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BIR may investigate the capacity of parties to acquire properties

Less than a month before she steps down from her office, the Commissioner of Internal Revenue issued Revenue Memorandum Order (RMO) No. 24-2016, prescribing the guidelines and procedures in the conduct of investigation on the capacity of parties to acquire properties.

The RMO provides new rules to be observed by revenue officers and the parties in transactions involving sale, transfer or assignment of properties. This covers the transactions subject to final capital gains tax on sale of real properties considered as capital assets and sale, transfer or assignment of stocks not traded in the stock exchange; expanded withholding tax on the sale of real properties which are ordinary assets; donor's tax; estate tax; other taxes including documentary stamp tax related to the sale or transfer of properties and those covered by tax-free transfers.

Parties to the transactions may be investigated in order to determine their financial capacity to acquire and hold properties. If the buyer or seller fails to prove his financial capacity, he may be issued a letter of authority for the revenue officers to conduct further investigation.

In the application for the issuance of Certificate of Authorizing Registration (CAR) and Tax Clearance (TCL) in relation to sale or transfer of properties, the application and the documents and information required to be submitted shall be evaluated for possible audit or investigation. If the seller/transferor has no capacity to acquire the property which is the subject of the CAR, the a Letter of Authority may be recommended for further audit or investigation.

In all cases, the ONETT shall verify with the integrated tax system of the BIR to determine whether the seller/transferor and buyer/transferee regularly file their tax returns and report income sufficient to establish financial capacity. For individuals exempt from the filing of income tax return, he must submit an affidavit stating therein the reason why he is not required to file an income tax return, his total annual income and his sources of income. To establish financial capacity, a party may present the income tax return, certificate of creditable withholding tax, certificate of final tax withheld at source or loan documents as the source of the consideration for the acquisition of the subject property.

As so provided in the RMO. if the buyer/transferee fails to prove financial capacity to acquire the property, the transaction shall be considered a donation, not a sale and donor’s tax shall be imposed instead of capital gains tax. The parties should then execute a Deed of Donation. If it is the seller, assignor, or transferor who is established to lack financial capacity, he may be issued an eLA for further investigation. However, this shall not hinder the issuance of CAR and TCL for the transfer of the property.

In cases of application for BIR certification ruling on the consequences of a tax-free exchange transactions, the usual supporting documents required under existing rules and regulations shall be submitted. But an evaluation will still be conducted to determine the financial capacity of the parties. If it is determined that the transferor or assignor does not have capacity to acquire the property subject of the tax-free exchange, the Law Division shall forward it to the National Investigation Division for investigation.

With the issuance of the RMO, a simple transaction involving sale, assignment or transfer of property may trigger the examination of the parties involved in the transaction. If the parties or a party cannot establish documents to supports his capacity to hold, own or acquire the property, he may be subjected to examination for possible undeclared income, and consequently undeclared taxes. To avoid this scenario, a party entering into transactions involving sale or assignment of properties should be ready to provide substantiation for his financial capacity.

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