November 19, 2018

BIR RULING NO. 1397-18

Sections 248 & 249, NIRC; RR 02-98; BIR Ruling No. 459-11

First Batangas Industrial Park, Inc.
Brgy. Balayong, Bauan
Batangas

Attention: *AAA*

Gentlemen :

This refers to your letter dated October 13, 2014 requesting confirmation of your opinion that the buyers in a deferred payment sale of residential lots by First Batangas Industrial Park (FBIP) are no longer required to withhold the creditable withholding tax on their installment payments, whether initial or final, since FBIP already paid the corresponding income tax on the entire price in the year of the sale.

It is represented that FBIP is a corporation duly registered and existing under Philippine Laws and is currently engaged in the sale of residential, estate and farm lots. On February 14, 2008, FBIP entered into a joint venture agreement with Sta. Lucia Land, Inc. for the development of the former's 49.9-hectare landholding in Bauan, Batangas into a residential subdivision, known as Bauan Grand Villa Homes (BGV Homes). FBIP contributed the land to the joint venture and, in exchange therefor, acquired 45% of the net saleable area of BGV Homes.

It is further represented that FBIP sold most of its share of residential lots in BGV Homes to buyers, who are individual persons not engaged in trade or business, on installment basis. Although they manifested their intention to withhold taxes on their last amortization, they are however not aware of the distinction between deferred payment sales and installment sales for purposes of withholding tax requirements. Hence, their initial payments and periodic amortizations were not subjected to withholding taxes. Further, when asked to present a Withholding Tax Remittance Return (BIR Form 1606) for purposes of securing a Certificate Authorizing Registration (CAR) for the transfer of the properties, the

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buyers have none to present.

On the part of the FBIP, since the buyer's payments in the year of sale exceed 25% of the total selling price, FBIP reported the entire selling price as part of its revenue and paid income tax on the same in the same year. FBIP has always adopted this accounting treatment of theoretical cash or deferred payment sales in accordance with general accounting standards.

Based on the foregoing representations, you are now requesting confirmation on the following issues:

1. FBIP's buyers on deferred payment sale are no longer required to subject their installment payments to withholding taxes and no further deficiency withholding tax, surcharge or interest may be assessed against them.

2. In lieu of presenting a Withholding Tax Remittance Return (BIR Form 1606), FBIP's buyers, for purposes of securing a CAR to transfer the property, may present:

    a. Quarterly or Final Income Tax Return and receipts of payment of income tax on the year when the sale of the specified residential lots were reported as part of revenue;

    b. Deed of Absolute Sale;

    c. Proof of payment of the Documentary Stamp Tax (DST) on the sale of real property; and

    d. Schedule of sales for the subject quarter or year, identifying the specified residential lots sold.

In reply, please be informed that the requirement imposed upon buyers of real property, who are not engaged in trade or business, to withhold the creditable withholding tax on the last installment applies only to installment sales as defined under Section 49 of the Tax Code. This is clear from the provisions of Section 2.57.2 (J) of Revenue Regulations No. 17-2003, to wit:

"xxx xxx xxx

If the buyer is an individual not engaged in trade or business, the following rules shall apply:

(i) If the sale is a sale of real property on installment plan (i.e., payments in the year of sale do not exceed twenty five percent (25%) of the selling price), no

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withholding is required to be made on the periodic installment payments. In such a case, the applicable rate of tax based on the gross selling price or fair market value of the property at the time of the execution of the contract to sell, whichever is higher, shall be withheld on the last installment or installments immediately prior to such last installment, if the last installment is not sufficient to cover the tax due, to be paid to the seller until the tax is fully paid."

The foregoing rule will not apply if the sale does not qualify as an installment sale, that is, the payments in the year of sale exceeds 25% of the selling price. Based on your representation, the buyers' payments in the year of sale exceeded 25% of the total selling price of the property. Hence, FBIP must recognize the entire sales in the year of sale and no withholding is required of the buyers on their amortizations and last installment payment.

This does not mean however, that a deferred payment sale is not subject to creditable withholding tax. The withholding should have been properly made on the initial payment or down payment exceeding 25% of the selling price of the property in accordance with Revenue Regulations (RR) No. 02-98, as amended. As represented, however, the buyers who made initial payments to FBIP in the amount exceeding 25% of the selling price of the property failed to withhold the applicable rate of tax at the time the initial payment was made. While the tax due on the entire selling price of the property was subsequently paid when FBIP recognized and reported the entire sales in the year of sale, the remittance of the withholding tax, which should have been properly withheld on the initial payment and remitted to BIR within the period set forth under Section 2.58 of RR No. 02-98, is still considered late and, thus, subject to appropriate interest and surcharge.

Under Sections 248 and 249 of the Tax Code of 1997, as amended, the imposition of the surcharge and interest on delinquency is mandatory. Strong reasons of policy support a strict observance of the rule regarding the payment of tax. The laws imposing penalties for delinquencies are clearly intended to hasten tax payments or punish evasions or neglect of duty in respect thereof. If delays in tax payments are to be condoned for light reasons, the law imposing penalties for delinquencies would be rendered nugatory and the maintenance of the government and its multifarious activities would be as precarious as taxpayers are willing or unwilling to pay their obligations to the state on time. (*Jamora vs. Meer*, 74 Phil. 22). The Supreme Court, in the case of *Castro vs. Collector of Internal Revenue, G.R. No. L-12174*, dated April 26, 1962, ruled that this mandatory imposition of interest and surcharge on delinquency is justified because the intention of the law is precisely to discourage delay in the payment of taxes due to the State and, in this sense, the surcharge and interest charged are not penal but compensatory in nature. They are compensation to the State for the delay in payment or for the concomitant use of the funds by the taxpayer beyond the date he is supposed to have paid them to the State. (*BIR Ruling No. 459-11* dated November 24, 2011)

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Accordingly, FBIP's buyers on deferred payment sale are no longer required to subject their installment payments to withholding taxes provided that FBIP already paid the corresponding income tax on the entire price in the year of the sale, but subject to applicable interest and surcharge. The required CAR, however, may be issued by the concerned Revenue District Office (RDO) upon submission of the following:

a. FBIP's Quarterly or Final Income Tax Return and receipts of payment of income tax on the year when the sale of the specified residential lots were reported as part of revenue;

b. Deed of Absolute Sale;

c. Proof of payment of the Documentary Stamp Tax (DST) on the sale of real property;

d. Schedule of sales for the subject quarter or year, identifying the specified residential lots sold; and

e. Proof of payment of interest and surcharge.

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

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