REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Secs. 24(D)(1), 98(A) & 188, NIRC
BIR Ruling No. 633-2012
#377-2017

8/14/2017

MR. BONIFACIO I. ANYAYAHAN
No. 234 Barangay Nagsaulay,
San Juan, Batangas

Sir:

This refers to your letter dated August 12, 2016 requesting clarification on whether or not the subsequent transfer of real property/ies in your name by virtue of the partition of the properties between you and your former wife, Ms. Erlinda Reyes (annulled marriage) under a Compromise Agreement approved by the Court is taxable.

It is represented that Bonifacio I. Anyayahan and Erlinda Reyes married on June 3, 1976 at Mabini, Batangas. However, in Civil Case No. (06), entitled "Erlinda Reyes Anyayahan, Petitioner versus Bonifacio I. Anyayahan, Respondent, the said marriage was declared null and void by the Regional Trial Court, Fourth Judicial Region, Branch 30, San Pablo City on May 28, 2015 on the ground of psychological incapacity of the respondent, Bonifacio I. Anyayahan. The parties, in compliance with the Decision of the Court dated May 28, 2015, with the assistance of their respective counsel submitted a Compromise Agreement as to the Partition of the Properties dated January 13, 2016. Accordingly, on January 28, 2016, the Court issued a Decision based on the said Compromise Agreement, to wit:

1. Bonifacio I. Anyayahan shall have exclusive ownership of the property covered by Tax Declaration No. containing an area of 750 sq. m.;
2. The former spouses shall divided equally the property covered by PIN No.
3. The former wife shall have exclusive ownership of the property covered by Transfer Certificate of Title (TCT) No. ;
4. The four (4) children of the former spouses shall have ownership of the property covered by TCT No. including the house thereon.

In reply, please be informed as follows:

Capital Gains Tax

Section 24(D)(1) of the Tax Code of 1997, as amended, provides:

#377-2017
8/14/2017

"(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;"

Considering that the transfer, adjudication or distribution of the above-mentioned conjugal properties in your favor and that of your spouse is not pursuant to a sale, hence, without any monetary consideration, the said transfer, adjudication or distribution therefore is not subject to the CGT imposed under Section 24 (D)(1) of the Tax Code of 1997, as amended. Neither is the said adjudication, transfer, or distribution subject to the donor's tax imposed under Section 98 of the same Tax Code, there being no donative intent on your part and that of your spouse because the transfer is made only in compliance with your property settlement which was approved by the court.

It must be emphasized, however, that the conjugal properties of the former spouses must be divided **equally** between them in order not to consider the distribution as conveyance of property but simply as partition or segregation of that part of the property which belongs to the co-owners. Should one spouse get a share more than the other spouse, the excess thereof is considered "other disposition" of property subject to CGT and DST under Section 24(D)(1) of the Tax Code of 1997, as amended.

The adjudication of property covered by TCT No. to the children shall be considered as a delivery of their presumptive legitimes pursuant to Article 50 of the Family Code, as amended, and therefore not subject to the CGT imposed under Section 24 (D) (1) of the Tax Code of 1997, as amended. Likewise, said transfer of properties or delivery of presumptive legitimes is not subject to the documentary stamp tax imposed under Section 196 of the same Code. Neither is it subject to the donor's tax imposed under Section 98 (A) of the Tax Code of 1997, as amended, there being no donative intent on your part and your spouse because the transfer is only in compliance with the order of the court.

However, an annotation of the transmission of such properties to the children as their presumptive legitimes must be made in the corresponding transfer certificates of title covering such realties, for estate tax purposes. The said properties being considered as advances on the children's legitime pursuant to Article 51 of the Family Code, as amended, shall be included in the gross state and subject to the estate tax, if any, only upon death of either of you and your spouse. The subject properties shall be included

#377-2017
8/14-2017

in your and your spouse's estate pro rata or divided equally as said properties are your conjugal properties.

Finally, the transfer of the properties in your name and those of your spouse and children, made in accordance with the compromise agreement, is not subject to DST pursuant to Section 185 of Revenue Regulations No. 26, otherwise known as the Revised Documentary Stamp Regulations, which provides that the conveyance of a real property without monetary consideration is not subject to the payment of documentary stamp tax (DST). The notarial certification, is however, subject to the DST of fifteen pesos (P15.00) imposed under Section 188 of the same Code. (*BIR Ruling No. 633-2012* dated November 26, 2012)

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained 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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K-1