REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Section 24 (D) (1) of the Tax Code of 1997, as amended.
BIR Ruling No. 119-2019; BIR Ruling No. 216-2015
OT- 399-2022
SEP 23 2022

LUZVIMINDA A. QUIMSON

Madam:

This refers to your request for exemption from the payment of capital gains tax (CGT) on the Deed of Exchange covering residential properties which was executed in order to correct material discrepancies encoded in your respective titles.

Records disclose that Ms. Luzviminda A. Quimson ("Ms. Quimson") and Mr. Ferdinand C. Arucan ("Mr. Arucan") executed a Deed of Exchange involving their properties covered by Transfer Certificate of Title (TCT) Nos. and , respectively. The reason for the said exchange was due to an error in the registration of their respective portions in the land to the effect that the actual portion of Ms. Quimson was erroneously registered in the name of Mr. Arucan, *vice versa*. It was further represented that the Deed of Exchange was made simply to rectify the error in the registration of the wrong portions in the parties' respective names and the registration of the portions that correctly belong to each other.

It is worth noting that, as per Deed of Exchange, Ms. Quimson agreed to pay Mr. Arucan the following amounts:

a. (₱ [redacted] payment for the one (1) square meter of land belonging to Mr. Arucan but was already occupied by the existing building of Ms. Quimson; and

b. (₱ as payment for all the taxes and fees paid by Mr. Arucan in transferring the title and tax declaration in the name of Ms. Quimson.

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

> *"SEC. 24. Income Tax Rates. –*
>
> *xxx xxx xxx*
>
> *(D) Capital Gain from the Sale of Real Property, –*
>
> *(1) In General. – The provision 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 disposition 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 vs. CIR*[1], the Court of Tax Appeals had occasion to rule that the Tax Code of 1997, as amended, does not define nor qualify the phrase "other disposition". Since there is no ambiguity or vagueness in the law, it 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[2].

It is thus clear that the phrase "other disposition" under Section 24 (D) (1) of the Tax Code of 1997, as amended, includes all kinds of dispositions of real property unless specifically excluded therefrom or subject to another tax treatment pursuant to other provisions of the Tax Code or other special tax laws.

The facts as represented show that an administrative error was incurred in the process of registering the titles of the parties which clouded their proof and right of ownership on their respective lots. Undisputably, the remedy resorted to by the parties cannot be construed as an exemption from the application of the prevailing tax laws. To rule otherwise would undermine the prevailing principles for the sake of expediency.

The absence of an express statutory provision exempting the subject transaction from CGT prompts the inevitable application of Section 24 (D) (1) of the Tax Code of 1997, as amended.[3] Thus, the Deed of Exchange is subject to CGT imposed under Section 24 (D) (1) of the Tax Code of 1997, as amended.

Also, the exchange, 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 tax imposed in Sections 188 and Section 196 of the same Code.[4]

Please be guided accordingly.

Very truly yours,

Lilia C. Guillermo

LILIA CATRIS GUILLERMO
Commissioner of Internal Revenue

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[1] CTA EB Case No. 412, April 30, 2009
[2] Black's Law Dictionary, 6th Edition
[3] BIR Ruling No. 216-2015 dated June 19, 2015
[4] BIR Ruling No. 216-2015 *Supra*