

# **NAVIGATING TAXES IN** **CONSTRUCTION & REAL ESTATE:** **A PRACTICAL GUIDE**

06.21.25 [SATURDAY] 8-5

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**REAL ESTATE DEALERS,  
DEVELOPERS & LESSORS**

## TOPIC OUTLINE

- ❑ Real Estate Dealers/Developers/Lessors
- ❑ Classification of Real Properties & Owners
- ❑ Income Tax/Exemption of Sale of Real Properties
- ❑ VAT/Exemption of Sale of Real Properties
- ❑ Joint Ventures
- ❑ DST



# Classification of Real Property



## Ordinary vs Capital Asset



**ORDINARY ASSET**-enumerated  
by way of inclusion under SEC  
39(A)(1) NIRC

- ❑ Inventory if on hand at end of TY  
(manufacturer or dealer)
- ❑ Stock-in-trade primarily held for sale  
or for lease in the course of trade or  
business (dealer in securities or  
realty)
- ❑ Asset used in trade or business,  
subject to depreciation
- ❑ Real property used in trade or business



## What are Ordinary Assets?



- ❑ **Stock in trade of TP** or other real property of a kind which would properly be included in the inventory of TP if on hand at close of year

- ❑ **Real Property held by TP primarily for sale to customers in the ordinary course of trade/business**



- ❑ **Real Property used in trade or business, of a character which is subject to allowance for depreciation**



☐ Real Property **used in trade or business of TP**

☐ Real Properties **acquired by banks through foreclosure sales** are considered as ordinary assets



**However, banks shall not be considered as habitually engaged in real estate business for purposes of determining the applicable withholding tax**

## **CAPITAL ASSET**-exclusions under SEC 39(A)(1) NIRC

- ❑ All other assets, whether or not used in trade or business, other than the above-stated ordinary assets





## What are Capital Assets?

- ❑ All real properties held by TP, whether or not connected with his trade or business & **which are not included among the real properties considered as ordinary assets**

