This provides a brief information on the tax treatment of certain real property transactions for purposes of facilitating their registration with the Register of Deeds and the Assessor’s Office of local government units.

A. TAX TREATMENT IN GENERAL

A final tax of six percent (6%) based on the gross selling price or current fair market value (zonal value) as determined by the Commissioner of Internal Revenue (CIR), whichever is higher, is 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, and corporations pursuant to Sections 24(D)(1) and 27(D)(5) of the NIRC.

If the property is classified as ordinary asset, the income from such sale is subject to ordinary income tax. If the property is a residential lot, or a residential house and lot, and the selling price thereof is P1,500,000 or more, P2,500,000 or more, respectively, the same is subject to the 12% value added tax (VAT). Otherwise the 3% tax on gross receipts shall apply.

On the other hand, donation of a real property is subject to a donor’s tax at rates ranging from 2% to 15% of the net gifts made during the calendar year in favor of a donee who is not a stranger to the donor.\(^1\) If the donee is a stranger,\(^2\) the donor’s tax

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\(^1\) Section 99(A), NIRC.

\(^2\) Section 99 of the NIRC identifies a “stranger” as 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 of relationship.
is 30%.\(^3\) However, if the net gift is not over P100,000.00, the same is exempt from the donor's tax. Donation mortis causa or those which are to take effect upon death of the donor and therefore partake of the nature of testamentary disposition, are not subject to a donor's tax but to an estate tax.

The estate tax is levied, assessed and collected upon the transfer of the net estate of every decedent, whether resident or nonresident of the Philippines, at rates ranging from 5% to 20%.\(^4\) If the net estate is not over P200,000.00, the same is exempt from the estate tax.

Section 196 of the NIRC likewise provides that on all conveyances, deeds, instruments or writings whereby any land, tenement or other realty sold shall be granted, assigned, transferred or otherwise conveyed to the purchaser, or purchasers, or to any person or persons designated by such purchaser or purchasers, a documentary stamp tax at the rate of fifteen pesos (P15.00) per one thousand pesos (P1,000.00) of the amount of consideration or on the zonal value of the said real property shall be collected.

B. TAXATION OF SPECIFIC REAL PROPERTY TRANSACTIONS\(^5\)

1. **Sale/Transfer of Principal Residence.** – May be exempt from the CGT.

   The exemption of the sale or disposition of principal residence from the CGT depends upon the seller/taxpayer. If the seller/taxpayer does not claim exemption, the transaction is subject to the payment of CGT and DST. The buyer, absent any stipulation to the contrary, shall deduct and withhold from the agreed selling price the CGT and shall remit the same to the BIR using CGT Return (BIR Form No. 1706) within thirty (30) days from the date of sale of the subject principal residence.

   If the seller/taxpayer claims for a CGT exemption, the following conditions must be met:\(^6\)

   a. That the proceeds of the sale shall be utilized in acquiring or constructing a new principal residence within 18 months from the date of sale or disposition;

   b. That the Commissioner of Internal Revenue (CIR) shall be notified by the taxpayer within 30 days from the date of sale or disposition through a prescribed return of his intention to avail of the tax exemption; and

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\(^3\) Section 99 (B), Ibid.

\(^4\) Section 84, Ibid.

\(^5\) Unless otherwise specified, the properties involved are presumed to be a capital asset.

\(^6\) Per Sec. 24 (D) (2), NIRC.
c. That the exemption can only be availed of once every 10 years.

The Buyer/Transferee shall withhold from the seller and deduct from the agreed selling price/consideration the 6% capital gains tax which shall be deposited in cash or manager’s check in interest-bearing account with an Authorized Agent Bank (AAB) under an Escrow Agreement between the concerned Revenue District Officer, the Seller and the Transferee, and the AAB to the effect that the amount so deposited, including its interest yield, shall only be released to such Transferor upon certification by the said RDO that the proceeds of the sale/disposition thereof have, in fact, been utilized in the acquisition or construction of the Seller/Transferor’s new principal residence within eighteen (18) calendar months from the date of the said sale or disposition. The date of sale or disposition of a property refers to the date of notarization of the document evidencing the transfer of said property.

