October 22, 2018

BIR RULING NO. 1275-18

RA No. 7279; BIR Ruling No. 034-15

Government Lot of Brgy. Apas
Homeowners' Association, Inc. (GLOBAHAI)
Wilson St., Apas, Cebu City 6000

Attention: *AAA*

_____

Gentlemen :

This refers to your letter dated August 17, 2017, requesting exemption from capital gains tax (CGT), relative to the transfer of title of land from **GOVERNMENT LOT OF BRGY. APAS HOMEOWNERS' ASSOCIATION, INC.** (**"GLOBAHAI"** for brevity), in favor of its qualified member-beneficiaries pursuant to Republic Act No. 7279 otherwise known as the "Urban Development and Housing Act of 1992."

It is represented that **GLOBAHAI**, with Taxpayer's Identification No. 000-000-000-000, is the owner of the parcel of land with a total area of Three Thousand One Hundred Fifty Eight square meters (3,158 sq.m.), located at Cebu City and covered by Transfer Certificate of Title (TCT) No. 120877 [1] issued by the Registry of Deeds of Cebu City; that it is a non-stock, non-profit organization duly registered with the Housing and Land Use Regulatory Board (HLURB) with Registration No. 08129; that the aforesaid lot was acquired through a loan under the Community Mortgage Program (CMP) with Cebu Commission for the Urban Poor, Inc., as originator; that said project was taken-out/paid on April 20, 1994 in the amount of _____ Pesos (P_____), involving Fifty One (51) beneficiaries.

In reply, please be informed that the transfer by **GLOBAHAI** in favor of the member-beneficiaries who have made full payment of their purchased subdivided lot is not subject to either the CGT imposed under Section 27 (D) (5) of the Tax Code of 1997, as amended, or the creditable withholding tax imposed under Revenue Regulations No. 2-98, as amended, considering that the said transfer of property is made without any consideration and effected only as a formality to finally effect the transfer of the said property to its member-beneficiaries, who actually bought the same from the former owner through the Association. In other words, the association is merely transferring the ownership of the property to its member-beneficiaries who actually own the

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aforedescribed lot.

Furthermore, the said transfer is not subject to the donor's tax imposed under Section 99 of the Tax Code of 1997, as amended, since there is no donative intent on the part of the Association to donate the said property to said members-beneficiaries, considering that it could not donate property the ownership of which already belongs to the members-beneficiaries themselves. *(BIR Ruling No. 034-2015 dated February 5, 2015)*

It is noted that under Section 196 of the Tax Code of 1997, as amended, the deeds or documents subject to the documentary stamp tax (DST) imposed therein are those where the realty sold shall be granted, assigned, transferred, or otherwise conveyed to a purchaser or purchasers or to any other person or persons designated by such purchaser or purchasers, thereby excluding from its purview the instant case considering that the supposed purchasers are actually the owners thereof. Besides, no consideration is involved in said transaction upon which the tax imposed could be based.

Accordingly, the transfer of title of the subject lots in favor of the beneficiaries is not subject to DST under Section 196 of the Tax Code of 1997, as amended. However, the notarial acknowledgment to the deed of conveyance is subject to the documentary stamp tax of P15.00 [2] pursuant to Section 188 of the Tax Code of 1997, as amended. *(BIR Ruling No. 034-2015 dated February 5, 2015)*

It is, however, understood that the Certificate Authorizing Registration (CAR) shall only be issued after the submission of the requirements provided under RMO 15-2003 and after it is established upon proper verification by the Revenue District Officer (RDO) concerned that, considering the rules on valuation on real property, the actual selling price per sale transaction in this case does not exceed P450,000.00 for house and lot and P180,000.00 for lot only for each qualified beneficiaries. *(BIR Ruling No. 034-2015 dated February 5, 2015)*

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. Now cancelled and in lieu thereof TCT Nos. 145221-145230; 145133-145142; 145330-145339; 145358-145367; 145392-145407 are issued, (56 titles).
2. The old DST rate of P15.00 shall be used since the transaction took place prior to the

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effectivity of RA 10963 or the TRAIN Law.

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