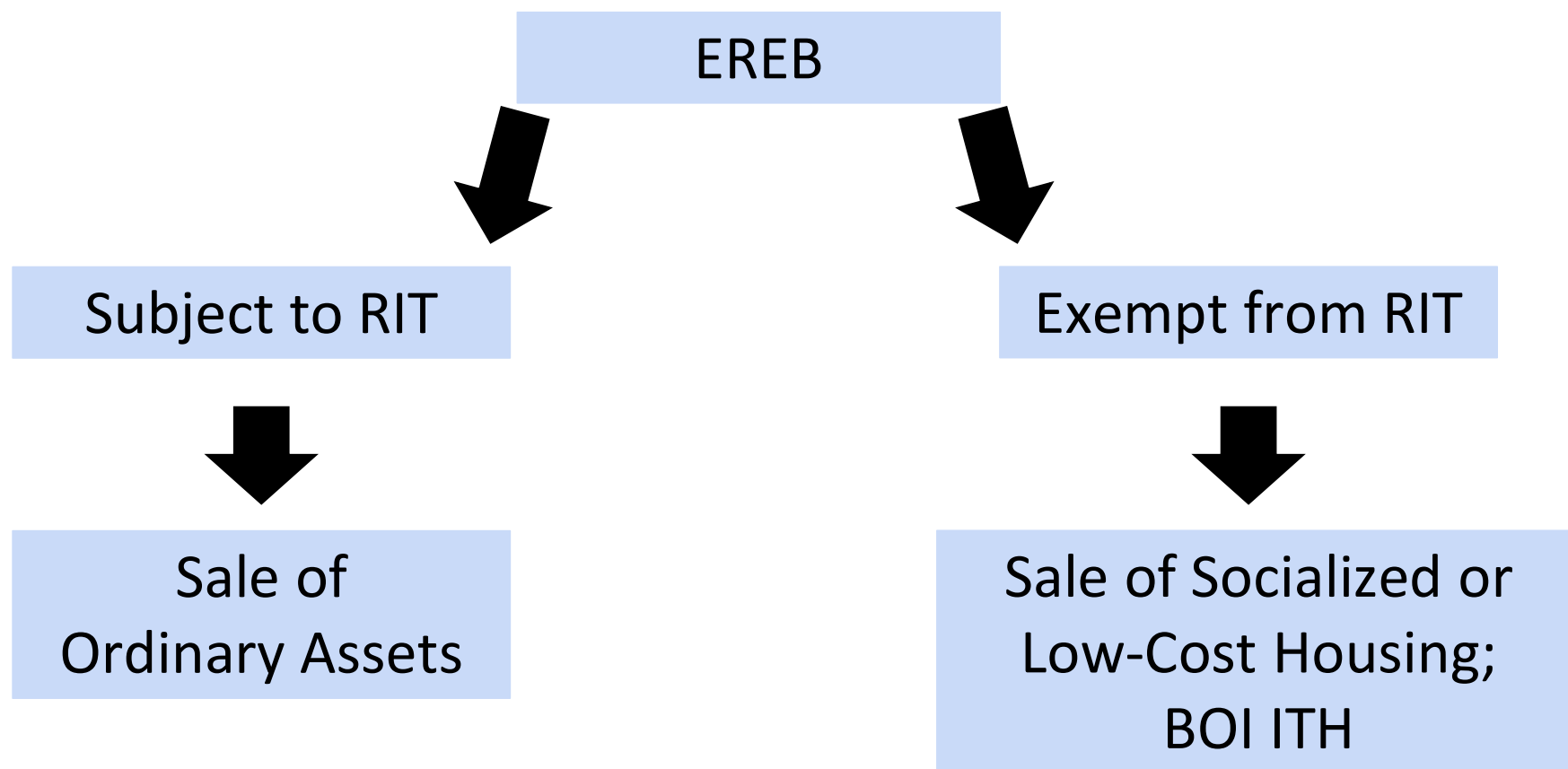


# Owners of Real Properties

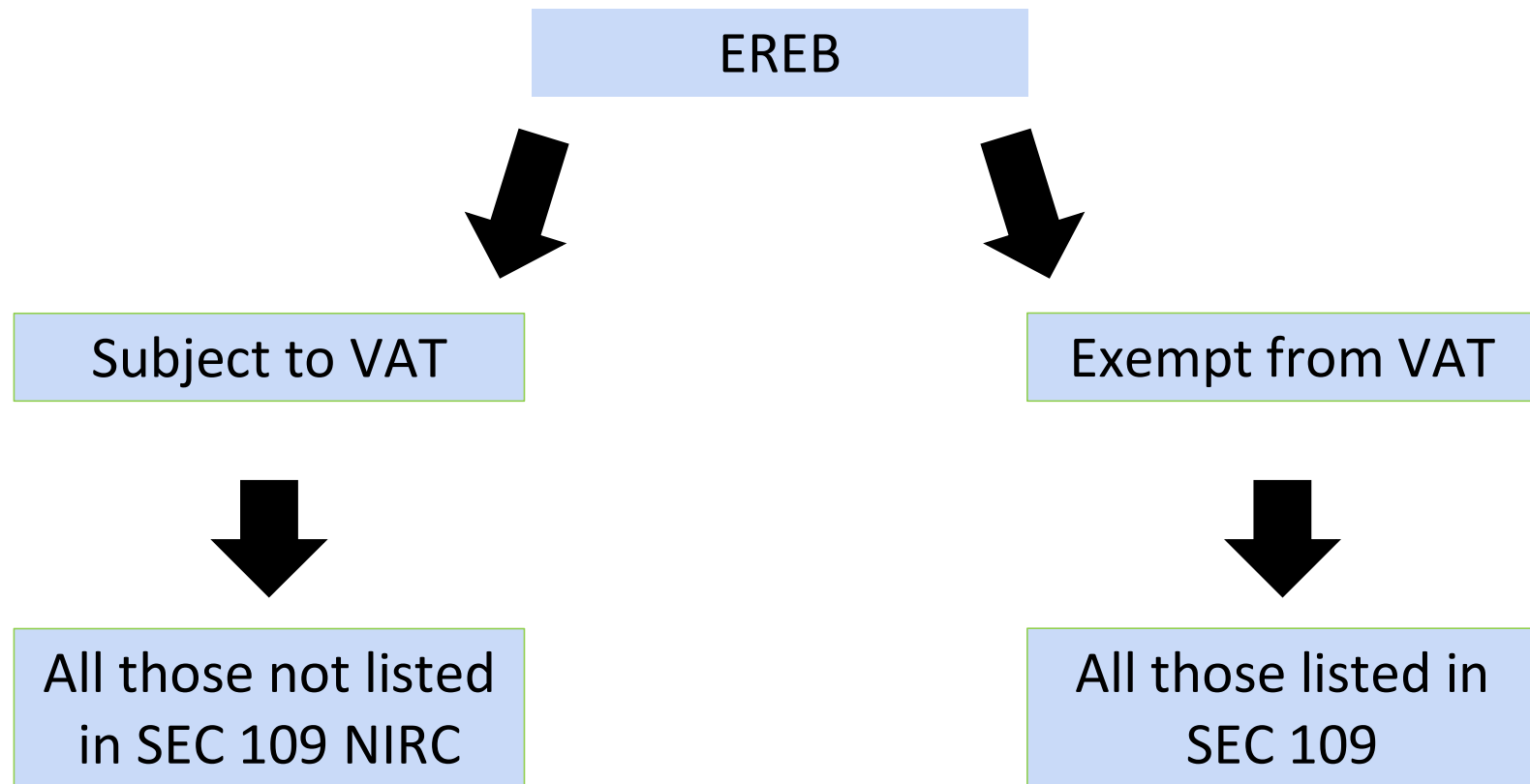


- ❑ **TPs Engaged in Real Estate Business (EREB)**
  - Real Estate Dealers
  - Real estate Developers
  - Real Estate Lessors
- ❑ **TPs not habitually engaged in real estate business (NEREB)**
- ❑ Those not engaged in business owning capital assets

## EREB Dealers & Developers (For Income Tax Purposes)



# EREB Dealers & Developers (For VAT Purposes)





- ❑ Engaged in buying, selling, exchanging real properties as principal & holding himself out as a **full or part-time dealer in real estate**

## Real Estate Dealer

- ❑ Engaged in the business of developing real properties into subdivisions, or building houses on subdivided lots, or constructing residential or commercial units & **offering them for sale or lease**



## Real Estate Developer



## Real Estate Lessor

- ❑ Engaged in the business of leasing or renting real properties & holding himself out as **lessor of real properties being rented out or offered for rent**

## Guidelines in Classifying Real Properties of EREB

- ☐ All real properties **acquired by real estate dealer, developer, lessor** are ordinary assets
- ☐ All real properties **acquired in the course of trade or business by TP habitually engaged in the sale of real estate** shall be considered as ordinary assets
- ☐ Property purchased **for future use in business**, does not lose its character as ordinary asset





