March 7, 2019

BIR RULING NO. 212-19

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

Kapit-Bisig ng Abra Homeowners Association, Inc.
52 Abra St., Brgy. Ramon Magsaysay I,
Bago Bantay, Quezon City 1105, Metro Manila

Attention: *AAA.*

Gentlemen :

This refers to your letter dated November 15, 2018, requesting exemption from capital gains tax (CGT), relative to the transfer of title of land from Kapit-Bisig ng Abra Homeowners Association, Inc., in favor of its qualified members-beneficiaries pursuant to Republic Act No. 7279 otherwise known as the "Urban Development and Housing Act of 1992."

It is represented that Kapit-Bisig ng Abra Homeowners Association, Inc., with Taxpayer's Identification No. 000-000-000-000, is the registered owner of the parcels of land located at Brgy. Ramon Magsaysay, Bago Bantay, Quezon City and covered by Transfer Certificate of Title (TCT) No. N-243441 and TCT No. N-243421 issued by the Registry of Deeds of Quezon City; that it is a non-stock, non-profit organization duly registered with the Home Insurance and Guaranty Corporation (HIGC) with Registration No. 04-2330; that the aforesaid lot was acquired through a loan under the Community Mortgage Program (CMP) of the Social Housing Finance Corporation (SHFC); and that Kapit-Bisig ng Abra Homeowners Association, Inc. issued a Deed of Absolute Sale, and SHFC issued Certificate of Payment and Partial Release of Real Estate Mortgage only to the extent of the properties described below, in favor of member beneficiaries of Kapit-Bisig ng Abra Homeowners Association, Inc., to wit:

Member-Beneficiaries	TCT No.	Lot Area (sq. m.)	Date of Absolute Sale	Date of Certificate of Payment	Date of Release of Real Estate Mortgage
BBB	N-243441	31	19-Nov-2018	27-Mar-2018	06-Oct-2017
CCC	N-243421	31	19-Nov-2018	23-Jul-2018	26-Jul-2018

and that Kapit-Bisig ng Abra Homeowners Association, Inc. is now in the process of

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transferring the purchased property to its above-named member-beneficiaries.

In reply, please be informed that the transfer by Kapit-Bisig ng Abra Homeowners Association, Inc. in favor of the above-named member-beneficiaries who have made full payment of their purchased subdivided lots 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 properties are made without any consideration and effected only as a formality to finally effect the transfer of the said property to its member-beneficiaries, BBB and CCC, who actually bought the same from the former owner through the Association. In other words, the association is merely transferring the ownership of the properties to its member-beneficiaries who actually own the aforedescribed lots.

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 above-named beneficiaries are 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 [1] 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.

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Very truly yours,

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

Footnotes

1. The old DST rate of P15.00 was used since the transaction took place prior to the effectivity of RA 10963 or the TRAIN Law.

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