REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

RA No. 7279 as amended by RA No. 10884
BIR Ruling No. NSH-358-2022; BIR Ruling No. 011-2018
OT-071-2023
JUN 07 2023

DALMATUAN AMIRUL REALTY, SURVEYING AND CONSULTANCY OFFICE
Rm. 314, Mendoza Bldg., Pilar St.
Zamboanga City

Attention: **ABUYUSUF S. AMIRUL, G.E.**
General Manager

Gentlemen:

This refers to your request for tax exemption relative to the Indanan Settlement Survey Works, Package 2 project of the National Housing Authority (NHA) located at Brgy. Kajatian, Indanan, Sulu.

It is represented that the Indanan Settlement Survey Works, Package 2 is a settlement project through Slum Upgrading Program of the NHA being undertaken by Dalmatuan Amirul Realty, Surveying and Consultancy Office, a sole proprietorship registered and existing under the laws of the Philippines; and that the scope of works for the Project includes relocation/boundary survey, consolidation/subdivision survey and lot titling.

In reply, please be informed that your request for tax exemption on the payment of service fees to Dalmatuan Amirul Realty, Surveying and Consultancy Office relative to the Indanan Settlement Survey Works, Package 2 project of the NHA cannot be granted for lack of legal basis. Section 20 of Republic Act (RA) No. 7279, states that:

> "Sec. 20. Incentives for the Private Sector Participating in Socialized Housing. — To encourage greater private sector participation in socialized housing and further reduce the cost of housing units for the benefit of the underprivileged and homeless, the following incentives shall be extended to the private sector:
>
> xxx xxx xxx
>
> (d) Exemption from the payment of the following:
>
> (1) Project-related income taxes;
>
> xxx xxx xxx
>
> (2) Value-added tax for the project contractor concerned;"

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In relation thereto, Section 3 (r) of RA No. 7279 defines "socialized housing" as follows:

> "Sec. 3. Definition of Terms. – For purposes of this Act:
>
> XXX XXX XXX
>
> (r) "Socialized housing" refers to housing programs and projects covering houses and lots or homelots only undertaken by the Government or the private sector for the underprivileged and homeless citizens which shall include sites and services development, long-term financing, liberalized terms on interest payments, and such other benefits in accordance with the provisions of this Act;" (Underscoring ours)

In this case, Dalmatuan Amirul Realty, Surveying and Consultancy Office has been engaged by NHA to undertake land survey and titling (*including relocation/boundary survey, consolidation/subdivision survey and lot titling*). It must be noted, that purely land survey and titling works do not fall within the definition of a "socialized housing" under Section 3 (r) of RA No. 7279, as amended. It is apparent that the tax incentive provision, granting exemption from project related taxes is limited to project contractors on their construction and development of houses and lots or homelots only, with a view to reduce the cost of housing units for the benefit of the underprivileged and homeless. Thus the service fees to be paid by the NHA to Dalmatuan Amirul Realty, Surveying and Consultancy Office shall be subject to income tax and consequently, to withholding tax.

Moreover, Section 20(d)(3) of RA No. 7279, as amended by RA No. 10884, on the exemption from value-added tax (VAT) for the project contractor concerned, was already repealed by Section 86(tt) and (uu) of RA No. 10963. Hence, the service fees to be paid by NHA to Dalmatuan Amirul Realty, Surveying and Consultancy Office shall be subject to VAT and the NHA, before making payment on account of the services performed by the contractor, shall deduct and withhold a creditable VAT at the rate of five percent (5%) of the gross payment thereof, pursuant to Section 114(C) of the National Internal Revenue Code of 1997, as amended.

It should be remembered that laws and statutes granting tax exemptions are strictly construed against the taxpayer. Exemptions are never presumed and the burden is upon the taxpayer to establish his right to exemption beyond reasonable doubt.[1] In the case of Mactan Cebu International Airport Authority v. Marcos,[2] the Supreme Court held:

> "Accordingly, tax statutes must be construed strictly against the government and liberally in favor of the taxpayer. But since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting the exemptions are thus construed strictissimi juris against the taxpayer and liberally in favor of the taxing authority. A claim of exemption from tax payments must be clearly shown and based on language in the

[1] Dimaampao, Japar B., Tax Principles and Remedies, Second Edition (2005).
[2] G.R. No. 120082, 11 September 1996, 261 SCRA 667.

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law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption therefrom is the exception."

Please be guided accordingly.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
009046

Copy Furnished:

Al-KHWARIZMI U. INDANAN
Acting Regional Manager, Region IX and ARMM
National Housing Authority

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