- ❑ Registration w/ DHSUD as a real estate dealer/developer shall be sufficient to be considered as **habitually engaged in the sale of real estate**

**If not registered**, it may be deemed to be EREB through the establishment of substantial relevant evidence

- ❑ Consummation during the preceding year of **at least 6 taxable real estate transactions, regardless of amount**
- ❑ COR with BIR
- ❑ AOI states that its primary purpose is to EREB



## Guidelines in Classifying Real Properties of NEREB

- ❑ real properties, whether land, building, or other improvements, **which are used or being used or have been previously used in the trade or business** shall be considered as ordinary assets



Include buildings &/or improvements **subject to depreciation** & lands used in the trade or business



- ❑ Depreciable asset **does not lose its character as an ordinary asset**, for purposes of the instant provision
- ❑ Monetary consideration is **not significant in the characterization of the property**
- ❑ So long as the property is or has been used for business purposes, **it shall still be considered as an ordinary asset**





## Change of Classification of Real Property

Real property in the hands of the seller/transferor **may change their character in the hands of the buyer/transferee:**

1. Transfer through succession/donation to the heir or donee who is NEREB & will not use same for trade or business-**Capital Asset**
2. Received as dividend by one who is not engaged in business & will not use it in business-**Capital Asset**
3. Capital asset transfer in a tax-free exchange to be used in business-**Ordinary Asset**



# Investment Properties







**“Investment properties”** which are idle, unproductive & unimproved since the time of acquisition & do not fall under any of the assets enumerated under SEC 39(A)(1) NIRC & 2(b)

- ☐ Considered **capital asset** if NEREB
- ☐ Considered **ordinary asset** if EREB



## Deemed Capital Asset

### BIR Ruling [DA(VAT-051)512]-08]

Considering that:

1. You are not a real estate dealer/developer/lessor since you are engaged in the operation of an ice plant
2. properties have long been idle & have never been used in the business &
3. parcels of land do not fall under any of the assets enumerated under SEC 39 (A)(1) NIRC, as amended & 2 (b) of RR 7-2003, the same should be **properly classified as capital assets**



A person in a dark suit and striped tie is holding a white rectangular sign with both hands. The sign has the text 'Income Tax on Sale of Property' in bold black font. The person's left hand is pointing towards a black calculator on a desk. The desk also has some papers with a line graph and a small white house model with a red roof sitting on a stack of gold coins. A green banknote is partially visible under the coins.

# **Income Tax on Sale of Property**

## A. Individual citizens (including estates & trusts) resident aliens & NRAE in trade/business

- ☐ **Capital Asset**-6% CGT (except when sold to govt, individual has the option to pay 6% CGT or ordinary income tax)
- ☐ **Ordinary asset**-CWT under SEC 2,57.2(J) RR 2-98 & consequently to ordinary income tax imposed under SEC 24(A)(1)(c) or (25(A)(1)



## B. NRA Not engaged in trade/business

**Capital Asset**-6% CGT (except when sold to govt, individual has the option to pay 6% CGT imposed under SEC 25(B) in relation to SEC 24(D) (1) NIRC





## C. Domestic Corporations

- ❑ Capital Asset-6% CGT
- ❑ Ordinary asset-CWT under Sec 2.57.2(J) RR 2-98 & consequently to ordinary income tax imposed under Sec 27(A) or may become subject to MCIT



## D. Resident Foreign Corporations

Regardless of classification, subject to CWT & to ordinary income tax under SEC 28(A)(1) or to MCIT under Sec 28(A)(2)



## E. Non-Resident Foreign Corporations

Gain realized on sale, exchange, or other disposition of real property **shall be subject to FWT of 25%**



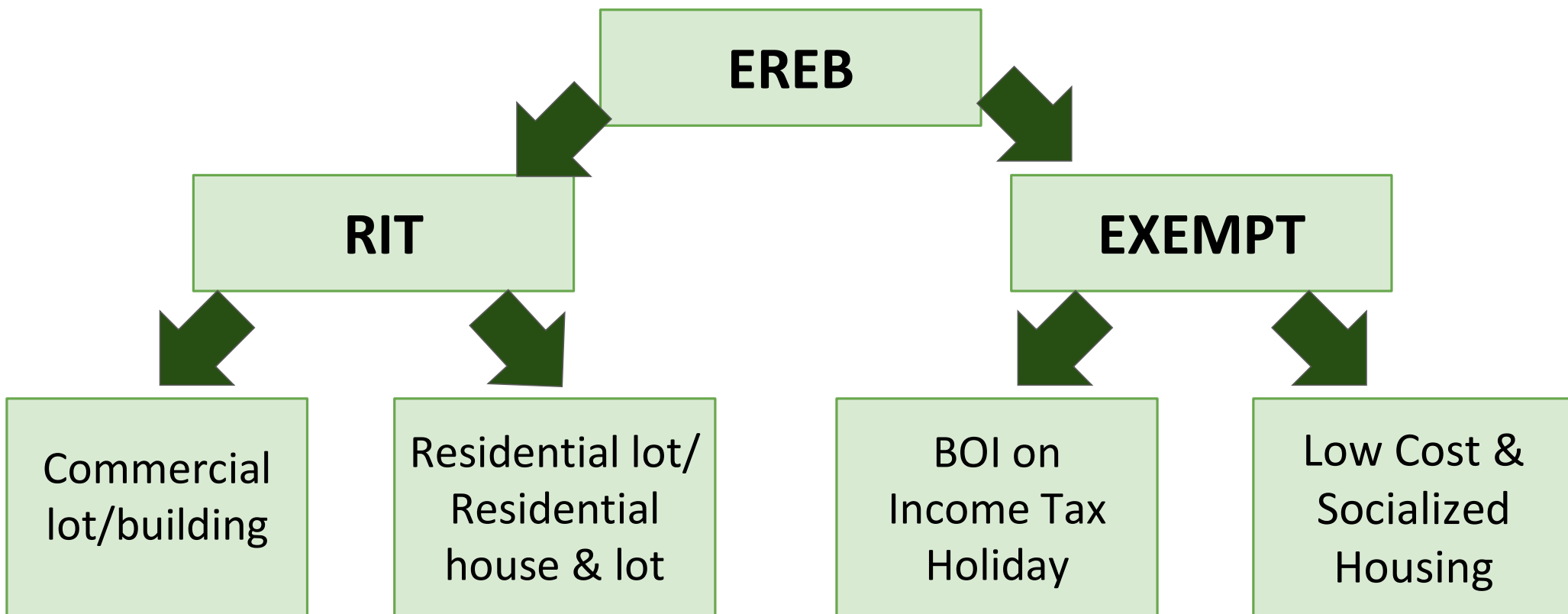
## Income on sale of real property not located in PH

