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

Article 1475 of the New of Civil Code; RR No. 16-05; RR No. 16-11; and RR No. 03-12	VAT-088-2021

Person to Contact: Chief, Law & Legislative Division
Tel. Nos. 926-55-36/927-09-63

Date: APR 09 2021

SM DEVELOPMENT CORPORATION
10th Floor, One E-Com Center, Harbor Drive
Mall of Asia Complex, CBP-IA
Pasay City

Attention: **Atty. David P. Tan, Jr.**

Gentlemen:

This refers to your request on behalf of SM Development Corporation ("SMDC") for clarification on the application of BIR Ruling No. 815-2018 dated May 15, 2018.

Background:

On April 2, 2012, a Contract to Sell was executed by and between Spouses Damasco and SMDC over one (1) condominium unit more particularly described as Unit No. situated at the Jazz Residences in Makati City. The gross selling price for the condominium unit is pegged at PhP. . However, after applying the discount, the net selling price is reduced to PhP.

Based on the above representation, this Office issued BIR Ruling No. 815-2018 on May 15, 2018 stating that the purchase of the said condominium unit is exempt from value-added tax (VAT) since its selling price of PhP did not exceed the revised VAT threshold of PhP3,199,200.00 pursuant to Revenue Regulations (RR) No. 16-2011 dated October 27, 2011 which took effect on January 1, 2012.

However, in your letter dated August 30, 2017, you narrated that while it was only on April 2, 2012 when the parties executed and notarized the Contract to Sell over the said condominium unit, Spouses Damasco and SMDC entered into a Reservation Agreement on June 30, 2011. In view thereof, Spouses Damasco started paying their monthly installments due to SMDC on July 30, 2011.

At the time SMDC began receiving the installment payments from Spouses Damasco, RR No. 16-2005, as amended, mandated the imposition of VAT on the sale of residential condominium units with selling prices above PhP2,500,000.00. As such, the installment payments of Spouses Damasco were subjected to VAT.

On January 1, 2012, RR No. 16-2011 which increased the VAT exemption threshold for sales of residential condominium units to PhP3,199,200.00 became effective. Thus, beginning January 1, 2012, all sales of residential condominium units with price not exceeding PhP3,199,200.00 became exempt from VAT.

Considering that Spouses Damasco commenced payment of their installments due for the above-mentioned residential condominium unit, although the Contract to Sell was

belatedly executed on April 2, 2012 when RR No. 16-2011 had already taken effect, you now request for clarification on how SMDC will put into effect the VAT exemption on the sale of condominium unit to Spouses Damasco as provided in BIR Ruling No. 815-2016.

In reply, please be informed that Article 1475 of the New Civil Code 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."*

The stages of a contract of sale 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.[1]

Based on the above-quoted provision and principle of law in relation to the factual antecedents of this case, it is clear that Souses Damasco and SMDC perfected their contract of sale on June 30, 2011, the time of the execution of the Reservation Agreement, and was consummated on July 30, 2011, the time when Spouses Damasco started paying their monthly installments due to SMDC.

Moreover, Article 1403 (2)(e) of the New Civil Code dictates that:

> *"Art. 1403. The following contracts are unenforceable, unless they are ratified:*
>
> *xxx xxx xxx*
>
> *(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum, thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:*
>
> *xxx xxx xxx*
>
> *(e) **An agreement of the leasing for a longer period than one year, or for the sale of real property or of an interest therein;**"* (Emphasis and underscoring supplied)

In the case of *Swedish Match v. Court of Appeals*[2], the Supreme Court through Justice Tinga, discussed, to wit:

> *"The Statute of Frauds embodied in Article 1403, paragraph (2), of the Civil Code requires certain contracts enumerated therein to be evidenced by some note or memorandum in order to be enforceable. The term "Statute of Frauds" is descriptive of statutes which require certain classes of contracts to be in writing. The Statute does not deprive the parties of the right to contract with respect to the matters therein involved, but merely regulates the*

[1] Sps. Onnie Serano and Amparo Herera v. Godofredo Caguiat, G.R. No. 139173, February 28, 2007
[2] G.R. No. 128120, October 20, 2004

formalities of the contract necessary to render it enforceable. Evidence of the agreement cannot be received without the writing or a secondary evidence of its contents.

The Statute, however, simply provides the method by which the contracts enumerated therein may be proved but does not declare them invalid because they are not reduced to writing. By law, contracts are obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable. Consequently, the effect of non-compliance with the requirement of the Statute is simply that no action can be enforced unless the requirement is complied with. Clearly, the form required is for evidentiary purposes only. Hence, if the parties permit a contract to be proved, without any objection, it is then just as binding as if the Statute has been complied with.

The purpose of the Statute is to prevent fraud and perjury in the enforcement of obligations depending for their evidence on the unassisted memory of witnesses, by requiring certain enumerated contracts and transactions to be evidenced by a writing signed by the party to be charged.

