REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Section 24(D)(1), NIRC
BIR Ruling No. 216-2015
0284-2019 MAY 15 2019

VIMAR A. TUAZON
No. 1988 Perfecto Street
Tondo, Manila

Madam:

This refers to your letter dated February 17, 2011, requesting for an exemption from capital gains tax and documentary stamp tax on the rectification and correction of entries in your respective titles to real properties.

It is represented that Maria Loida E. De Ocampo, Vimar A. Tuazon and Lynell A. Rubin acquired under co-ownership a ONE HUNDRED FIFTY (150) square meters real property located in Kundiman Street, Sampaloc, Manila, from the co-owners/vendors thereof, after which they proceeded to improve, possess and occupy the same lot as adjoining lot owners; that for the purpose of separating their titles to the same lot, they had the same subdivided into three (3) lots with an area of FIFTY (50) square meters each and registered *TCT No. -* *a parcel of described as lot 39-A of the subdivision plan (LRA) Psd-397954* in the name Maria Loida E. De Ocampo and *TCT No. -* *a parcel of described as lot 39-C of the subdivision plan (LRA) Psd-397954* in the name of Vimar A. Tuazon; that as it turned out later, the registered owners realized that while they were occupying their respective properties, the technical description of their properties appearing in their respective titles do not match the actual description of their properties, in other words, *TCT No. -* issued in the name of Maria Loida E. De Ocampo bears the technical description of the property owned by Vimar A. Tuazon and the title *TCT No. -279200* in the name of Vimar A. Tuazon describes the property owned and occupied by Maria Loida E. De Ocampo; that obviously there was a mistake in the technical description embodied in each other's titles; that both registered owners executed a document before Notary Public Jimmy D. Lacebal expressing their intention to correct the mistake; and that while the document executed was a Deed of Exchange, in truth and in fact, there is no exchange of property but rather a mere rectification and correction of entries in their respective titles to truly reflect the technical description of the properties they own and possess.

In reply, Section 24 (D) of the Tax Code of 1997, as amended, provides, viz.:

> "Section 24 (D). Capital Gains from Sale of Real Property. — (1) In General. — The provision of Section 39 (B) notwithstanding, a final tax of 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 the capital

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> 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: . . ."

In the case of *Salud vs. CIR, CTA EB Case No. 412* dated April 30, 2009, the Court of Tax Appeals had occasion to rule that the 1997 Tax Code, 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 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 (Black's Law Dictionary, 6th Edition).

Applying the above ruling of the Court, it is therefore clear that the phrase "other disposition" under Section 24(D)(1) of the 1997 Tax Code includes within its purview all kinds of dispositions of real property unless specifically excluded therefrom or subject to another tax treatment pursuant to other provisions of the 1997 Tax Code or other special tax laws.

Foregoing considered, in the absence of an express statutory provision exempting from tax the herein exchange of properties, said transaction is subject to CGT under Section 24(D)(1) of the 1997 Tax Code, as amended. (*BIR Ruling No. 216-2015 dated June 19, 2015*)

The conveyance, being a disposition of real property under Section 24(D)(1) of the 1997 Tax Code, as amended, is likewise subject to the documentary stamp taxes imposed in Section 188 and Section 196 of the same Code. (*BIR Ruling No. 216-2015 dated June 19, 2015*)

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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