Gain realized on sale, exchange, or other disposition of real property, regardless of classification **shall be subject to income tax**



Such gain is exempt in the case of non-resident citizen, alien individuals & foreign corporation

# Income Tax of Engaged in Real Estate Business (EREB)



# Involuntary Sales

- ❑ non-redemption of property sold during involuntary sales & revokes & amends all contrary issuances & rulings

If property is sold during involuntary sales, the SELLER shall be subject to

- (a) Income tax
- (b) VAT (if ordinary asset)
- (c) CGT/CWT/VAT & DST-whichever is higher





# **Exempt from Income Tax/CGT**

## **Sale of Principal Residence, Exempt**

1. Seller is a citizen or resident
2. Sells residential house & lot used as his principal residence located in PH
3. utilizes the entire sales proceeds in acquiring or constructing a new principal residence within 18 months from the date of sale of the old principal residence
4. notifies BIR of his intention to avail of the benefits within 30 days from date of sale

## Exempt from Income Tax/CGT

### Sale of Principal Residence, Exempt

5. privilege is availed of only once in 10 years
6. deposits the equivalent amount of CGT with a bank **under an escrow agreement** with the BIR, such deposit & interest therefrom shall be allowed to be withdrawn later on only upon satisfaction of all the No. 1 to 5 conditions by seller & approval is given by BIR RDO

## Rules on CGT on Principal Residence

- sale or disposition of their principal residence by natural persons, the proceeds of which is fully utilized in acquiring or constructing a new principal residence within 18 calendar months from the date of sale or disposition, **shall be exempt from the CGT**



- Provided that the Commissioner shall have been duly **notified within 30 days** from the date of sale or disposition of his intention to avail of the tax exemption

## Rules on CGT on Principal Residence

- ❑ can only be availed of once every 10 years
- ❑ that if there is no full utilization of proceeds of sale or disposition, portion of the gain presumed to have been realized from the sale or disposition
- ❑ shall be subject to CGT



- (1) Escrow Agreement
- (2) CGT Return
- (3) Post Reporting Requirement
- (4) Release from Escrow Agreement
- (5) Limitation on Tax Exemption Privilege
- (7) Assessment for Deficiency CGT Application of Escrowed Bank Deposit Against the Deficiency Tax
- (8) Partial Utilization of Proceeds of Sales Exchange or Disposition



## Condition for Exemption







# **Withholding Taxes on Real Estate Transactions**



- ❑ Final tax of 6% based on the **gross selling price or current FMV, whichever is higher**
- ❑ Imposed upon capital gains presumed to have been realized from sale, exchange, or other disposition of real property located in PH, **classified as capital assets**
- ❑ Including pacto de retro sales & other forms of conditional sales, by individuals, including estates & trusts





## On Cash Sales Basis or Deferred Payment (not installment Sales):

### A. If buyer is not engaged in business

- ☐ EWT is applied to GSP or FMV at the time of the sale whichever is higher, on the **1<sup>st</sup> installment in case of Deferred Payment Plan**

### B. If buyer is engaged in business

- ☐ same as in “A”



