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

Sections 24(D)(1), 188, and 196 of the NIRC of 1997, as amended
BIR Ruling No. 216-2015
1432-2017
9-6-2017

CONRAD BYRON SORIANO
48-A Pureza St.
Tugatog, Malabon City

Sir:

This refers to your letter dated September 19, 2016, requesting exemption from capital gains (CGT) and documentary stamp taxes (DST) on your exchange of properties without monetary consideration.

<u>Background:</u>

Sometime in 1989, Vilma Dispo and Piedad D. Soriano jointly bought a parcel of land designated as Lot No. 3, Block No. 3, of the consolidated- subdivision plan Pcs- 754 containing an area of six hundred ninety-three (693) sq. m. and covered by Transfer Certificate of Title (TCT) No. (T-). On March 1, 1995, the real property was transferred in the name of Vilma Dispo and Piedad D. Soriano under TCT No. On February 6, 2002, the property was divided into two (2) parcels. Lot 3-A of the subd. Plan (LRA) Psd- covered by TCT No. was issued in the name of Vilma M. Dispo, and Lot 3-B of the subd. Plan (LRA) Psd- covered by TCT No. was issued in the name of Piedad D. Soriano.

Sometime in 2010, Piedad D. Soriano donated the property covered by TCT No. to her nephew, Conrad Byron Soriano, who consequently registered in his name the property covered by TCT No. The new owner, Conrad Byron Soriano, decided to demolish the old and dilapidated improvement to give way for the construction of a new one. However, as necessary documents were submitted to Quezon City building permit officials, it was found out that the portion occupied by Piedad D. Soriano should have been for Vilma Dispo and the part occupied by Vilma Dispo should have been for Piedad D. Soriano, in accordance with the blue print and building and area plans. In order to correct the said error, Vilma Dispo and Piedad D. Soriano with the conformity of the new owner, Conrad Byron Soriano, executed a Deed of Exchange of Real Property dated September 13, 2011, wherein the parties agreed to exchange their respective properties with that of the other without any monetary consideration. Hence, this request.

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 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)

A reading of the afore-quoted provision shows that the law 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[1].

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 National Internal Revenue Code of 1997, as amended, unless specifically excluded therefrom or subject to another tax treatment pursuant to different provisions of the National Internal Revenue Code of 1997, as amended, or other special tax laws. Thus, the herein exchange of properties, in the absence of a 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 CGT imposed therein. ***(BIR Ruling No. 216-2015 dated June 19, 2015)***

Moreover, the reconveyance 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 DST imposed in Section 188 and Section 196 of the National Internal Revenue Code of 1997, as amended.

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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[1] Black's Law Dictionary, 6th Edition