February 28, 2019

BIR RULING NO. 200-19

Sections 24 (A) (1), 25 (A) (1) and (B), 27 (A) or (E), 28 (A) (1) or (2) and (B) (1), 39, 73 of R.A. No. 8424; R.A. No. 3676; R.R. No. 2

Montepino Baguio Condominium Corporation
Suite 605 Cattleya Condominium Building
235 Salcedo St., Legaspi Village, Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated January 15, 2014, requesting for a ruling on whether or not the distribution of **MONTEPINO BAGUIO CONDOMINIUM CORPORATION (MBCC)** to its members/unit-owners of the proceeds of the sale of its properties pursuant to its dissolution is subject to taxation; and a clarification on the party obligated to pay the same.

Documents submitted disclosed that **MBCC**, with taxpayers' identification number 000-000-000, is a non-stock and non-profit corporation organized under Republic Act No. 4726 ("The Condominium Act") for the sole purpose of owning and/or holding title to the common areas of the condominium project, known and identified as the "Montepino Baguio Condominium Projects" and registered with the Securities and Exchange Commission (SEC) under Registration No. 50411. The Condominium stands on parcels of land located along Pacdal Road, Baguio City and registered with the Registry of Deed of Baguio City under Transfer Certificates of Title Nos. T-30743, T-68247 and T-27697. On July 16, 1990, the Condominium was heavily damaged by a strong earthquake. Consequently, on January 15, 1992, the members issued a resolution approving the motion not to repair the damaged Condominium, terminate the project, sell the assets of MBCC; and thereafter, distribute the proceeds of the sale among the various unit owners, in accordance with their interests as provided for in the Master Deed and/or other related documents. In the course of preparing a Partition Plan, the Register of Deeds of Baguio informed the officers that the same cannot be had if no authorities to sell from each member shall be presented forcing the officers of

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MBCC to file a Petition in the Regional Trial Court of Baguio. On January 31, 1997, the Baguio RTC found that "the Building was heavily damaged by the earthquake which struck the Philippines on July 16, 1990. More than 1/2 of the Building has been severely damaged and the entire edifice is untenantable." The Court ordered the sale of the assets of **MBCC**; the distribution of the net proceeds thereof, after deducting all taxes, expenses and debts, to the members/unit owners in proportion to their interests; the cancellation of all annotations and encumbrances in the titles and the various owners copies of the Condominium Certificates of Title issued to the individual unit owners; and the issuance of a new title to the buyer free from all encumbrances of condominium ownership. On September 4, 2013, **MBCC** was finally able to sell the parcels of land to **DMCI PROJECT DEVELOPERS, INC. (DMCIPDI)**. The after-tax proceeds of the sale are now deposited with the Bank of the Philippine Islands.

MBCC now requests for clarification on whether or not its distribution to its members/unit-owners of the proceeds of the sale of its properties pursuant to its dissolution is subject to taxation; and the party obligated to pay and report the same.

The provisions on dissolution of a Condominium Corporation and the liquidation of its properties are enshrined in the Condominium Act, which provides:

> "Sec. 13. Until the enabling or the master deed of the project in which the condominium corporation owns or holds the common area is revoked, the corporation shall not be voluntarily dissolved through an action for dissolution under Rule 104 of the Rules of Court except upon a showing:
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> "(a) That three years after damage or destruction to the project in which the corporation owns or holds the common areas, which damage or destruction renders a material part thereof unfit for its use prior thereto, the project has not been rebuilt or repaired substantially to its state prior to its damage or destruction; or
>
> "(b) *That damage or destruction to the project has rendered one-half or more of the units therein untenantable and that more than thirty percent of the members of the corporation, if non-stock, or the shareholders representing more than thirty percent of the capital stock entitled to vote, if a stock corporation, are opposed to the repair or reconstruction of the project*, or
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> "(c) That the project has been in existence in excess of fifty years, that it is obsolete and uneconomical, and that more than fifty percent of the members of the corporation, if non-stock, or the stockholders representing more than fifty percent of the capital stock entitled to vote, if a stock corporation, are opposed to the repair or restoration or remodeling or modernizing of the project; or
>
> "(d) That the project or a material part thereof has been condemned or

