REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sections 98, 99, 101 and 196, Tax Code; Revenue Memorandum Circular No. 53-2013
BIR Ruling No. 272-2016
DT- 352-2022
JUL 14 2022

MARIQUITA V. LISING HOMEOWNERS ASSOCIATION, INC.
Gatungan, Bunawan District
Davao City
Philippines

Attention: CLARITA PANZA MONSALUD
President

Gentlemen:

This refers to your request for a tax exemption ruling relating to the donation made by Mr. Agustin V. Lising (**"Mr. Lising"**) to Mariquita V. Lising Homeowners Association, Inc. (**"MVLHAI"**) on July 9, 2010, of a property located in Barrio of Mahayag, Davao City.

It is represented that Mr. Lising was the registered owner of a parcel of land containing an area of more or less thirteen thousand four hundred thirty-two (13,432) square meters located in Barrio of , and covered by Transfer Certificate of Title No. T- ; and that Mr. Lising donated ten thousand (10,000) square meters of such property (the **"Donated Property"**) to MVLHAI on July 9, 2010 and the latter accepted the same.[1]

In reply, please be informed that Sections 98 and 99 of the National Internal Revenue Code of 1997, as amended (**"Tax Code"**),[2] provides that a donor's tax of six percent (6%)[3] shall be paid upon the transfer by any person of a property by gift computed on the basis of the total gifts exceeding Two Hundred Fifty Thousand Pesos (PhP250,000.00) exempt gift made during the calendar year, to *wit*:

> *"SEC. 98. Imposition of Tax. –*
>
> *(A) There shall be levied, assessed, collected and paid upon the <u>transfer by any person, resident or nonresident, of the property by gift,</u> a tax, computed as provided in Section 99.*

[1] Per Deed of Donation between Mr. Agustin V. Lising and Mariquita V. Lising Homeowners Association, Inc. dated July 9, 2010.
[2] Amended by Section 28 of Republic Act No. 10963, Otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN)" Act, signed in December 19, 2017 and took effect on January 1, 2018.
[3] As amended by RA No. 10963 which replaced the graduated donor's tax rates of 2-15% with a uniform 6% donor's tax applicable to total net gifts made during the calendar year, whether the beneficiary is a relative or a stranger.

xxx *xxx* *xxx*

SEC. 99. Rates of Tax Payable by Donor. –

(A) In General. – The tax for each calendar year shall be six percent (6%) computed on the basis of the total gifts in excess of Two Hundred Fifty Thousand Pesos (PhP250,000) exempt gift made during the calendar year" (Underscoring supplied)

Please note however that, in 2010, the year when the donation was actually made to MVLHAI, the rate of tax imposed on donation is thirty percent (30%) of the net gifts, to *wit*:

"SEC. 99. Rates of Tax Payable by Donor. –

xxx *xxx* *xxx*

(B) Tax Payable by Donor if Donee is a Stranger. – When the donee or beneficiary is a stranger, the tax payable by the donor shall be thirty percent (30%) of the net gifts. For the purpose of this tax, a 'stranger' is a person who is not a:

(1) Brother, sister (whether by whole or half-blood), spouse, ancestor and lineal descendant; or
(2) Relative by consanguinity in the collateral line within the fourth degree or relationship." (Underscoring supplied)

Section 101 of the Tax Code provides a strict and exhaustive list of gifts or donations that are exempt from payment of donor's tax, to *wit*:

*"**SEC. 101. Exemption of Certain Gifts.** – The following gifts or donations shall be exempt from the tax provided for in this Chapter:*

(A) In the Case of Gifts Made by a Resident. –

(1) Gifts made to or for the use of the National Government or any entity created by any of its agencies which is not conducted for profit, or to any political subdivision of the said Government; and

(2) Gifts in favor of an educational and/or charitable, religious, cultural or social welfare corporation, institution, accredited nongovernment organization, trust or philanthropic organization or research institution or organization: Provided, however, That no more than thirty percent (30%) of said gifts shall be used by such donee for administration purposes. For the purpose of this exemption, a 'non-profit educational institution and/or charitable corporation, institution, accredited nongovernment organization, trust or philanthropic organization and/or research institution or organization' is a school, college or university and/or charitable corporation, accredited nongovernment organization, trust or philanthropic organization and/or research institution or organization, incorporated as a nonstock entity, paying no dividends, governed devoting all its income, whether students' fees or gifts, donations, subsidies or other forms of philanthropy, to the accomplishment and promotion of the purposes enumerated in its Articles of Incorporation."[4] (Underscoring supplied)

[4] BIR Ruling No. 272-2016 dated June 22, 2016.

Corollary to the above-cited provisions, this Office issued Revenue Memorandum Circular No. 53-2013[5] to clarify that gifts, donations, and other contributions received by associations are not qualified for exemption under Section 101 (A) (2) of the Tax Code, consequently, such transactions are subject to donor's tax pursuant to Sections 98 and 99 of the Tax Code:

*"II. **Gratuitous Donations to Associations.***

Gifts, donations, and other contributions received by the Associations are subject to the payment of donor's tax pursuant to Sections 98 and 99 of the Tax Code, as amended.

xxx xxx xxx

Endowments or gifts received by such associations are not exempt from donor's tax considering that gifts to Associations are not qualified for exemption under Section 101 (A) (3)[6] of the Tax Code." (Underscoring supplied)

Accordingly, considering that a homeowner association like MVLHAI is not among those in whose favor donation or gifts made are exempt under the aforesaid law, rules and regulations, and considering further that tax exemption cannot be created by implication because exemptions from taxation are highly disfavored in law and one who claims exemption from tax must be able to justify his claim by clearest grant of organic or statute law,[7] your request that the donation in favor of MVLHAI of the Donated Property by Mr. Lising on July 9, 2010 be exempt from the payment of the donor's tax imposed under Section 99 of the Tax Code is hereby denied for lack of legal basis. Moreover, the aforesaid Deed of Donation is subject to documentary stamp tax under Section 196 of the Tax Code.

This ruling is issued on the basis of the foregoing facts as represented. However, if upon investigation it shall be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

Lilia C. Guiller

LILIA CATRIS GUILLERMO
Commissioner of Internal Revenue

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[5] Clarifying the Taxability of Donations given to Homeowners' Association of Subdivisions and Villages, August 16, 2013.

[6] Now Section 101 (A) (2), as amended by Section 30 of the TRAIN Law.

[7] BIR Ruling No. 296-11 dated August 12, 2011; University of the Philippines System Admin v. Commissioner of Internal Revenue, C.T.A. EB Case No. 1946 (C.T.A. Case No. 8397), November 18, 2020; Wonder Mechanical Engineering Corporation vs. Court of Tax Appeals, et al., G.R. Nos. L-22805 & L-27858 June 30, 1975.