

Tax Implications of Asset Transfers

One of the common concerns of taxpayers when transferring assets is the resulting tax consequences. A sale of property, whether real or personal, may result in a gain or a loss to the taxpayer. The gain or loss arising therefrom is, as a general rule, a taxable gain or a deductible loss.

In the transfer of properties, the proper question to ask is whether the asset sold or exchanged was an ordinary asset or a capital asset. A correct classification is important because of the special rules on gains and losses from sales or exchanges of capital assets which do not apply to the gains and losses from sales or exchanges of ordinary assets.

The following are ordinary assets:

- (a) Stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the end of the taxable year;
- (b) Property held by the taxpayer primarily for sale to customers in the ordinary course of trade or business;
- (c) Property used in trade or business of a character which is subject to allowance for depreciation; and
- (d) Real property used in trade or business.

All properties held by the taxpayer, whether or not connected with trade or business, not included in the enumeration of ordinary assets, are capital assets subject to capital gains tax.

Capital gains tax is applicable to the following:

- (1) On sale of shares of stock of a domestic corporation not listed and traded through a local stock exchange held as capital asset

On the net capital gain

Not over P100,000

On any amount in excess of P100,000

Final tax of 5%

Final tax of 10%

(2) On sale of real property in the Philippines held as capital asset

On the gross selling price or the current
fair market value at the time of sale,
whichever is higher Final tax of 6%

In addition, every sale, barter or exchange of goods or properties in the course of trade or business, shall be subject to value added tax. A sale is a transfer of ownership of property in consideration of money received or to be received. The following are considered "sales":

- (a) Transfer, use or consumption not in the ordinary course of business of goods or properties ordinarily intended for sale or use in the course of business;
- (b) Distribution or transfer to shareholders or investors of shares in the profits of a VAT-registered person;
- (c) Distribution or transfer to creditors in payment of debt;
- (d) Consignment of goods if actual sale is not made within 60 days following the date such goods were consigned; and
- (e) Retirement from or cessation of business, with respect to inventories of taxable goods as of such retirement or cessation.

"Goods or properties" are all tangible and intangible objects which are capable of pecuniary (money) estimation. These include:

- (a) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business;
- (b) The right or privilege to use patent, copyright, design or model, plan, secret formula or process, goodwill, trademark, tradebrand, or other like property or right;
- (c) The right or privilege to use in the Philippines of any industrial, commercial or scientific equipment;
- (d) The right or privilege to use motion picture files, tapes and discs;
- (e) Radio, television, satellite transmission and cable transmission time.

Thus, any person who, in the course of trade or business, sells, barter, exchanges, or leases goods or properties, or renders services, and any person who imports goods or services, shall be liable to the value added tax. The value added tax is 12% of the gross selling price. "Gross selling price" means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration for the sale, barter or exchange, excluding the value added tax.

The sale of assets is also subject to 0.75% local business tax based on the gross selling price.

With respect to documentary stamp tax, it is a tax on documents, instruments, loan agreements and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. In the case of an asset sale, documentary stamp tax applies only on sale/transfer of real property.

Before entering into a sale or transfer of assets, the foregoing taxes should be considered.

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