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
0458-2019
AUG 28 2019

HON. FRANCIS ANTHONY S. GARCIA
City Mayor
Office of the City Mayor
City of Balanga, Bataan

Sir:

This refers to your letter dated October 22, 2018 requesting for tax exemption on the transfers of property (1) from the Ministry of Human Settlements (MHS) to the City of Balanga, and (2) from the City of Balanga to Housing Beneficiaries.

Documents submitted disclosed that on January 9, 1979, pursuant to Executive Order (EO) No. 517, the MHS, previously the Department of Human Settlements, was adopted as a major component of development strategy to include the selection and development of the depressed communities and coordination of programs and projects of the National Local Government, through the Bagong Lipunan Sites and Services (BLISS). On March 2, 1983, the MHS spun-off the Bliss Development Corporation (BDC), as its subsidiary, to undertake the development of communities under the BLISS.

On February 1986 EDSA Revolution, MHS was abolished and all the remaining agencies, corporations, programs, projects and functions were transferred to the Presidential Management Staff (PMS). On May 09, 1988, then President Corazon C. Aquino issued a Memorandum directing the consolidation of the BDC with the Home Guaranty Corporation (HGC), formerly Home Insurance and Guaranty Corporation, to take steps for the liquefaction of its assets.

One of the Rural Bliss Housing Project is located at Brgy. Bagong Silang, Balanga City, Bataan, under Transfer Certificate of Title (TCT) No. in the name of the MHS. Said property was previously owned by the City of Balanga which was donated to the MHS as its counterpart contribution for the development of the Rural Bliss Housing Project for Balanga City, Bataan. MHS deemed it proper to reconvey the subject property to the City of Balanga for its monitoring, maintenance and development, as necessary to ensure that the purpose/s of the Rural Bliss Housing Project is strictly followed. Thus, on October 11, 2018, MHS, through its subsidiary, the BDC, represented by its successor-in-interest, the HGC, executed a Deed of Reconveyance, in favor of the City of Balanga, conveying unto the latter the above-mentioned property. 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:

"*(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)

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 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. Thus, the transfer of TCT No.   in favor of the City of Balanga, 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 the capital gains tax imposed therein.

Moreover, the re-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 documentary stamp taxes imposed in Section 188 and Section 196 of the National Internal Revenue Code of 1997, as amended.

With regard to your request for tax exemption on the transfer of the property from the City of Balanga to the individual beneficiaries, Revenue Bulletin 01-03 declared certain issues or subject matter as "No-Ruling Areas", on which the appropriate office of the Bureau is hereby instructed not to accept any request for rulings covered by said Revenue Bulletin or any amendments thereto. Section 2 (t) of Revenue Bulletin 01-03 provides that:

> *"SECTION 2. List of No-Ruling Areas. — The following shall hereby be construed and identified as "No-Ruling Areas":*
>
> *xxx xxx xxx*
>
> *t) Request for rulings on issue/s or transactions based on hypothetical situations;*
>
> *xxx xxx xxx"*

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

In view of the fact that the TCT of the property is not yet in the name of the City of Balanga, this Office cannot as yet issue a definitive ruling or opinion on the matter considering that the issue is based on hypothetical situation, which is considered as a "No-Ruling Area" pursuant to Section 2 (t) of Revenue Bulletin No. 01-03.

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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