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

RR No. 2-98 as amended by RR No. 17-03
OT- 028-2024
MAY 29 2024

FINE PROPERTIES, INC.
Star Mall, National Road
Muntinlupa City

Attention: **Atty. Cecilia A. Ramilo, CPA**
Corporate Secretary

Gentlemen:

This refers to your letter requesting on behalf of Fine Properties, Inc. (FPI) for confirmation of your opinion that the basis for the computation of the creditable withholding tax (CWT) and documentary stamp tax (DST) on its transaction involving the sale of real property on installment, should be determined pursuant to the guidelines set under Revenue Regulations (RR) No. 17-2003.[1]

It is represented that on March 26, 2021, FPI and Prime Asset Ventures, Inc. (PAVI) entered into a Contract of Lease over the sq.m. portion of Lot covered by Transfer Certificate of Title (TCT) No. , situated in Brgy. Daan Pare, Orion, Bataan (subject portion). It is stipulated therein that the "rental commencement date" shall be on June 1, 2022 or the commercial operations date of the proposed establishment of "20 MW Bataan Solar Farm Project". The said stipulation is intended to ensure that PAVI will first secure all the pertinent government approvals, clearances and permits necessary for the said project.

On June 24, 2021, by mutual agreement, the parties rescinded the Contract of Lease. Instead, they entered into an Agreement to Purchase and Sale (subject agreement) for the sale of the subject portion which is classified as agricultural lot per Tax Declaration No. with a gross area of sq.m. covered by TCT No. (subject property).

Under the terms of the subject agreement, the purchase price of the subject portion in the amount of ₱ shall be paid by PAVI in installments detailed as follows:

The down payment of ₱ is payable as follows:

[1] Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as Amended, Providing for Additional Transactions Subject to Creditable Withholding Tax; Re-Establishing the Policy that the Capital Gains Tax on the Sale, Exchange or Other Disposition of Real Property Classified as Capital Assets Shall be Collected as a Final Withholding Tax, Thereby Further Amending Revenue Regulations Nos. 8-98 and 13-99, as Amended by Revenue Regulations No. 14-2000; and for Other Purposes, March 31, 2003.

having jurisdiction of the place where the property is located for validation of the correctness of the issuance of an electronic Certificate Authorizing Registration (eCAR).

These provisos readily suggest that the CWT is made to be predicated upon the object and the consideration agreed upon by the parties as contained in the contract to sell and the deed of sale. This conclusion stems from Article 1475 of the New Civil Code which provides that:

> *"Article 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.*
>
> *From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts."*

As tax laws are civil in nature,[2] it is worthy to note the stages of a contract of sale, which are: (1) *negotiation*, covering the period from the time the prospective contracting parties indicate interest in the contract to the time the contract is perfected; (2) *perfection*, which takes place upon the concurrence of the essential elements of the sale, which is the meeting of the minds of the parties as to the object of the contract and upon the price; and (3) *consummation*, which begins when the parties perform their respective undertakings under the contract of sale, culminating in the extinguishment thereof.[3]

The contract to sell coupled with the deed of absolute sale indicates the acquiescence to and acknowledgment of the parties towards the validity of the sale. Considered collectively, both contract to sell and deed of sale present the time line when the parties have perfected their contract and their intention as shown by the terminology used including all the surrounding circumstances, such as their relative situation at that time, their attitude, acts, conduct, declarations, their negotiations leading to the deed, and generally, all pertinent facts tending to fix and determine the real nature of their design and their corresponding obligations.

The inclusion of the notarized deed of absolute sale to be presented before the RDO signifies that in computing for the CWT, the legal consequences of the conveyance produce only its effects, insofar as the Bureau of Internal Revenue is concerned, after the notarization of the said document. This can be gleaned from the rule that a private conveyance is valid between the parties[4] and does not include those who are not privy thereto. The necessity of a public document for contracts which transmit or extinguish real rights over immovable property, as mandated by Article 1358 of the New Civil Code, is only for convenience[5] or to bind third persons.[6] This is in line with the implications under the rules of evidence as elaborated in the case *Dela Rama v. Papa*,[7] *viz*:

> *"Under Section 19, Rule 132 of the Rules of Court, '**documents acknowledged before a notary public** except for last wills and*

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[2] Commissioner of Internal Revenue v. Unioil Corporation, G.R. No. 204405, August 4, 2021.
[3] Sps. Onnie Serano and Amparo Herrera v. Godofredo Caguiat, G.R. No. 139173, February 28, 2007.
[4] Diampoc v. Buenaventura, G.R. No. 200383, March 19 2018.
[5] Manlan v. Beltran, G.R. No. 222530, October 16, 2019.
[6] Diampoc v. Buenaventura, *Supra.*
[7] G.R. No. 142309, January 30, 2009.

