REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Section 24 (D) (1) of the National Internal Revenue Code of 1997, as amended.
BIR Ruling No. 1326-2018
OT-0362-2020
JUN 25 2020

MS. ARLENE B. GIMENA &
GREGORIO A. LIKIT
YFC Village, San Antonio,
Agdao, Davao City

Gentlemen/Madam:

This refers to your letter, with attachments, as indorsed by the Regional Director, Revenue Region No. 19 – Davao City, dated April 25, 2019, requesting for Certificate of Tax Exemption from the payment of capital gains tax (CGT) and documentary stamp tax (DST) relative to the Deed of Exchange, executed by and between Arlene B. Gimena and Gregorio A. Likit, for the purpose of correcting mistakes in their respective titles.

It is represented that Arlene B. Gimena had purchased from YCF Neighborhood Association of Agdao, Inc. the property known as Lot 6, Block 11, with an area of 82 sq. m., more or less, and covered by TCT No. [redacted], as evidenced by Deed of Absolute Sale dated September 07, 2016. However, it was discovered that the actual portion she has occupied and developed prior to the execution of the Deed of Absolute Sale is the portion known as Lot 7, Block 11, Psd-112402-125582, with an area of 66 sq. m., more or less, covered by TCT No. [redacted]

On the other hand, Gregorio A. Likit, had purchased also from YCF Neighborhood Association of Agdao, Inc. the property known as Lot 7, Block 11, with an area of 66 sq. m., more or less, and covered by TCT No. [redacted], as evidenced by Deed of Absolute Sale dated September 09, 2016. It was also discovered that the actual portion he has occupied and developed prior to the execution of the Deed of Absolute Sale is the portion known as Lot 6, Block 11, Psd-112402-125582, with an area of 82 sq. m., more or less, covered by TCT No. [redacted].

On December 8, 2017, Arlene B. Gimena and Gregorio A. Likit executed a Deed of Exchange wherein Arlene B. Gimena and Gregorio A. Likit agreed as follows:

1. *Arlene B. Gimena, conveys and sets over absolutely unto Gregorio A. Likit, his heirs and successor, by way of Exchange the property known as Lot 6, Block 11 with an area of 82 sq. m. and covered by TCT No.* [redacted]

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2. *Gregorio A. Likit, conveys and sets over absolutely unto Arlene B. Gimena, her heirs and successor, by way of Exchange the property known as Lot 7, Block 11 with an area of 66 sq. m. and covered by TCT No.*

On November 08, 2018, Marie June C. Santa Agata, President of YCF Neighborhood Association of Agdao, Inc., executed an Affidavit of Exchange of True Ownership, acknowledging the clerical error in her honest mistake of interchanging the Lot Number, Title Number and area in square meters between Arlene B. Gimena and Gregorio A. Likit.

In connection with the foregoing, you are requesting for a Certificate of Tax Exemption with regard to the tax consequences of the correction and/or registration of the above-mentioned exchange of properties.

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

*"**SEC. 24. Income Tax Rates. –**___*

xxx xxx xxx

(D) Capital Gains 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€ 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."* (Emphasis supplied)

In the case of *Salud vs. Commissioner of Internal Revenue*[1], the Court of Tax Appeals had the occasion to rule that the National Internal Revenue 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[2].

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

[1] CTA EB Case No. 412 dated April 30, 2009.
[2] Black's Law Dictionary, 6th Edition.

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Section 24 (D) (1) of the National Internal Revenue Code of 1997, as amended, unless specifically excluded therefrom or subject to another tax treatment pursuant to different provisions of the same Code. Thus, the Deed of Exchange dated December 8, 2017, executed by Arlene B. Gimena and Gregorio A. Likit, in the absence of specific law excluding it from the coverage of Section 24 (D) (1) of the National Internal Revenue Code of 1997, as amended, is deemed included within the purview of the said provision. Therefore, it shall be subject to the CGT imposed therein.

Moreover, the conveyance being a disposition of real property under Section 24 (D) (1) of the National Internal Revenue Code of 1997, as amended, is likewise subject to the DST imposed in Sections 188 and 196 of the same Code.

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue
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