## **Time of Withholding, For Rental [subject to change pursuant to 2024 EOPT]**

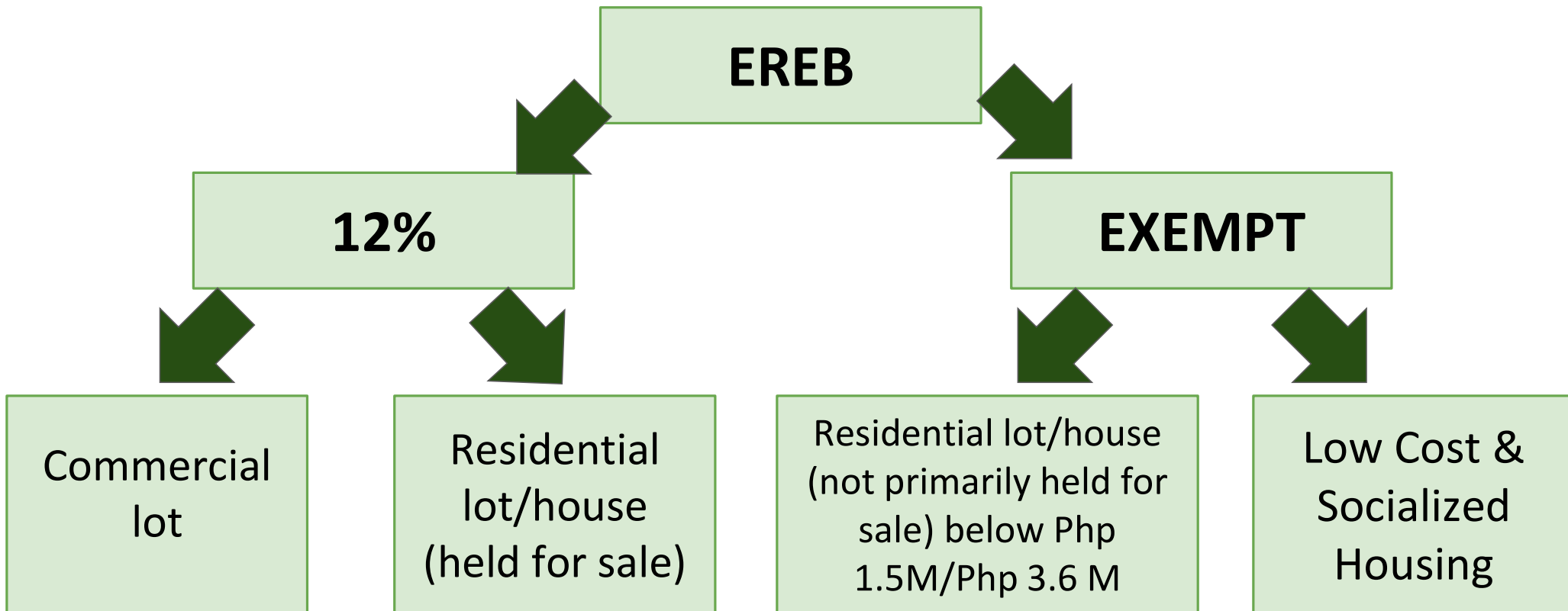
- ☐ Advance rental-**at the time of payment**
- ☐ Regular rental payment-**when paid or accrued**
- ☐ Security deposit-**when applied as rent payment**
- ☐ RPT-considered rental **if paid by lessee on behalf of the lessor**





## **VAT/Exemption of Real Estate Transactions**

# VAT of Engaged in Real Estate Business (EREB)



## EXEMPT FROM VAT

- ❑ Residential Lot (Php 1.5M & below)
- ❑ House & Lot & other residential dwellings (Php 3.6M)
- ❑ Lease of Residential unit with a monthly rental (not exceeding Php 15K)



- ❑ Sale of real properties not primarily held for sale or lease in the ordinary course of trade & business
- ❑ Sale of real properties utilized for socialized & low cost housing
- ❑ Transfer of property to a trustee if the property is held merely in trust for the trustor
- ❑ Swap of land for shares of Stocks



# **Taxable Base for Real Estate Lessor**

Gross Rental Receipts

Plus : Advance payments for rental

Security deposit applied to rental

Equals: Taxable Base

Gross Selling Price  
(GSP)/consideration/or equivalent  
or FMV, whichever is higher

Plus: Interest, Penalties, Forfeited  
Amount

Equals: Taxable Base

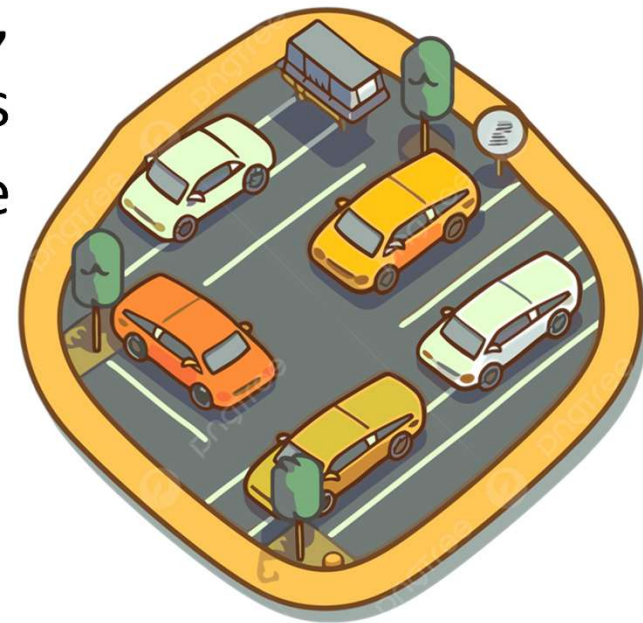


## **Taxable Base for Real Estate Dealer/Developer**



## Sale of Adjacent Lots/Parking lot

- ❑ Sale of 2 or more adjacent residential lots, house & lots & other residential dwellings within a 12-month period to one & the same buyer is **presumed sale of 1 lot**
- ❑ Sale of parking lot is **not covered by the threshold** on residential lots, house & lots & other residential dwellings



## Kinds of Real Property Sales

- ☐ Cash sale
- ☐ Deferred Payment Basis (Not on Installment Plan)
- ☐ Installment Sales (On Installment Plan)





**JOINT VENTURE**

# NOT EXEMPT JV-IF MERE SUPPLIER OF GOODS

RR 10-2012



- ☐ mere suppliers of goods or services or capital of construction projects will not qualify as exempt JV

## JOINT VENTURE/CONSORTIUM

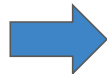
- ☐ Usual **JVs** formed with landowners
- ☐ who are not licensed contractors are considered taxable corporations

## TAXABLE JV WITH LANDOWNER RULING 263-2013



### Distribution of condo units to the parties

❑ Landowner is subject to ordinary income tax



based on current FMV of condo units he received from JV less FMV of property he contributed to JV

