



TAX LAW FOR BUSINESS
Atty. Fulvio D. Dawilan

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Real property: Zonal valuation

DEPENDING on the type of tax levied, the same may be imposed as a certain percentage or fraction of the gross amounts realized from the sale or other disposition of property or the net amount realized, in cases where deduction is allowed.

The amount realized is the sum of the money received plus the fair market value of the property (other than money, if any) received from the sale. In other words, the general rule is—the value of the consideration (whether that is money, property or a combination of money or property) received or contracted to be received in exchange for the disposition of property shall be the basis of the tax or the gross amount from where the net taxable amount is derived.

There are, however, instances in the Tax Code and/or its implementing rules and regulations, where the fair market value of the asset sold, and not the value of the consideration received, is made the basis of the tax.

In the case of sale of real properties, for instance, the gross selling price or consideration is compared with the current fair market value of the asset sold. If the gross selling price is lesser than the current fair market value of the property sold, the latter shall be presumed to have been realized from the sale and on the basis of which the capital-gains tax (if the asset is classified as capital asset) or the creditable withholding tax (if ordinary asset) is imposed. Like the capital gains tax or the withholding tax, the documentary stamp tax is also imposed on the consideration or fair market value, whichever is higher.

The fair market value of the real property sold or transferred is thus significant in computing tax liabilities. Because of this, there is often a dispute between the taxpayer and the Bureau of Internal Revenue (BIR) on the determination of the fair market/zonal values.

Thus, the question—who determines the fair market value of real properties? The power to prescribe real-property values is vested upon the commissioner of Internal Revenue pursuant to Section 6(E) of the Tax Code. The commissioner is authorized

to divide the Philippines into different zones and, upon consultation with competent appraisers from the private and public sectors, determine the fair market values of real properties located in each zone.

Unfortunately, even if there is already an established schedule of zonal values, the parties tend to disregard it. The result—delay in the issuance of the Certificate Authorizing Registration and, consequently, delay in the transfer of title.

In GR 170389, October 20, 2010, the taxpayer paid the capital-gains tax and documentary-stamp tax on the sale of property, classifying it as residential property based on the existing zonal value of the properties in the area where it is located. The BIR assessed a higher tax by classifying the property as commercial with higher zonal value. The Supreme Court ruled that while the commissioner has the authority to prescribe real-property values and divide the Philippines into zones, the same has to be done upon consultation with competent appraisers both from the public and private sectors. The BIR cannot unilaterally change the zonal valuation of properties without first conducting a re-evaluation of the zonal values.

Once the zonal values in a particular area have been determined, that shall prevail until a revision is made. As the Court puts it, the zonal valuation was established with the objective of having an efficient tax administration by minimizing the use of discretion in the determination of the tax base on the part of the administrator, on one hand, and the taxpayer, on the other hand. Zonal value is determined for the purpose of establishing a more realistic basis for real-property valuation. Since the internal-revenue taxes are assessed on the basis of valuation, the zonal valuation existing at the time of sale should be taken into account.

Indeed, the inescapable conclusion is that if a zonal valuation is already established in a particular area, that shall be used for purposes of determining tax liabilities. Neither the taxpayer nor the BIR officials can disregard the existing zonal values previously determined in accordance with the prescribed guidelines. The BIR cannot use the previous selling prices of nearby or adjacent areas as basis in determining zonal values.

To be effective, a revision of the classification and zonal valuation should be made in accordance with the procedures on the establishment of zonal values of real properties. Incidentally, the BIR issued Revenue Memorandum Order 041-2010, providing for the guidelines and procedures in the establishment/revision of schedule of zonal values of real properties within the jurisdiction of the revenue district offices.

The author is a Senior Partner of Du-Baladad and Associates Law Offices (BDB Law). If you have any comments or questions concerning the article, you can e-mail the author at fulvio.dawilan@bdblaw.com.ph or call 403-2001 local 310.