REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

M-042-2021
3/2/2021

BEDAR LAW OFFICE
14th Floor Manila Astral Tower
P. Faura Ave. Cor. Taft Ave., Manila

Attention: ***Alvin Renald A. Bedar***

Gentleman:

This refers to your letter dated September 10, 2020 requesting on behalf of your client, Angelito M. Macalino and his three (3) sisters, namely, Maria Pauline M. Macalino, Anna Marie M. Macalino and Mary Joy M. Macalino ("the Macalinos" for brevity), as represented by Ms. Antonia M. Barrameda, for confirmation that the sale of real property owned by the Macalinos is subject to the 6% capital gains tax under Section 27(D)(5) and documentary stamp tax under Section 196, both of the National Internal Revenue Code (NIRC) of 1997, as amended, but is not subject to value-added tax (VAT).

It is represented that the Macalinos are the owners pro indiviso of a parcel of land ("subject property" for brevity) situated in the Barrio of Calaanan, Caloocan City covered with Transfer Certificate of Title No. issued by the Registry of Deeds of Kalookan City.

As Filipino citizens residing abroad, the Macalinos are not engaged in trade or business and are much more not engaged in the real estate business.

On August 26, 2020, Angelito Macalino, for and in behalf of his three (3) sisters who are currently residing in the United States of America (U.S.A.), executed a Deed of Absolute Sale in favor of Reynaldo B. Chua over the subject property including the building and improvements thereon. The corresponding taxes due on the sale of the said property were already paid. However, Revenue District Office (RDO) No. 027 issued assessment for Value-Added Tax (VAT). Hence, this query on whether or not the subject real property owned by the Macalinos are considered capital assets.

In reply thereto, please be informed that Section 2 (t) of the Revenue Bulletin No. 1-2003, (Prescribing the Procedure and Guidelines for the Proper Handling of Request for Rulings Which are Determined Hereunder as "No-Ruling Areas"), and Providing the Initial List of "No-Ruling Areas" provides, as quoted herein below, to wit:

> *"Section 2. List of No-Ruling Areas. – The following shall hereby be construed and identified as "No-Ruling Areas":*
>
> *r) **Issue/s or transactions involving directly or indirectly the same taxpayer/s which is/are the subject of an investigation, on-going audit**, administrative protest, claim for refund or issuance of tax credit certificate, collection proceedings, or a judicial appeal subject to Section 3 hereunder. Accordingly, the taxpayer must submit and include the following statement in the request for*

ruling: "The issue/s or transaction subject of the request is not under investigation, on-going audit, administrative protest, claim for refund or issuance of a tax credit certificate, collection proceedings, or a judicial appeal of the taxpayer/s involved."

In view thereof, considering that the transaction is subject to an on-going audit investigation as RDO No. 027 issued an assessment for VAT, this Office declines to issue a ruling on the issue raised, since it is declared as "No-Ruling Area" covered by Revenue Bulletin No. 1-2003, as amended.

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

040992

K-1