(J) Gross selling price or total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange, or transfer of real property classified as ordinary asset. – xxx

xxx xxx xxx

However, if the buyer is engaged in trade or business, whether a corporation or otherwise, these rules shall apply:

(i) ***If the sale is a sale of property on the installment plan*** *[i.e., payments in the year of sale do not exceed twenty five percent (25%) of the selling price],* ***the tax shall be deducted and withheld by the buyer from every installment which tax shall be based on the ratio of actual collection of the consideration against the agreed consideration appearing in the Contract to Sell applied to the gross selling price or fair market value of the property at the time of the execution of the Contract to Sell, whichever is higher.***

xxx xxx xxx

For sale of property on installment basis or deferred payment basis where the Contract to Sell is always executed before the execution of the Deed of Sale, the said Contract to Sell must be attached to the Deed of Absolute Sale executed upon completion of the payments and the duly notarized original duplicate copy of both documents must be presented to the RDO having jurisdiction of the place where the property is located for validation of the correctness of issuance of CAR/TCL.

It is to be noted, however, that in case of sale of real property paid under installment payment or deferred payment basis, the payment of the documentary stamp tax (DST) shall accrue upon the execution of the Deed of Absolute Sale but the basis for the imposition thereof shall be the gross selling price or fair market value of the property, whichever is higher, at the time of the execution of the Contract to Sell." (Emphasis and underscoring supplied)

The provision clearly states the tax consequence of DST which accrues upon the execution of the deed of absolute sale is reckoned from the gross selling price or fair market value of the property at the time of the execution of the contract to sell.

Insofar as CWT, Section 3 (J) of RR No. 17-2003 provides that if the sale of a real property is on installment plan, the tax shall be deducted and withheld by the buyer from every installment which tax shall be based on the ratio of actual collection of the consideration against the agreed consideration appearing in the contract to sell applied to the gross selling price or fair market value of the property at the time of the execution of the contract to sell, whichever is higher. The same provision likewise mandates the contract to sell to be attached with the deed of absolute sale executed upon completion of the payments and the duly notarized original duplicate copy of both documents must be presented to the Revenue District Office (RDO)

a. ₱ on June 24, 2021 simultaneous with the execution of the subject agreement as evidenced by Official Receipt No. issued on the same date.

b. ₱ – on or before August 31, 2021 provided FPI has transferred to PAVI the physical and vacant possession of the subject portion.

The remaining ₱ shall be paid to FPI on August 31, 2023 or upon release of the title and tax declaration covering the subject portion registered in its name, whichever comes earlier.

The subject agreement likewise provides that FPI shall execute the Deed of Sale upon the full payment by PAVI of the purchase price. Simultaneously, FPI shall deliver to PAVI the original owner's duplicate copy of the title to the subject portion free from any lien, encumbrance and annotation, the tax declaration and such other related documents or the original owner's duplicate copy of the title covering the subject property.

Emphatically, the prevailing zonal value of covering the subject portion is ₱25.00 per square meter as of the time of the execution of the subject agreement.

On July 12, 2021, PAVI through its authorized representative filed an application for reclassification of the subject property from agricultural land to industrial use before the Sangguniang Bayan of Orion, Bataan. On August 20, 2021, the Sangguniang Bayan enacted Municipal Special Ordinance No. (special ordinance) approving the reclassification of the subject property. The special ordinance was duly ratified by the Sangguniang Panlalawigan of the Province of Bataan on September 13, 2021 pursuant to Resolution No. and was duly approved by Governor Albert S. Garcia on October 1, 2021. Accordingly, Tax Declaration No. was issued on December 28, 2021 reflecting the reclassification of the subject property to industrial.

Meanwhile, on August 31, 2021, PAVI paid the second installment to FPI. On even date, the latter issued Official Receipt No. exhibiting the second installment.

From the foregoing, you request for a ruling confirming that the subject agreement is a sale of real property on installment and the basis for the computation of the CWT and DST is the highest value among the zonal, market value per tax declaration at the time of the subject agreement in accordance with Section 3 (J) of RR No. 17-2003.

In reply, please be informed that Section 3 (J) of RR No. 17-2003 provides for the tax treatment of sale involving real properties classified as ordinary asset:

> *"Sec. 2.57.2 Income Payment Subject to Creditable Withholding Tax and Rates Prescribed Thereon. – Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:*
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> *xxx xxx xxx*

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testaments' ***are deemed as public documents****, and as such, under Section 23 of the same Rule,* ***they are evidence of the fact which gave rise to its execution and as to its date.***" (Emphasis and underscoring supplied)

The attachment of the notarized contract to sell, in addition to the said deed of sale, manifests that the legal consequences of the conveyance retroacts from the time the contract of sale is perfected. It is during this time that the presumed gain or profit is realized or received, actually or constructively. Logically, the prevailing conditions during such time of perfection shall be the basis determining the tax liabilities of the parties.

From the foregoing, this Office hereby confirms your opinion that the computation of CWT and DST should be based on the gross selling price or fair market value of the subject portion, whichever is higher, at the time of the execution of the subject agreement pursuant to the Section 3 (J) of RR No. 17-2003.

This ruling is being issued on the basis of the foregoing facts as represented. 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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