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

Sec. 196; RR 26; RR 17-03
BIR Ruling No. 079-14;
BIR Ruling No. 027-10;
2-15-2017
2-15-2017

COMMUNITIES PANAY, INC.
3rd Level, Starmall, Las Piñas, CV Starr Avenue
Pamplona, Las Piñas City

Attention: **Atty. Cecilia A. Ramilo, CPA**
Tax Department Head

Gentlemen:

This refers to your letter dated July 11, 2016 requesting for confirmation of your opinion that, in the case of deferred sale where the initial payment exceeds 25%, the correct tax base in computing the capital gains tax (CGT) and documentary stamp tax (DST) shall be the gross selling price or fair market value of the property, whichever is higher, as of the time of the execution of the Contract to Sell.

It is represented that Communities Panay, Inc. ("Corporation") is a domestic corporation engaged in the development and sale of low cost mass housing project in the Western Visayas area, more particularly, in Roxas City and Aklan. On June 6, 2013, the Corporation entered into an Agreement to Purchase and Sell ("ATPS") with Spouses Ramon Asis and Nieva Asis ("Sellers"), for the purchase of a portion of an agricultural real property situated in Barangay Sibaguan, Roxas City. Under the terms of the purchase, the buyer Corporation shall pay the down payment upon execution of the ATPS and the balance will be payable in 10 equal quarterly installments with the first installment payment to commence six (6) months from the execution of the ATPS. Immediately thereafter, the CGT in the amount of P , which is equivalent to 6% based on the selling price per ATPS, was paid in full on June 24, 2013 since the transaction falls under the deferred cash sale.

Likewise, the parties agreed that the physical possession of the subject property shall be transferred by the Sellers in favor of the Corporation upon execution of the ATPS. Hence, the Corporation processed all the necessary permits for the development of the subject realty and secured the reclassification of the land from agricultural to residential so as to fit its intended purpose, *i.e.*, low cost housing development. Then finally on May 19, 2016, the parties have executed the Deed of Absolute Sale after the buyer Corporation have fully paid the contract price and the Sellers have fulfilled their corresponding obligations under the ATPS. Accordingly, the DST computed based on the selling price in the amount of P894,405.00 was paid.

In reply, please be informed that Section 196 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> *"SEC. 196. Stamp Tax on Deeds of Sale and Conveyances of Real Property. - All conveyances, deeds, instruments, or writings, other than grants, patents or original certificates of adjudication issued by the Government, whereby any land, tenement or other realty sold shall be granted, assigned transferred or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax, at the rates herein below prescribed, based on the consideration contracted to be paid for such realty or on its fair market value determined in accordance with Section 6(E) of this Code, whichever is higher; . . ."*

COMMUNITIES PANAY, INC.

Corollary, Section 163 of Regulations No. 26, or Revised Documentary Stamp Tax Regulations provides:

> *"SEC. 163. Contract for sale of land. - If contract for the sale of land vests title on the land and improvements thereon, it would be subject to taxation as a conveyance. If it does not vest title but contains only certain provisions for the giving of a deed in the future upon compliance with conditions precedent, it is not subject to tax."*

In the same vein, Section 2.57.2 (J) of Revenue Regulations (RR) No. 2-98, as amended by Revenue Regulations No. 17-2003, provides that:

> *"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 payment of all applicable taxes before the 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, as of the time of the execution of the Contract to Sell.*** (Emphasis Supplied)
>
> *xxx xxx xxx"*

Considering that the terms of payment on the sale transaction between Spouses Ramon Asis and Nieva Asis and Panay Communities, Inc. is on deferred payment basis as stipulated in the ATPS and that the CGT due thereon has been paid, accordingly, the DST on the sale and the conveyance of real property as prescribed in Section 196 of the NIRC of 1997, as amended, is payable only upon the execution of the Deed of Absolute Sale and the basis for the imposition thereof shall be the gross selling price or fair market value of the property, whichever is higher, as of the time of the execution of the ATPS pursuant to RR No. 17-2003. *(BIR Ruling Nos. 027-10 dated August 10, 2010 and 079-14 dated March 4, 2014))*

However, it should be noted that the ATPS is subject to the DST of P15.00 pursuant to Section 188 of the NIRC of 1997, as amended.

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

003880

K-1-LMAT