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- 0418-2020
JUL 24 2020

GEISEL GILDA V. SUÑER-CARIÑO
Blk. 13 Lot 5 Phase 1, Kadayawan Homes,
Bangkal, Davao City

Madam:

This refers to your letter dated September 18, 2017, which was forwarded by the Regional Director of Revenue Region No. 19, Davao City, through 1st Indorsement dated March 15, 2019, requesting for the issuance of a ruling relative to the Deed of Exchange dated May 26, 2017 executed by you and Glenn Villaluz Suñer.

It is represented that you are the registered owner of a parcel of land covered by Transfer Certificate of Title (TCT) No. [redacted] of the Registry of Deeds for Davao City, bounded and described as follows:

> *"A PARCEL OF LAND OF THE CONSOLIDATION-SUBDIVISION PROJECT (LOT 14, BLOCK 13 OF THE CONSOLIDATION-SUBDIVISION PLAN PCS-[redacted] BEING A PORTION OF LOT 337-N TO 337-T, ALL OF (LRC) [redacted]; . . . . . SITUATED IN THE BARRIO OF TALOMO, CITY OF DAVAO, ... CONTAINING AN AREA OF ONE HUNDRED TWENTY NINE (129) SQUARE METERS, MORE OR LESS. . . . ."*

On the other hand. Glenn Villaluz Suñer is the registered owner of a parcel of land covered by TCT No. [redacted] of the Registry of Deeds for Davao City, bounded and described as follows:

> *"A parcel of land of the consolidation-subdivision project (Lot 5, Blk. 13 of the consolidation-subdivision plan Pcs-[redacted] being a portion of Lot 337-N to 337-T, all of LRC Psd-[redacted]; . . . . . situated in the Barrio of Talomo, City of Davao, ... containing an area of [redacted] ([redacted]) [redacted] more or less. . . . ."*

It is further represented that the two (2) aforementioned properties comprise the estate of your late father, Antonio V. Suñer, Jr., who died intestate on January 4, 2003. After his death, you, together with your siblings, subdivided the properties of your late father and occupied your respective lots. The lot designated as Lot 5, Block 13, was decided to be the share of Glenn Villaluz Suñer while the lot designated as Lot 14, Block 13, was decided to be your share. Believing that the lot occupied by Glenn Villaluz Suñer was Lot 5, Block 13, he processed the title thereof and a new title under TCT No. [redacted] was issued under his name. Likewise, believing that the lot occupied by you was Lot 14, Block 13, you also processed the title thereof and a new title under TCT No. [redacted] was issued under your name. After a survey was conducted, you found out that the property you occupied was not the one that was agreed upon. The error was likely caused by the fact that the two lots are adjacent to each other, such that in order to correct the error, you and Glenn Villaluz Suñer executed a Deed of Exchange in order to reflect the true agreement of the settlement of your late father. 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:

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*"**SEC. 24. Income Tax Rates.** –*

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(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 Deed of Exchange dated May 26, 2017 executed by you and Glenn Villaluz Suñer, 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 (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 documentary stamp taxes (DST) imposed in Sections 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] CTA EB Case No. 412 dated April 30, 2009
[2] Black's Law Dictionary, 6th Edition