After depositing the amount representing the six percent (6%) capital gains tax as mentioned above, the Buyer/Transferee and the Seller, shall jointly file, within thirty (30) days from the date of the sale or disposition of the principal residence, with the Revenue District Office having jurisdiction over the property, in duplicate, the Final Capital Gains Tax Return (BIR Form No. 1706, or any form number assigned by the BIR), covering the property bought with no computed tax due stating that the supposed-tax due/amount so withheld by the buyer is maintained in a escrow account, which amount will be used to satisfy future tax liability, if any, on the subject transaction. For purposes of the capital gains tax otherwise due on the sale, exchange or disposition of the said Principal Residence, the execution of the Escrow Agreement shall be considered sufficient. The tax return filed shall bear the addresses of both the seller and the buyer.

If within thirty (30) days after the lapse of the aforesaid 18-month period, the Seller/Transferor fails to submit a documentary evidence showing that he/she has utilized the proceeds of sale or disposition of his/her old principal residence to acquire/construct his/her new principal residence, he/she shall be treated as deficient in the payment of his/her capital gains tax on the sale or disposition of his/her aforesaid Principal Residence, and be accordingly assessed for deficiency capital gains tax, inclusive of penalties and the 20% interest per annum computed from the 31st day after the date of sale/disposition of the said principal residence, pursuant to the provisions of Section 228 of the Code, as implemented by Revenue Regulations No. 12-99.

In the issuance of assessments, the Seller shall receive all the required notices following existing procedures. Upon the time that the said deficiency tax assessment has become final and executory, the deposit in escrow, inclusive of its interest earnings, shall be forfeited and applied against the deficiency capital gains tax liability. If it is insufficient to cover the entire amount assessed, the Seller/Transferor shall remain liable for the remaining balance of the assessment. On the other hand,

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7 The term “Escrow” means a scroll, writing or deed, delivered by the grantor, promisor or obligor into the hands of a third person, to be held by the latter until the happening of a contingency or performance of a condition, and then by him delivered to the grantee, promise or obligee.
the excess of the deposit in escrow, if any, shall be returned to the Seller by the Bank upon written authorization from the Commissioner or his duly authorized representative.\(^8\)

2. **Partition of Real Property by Its Co-Owners** – This is exempt from CGT.

   The dissolution by the co-owners of the co-ownership by an agreement to divide among them the real property they co-owned is not subject to CGT. The transfer of title to the co-owners is not a sale, barter, exchange or other disposition contemplated by law subject to the imposition of the tax. The document, however, is subject to DST pursuant to Section 188 of the NIRC.

   If the real property is not partitioned, i.e., status quo is maintained, no tax shall be imposed as there would be no taxable activity/transaction to speak of.

3. **Extrajudicial Settlement of Estate With Sale of Real Property.** - Subject to Estate Tax, CGT, and DST.

   This happens if the decedent does not have a will and the heirs decide to settle or adjudicate for themselves the estate of the decedent extrajudicially and at the same time, sell the property, especially if they do not agree on the partition or allocation of which portion shall belong to whom. The sale is made for easier partition of the proceeds. The transfer of property from the decedent to the heirs/sellers is subject to estate tax and the sale between the heirs and the buyer is subject to CGT and DST.

4. **Sale of a Portion of Real Property.** - Subject to CGT and DST.

   The sale of a portion of land is taxed just like a regular sale of a whole property. It is subject to CGT and DST.

5. **Exchange of Land to Correct an Erroneous Sale or Donation.** – Exempt from CGT and DST.

   The erroneous transaction usually involves adjoining lots with the same area. The discovery of the mistake happened after the title to the land was issued. Thus, to rectify the error, a Deed of Exchange, without any monetary consideration, was executed. The BIR ruled that the exchange transaction is not subject to CGT, DST under Section 196 of the NIRC, nor to creditable withholding tax imposed under Revenue Regulation No. 2-98, as amended but only to the P15.00 DST under Section 188 of the NIRC.

