Bringing In Revenues
for Nation-Building

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

BAGONG PILIPINAS

BIR Ruling No. OT-0322-2020
Revenue Regulations No. 7-2003
OT-064-2025
APR 15 2025

RS GALLARDO LAW OFFICE
Unit 300 Valero Plaza, Valero St.
Salcedo Village, Makati City

Attention: **ATTY. RAYMUND GALLARDO**
Managing Partner

Gentlemen!

This refers to your letter, on behalf of your client, **CONCRETE AGGREGATES CORP. ("CAC")**, requesting for a confirmatory ruling that the subject properties held by CAC as investment properties are classified as capital assets. Thus, any conveyance thereof, are subject to six percent (6%) capital gains tax ("CGT") and documentary stamp tax ("DST"); but are not subject to value added tax ("VAT") and creditable withholding tax ("CWT").

It is represented that CAC is a domestic corporation registered with the Securities and Exchange Commission ("SEC") under SEC Registration No. 36140 and with Tax Identification Number . CAC is publicly listed in the Philippine Stock Exchange as of April 2, 1973. Its principal place of business is located at 7th Flr., West Wing, Estancia Offices, Capitol Commons, Meralco Avenue, Pasig City.

It is likewise represented that CAC is neither a real estate dealer nor a real estate developer. It is not a real estate lessor and is not considered as habitually engaged in real estate business.

Based on CAC's amended Articles of Incorporation, CAC's primary purpose is to "*engage in all or any of the business of manufacturers and dealers and workers in rock, stone, cement, lime, plasters, whiting, clay, grave, and minerals, earth, coke, fuel, artificial stone, and builders requisites and convenience of all kinds and incidental to the foregoing:*

(a) To quarry and crush rock, stone, limestone, etc. and to excavate in earth.
(b) To sell and deal in rock and stone products and limestone in all forms.
(c) To excavate, wash, screen, sell, and deal in sand and gravel
(d) To mix and sell limestone and rock products, sand and gravel, with binders of every description including asphalt and cement.
(e) To manufacture, buy, sell and deal on concrete asphalt and their products.

(f) To acquire, own, maintain, operate and dispose of trucks, lighters, ships, barges, transportation, construction equipment of all kinds for the corporation's own use.

(g) To acquire, own, use, convey, and otherwise dispose of and deal in real property or any interest therein.

(h) To buy, purchase, own, hold, sell, or otherwise acquire and dispose of land and deal in leases, hire, and let or lease or hire all kinds of materials, machinery equipment, tools and /or apparatus for the purpose or object aforesaid, and the materials thereof, to be manufactured and/or processed for sale exported as the demand of business requires."

Moreover, CAC's secondary purposes and powers include:

"*1.* -xxx-

2. [To deal and engage in land or real estate business] in all its branches and ramifications by purchase, exchange, assignments, gift or otherwise, and to own, use, improve, subdivide, operate, sell, assign, transfer, exchange, lease, develop, manage, administer, encumber, mortgage, pledge, and hold for investment or otherwise, any or all properties of every kind of whatsoever situated (including any interest of right therein, as well as shares of stocks of a corporation insofar as necessary or expedient in conducting the business of the Corporation), for itself or for others, in order to exercise all rights, powers and privileges of ownership or any other interest therein (including [1] the right to receive, collect and dispose of any and all rentals, dividends, interest and income derived therefrom, [2] the right to vote on any proprietary or other interest on any shares of the capital stock, and upon any bonds, debentures, or other securities, having voting power so owned or held, and [3] the right to develop, conduct, operate, and maintain the business of modernized commercial shopping centers and all business appurtenant thereto, such as but not limited to the conduct, operation and maintenance of shopping center spaces for rent, amusement centers, movie or cinema theaters within the compound or premises of the shopping centers) as may be permitted by law.

3. To acquire, purchase, hold, manage, develop, sell, construct, erect, manage, and administer subdivision lots, buildings such as condominium, apartments, hotels and restaurants, stores, or other structures for mixed used purposes for such consideration and in such manner or form as the Corporation may determine or as the law permits; as well as to engage or act as a real estate broker, on commission or for such fees as may be proper or legal; and to exercise or undertake such other powers and purposes as may be required and necessarily implied or incidental to any of the purposes herein mentioned." (Emphasis supplied)

That as per CAC's audited financial statements, it has parcels of land presented under "Investment Properties" amounting to Php [illegible]0 and Php [illegible]0 for the years 2021 and 2020, respecti[illegible] of the total "Investment Properties", the parcels of land with a total book value of P[illegible] 09.00 are subject of this request.

In reply, please be informed that Section 39 (A)(1) of the National Internal Revenue Code (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." (Underscoring supplied)

In relation thereto, Section 2 of Revenue Regulations ("RR") No. 7-2003 states that:

"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.

-xxx-" (Underscoring supplied)

A perusal of the submitted documents reveals that CAC is engaged in the real estate business. CAC's primary and secondary purposes as stated in its Articles of Incorporation clearly include dealing with real properties.

In relation thereto, Section 3(a)(1) of RR No. 07-2003 provides:

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

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Therefore, considering that CAC is in real estate business, all real properties acquired by it shall be considered as ordinary assets.

In view of the foregoing, the sale of the subject parcels of land, 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, amended.

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.

For your strict compliance.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

CC: LTAD I -RDO 121

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