❑ Developer is subject to ordinary income tax

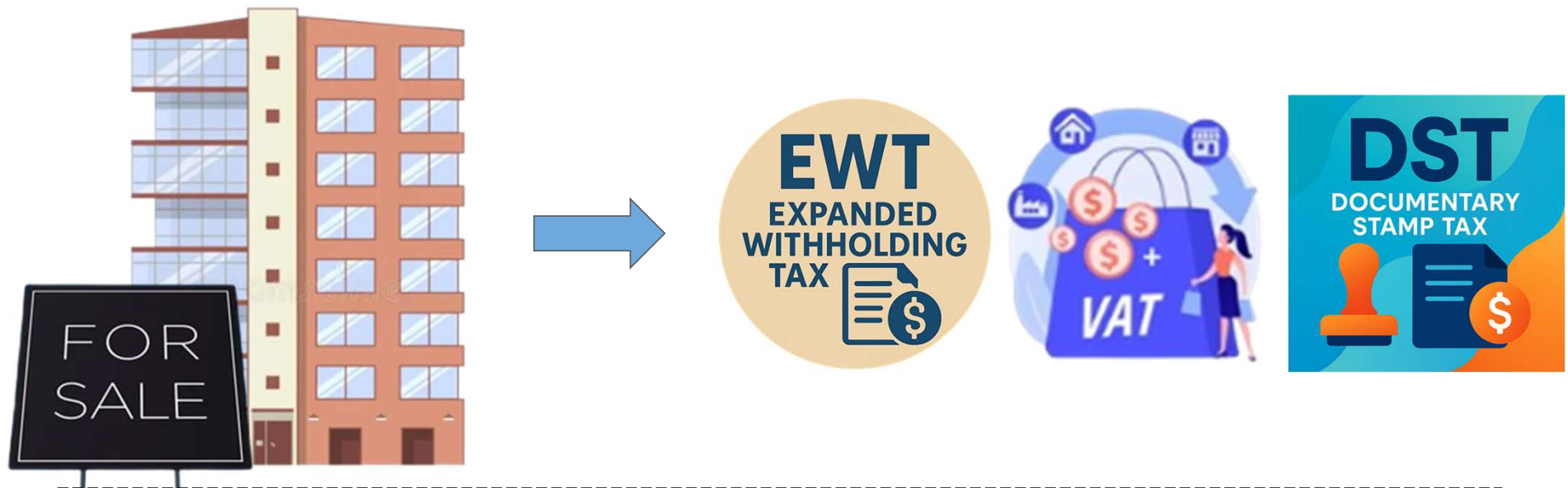


based on current FMV of condo units received less cost actually & exclusively incurred for construction of condo

JV does not meet requirements of RR 10-2012

## JOINT VENTURE WITH LANDOWNER RULING 263-2013

### Distribution of condo units to the parties



- ❑ subsequent sales of the condo units received
- ❑ subject to applicable **EWT, VAT & DST**

## To be considered an exempt JV, local JV should be:

- ☐ for undertaking of a construction project
- ☐ involve joining or pooling resources by licensed local contractors by DTI PCAB
- ☐ local contractors are engaged in construction business
- ☐ JV is duly licensed as such by DTI PCAB
- ☐ JV must enroll under eFPS





# Requisites for a foreign contractor to be granted tax exemption as JV

- ❑ Covered by a **special license as contractor by PCAB**
- ❑ Construction project is certified by appropriate Tendering Agency (government office) that it is a **foreign-financed internationally funded project & that international bidding is allowed under Bilateral Agreement**



- ❑ Tax exempt JV members shall be **responsible in reporting & paying appropriate income taxes on their respective share to JV profit**



**BIR CLARIFIES TAX RULES FOR CONSTRUCTION JOINT  
VENTURES TO ENSURE COMPLIANCE**

**NEW CIRCULAR CLOSES LOOPHOLES IN JOINT VENTURES  
TAX EXEMPTIONS, PREVENTING TAX AVOIDANCE**

**MANDATORY REGISTRATION & COMPLIANCE MEASURES  
STRENGTHEN OVERSIGHT ON JOINT VENTURES**

**RMC 21-2025**



**MARCH 21, 2025**



Bringing In Revenues  
for Nation-Building

REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF FINANCE  
BUREAU OF INTERNAL REVENUE