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\(^8\) As amended by RR No. 17-2003.
6. **Transfer by the First Buyer on Installment Basis or conditional Sale to a Third Party Using an Instrument Between the Original Seller and the Third Party/Second Buyer.** - Subject to CGT and DST

This is commonly done by those who are speculating that the value of the subject property will soon rise due, for example, to an impending infrastructure project. The speculator will buy the property on a conditional sale or installment basis and sell or transfer the same, even if the property is not fully paid, to the developer or second buyer for profit. The first and second transactions are supposedly subject to CGT and DST. However, the first transaction sometimes escapes taxation because the document used for the transfer of property to the second buyer is between the first seller and second buyer.

7. **Mortgage Foreclosure Sale.** – Subject to CGT only after the expiration of the one-year redemption period.

This is resorted to by the creditor like banks and other financial institutions if the real property owner/mortgagor who mortgaged or used real property as collateral for the loan he/she secured from them failed to pay his/her debts. The foreclosure sale, be it judicial or extrajudicial, is evidenced by a Certificate of Sale issued by the person in charge thereof in favor of the winning bidder who usually is the creditor/mortgagee. However, the mortgagor has the right to redeem the subject real property within one (1) year from the date of sale as provided for under Section 6 of Act No. 3135 as amended by Act No. 4118. Thus, to establish the winning bidder’s claim and interest over the subject real property, such certificate needs to be registered with the Register of Deeds who is required under Section 58 (E) of the NIRC to insure the payment of tax(es) on real property transactions prior to their registration. The BIR ruled that such Certificate of Sale may be registered by the Register of Deeds by way of a Brief Memorandum to be annotated at the back of the Title of the subject real property without the payment of CGT or expanded creditable withholding tax, as the case may be.

In the case of mortgagor exercises his/her right of redemption within one year from the issuance of certificate of sale, no CGT shall be imposed because no capital gains have been derived by mortgagor and no sale or transfer of real property was realized.

In case of non-redemption, the CGT on foreclosure sale imposed under Section 24 (D)(1) and 27 (D)(5) of the NIRC shall become due based on the bid price of the highest bidder but only upon the expiration of the one-year redemption period and shall be paid within 30 days from the expiration of the said period.

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Per Section 4 of Act No. 3135, the persons in charge of auction are the sheriff of the province, the justice or auxiliary justice of the peace of the municipality in which the sale has to be made or a notary public of the said municipality.
8. Bank’s Disposal of Foreclosed Real Properties and Sales of Ordinary Assets by Those in the Real Estate Business. — Subject to credible withholding tax and DST.

Real properties acquired by banks through foreclosure sales are considered as their ordinary assets, therefore, their disposition is not subject to CGT but to a creditable withholding tax pursuant to Revenue Regulations (RR) No. 2-98 as amended. The banks, however, are not considered as habitually engaged in real estate business for purposes of determining the applicable rate of withholding tax. Thus, banks are subject to 6% creditable withholding tax on their disposition of foreclosed real properties.

The tax treatment of sales of real properties classified as ordinary assets also depends upon the personality of the buyer and the type of sale. If the buyer is an individual not engaged in trade or business, the following rule shall apply:

(i) If the sale is a sale of property on the installment plan [i.e., payments in the year of sale do not exceed twenty five (25%) of the selling price], no withholding

10 Per Revenue Regulations Nos. 6-2001 and 7-2003.

11 Registration with the HLURB or HUDCC shall be sufficient for a seller/transferor to be considered as habitually engaged in real estate business. If the seller/transferor is not registered with HLURB or HUDCC, he/it may prove that he/it is engaged in the real estate business by offering other satisfactory evidence (for example, he/it consummated during the preceding year at least six taxable real estate transactions, regardless of amount).

12 The rates of creditable withholding tax are as follows:

A. Where the seller/transferor is exempt from creditable withholding tax in accordance with Sec. 2.57.5 of RR No. 2-98, as amended

B. Upon the following values of real property, where the seller/transferor is habitually engaged in the real estate business:

   With a selling price of Five Hundred Thousand Pesos (P500,000.00) or less

   With a selling price of more than Five Hundred Thousand Pesos (P500,000.00) but not more than Two Million Pesos (P2,000,000.00)

   With a selling price of more than Two Million Pesos (P2,000,000.00)

