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

Sections 24 (D) (1) and 196 of the National Internal Revenue Code of 1997, as amended;
BIR Ruling No. 456-17; BIR Ruling No. 119-19
OT-291-2021
AUG 03 2021

DE LEON & DESIDERIO LAW FIRM
Suite 7c Belvedere Tower, San Miguel Avenue
Ortigas Center, Pasig City, Philippines

Attention: **Atty. Felix B. Desiderio, Jr.**

Gentlemen:

This refers to your letter dated February 1, 2021, filed in behalf of Delia C. Arceo and Dalia C. Cabalu, requesting for confirmation of your opinion that the transfer of properties by and between the abovenamed parties is not subject to tax.

It is represented that the above parties, together with three of their sisters, inherited a lot at Otis Street, Manila. They partitioned it into five different lots with each lot having an area of ninety-one square meters and twenty-eight decimeters (91.28 sqm). The five sisters drew lots as to which lot would belong to them. Dalia C. Cabalu drew Lot 1-B whereas Delia C. Arceo drew Lot 1-D.

While waiting the issuance of their respective titles, Dalia C. Cabalu purchased Lot 1-A and Lot 1-C from her sisters, which were the two lots adjacent to her lot, Lot 1-B.

However, upon the issuance of the new titles, Lot 1-B was issued under the name of Delia C. Arceo instead of Dalia C. Cabalu, while Lot 1-D was issued under the name of Dalia C. Cabalu, instead of Delia C. Arceo. Thus, instead of Dalia C. Cabalu having ownership over three adjacent lots, Delia C. Arceo's lot, Lot 1-B, was in between two of Dalia C. Cabalu's lots.

In order to rectify the unfortunate situation, Dalia C. Cabalu and Delia C. Arceo entered into a *Lot Swapping Agreement* dated March 2, 2020 wherein they swapped with each other their respective lots, particularly, Lot 1-B, which is covered by Transfer Certificate of Title (TCT) No.   and Lot 1-C, which is covered by TCT No.

You now request for confirmation of your opinion that since the "swap" or exchange of properties has no consideration involved, and the parties did not gain from such exchange, there can be no basis for which taxes may be imposed.

In reply, please be informed that Section 24 (D) (1) of the National Internal Revenue Code (Tax Code) of 1997, as amended, provides:

"(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."

In the case of Salud v. Commissioner of Internal Revenue,[1] the Court of Tax Appeals had the occasion to rule that the Tax Code of 1997, 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.

Applying the above ruling of the Court, it is therefore clear that the phrase "other disposition" includes within its purview all kinds of dispositions of real property under Section 24 (D) (1) of the Tax Code of 1997, as amended, unless specifically excluded therefrom or subject to another tax treatment pursuant to different provisions of the Tax Code of 1997, as amended. Thus, the *Lot Swapping Agreement* executed by Dalia C. Cabalu and Delia C. Arceo, in the absence of a specific law excluding it from the coverage of Section 24 (D) (1) of the Tax Code of 1997, as amended, is deemed included within the purview of the said provision. Therefore, it shall be subject to the capital gains tax imposed therein.

Also, the reconveyance being a disposition of real property under Section 24 (D) (1) of the Tax Code of 1997, as amended, is likewise subject to the documentary stamp taxes imposed under Section 188 and Section 196 of the Tax Code of 1997, as amended.

As repeatedly held by the Supreme Court, "laws granting exemption from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted."[2]

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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[1] *CTA EB Case No. 412 dated April 30, 2009.*
[2] *Sea-Land Service, Inc. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 122605, April 30, 2001.*