**BAGONG  
PILIPINAS**

MAR 21 2025

REVENUE MEMORANDUM CIRCULAR NO. 021-2025

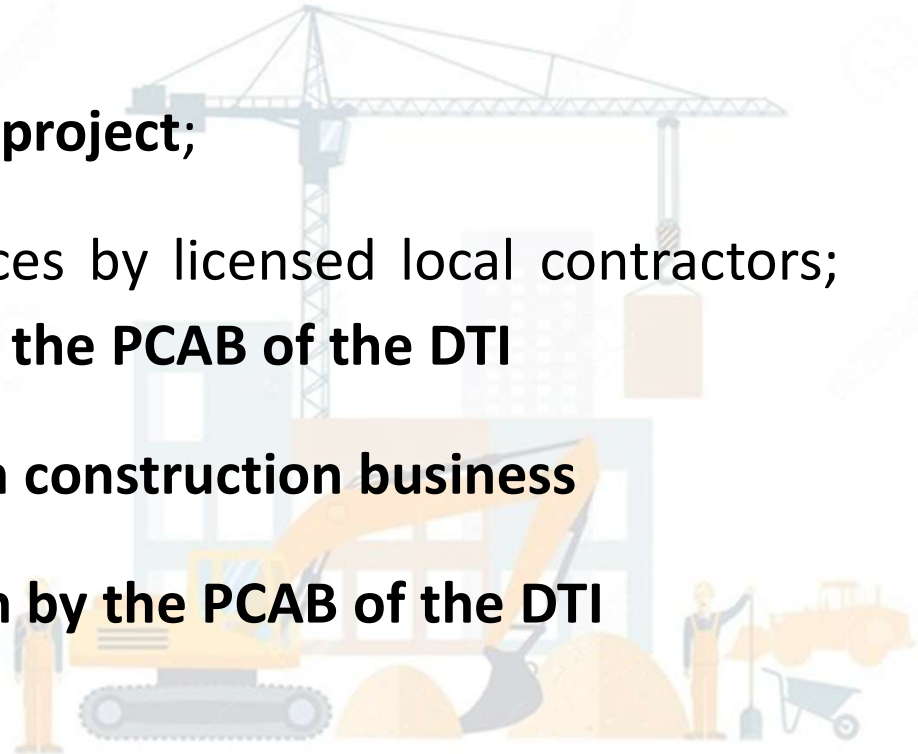
☐ Clarifies tax treatment of **JVs or Consortiums engaged in construction projects**, under SEC 22(B) & SEC 236 NIRC, as well as RR 10-2012 & 14-2023

TO : All Internal Revenue Officers and Others Concerned

# I. JOINT VENTURE NOT TAXABLE AS A CORPORATION

☐ JV/Consortium formed for construction projects **not considered as corporation under SEC 22 NIRC, should be:**

- (1) for the undertaking of a **construction project;**
- (2) Involve joining or pooling of resources by licensed local contractors; that is, **licensed as general contractor by the PCAB of the DTI**
- (3) these local contractors are **engaged in construction business**
- (4) JV itself must be **duly licensed as such by the PCAB of the DTI**



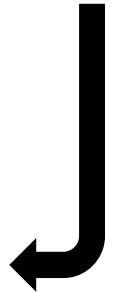
## Joint Ventures



## Foreign Contractors



- ☐ If member foreign contractor is covered by a special license as contractor by PCAB of the DTI



- ☐ Certified by appropriate Tendering Agency
- ☐ Project is a foreign financed/internationally-funded
- ☐ International bidding is allowed under Bilateral Agreement

- 
- ❑ Absent any one of the requirements, the JV or consortium formed for construction projects shall be **considered as taxable corporations**



## II. PERSONS/ENTITIES DISQUALIFIED TO BE CONSIDERED AS A JV/CONSORTIUM NOT TAXABLE AS A CORPORATION

☐ Who are mere suppliers of goods, services or capital to such project





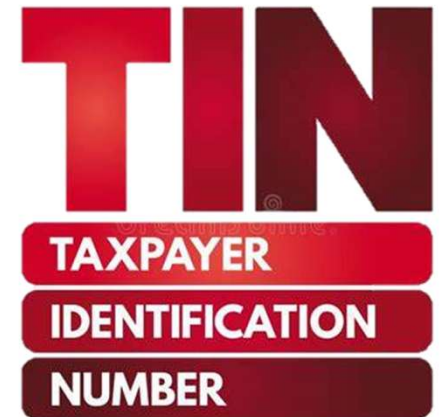
Agreements formed by the ff. persons/entities are  
**disqualified to be considered as tax-exempt:**

- a. Between/amongst Real Estate Developer
- b. Between/amongst REDs & Landowners
- c. Between/amongst REDs & LGUs
- d. Between/amongst REDs & GOCCs
- e. Between/amongst Non-Contractors & Non-Contractors
- f. Between/amongst Contractors & Non-Contractors



### III. MANDATORY REGISTRATION WITH THE BIR

- ☐ All JV or Consortiums formed as a taxable corporation or not, incorporated or not, regardless of purpose, are **required to register with the BIR** [SEC 236 NIRC]
- ☐ JV shall be issued a separate TIN per JV agreement



- ☐ In case a JV or Consortium change its composition (adding new co-venturers), or if existing co-venturers dissolve their involvement or retire, the same shall be **considered as a new JV or Consortium**



- ☐ Should register & be issued a new TIN as Head Office

- ☐ In case a new undertaking or project is formed that is different from the original purpose, but the composition or co-venturers are the same, said project **shall be registered as a branch**



## Registration of Tax Types

- ❑ JV or Consortiums shall register the ff. tax types as may be applicable to HO or Branch:
  - a. Income Tax (Annual & Quarterly)
  - b. VAT
  - c. Percentage Tax
  - d. Withholding Tax
  - e. CWT on certain income payments
  - f. DST, if applicable
  - g. Excise Tax, if applicable



## IV. TAX TREATMENT OF A JV/CONSORTIUM NOT TAXABLE AS A CORPORATION

### Joint Ventures



- ❑ Gross payments to the JV/Consortium not taxable as a corporation is **not subject to 2% CWT**
- ❑ However, it is **subject to 12% VAT & consequently to CWWAT**

## V. INCOME TAX LIABILITY

- ❑ Responsible in reporting & paying appropriate income taxes on their distributive share, **actually or constructively received, based on the NI as declared in the AITR**



**CWT**

- ❑ If the project is funded by ODA, the distributive share is **not subject to the CWT**

- 
- ❑ In case the JV/Consortium sustains a Net Operating Loss, the co-venturer/member shall be **entitled to deduct its respective share in the Net Operating Loss from its individual Gross Income**



