REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

RR 10-2012
BIR Ruling No. 263-2013
~~3-14-2016~~ 3-16-2016

NATIONAL HOUSING AUTHORITY
Quezon Memorial Elliptical Road
Diliman, Quezon City

Attention : **Engr. ALBERT A. PERFECTO**
Regional Manager

Gentlemen:

This refers to your letter dated July 1, 2010, requesting in behalf of Tiger Construction and Development Corporation for an exemption from payment of capital gains tax (CGT) on the sale of National Housing Authority's (NHA) shares and interest over the Libmanan Housing Project located at Brgy. Bahay, Libmanan, Camarines Sur pursuant to Republic Act (R.A.) No. 7279 or the "Urban Development and Housing Act of 1992".

Documents submitted show that National Housing Authority (NHA), a government corporation organized and existing by virtue of Presidential Decree (PD) No. 757, as amended, is the registered owner of a parcel of land, identified as Lot 1 of the subdivision survey Psd-051718-014671, being a portion of Psu-124957 covered by Transfer Certificate of Title (TCT) No. [1] issued by the Registry of Deeds for the Province of Camarines Sur. The aforesaid property is situated at Brgy. Bahay, Libmanan, Camarines Sur with an area of Forty Nine Thousand One Hundred Sixteen square meters (49,116 sq.m.), more or less. Tiger Construction and Development Corporation (TIN: on the other hand, is a private corporation duly organized and existing under the laws of the Philippines.

On April 1, 1998, NHA and Tiger Construction and Development Corporation entered into a Joint Venture Agreement (JVA) to jointly undertake the development of the project known as the NHA-Libmanan Housing Project; that the NHA contributed all its rights, title and interest over the above-mentioned property to the joint venture; that likewise, Tiger Construction and Development Corporation contributed on the project the land development and housing construction; that the total estimated project cost shall be

041255

[1] Now TCT No.

; and that the sharing of gross income estimated shall be 8.77% for NHA and 91.23% for Tiger Construction and Development Corporation.

Under the JVA, the parties agreed to construct and develop 326 house and lot units, broken down as follows:

Model	Lot Size	No. of Units	Package Price
SD 24	96 sq.m.[3]	196	
SA 30	117.17 sq.m.[4]	130	

Tiger Construction and Development Corporation has completed the construction of One Hundred Fifty Five (155) housing units, of which 30 has been take-out by HDMF under its Expanded Housing Loan Program and 6 by Tiger Construction and Development Corporation under its In-house Financing Scheme; that in order to accelerate sales and disposition of the 119 remaining completed housing units the parties agreed during its series of meetings and dialogues for the mutual termination of the JVA to allow NHA to take over the management of the project and for the NHA, at its option, to enter into an agreement with other contractor/developer to continue the project; and that on October 8, 2003, NHA and Tiger Construction and Development Corporation executed a Deed of Mutual Rescission of JVA, whereby the former shall take over the management of the project and may enter into agreement with other contractor/developer to continue the project and the latter shall be reimbursed the actual expenses incurred in the partial development of the project.

Moreover, on February 7, 2007, a Memorandum of Agreement (MOA) was executed by NHA and Tiger Construction and Development Corporation, whereby the former shall turn-over the management, marketing and disposition of the project to the latter and the latter shall reimburse the NHA of all its equity and projected income/profit per JVA[5], Local Housing Fund[6] and Land Acquisition of right of way[7].

To give effect to the MOA, on June 5, 2007, a Deed of Absolute Sale was executed by and between NHA and Tiger Construction and Development Corporation, whereby the former sells, transfer, cedes and conveys to Tiger Construction and Development Corporation, parcels of lands of NHA-Libmanan Housing Project located at Brgy. Bahay, Libmanan, Camarines Sur. containing an area of 45,770[8] sq.m. covered by TCT No.

In reply thereto, please be informed that Section 3 of Revenue Regulations No. 10-2012, implementing Section 22 (B) of the Tax Code of 1997, provides that —

---

[2] Land
Land Development
House Construction
Direct Cost
Indirect Cost
Total Project Cost
[3] Floor Area 24 sq.m.
[4] Floor Area 30 sq. m.
[5] F
[6] F
[7]

[8] 3,346 sq.m. was already sold by the JV partners

041255

#174-2016
5-16-2016

"SEC. 3. Joint Ventures Not Taxable as Corporations. — A joint venture or consortium formed for the purpose of undertaking construction projects which is not considered as corporation under Section 22 of the NIRC of 1997 as amended, should be:

(1) for the undertaking of a construction project; and
(2) should involve joining or pooling of resources by licensed local contractors that is, licensed as general contractor by the Philippine Contractors Accreditation Board (PCAB) of the Department of Trade and Industry (DTI);
(3) the local contractors are engaged in construction business; and
(4) the Joint Venture itself must likewise be duly licensed as such by the Philippine Contractors Accreditation Board (PCAB) of the Department of Trade and Industry (DTI)."

Indubitably, to be a tax exempt Joint Venture undertaking a construction project, it must satisfy or meet the above conditions. Thus, the Joint Venture established by NHA and Tiger Construction and Development Corporation is not covered by Section 3 of Revenue Regulations No. 10-2012 and, as such, a taxable as a corporation. (BIR Ruling No. 263-2013 dated July 12, 2013)

The transfer of parcels of lands of NHA-Libmanan Housing Project located at Brgy. Bahay, Libmanan, Camarines Sur, containing an area of the 45,770 sq.m. covered by TCT No. to Tiger Construction and Development Corporation shall be subject to ordinary income tax on the part of NHA based on the current fair market value of the land received less the fair market value of the property contributed to the joint venture.

The transfer of parcels of lands of NHA-Libmanan Housing Project located at Brgy. Bahay, Libmanan, Camarines Sur, containing an area of the 45,770 sq.m. covered by TCT No. Tiger Construction and Development Corporation shall be subject to ordinary income tax on the part of Tiger Construction and Development Corporation based on the current fair market value of the land it received less the costs it actually, directly and exclusively incurred for the construction of the NHA-Libmanan Housing Project.

Likewise, the subsequent sale, directly or indirectly (by trust or agency), of the land received shall be subject to ordinary income tax, creditable withholding tax, value-added tax, and documentary stamp tax.

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,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

K-1-JRC

041255