C. Where the seller/transferor is not habitually engaged in real estate business

13 Per RR No. 2-98 as amended.
is required to be made on the periodic installment payments. In such a case, the
applicable rate of tax based on the gross selling price or fair market value of the
property at the time of the execution of the contract to sell, whichever is higher, shall
be withheld on the last installment or installments immediately prior to such last
installment, if the last installment is not sufficient to cover the tax due, to be paid to
the seller until the tax is fully paid.\(^{14}\)

However, if the buyer is engaged in trade or business, whether a corporation
or otherwise, these rules shall apply:\(^{15}\)

(i) If the sale is a sale of property on the installment plan [i.e., payments in
the year of sale do not exceed twenty five percent (25%) of the selling price], the tax
shall be deducted and withheld by the buyer from every installment which tax shall
be based on the ratio of actual collection of the consideration against the agreed
consideration appearing in the Contract to Sell applied to the gross selling price or
fair market value of the property at the time of the execution of the Contract to Sell,
whichever is higher.

The term ‘consideration’ refers to the selling price exclusive of interest.
Interest earned as an incident of installment payment, if any, shall be subject to the
ordinary income tax rate.\(^{16}\)

Whether the buyer is engaged or not in trade or business, if the sale is on a
“cash basis” or is a “deferred-payment sale not on the installment plan” (that is,
payments in the year of sale exceed 25% of the selling price), the buyer shall
withhold the tax based on the gross selling price or fair market value of the property,
whichever is higher, on the first installment.

In any case, no Certificate Authorizing Registration (CAR)/Tax Clearance
Certificate (TCL) shall be issued to the buyer unless the withholding tax due on the
sale, transfer or exchange of real property has been fully paid.

For sale of property on installment basis or deferred payment basis where the
Contract to Sell is always executed before the execution of the Deed of Sale, the said
Contract to Sell must be attached to the Deed of Absolute Sale executed upon
completion of the payments and the duly notarized original duplicate copy of both
documents must be presented to the RDO having jurisdiction of the place where the
property is located for validation of the correctness of issuance of CAR/TCL.

It is be noted, however, that in case of sale of real property paid under
installment payment or deferred payment basis, the payment of the documentary
stamp tax (DST) shall accrue upon the execution of the Deed of Absolute Sale but the

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\(^{14}\) Ibid.

\(^{15}\) Ibid.

\(^{16}\) Ibid.
basis for its imposition shall be the gross selling price or fair market value of the property, whichever is higher, at the time of the execution of the Contract to Sell.

If upon completion of the payment of the purchase price of real property classified as ordinary asset, but before the execution of the Deed of Sale, the buyer decides to assign his right over the property to another person for a consideration, the assignment shall be considered a separate sale of real property and, therefore, subject to the creditable/expanded withholding tax (EWT) or final withholding of capital gains, as the case may be, which shall be withheld by the assignee of such property based on the consideration per Deed of Assignment or the fair market value of such property at the time of assignment, whichever is higher, and to the DST imposed under Sec. 196 of the NIRC using the same basis.

It is be clarified, however, that sale of interest in real property (real property purchased on installment covered by Contract to Sell which was sold by the original buyer before it was fully paid) shall be taxable on the part of the original buyer (now seller) based on the realized gain thereon which is measured by the difference between the agreed consideration and the amount actually paid by the said original buyer. 17

9. Dacion en Pago. – Subject to CGT and DST.

This is the transmission of the ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of an obligation. 18 In other words, the ownership of real property is transferred by the debtor to the creditor to settle the debt of the former to the latter. The transaction is deemed a sale and therefore subject to CGT and DST.

10. Transfer of Lands Under the Comprehensive Agrarian Reform Program (CARP). – Exempt from CGT and DST.

Section 66 of Republic Act No. 6657 or the Comprehensive Agrarian Reform Law of 1988 provides that transactions under this Act involving transfer of ownership, whether from natural or juridical persons, shall be exempted from taxes arising from capital gains. These transactions shall also be exempted from the payment of registration fees, and all other taxes and fees for their conveyance or transfer. Section 67 of the said law, on the other hand, directed all Register of Deeds to register, free from payment of all fees and other charges, patents, titles and documents required from the implementation of the CARP.

17 Ibid.

18 Filinvest Credit Corporation vs. Philippine Acetylene Co. Inc. 111 SCRA 421.