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expropriated and that the project is no longer viable, or that the members holding in aggregate more than seventy percent interest in the corporation, if non-stock, or the stockholders representing more than seventy percent of the capital stock entitled to vote, if a stock corporation, are opposed to the continuation of the condominium regime after expropriation or condemnation of a material portion thereof; or

"(e) That the conditions for such a dissolution set forth in the declaration of restrictions of the project in which the corporation owns or holds the common areas, have been met.

"Sec. 14. The **condominium corporation may also be dissolved by the affirmative vote of all the stockholders or members thereof at a general or special meeting duly called for the purpose**: Provided, That all the requirements of Section sixty-two of the Corporation Law are complied with.

"Sec. 15. Unless otherwise provided for in the declaration of restrictions **upon voluntary dissolution of a condominium corporation in accordance with the provisions of Sections thirteen and fourteen of this Act, the corporation shall be deemed to hold a power of attorney from all the members or stockholders to sell and dispose of their separate interests in the project and liquidation of the corporation shall be effected by a sale of the entire project as if the corporation owned the whole thereof**, subject to the rights of the corporate and of individual condominium creditors."

In relation to this, Section 73 of the National Internal Revenue Code of 1997, as amended, (NIRC) provides:

"Section 73. ***Distribution of Dividends or Assets by Corporation.*** —

(A) *Definition of Dividends*. — The term 'dividends' when used in this Title means any distribution made by a corporation to its shareholders out of its earnings or profits and payable to its shareholders, whether in money or in other property.

Where a corporation distributes all of its assets in complete liquidation or dissolution, the gain realized or loss sustained by the stockholder, whether individual or corporate, is a taxable income or a deductible loss, as the case may be." (Emphasis ours)

According to Section 73 of the NIRC, liquidating gain or loss is in the nature of capital gain or loss, as the case may be, and therefore treated in the manner stated in Section 39 of the same Code. If no gain is realized in the liquidation of assets of a dissolving corporation there is no taxable income as liquidating dividends are mere return of capital. However, any gain derived by the individual stockholders consisting of the difference between the value of the liquidating dividends and the adjusted cost to the stockholders of

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their respective shareholdings in the corporation shall be subject to the ordinary income tax rates provided under Sections 24 (A) (1), 25 (A) (1) and (B), 27 (A) or (E), 28 (A) (1) or (2) and (B) (1) of the NIRC, depending on the status of the shareholder/stockholder (for instance, whether the shareholder is a corporation or an individual, resident or non-resident); and shall be reported by the shareholders/stockholders in their Annual Income Tax Returns. This is in accord with Section 36 of Revenue Regulations No. 2 states that, "income, in a broad sense, means all wealth that flows into the taxpayer *other than a return of capital*."

The distributed proceeds is not subjected to withholding tax since Revenue Regulations No. 2-98 does not prescribe the same.

From the foregoing, **MBCC** having undergone voluntary dissolution under the Condominium Act and in liquidation, the remaining properties of **MBCC** have been sold to **DMCIPDI**, in its distribution of the proceeds of the said sale to the members/unit-owners in accordance with their respective interests in accordance with the Master Deed and/or other related documents, the gain or loss sustained by the member/unit-owner is a taxable income or a deductible loss, as the case may be. In case there is a liquidating gain, the same shall be subject to ordinary income tax rates provided under Sections 24 (A) (1), 25 (A) (1) and (B), 27 (A) or (E), 28 (A) (1) or (2) and (B) (1) of the NIRC, depending on the status of the shareholder/stockholder. The members/unit-owners of **MBCC** shall individually have the obligation to pay such tax, if due, and report the same in their Income Tax Returns.

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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