REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

BIR Ruling No. OT-0322-2020
OT- 012-2024
FEB 22 2024

MOS AUTOSOLUTIONS, INC.
c/o BERNALDO DIRECTO & PO LAW OFFICES
18/F Cityland 10 Condominium Tower 1
156 H.V. dela Costa St., Ayala North
Makati City

Gentlemen:

This refers to your letter requesting for a confirmatory ruling of your opinion that the properties of **MOS AUTOSOLUTIONS INC.** ("MOS") involved in the sale are considered as capital assets, hence, subject only to 6% capital gains tax ("CGT"), 1.5% documentary stamp tax ("DST"), and exempt from value-added tax ("VAT") pursuant to the National Internal Revenue Code ("Tax Code") of 1997, as amended.

It is recognized that the above opinion of MOS is in conflict with the opinion of the Revenue District Office ("RDO") No. 52 – Paranaque City, ruling that the subject properties are classified as ordinary assets, thus, are subject to creditable withholding tax ("CWT") pursuant to Revenue Regulations ("RR") No. 2-98, as amended, the corresponding DST, and likewise subject to VAT pursuant to the Tax Code of 1997, as amended, and RR No. 16-2005, respectively.

The antecedent background are as follows:

1. MOS is a domestic corporation duly organized and existing under the laws of the Philippines. It was incorporated on October 16, 2015 and registered with the Securities and Exchange Commission ("SEC"). MOS was likewise registered with the Bureau of Internal Revenue ("BIR") on October 26, 2015.

2. As per the Articles of Incorporation ("AOI") of MOS, its primary purpose is to engage in, conduct and carry on the business of buying, selling, distributing, marketing at retail and wholesale including repairing, servicing and after sales maintenance insofar as may be permitted by law, all kinds of motor vehicles, accessories, goods, product/equipment, wares and merchandise of every kind and description; to enter into all kinds of contracts for the export, import, purchase, acquisition, sale at retail and wholesale and other disposition for its own account as principal or in representative capacity as manufacturer's representative, merchandise broker, indentor, commission merchant, factors or agents upon consignment of all kinds of goods, equipment, wares, merchandise, or products whether natural or artificial.

3. Likewise, one of its secondary purposes indicated therein is to purchase, acquire, own, lease except financial leasing, sell and convey real and personal properties such as lands, buildings, warehouses, machinery, equipment and other properties as may be necessary or incidental to the conduct of the Primary Purpose, and to pay in cash, shares, of its capital

stock, debentures, and other evidences of indebtedness, or other securities, as may be deemed expedient for any business or property acquired by the Corporation.

4. MOS is the absolute, registered and beneficial owner of the eight (8) parcels of land situated at No with a total land area of

TCT No.	Tax Declaration No.	Lot No.	Area (sqm)	Land Classification
				Commercial
				Commercial
				Commercial
				Commercial
				Commercial
				Commercial
				Commercial
				Commercial

5. Based on the audited financial statement of MOS as of December 31, 2018, the subject properties are booked as non-current assets under *Investment Property* Account.

6. The subject properties have been idle, intended for capital appreciation, and were neither been used in trade or business nor were there any improvements introduced therein, as indicated in the *Certificate of No Improvement.*

7. On December 20, 2019, MOS sold the subject properties, as evidenced by the *Deed of Absolute Sale.*

8. On the basis of the said *Deed of Absolute Sale*, MOS filed the DST return and paid the amount
(P) on January 6, 2020.

9. Furthermore, on January 20, 2020, MOS filed the CGT return and paid the amount of
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10. Upon filing of the application for the Certificate Authorizing Registration ("CAR") with the ONET of RDO No. 52, the action officer is of the opinion that:

    a. The properties involved are "Ordinary Assets";
    b. The transaction shall be subject to VAT aside from the Expanded Withholding Tax and DST;
    c. Gain derived on the sale will be subject to regular income tax on net gain, to be included in the Income Tax Return in the year of the sale; and
    d. Taxpayer is required to amend the CGT return to Expanded Withholding Tax return in order for the application for CAR to proceed.

11. On July 29, 2020, MOS received a letter from RDO No. 52 stating that due to conflicting opinions, the Office deemed it proper to forward the case to the Legal Division of Revenue Region No. 8B-South NCR for evaluation and opinion.

12. On February 2021, MOS received a letter the RDO 52 which stated that the said Legal Division's opinion on the matter is that the subject properties are considered as ordinary assets.

In reply, please be informed as follows:

The term "Capital Assets", as negatively defined in Section 39(A)(1) of the Tax Code of 1997, as amended, states that:

"SEC. 39. Capital Gains and Losses. -

(A) Definitions. - As used in this Title –

> (1) Capital Assets. – The term 'capital assets' means property held by the taxpayer (whether or not connected with his trade or business), but does not include 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 close of the taxable year or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property used in the trade or business, of a character which is subject to the allowance for depreciation provided in Subsection (F) of Section 34; or real property used in trade or business of the taxpayer."

Moreover, Section 2 of RR No. 07-03, December 27, 2002, provides:

"SECTION 2. *Definition of Terms*. — For purposes of these Regulations, the following terms shall be defined as follows:

a. *Capital assets* shall refer to all real properties held by a taxpayer, whether or not connected with his trade or business, and which are not included among the real properties considered as ordinary assets under Sec. 39(A)(1) of the Code.

b. *Ordinary assets* shall refer to all real properties specifically excluded from the definition of capital assets under Sec. 39(A)(1) of the Code, namely:

   1. Stock in trade of a taxpayer or other real property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year; or

   2. Real property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business; or

   3. Real property used in trade or business (i.e., buildings and/or improvements) of a character which is subject to the allowance for depreciation provided for under Sec. 34(F) of the Code; or

   4. Real property used in trade or business of the taxpayer."

In applying the above cited provisions of the Tax Code of 1997, as amended, as well as RR No. 07-03, it appears that the subject properties owned by MOS are within the purview and definition of a "Capital Asset".

First, the subject properties are not stock in trade of a taxpayer or other real properties of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable

year. Second, the subject properties are not real properties held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business. Third, the subject properties are not real properties used in trade or business (i.e., buildings and/or improvements) of a character which is subject to the allowance for depreciation provided for under Sec. 34(F) of the Code. Lastly, the subject properties are not real properties used in trade or business of the taxpayer.

However, a perusal of the submitted documents reveals that MOS is engaged in the real estate business. Among its secondary purpose is to "purchase, acquire, own, lease except financial leasing, sell and convey real and personal properties such as lands, buildings, warehouses, machinery, equipment and other properties". Accordingly, it is clear that MOS is engaged in real estate business.

Section 3(a)(1) RR No. 07-03 likewise provides that:

"1. Real Estate Dealer. - All real properties acquired by the real estate dealer shall be considered as ordinary assets."

Considering that MOS is engaged in real estate business, all real properties it acquired are considered ordinary assets. Therefore, the subject properties are likewise considered as ordinary assets.

In view of the foregoing, the sale of the above properties, being ordinary assets, are subject to CWT, the corresponding DST, and VAT, pursuant to the Tax Code of 1997, as amended, and RR No. 16-2005, respectively.

This ruling is being issued on the basis of the foregoing facts as presented. However, if upon investigation, it will be ascertained that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

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