REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 24, 27, 106 & 196 of the NIRC, as amended; Revenue Regulation 2-98, 6-01, 7-03, 16-05 & 4-07; Revenue Memorandum Order 41-91
BIR Ruling No. 388-2011
OT-029-2020 JAN 2 4 2020

ONGKIKO MANHIT CUSTODIO & ACORDA LAW OFFICES
15th Floor, Citibank Tower
8741 Paseo de Roxas, Makati City

Attention: **DEMETRIO C. CUSTODIO, JR.**

Gentlemen:

This refers to your letter dated January 16, 2012, requesting in behalf of Bangko Sentral ng Pilipinas (BSP), clarification of the applicability of BIR Ruling No. 388-2011 relevant to tax implications on the expropriation sale between two government instrumentalities.

It is represented that BIR Ruling No. 388-2011 dated October 20, 2011, discusses the tax implications of an expropriation sale of a property from a seller, whether individual or corporation, to the Light Rail Transit Authority (LRTA); that it is your opinion that the same, however, is silent on the tax implications of an expropriation sale from the BSP to LRTA, hence, this request.

It is further represented that on September 7, 2001, the LRTA filed a complaint for eminent domain for its LRT2 Project[1]. One of the properties subject of the complaint is a property located in Manila, which is covered by Transfer Certificate of Title No. and Tax Declaration No. , a property belonging to BSP. The Trial Court rendered its decision determining the just compensation[2] which has become final and executory.

In reply, please be informed that this Office on several occasions ruled that involuntary transfers of real properties, including expropriation sale, are subject to applicable taxes, depending on whether the subject properties are classified as capital assets or ordinary assets.

Under Section 27(D)(5) of the 1997 Tax Code, as amended, it is provided that in the case of sale, exchange, or other disposition of lands and/or buildings which are not actually used in business and are treated as capital assets by domestic corporations, 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 the Tax Code, whichever is higher, is imposed upon capital gains presumed to have been realized therefrom. It must be noted that the capital gains tax mentioned under the

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[1] The case was entitled Light Rail Transit Authority v. Banco Filipino Savings and Mortgage Bank Inc. and Bangko Sentral ng Pilipinas, Civil Case No. 01-101871 before the Regional Trial Court of Manila, Branch 42.

[2] P21,426,425.00, partial payment of P14,581,220.00 was already made by LRTA, as a consequence of which P6,845,205.00 remains to be paid

aforementioned provision is an income tax, the burden of which rests upon the seller which, in this case, is the BSP.

It is noteworthy to mention that BSP is subject to the capital gains tax of 6% imposed on its capital gains presumed to have been realized from the sale of the said parcel of land in spite of its being a government agency. This is in accordance with Sec. 32(B)(7)(b) of the Tax Code of 1997 which provides that only the income derived by the government agency from the exercise of its essential governmental function shall be excluded from its gross income.

Thus, the property owned by BSP is considered as its capital asset, then the capital gains presumed to have been realized by the said corporation from the expropriation or sale via negotiation of its capital asset, shall be subject to the 6% final withholding tax imposed under Section 2.57.1 (G) of RR No. 2-98, as amended.[3] The tax therein imposed shall be based on the amount that will be received by the corporate owner of the affected property as "just compensation", the same being considered as the actual consideration or consideration contracted to be paid in accordance with RMO No. 41-91.

Moreover, Section 9 of RA No. 9243, "An Act Rationalizing the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes", provides what documents and papers are not subject to documentary stamp tax as follows:

> *SECTION 9. Section 199 of the National Internal Revenue Code of 1997, as amended is hereby further amended to read as follows:*
>
> *SEC. 199. Documents and Papers Not Subject to Stamp Tax. — The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:*
>
> *xxx xxx xxx*
>
> *(l) All contracts, deeds, documents and transactions related to the conduct of business of the Banko Sentral ng Pilipinas.*
>
> *xxx xxx xxx*

Section 173 of the Tax Code of 1997, as amended, provides that whenever one party to the taxable document enjoys exemption from the tax therein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax. It is clear from the provision of R.A. 9243 as implemented by Revenue Regulations No. 13-04, the provisions of Section 173 to the contrary notwithstanding, that all contracts, deeds, documents and transactions entered into by the BSP which are related to the conduct of its business are exempt from the payment of DST. Hence, LRTA is the one liable for the payment of DST.

Furthermore, Sec. 14 (B) (p) (1) of Revenue Regulations (RR) No. 4-2007, amending Sec. 4.109-1 (B) (1) (p) of RR No. 16-2005, implementing Republic Act (RA) No. 9337, provides —

> *"(p) The following sales of real properties are exempt from VAT, namely:*

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[3] RR No. 7-2003 provides for the guidelines in the classification of assets, whether capital or ordinary.

ar.

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(1) Sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business.

However, even if the real property is not primarily held for sale to customers or held for lease in the ordinary course of trade or business but the same is used in the trade or business of the seller, the sale thereof shall be subject to VAT being a transaction incidental to the taxpayer's main business."

The term "primary" is defined as "first, principal, chief, leading or first in order of time, or development, or intention" (Black's Law Dictionary, Sixth Edition). Thus, to be "held primarily for sale or lease", the property must be held with the chief intention of being sold or leased. Thus, sale of property not primarily held for sale to customers or held for lease in the ordinary course of trade or business, and the same is not used in the taxpayer's trade or business, is not subject to the 12% VAT.

Accordingly, the expropriated sale of the property by the BSP to LRTA is:

1. subject to the capital gains tax of 6% pursuant to Section 27 (D) (5) of the Tax Code of 1997 based on the just compensation as actual consideration pursuant to RMO No. 41-91;

2. subject to DST to be paid by LRTA at the rate of P15.00 for each P1,000.00 or fractional part thereof in excess of P1,000.00, or 1.5% of the just compensation as actual consideration pursuant to Section 196, supra; and

3. exempt from 12% VAT, the property not being primarily held and offered for sale or lease to customers in the ordinary course of BSP's trade or business and not used in the trade or business.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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