BDB Law wts
DU-BALADAD AND ASSOCIATES

BDB Law's "Tax Law for Business" *appears in the opinion section of* ***Business Mirror*** *every Thursday*

DST on transfers of real properties

Although comparatively lower than the other types of taxes, documentary-stamp tax (DST) is one of the more complicated types of taxes. The courts had clarified this type of tax to be in the nature of an excise tax. As repeatedly quoted in a number of cases, DST is an excise upon the privilege, opportunity or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself. DST is levied on the exercise by persons of certain privileges conferred by law for the creation, revision or termination of specific legal relationships through the execution of specific instruments. It is levied independently of the legal status of the transactions giving rise thereto.

Despite the clarification made on the nature of DST, confusions are repeatedly encountered. For instance, there is still often a question as to whether it is a tax on the transaction or a tax on the document. This is also complicated by the fact that there are different applicable DST rates, such that the taxpayer would have to consult the Tax Code or the regulations to identify which is the applicable rate. This is also the only type of tax which is payable by either party to the transaction, such that if the parties did not agree as to who should be responsible for the payment, there is a possibility that the tax may be left unpaid. And more important, there is usually confusion as to what transaction is covered by each of the provisions imposing the tax.

One of the provisions imposing DST, which is often the cause of disputes between taxpayers and the tax authority, pertains to transfers of real property. Be it noted that among those subject to DST are those imposed under Section 196 of the National Internal Revenue Code (NIRC) on the 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 other person or persons designated by such purchaser or purchasers. The DST is based on the consideration contracted to be paid for such realty or on its fair-market value, whichever is higher. The rule appears to be simple, but its implementation is often met with disagreement.

In this regard, the tax bureau, in some of its issuances, had taken the position that a transfer of real property is subject to DST only in cases where there is a consideration.

For example, rulings issued by the tax bureau had held that a reconveyance of a property by virtue of a court decision to return the property to the legal owner without consideration is not subject to the DST imposed on conveyances of real properties.

There are, however, also other rulings holding that reconveyance of property based on a court-approved compromise agreement is in the nature of disposition of real property, which is subject to DST.

In other words, as in the case of its application of the rules on DST in general, the tax bureau had also been inconsistent on its application of the DST rules on transfers of real property. It is because if this inconsistency that forced some taxpayers to bring their actions before the courts to question the imposition of DST or to recover those that were erroneously paid or collected. Such was the case in GR 192398, which was decided by the Supreme Court in 2014.

In said case, the bureau took the position that Section 196 of the NIRC covers all transfers of real property and does not only refer to sale of realty since it speaks of real property being “granted, assigned, transferred or otherwise conveyed.” The bureau further averred that it is enough that a conveyance of real property has been effected since DST is imposed not on the document alone, but on the transaction.

Ruling against the contention of the bureau, the Court held that Section 196 pertains only to sale transactions where real property is conveyed to a purchaser for a consideration.

The phrase granted, assigned, transferred or otherwise conveyed is qualified by the word “sold,” which means that DST under Section 196 is imposed on the transfer of realty by way of sale and does not apply to all conveyances of real property. The fact that Section 196 refers to the words “sold”, “purchaser” and “consideration” undoubtedly means that only sales of real property are contemplated by the provision.

The Court further stated that the phrase granted, assigned, transferred or otherwise conveyed clearly refers to the phrase whereby any land, tenement or other realty is sold. This clearly shows that the legislature intended Section 196 to refer to a transfer of realty by virtue of sale. This is further bolstered by the fact that the property is granted, assigned, transferred or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers.

In addition, the basis of the stamp tax is the consideration agreed upon by the parties or the property’s fair-market value.
Taking all of these into consideration, it is beyond doubt that Section 196 pertains to a transfer of realty by way of sale.

The Court made a similar decision in a subsequent case (GR 175188, July 05, 2015) whereby the Court ruled that DST under Section 196 is imposed on the transfer of real property by way of sale and does not apply to all conveyances of real property.

Incidentally, the two cases involved transfers of real properties by an absorbed corporation to a surviving corporation in a merger. As an effect of the merger, properties were transferred by operation of law, without any further act or deed on the part of the parties. Thus, there should be no DST.

In fact, as the Court puts it, any doubts as to the tax-free nature had been already removed by the subsequent amendment introduced by Republic Act 9243, specifically exempting from the payment of DST the transfer of property pursuant to a merger.

This does not mean though that the nonimposition of DST on transfer of real properties should be isolated to transfers by reason of merger.

The more crucial is the pronouncement by the Court that the law applies only to transfers of real property via sale. Hence, any transfer of real property not involving sale should not be subject to DST.

****

The author is a senior partner of Du-Baladad and Associates Law Offices, a member-firm of World Tax Services Alliance.

The article is for general information only and is not intended, nor should be construed as a substitute for tax, legal or financial advice on any specific matter. Applicability of this article to any actual or particular tax or legal issue should be supported therefore by a professional study or advice. If you have any comments or questions concerning the article, you may e-mail the author at fulvio.dawilan@bdblaw.com.ph or call 403-2001 local 310.