## VI. CWT IMPOSED ON SPECIFIC PAYMENTS

- ❑ Distributive share on the Net Income is **subject to 15% CWT on the share of each co-venturer/member** from the Net Income of the JV/Consortium
- ❑ Income payments to their local/resident supplier of goods & services, shall be subject to the ff. withholding tax rates: [RR 14-2023]
  - ❖ Supplier of Goods - 1%
  - ❖ Supplier of Services - 2%





## VII. MANDATORY ENROLLMENT TO THE BIR'S EFPS

- ❑ All licensed contractors who are co-venturers/members with a specific subject or undertaking **exceeding 12-months** are required to enroll to the BIR's eFPS



## VIII. MANDATORY FILING OF AN AITR & SUBMISSION OF AN AFS

- ☐ Joint Ventures/Consortiums (taxable corporations) - **BIR Form 1702-RT or 1702-MX, whichever is applicable**
- ☐ Joint Ventures & Consortiums (not taxable as corporations) - **BIR Form 1702-EX**
- ☐ ITR filed shall be **accompanied with AFS**

For BIR/ BCS/ Use Only: Item: Republic of the Philippines Department of Finance Bureau of Internal Revenue **Annex "C"**

BIR Form No. **1702-RT**  
January 2018 (ENCS)  
Page 1

**Annual Income Tax Return**  
Corporation, Partnership and Other Non-Individual Taxpayer  
Subject Only to REGULAR Income Tax Rate  
Enter all required information in CAPITAL LETTERS. Mark applicable boxes with an "X".  
Two copies MUST be filed with the BIR and one held by the taxpayer.

1 For ☐ Calendar ☐ Fiscal  
2 Year Ended (MM/20YY) ☐ /20 ☐

3 Amended Return? ☐ Yes ☐ No

4 Short Period Return? ☐ Yes ☐ No

5 Alphanumeric Tax Code (ATC):  
TC 055 ☐ Minimum Corporate Income Tax (MCIT) ☐

1702-RT 01/18ENCS P1

For BIR/ BCS/ Use Only: Item: Republic of the Philippines Department of Finance Bureau of Internal Revenue

BIR Form No. **1702-MX**  
January 2018 (ENCS)  
Page 1m

**Annual Income Tax Return**  
Part V – Mandatory Attachments Per Activity

Taxpayer Identification Number (TIN) **0 0 0 0 0** Registered Name

1702-MX 01/18ENCS P1m

Part V – Mandatory Attachment per Activity (Schedules per Tax Regime)

For BIR/ BCS/ Use Only: Item: Republic of the Philippines Department of Finance Bureau of Internal Revenue **Annex "B"**

BIR Form No. **1702-EX**  
January 2018 (ENCS)  
Page 1

**Annual Income Tax Return**  
Corporation, Partnership and Other Non-Individual Taxpayer EXEMPT under the Tax Code, as Amended, [Sec. 30 and those exempted in Sec. 27(C)] and Other Special Laws, with NO Other Taxable Income  
Enter all required information in CAPITAL LETTERS. Mark applicable boxes with an "X".  
Two copies MUST be filed with the BIR and one held by the taxpayer.

1 For ☐ Calendar ☐ Fiscal  
2 Year Ended (MM/20YY) ☐ /20 ☐

3 Amended Return? ☐ Yes ☐ No

4 Short Period Return? ☐ Yes ☐ No

5 Alphanumeric Tax Code (ATC):  
TC 011 ☐ Exempt Corporation on Exempt Activities ☐

1702-EX 01/18ENCS P1

## IX. MANDATORY DEREGISTRATION WITH THE BIR

- ☐ All Joint Ventures/Consortiums are required to deregister with the BIR after completion of the undertaking construction project
- ☐ Through submission of the complete documentary requirements & full settlement of tax liabilities, if any



- ☐ Due to retirement from or cessation of business within 2 years **may apply for a cash refund for any unused input tax**



## **Documentary Stamp Tax**

Based on **FMV** determined, whichever is higher:

(a) When the consideration does not exceed Php 1K, PHP 15

(b) For each additional Php 1K or fractional part thereof in excess of PHP 1K of such consideration or value, Php 15



## **On sale of real property**

- ☐ 1.5% of consideration or FMV, whichever is higher
- ☐ 1.5% of actual consideration, when one of the parties is the government or exempt entity, such tax to be paid by the taxable party

## **On loan agreements & promissory notes**

- ☐ Php 1 for every Php 200 of issue price

## **On mortgage of real property**

- ☐ For first Php 5K-Php 20 &
- ☐ For each succeeding Php 5K-Php 10

## On lease of real property

- ❑ 1<sup>st</sup> Php 2K rental income-PHP 3 &
- ❑ For each Php 1K additional rental income for the year-PHP 1

## On transfer of mortgage or lease, or renewal of agreement

- ❑ Same DST rate imposed on original instrument



**CGT**-within **30 days** from the date of sale

**CWT**-within **10 days** after the end of each month, except for taxes withheld for the month of **December**, which shall be filed on or before **January 15** of the following year

**DST**-within **5 days** after the close of the month when the taxable document was made, signed, accepted, or transferred

**Place of Filing**: RDO where the property is located



## Date & Place of Filing







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**E-MAIL ME AT**  
**[willie.santiago@dmdcpa.com.ph](mailto:willie.santiago@dmdcpa.com.ph)**

A large, stylized red question mark is positioned to the right of the text. It has a thick, rounded shape with a small circle at the bottom, and its overall color is a vibrant red.