July 18, 2018

BIR RULING NO. 1091-18

RA No. 7279; RA No. 7160; BIR Ruling
No. 476-2013; BIR Ruling No. 201-2014

Sampaguita Hills (United Parañaque) Homeowners Association, Inc.
Sampaguita Hills, UPS IV, Brgy. Marcelo Green
Parañaque City

Attention: *AAA*

Gentlemen :

This refers to your letter dated December 4, 2015, requesting for exemption from the payment of Capital Gains Tax (CGT) and other taxes on the sale transaction between V. C. Ponce Co., Inc. and Sampaguita Hills (United Parañaque) Homeowners Association, Inc. in accordance with Revenue Regulations (RR) No. 9-93.

Documents submitted disclosed that V. C. Ponce Co., Inc. is the absolute registered owner of a parcel of land covered by Transfer Certificate of Title (TCT) No. 116554 (26137-17) 1997 issued by the Registry of Deeds for the Province of Rizal, containing an area of Eighteen Thousand Two Hundred Ninety Eight square meters (18,298 sq. m.) more or less; that on March 10, 2005, a Decision was rendered by the Regional Trial Court (RTC) of Parañaque City, Branch 274, expropriating the said parcel of land for the continuing Socialized Housing Program of the City Government of Parañaque for the landless constituents, in particular, to the socialized housing needs of the members of Sampaguita Hills (United Parañaque) Homeowners Association, Inc., which Decision was both affirmed by the Court of Appeals and the Supreme Court and became final and executory and recorded in the Book of Entries of Judgments on December 14, 2012; that the Court issued an order fixing the just compensation in the amount of _____ pesos (P_____) per square meter or a total consideration of _____ pesos (P_____); and that on June 23, 2015, Sampaguita Hills (United Parañaque) Homeowners Association, Inc. and V. C. Ponce Co., Inc. executed a Deed of Absolute Sale whereby the latter transferred and conveyed the subject property to the former at an agreed price of P_____ per square meter or P_____, pursuant to the final and executory March 10, 2005 Decision of the RTC of Parañaque City.

In reply, please be informed that the involuntary transfers of real properties,

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including expropriation sale, are subject to applicable taxes, depending on whether the subject properties are classified as capital assets or ordinary assets. *(BIR Ruling No. 476-2013 dated December 18, 2013)*

However, Section 19 of Republic Act (RA) No. 7160 provides the basis for the exercise of the power of eminent domain of local government, which provides that:

> *"SECTION 19. Eminent Domain. — A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, or purpose or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws: Provided, however, That the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted: Provided, further, That the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a deposit with the proper court of at least fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated: Provided, finally, That, the amount to be paid for the expropriated property shall be determined by the proper court, based on the fair market value at the time of the taking of the property."*

As an instrumentality of the government, a local government unit, which acts for the purpose of accomplishing government policies and objectives and extending essential services to the people, performs governmental and not proprietary functions. [1] Thus, in line with the foregoing, it is a declared State policy as laid down in RA No. 7279, otherwise known as the "Urban Development and Housing Act of 1992," to provide decent and affordable housing to the underprivileged and homeless citizens. *(BIR Ruling No. 201-2014 dated June 17, 2014)*

Also, the pertinent portion of Section 20 of RA No. 7279, reads:

> *"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) . . .*
>
> *(2) Capital gains tax on raw lands used for the project;*
>
> xxx xxx xxx"

Pursuant to the aforementioned provisions, the conveyance of the parcel of land covered by TCT No. 116554 (26137-17) 18997 by herein landowner, V. C. Ponce Co.,

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Inc. in favor of the Sampaguita Hills (United Parañaque) Homeowners Association, Inc. for use in its socialized housing project is exempt from capital gains tax.

Upon application for exemption, a lien on the title of the land shall be annotated by the Register of Deeds having jurisdiction over the property, to the effect that the same is to be applied or is being applied to socialized housing project pursuant to RA No. 7279. *(BIR Ruling No. 201-2014 dated June 17, 2014)*

However, the sale is subject to the documentary stamp tax imposed under Section 196 of the National Internal Revenue Code 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,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. *People's Homesite and Housing Corporations vs. Court of Industrial Relations*, 150 SCRA 296, 310 [1987].

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