November 15, 2018

BIR RULING NO. 1356-18

Sections 27, 105, NIRC; RMC No. 65-2012

Paragon Plaza Condominium Corporation
No. 162 EDSA cor. Reliance St., Mandaluyong City

Attention: *AAA*

Gentlemen :

This refers to your letter dated October 17, 2013 requesting for a clarificatory ruling whether the Real Property Tax (RPT) collected by the **PARAGON PLAZA CONDOMINIUM CORPORATION (PARAGON PLAZA)** should be subjected to value-added tax (VAT) and be recognized as part of **PARAGON PLAZA**'s income pursuant to Revenue Memorandum Circular No. 65-2012.

It is your position that the phrase *"Association dues, membership fees, and other assessments/charges collected by a condominium corporation are subject to VAT since they constitute income payment or compensation for the beneficial services it provides to its members and tenants"* in Revenue Memorandum Circular 65-2012 does not include taxes imposed by the Local Government.

In reply, please note that your condominium corporation may be collecting two kinds of RPT from your members — the RPT for the Common Areas and the RPT for the individual units of your members.

The RPT is a direct tax imposed on the privilege to use real property levied and collected by local government units under Republic Act No. 7160 otherwise known as the Local Government Code of 1991.

A condominium is an interest in a real property consisting of separate interest in a unit in a residential, industrial or commercial building and an undivided interest in common, directly or indirectly, in the land on which it is located and in other common areas of the building. [1]

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Hence, local government units assess real property tax on common areas and the individual residential units of the condominium project. Whenever common areas in the condominium project are held by a condominium corporation, such corporation shall constitute a management body of the project. As part of its obligation to manage the condominium, it shall be responsible for:

1. For payment of taxes and special assessments which would be a lien upon the entire project or common areas, and for discharge of any lien or encumbrance levied against the entire project of the common areas; [2] and

2. For a reasonable assessment to meet authorized expenditures, each condominium unit to be assessed separately for its share of such expenses in proportion (unless otherwise provided) to its owners fractional interest in the common areas. [3]

RPT due on the common areas are usually included in the total dues and fees assessed and collected by the condominium corporation from the unit owners. Although RPT due on the individual condominium units are for the account of the unit owners, condominium corporations may however collect such RPT from the unit owners in the same way as it is for the common areas depending on its management policies and regulations.

In such cases, RPT whether for common areas or for the individual unit, that is collected by the condominium corporation which is made part of its assessment fees and dues shall be treated as income as discussed in RMC 065-2012. It shall likewise be considered as part of the gross receipts of the condominium corporation subject to VAT or percentage tax, whichever is applicable.

RPT for individual units paid for by the members/unit owners themselves are not subject to income and VAT or percentage tax, as the case may be, since no service is rendered by the Condominium Corporation to the member/unit owner.

In *Commissioner of Internal Revenue vs. Solidbank Corporation*, [4] the Supreme Court has held that:

> *Double taxation* means taxing the same property twice when it should be taxed only once; that is, ". . . taxing the same person twice by the same jurisdiction for the same thing." It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as "direct duplicate taxation," the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and they must be of the same kind or character.

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It should be noted that the RPT is imposed on the privilege of using property and is imposed by the local governments. On the other hand, income tax is imposed on profit from property, profession, trade or office, while the VAT is imposed on the increase in worth, merit, or importance of goods, properties or services. The former is a local tax while the latter two are national internal revenue taxes. Noting the differences, there can be no double taxation in the imposition of income tax and VAT on the collected RPT by Condominium Corporations.

Please be guided accordingly.

Very truly yours,

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

Footnotes

1. Section 2, Republic Act No. 4726.
2. Section 9 (a) (5), Republic Act No. 4726.
3. Section 9 (d), Republic Act No. 4726.
4. G.R. No. 148191, November 25, 2003.

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