However, for a note or memorandum to satisfy the Statute, it must be complete in itself and cannot rest partly in writing and partly in parol. The note or memorandum must contain the names of the parties, the terms and conditions of the contract, and a description of the property sufficient to render it capable of identification. Such note or memorandum must contain the essential elements of the contract expressed with certainty that may be ascertained from the note or memorandum itself, or some other writing to which it refers or within which it is connected, without resorting to parol evidence."

Evidently, the Reservation Agreement entered into by Spouses Damasco and SMDC on June 30, 2011 constitutes the note or memorandum within the purview of Article 1403 of the New Civil Code. Consequently, the obligation of SMDC to collect the corresponding VAT over payments for the property purchased thereby should be pursuant to RR No. 16-2005 being the prevailing regulation when the contract was deemed instituted and perfected.

Moreover, it is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, i.e., that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law. The statute's clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Consistent with the fundamentals of statutory construction, all the words in the statute must be taken into consideration in order to ascertain its meaning.[3]

Applying the abovementioned principle, Section 4.106-3 of RR No. 16-2011 as amended further by RR No. 03-2012, which provides that:

"Section 4.106-3 Sale of Real Properties. — Sale of real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business of the seller shall be subject to VAT.

[3] Philippine International Trading Corporation vs. Commission on Audit, G.R. No. 183517, June 22, 2010

Sale of residential lot with gross selling price exceeding P1,919,500.00, residential house and lot or other residential dwellings with gross selling price exceeding P3,199,200.00, where the instrument of sale (whether the instrument is nominated as a deed of absolute sale, deed of conditional sale or otherwise) is executed and notarized on or after January 1, 2012 and shall be subject to twelve percent (12%) output VAT.

However, for instruments of sale executed and notarized on or after Nov. 1, 2005 but prior to January 1, 2012, the threshold amounts should appropriately be P1,500,000 and P2,500,000 respectively, and excess thereof shall be subject to ten percent (10%) output VAT, and starting Feb. 1, 2006, to twelve percent (12%) output VAT.

xxx xxx xxx"

should be read with the un-amended portion of RR No. 16-2005, *viz*:

"Section 4.106-3 Sale of Real Properties. — Sale of real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business of the seller shall be subject to VAT.

xxx xxx xxx

*"**Sale of real property on installment plan**" means sale of real property by a real estate dealer, the initial payments of which in the year of sale do not exceed twenty-five percent (25%) of the gross selling price.*

However, in the case of sale of real properties on the deferred-payment basis, not on the installment plan, the transaction shall be treated as cash sale which makes the entire selling price taxable in month of sale.

*"**Sale of real property by a real estate dealer on a deferred payment basis, not on the installment plan**" means sale of real property, the initial payments of which in the year of sale exceed twenty-five percent (25%) of the gross selling price.*

*"**Initial payments**" means payment or payments which the seller receives before or upon execution of the instrument of sale and payments which he expects or is scheduled to receive in cash or property (other than evidence of indebtedness of the purchaser) during the year when the sale or disposition of the real property was made. It covers any down payment made and includes all payments actually or constructively received during the year of sale, the aggregate of which determines the limit set by law.*

Initial payments do not include the amount of mortgage on the real property sold except when such mortgage exceeds the cost or other basis of the property to the seller, in which case, the excess shall be considered part of the initial payments.

Also excluded from initial payments are notes or other evidence of indebtedness issued by the purchaser to the seller at the time of the sale.

Pre-selling of real estate properties by real estate dealers shall be subject to VAT in accordance with rules prescribed above.

xxx xxx xxx"
(Emphasis and underscoring supplied)

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Clearly, the instrument of sale (whether the instrument is nominated as a deed of absolute sale, deed of conditional sale or otherwise) contemplated on the above-cited provisions is not exclusive to those contracts which are executed and notarized. It also includes sale on installment plan reckoned from the year where the initial payment is made.

The partial payments made by Spouses Damasco on July 30, 2011, in accordance to the execution of the Reservation Agreement are indicative of their acquiescence to and acknowledgment of the validity of the sale.

Likewise, RR No. 16-2011, as amended by RR No. 03-2012 should only apply to cases where there is no other proof evidencing the perfection of the contract because in said cases, the deed of absolute sale/contract to sell is the *prima facie* evidence of the perfection of the contract between the parties.

Accordingly, the sale of the condominium unit by Spouses Damasco which is deemed instituted and perfected on June 30, 2011 and consummated on July 30, 2011 is subject to VAT. It is thus logical that the prevailing regulations during that time applies. Therefore, the purchase by Spouses Damasco from SMDC of one (1) condominium unit more particularly described as Unit No. situated at the Jazz Residences in Makati City is subject to VAT.

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

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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