) BIR Form No. 1606 for the remittance of expanded withholding tax on the purchase of real property; and (b) BIR Form No. 2000-OT for the declaration and payment of the documentary stamp tax (DST) due on the transfer/sale of real property.

7. **Are all sales of real property classified as "ordinary asset" subject to Value Added Tax (VAT)?**

   Answer: Generally, sales of real property classified as "ordinary assets" are subject to VAT. However, the following are instances when the sales of real property classified as "ordinary assets" are not subject to VAT:

   a. When the real property is used in business by a "Non-VAT Registered Person", whose transactions are under Section 109(1)(A) to (BB) of the Tax Code, as amended; or

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b. When the real property subject of sale/transfer falls under Section 109 (P) of the NIRC, as amended (i.e., sale of real property utilized for socialized housing as defined by Republic Act No. 7279, as amended; sale of house and lot and other residential dwellings with the selling price of not more than P 3,199,200.00: provided that every three (3) years thereafter, the amount shall be adjusted to its present value using the Consumer Price Index as published by the Philippine Statistics Authority[PSA].

8. If the sale of real property is subject to VAT, what is the taxable base that must be used to determine the VAT?

Answer: Section 106 of the NIRC, as amended provides that the twelve percent (12%) VAT shall be based on the ***"gross selling price or gross value in money of the goods or properties sold, bartered or exchanged"***. Section 4.106-4 of Revenue Regulations No. 16-2005, as amended, however, states that in the case of sale of real property subject to VAT, the "***gross selling price***" shall mean the consideration stated in the sales document or the fair market value, whichever is higher. The term "fair market value" shall mean whichever is the higher of (a) fair market value as determined by the Commissioner (zonal vale), or (b) the fair market value as shown in the schedules of values in the Provincial or City Assessors (Real Property Tax Declaration).

9. The lot where the taxpayer's bakeshop is established is inherited by the taxpayer proprietor from his ancestors. The said lot was donated to his daughter for which he paid donor's tax. However, the operation of the bakeshop remained under the name of the taxpayer-transferor. Is the donation of the lot be considered "deemed sale" subject to VAT?

Answer: Donation by a VAT-registered person of a property classified as an "ordinary asset" shall be considered transaction "deemed sale", hence, subject to VAT pursuant to Section 106 (B)(1) of the NIRC, as amended, and Section 4.106-7 of Revenue Regulations No. 16-2005, as amended.

In this case, the donated lot is classified as an "ordinary asset" as it is used in the course of business of the donor-taxpayer (Section 39(a) of the NIRC, as amended; Section 2(b)(4) of Revenue Regulations No. 7-2003).

Thus, if the donor-taxpayer is a VAT-registered person, the donation of the lot is considered a transaction "deemed sale" subject to VAT. If the donor-taxpayer is not a VAT registered person, the donation is exempt from VAT.

Further, while the lot was donated to the taxpayer's daughter, the same is still being used in the operation of business of the taxpayer. Therefore, the classification of the lot after the donation remains to be "ordinary asset" in accordance with Section 3(f)(1) of Revenue Regulations No. 7-2003.

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10. A VAT-registered taxpayer donated the real property used in business to his son. The said real property was purchased by the taxpayer supposed to be for expanding his supermarket. Is the donation be considered "deemed sale" subject to VAT?

Answer: Yes. The real property forms part of the asset of the taxpayer as it was originally intended for use in business; thus, it is a "deemed sale" transaction pursuant to the provisions of Section 106(B)(1) of the NIRC, as amended, subject to the payment of VAT.

All internal Revenue Officers and others concerned are hereby enjoined to give this Circular a wide publicity as possible.

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

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