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

June 7, 2016

REVENUE MEMORANDUM ORDER NO. 24-2016

SUBJECT : Prescribing the Investigation of Parties in Transactions Involving the Transfer/Assignment/Sale of Properties.

TO : All Revenue Officials, Personnel and Others Concerned

This Revenue Memorandum Order is being issued to prescribe guidelines and procedure in the conduct of investigation on the capacity of a party/ies to acquire properties.

Such transactions covered by this Order are, but not limited to, those subject to: (1) Final Capital Gains Tax (CGT) on sale of real properties considered as capital assets; (2) CGT on sale, transfer or assignment of stocks not traded in the stock exchange; (3) expanded withholding tax (EWT) on the sale of real properties considered as ordinary assets; (4) donor's tax; (5) estate tax; (6) other taxes including documentary stamp tax related to the sale/transfer of properties, and (7) those covered by tax-free transfer under Section 40 of the NIRC.

I. GUIDELINES AND PROCEDURE. —

In order to ensure the tax compliance of the parties, and to determine the capacity of the parties to acquire and hold the properties subject of said transfer/assignment/sale ("Subject Properties"), the following guidelines and procedure are hereby prescribed:

i. Application for the issuance of Certificate Authorizing Registrations (CARs)and Tax Clearance (TCLs) covering sale/transfer/assignment of properties under Revenue Memorandum Order (RMO) No. 15-2003 and other related issuances shall, including all supporting documents required under existing BIR issuances and may be required thereafter as necessary, be evaluated for possible audit or investigation.

ii. Parties to the said transactions may be subjected to an audit or investigation to determine their capacity to hold and/or acquire properties. If it is determined that the seller/transferor has no capacity to acquire the Subject Property he/she/it is selling/assigning/transferring and/or the buyer/transferee has no capacity to acquire the Subject Property, the Revenue District Officer (RDO) may recommend the issuance of the electronic Letter of Authority (eLA) for approval by the Regional Director (RD) having jurisdiction over the parties concern, in accordance with existing rules and regulations.

iii. In relation to this issuance, the One-Time Transactions (ONETT) Team shall undertake the following procedures:

   a. In all cases, verify with the Integrated Tax System (ITS) that the parties (seller/assignor/transferor and buyer/assignee/transferee) regularly files returns and report income sufficient to establish financial capacity.

      For individuals not required to file an income tax return (e.g. individual whose gross income does not exceed total personal

and additional exemptions for dependents, Minimum Wage Earners or individual who is exempt from income tax pursuant to the provision of the Tax Code and other laws, general or special, or those who are substituted tax filers), to establish his/her financial capacity, he/she shall submit an affidavit stating therein (1) why they are not required to file an income tax return, (2) total annual income, (3) source of their income

In addition, presentation of documents such as but not limited to Income Tax Return, Certificate of Creditable Tax Withheld at Source, Certificate of Final Tax Withheld at Source, or loan documents as the source of the consideration for the acquisition of the Subject Property may be used to establish financial capacity.

b. Financial capacity of the buyer to acquire the Subject Property shall be determined during the application of CARs and TCLs.

If the buyer/transferee is proven to have no financial capacity to acquire the property, the transaction is not a sale but a donation and donor's tax should be imposed and not capital gains, and a duly executed Deed of Donation shall be required.

c. The lack of financial capacity of the Seller/assignor/transferor shall not stop the processing and issuance of the CARs and TCLs relating to the Subject Property. The ONETT Team may recommend the issuance of eLA pursuant to paragraph (ii) above. The processing and issuance of the CARs and TCLs shall proceed in accordance to Revenue Memorandum Order No. 15-2003 any amendment thereto notwithstanding the impending audit or investigation.

iv. For application of BIR Certification Ruling on the consequence of a tax-free exchange transactions, the taxpayers shall submit all supporting documents required under existing rules and regulations in quadruplicate to the Law Division of the BIR National Office. And if it shall be determined that transferor/assignor does not have the capacity to acquire the property subject of the tax-free exchange, the Law Division shall forward it to the National Investigation Division (NID) for investigation.

a. To initiate an audit/investigation, the NID shall submit a memorandum-request directly to the Office of the Commissioner (OCIR) indicating the following:

- The parties to be audited (the transferor/s and the transferee/s),
- Brief background of the tax-free exchange transaction,
- Tax compliance history of the parties based on internal revenue information,
- Justifications for the conduct of an audit/investigation, or
- Such other information as may be required by the Commissioner of Internal Revenue.

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b. The conduct of an audit/investigation (i.e., submission of audit reports, issuance of Assessment Notices, etc.) shall observe the established rules and regulations for the conduct of such activities, subject to final review and approval by the Commissioner.

c. The processing of BIR Certification Ruling and issuance of CARs and TCLs on the transfer of property in exchange for shares of stock shall proceed notwithstanding the impending audit or investigation.

v. The procedures and requirements contained in this issuance shall be mandatory on sale/transfer/assignment of stocks not traded in the Stocks Exchange and other ONETT transactions involving tax payments of at least One Million (P1,000,000) and transactions exempted from CGT/EWT. (e.g. tax-free exchange under Section 40 (c)(2) of the NIRC of 1997).

II. REPEALING CLAUSE. —

All other rules, orders or portions thereof that are contrary to or inconsistent with the provisions of this Order are hereby modified and/or repealed accordingly.

III. EFFECTIVITY. —

This Order shall take effect immediately.

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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