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. 703-2019; BIR Ruling No. OT-019-20
OT-004-2021
JAN 13 2021

HEMINGTON H. YAP
Unit G12, Toledo Bldg.
Magallanes Residences Condominium
Davao City, Metro Manila, Philippines

Sir:

This refers to your undated letter requesting for confirmation of your opinion that the buy-back transaction involving Magallanes Residences Condominium Unit G12, Toledo Building, between you and developer DMC Urban Property Developers Inc. (DMC-UPDI) is not subject to Capital Gains Tax (CGT) imposed under Section 24 (D) (1) of the National Internal Revenue Code ("Tax Code") of 1997, as amended, and Documentary Stamp Tax (DST) under Section 196 of the Tax Code of 1997, as amended.

It is represented that Davao City was hit by a series of strong earthquakes in the month of October 2019. Due to such, various Magallanes Residences condominium buildings constructed by DMC-UPDI suffered structural damages and were deemed unfit for occupancy. On December 15, 2019, another earthquake hit Davao City and upon inspection by the City Building Office, Magallanes Residences Condominium Toledo building was also deemed unfit for occupancy as major structural damages were likewise discovered prompting a series of negotiations between the unit owners of Magallanes Residences Condominium and DMC-UPDI. Eventually, DMC-UPDI agreed to enter into a buy-back transaction with the aforesaid unit owners whereas DMC-UPDI will purchase back the condominium units from their owners at 125% of the total contract price by which the unit owners had purchased the aforesaid units.

Due to the fear of the possible dangers that may befall if you continue to live in a building that is structurally compromised, you accepted the offer from DMC-UPDI to purchase back from you your condominium unit.

Thus, in order to help diminish any further costs that you may incur, you seek confirmation that the aforesaid buy-back transaction is exempt from CGT and DST.

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

"Sec. 24. Income Tax Rates. –

xxx xxx xxx

(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." (Emphasis supplied)

What is involved in this case is a sale of the condominium unit from you, the seller, to DMC-UPDI, which is the buyer. Thus, the subject transaction is subject to CGT regardless of whether a gain was in fact realized considering that Section 24 (D)(1) of the Tax Code of 1997, as amended, imposes CGT upon capital gains which is presumed to have been realized.

Also, the buy-back transaction, 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 in Section 188 and Section 196 of the same Code. (BIR Ruling No. OT-019-20)

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."[1]

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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K-1-FR-20-0279

[1] *Sea-Land Service, Inc. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 122605, April 30, 2001.*