REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Section 39 NIRC
RR 7-2003
#253-2016 6-22-2016

BENNYSON EMPIRE ESTATE HOLDINGS, INC.
Limtuaco Bldg. 1830 EDSA
Balintawak, Quezon City

Attention: **Olivia Limpe-Aw**
Treasurer

Gentlemen:

This refers to your letter dated September 30, 2011, requesting confirmation on your opinion that the sale of a house and lot, registered under the name of **Long-Tess Investment Corporation**, in favor of **Bennyson Empire Estate Holdings, Inc.**, is not subject to value- added tax (VAT), the subject property being a capital asset; further requesting to reclassify the tax payments made from creditable withholding tax to capital gains tax.

Documents submitted show that **Long-Tess Realty Investment Corporation**, a corporation duly organized under the laws of the Philippines, bearing Securities and Exchange Commission (SEC) Certificate of Registration No. is the registered owner of a house and lot, with a total land area of 1, 308 square meters, covered by Transfer Certificate of Title No. of the Registry of Deeds for the Province of Rizal, located in 1365 Caballero St., Dasmariñas Village, Makati City; that on 06 July 2011, a Deed of Absolute Sale was executed by and between **Long Tess Realty Investment Corporation** and **Bennyson Empire Estate Holdings, Inc.** in which the former sold the said property to the latter for the amount of ; and that the said house and lot has been used as the family home of the owners of **Long-Tess Realty Investment Corporation** from the time it was acquired in 1973 until the time of its sale. Thus, it is contended that the subject property, it having been consistently used as a residential home, is classified as capital asset, the sale of which is not subject to VAT.

In support of its request, **Bennyson Empire Estate Holdings, Inc.** has completely submitted on December 15, 2011 the following documents:

1) Letter application for tax exemption;
2) Certified true copy of the Transfer Certificate of Title No.

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3) Copy of the Articles of Incorporation of **Bennyson Empire Estate Holdings, Inc.**;
4) Copy of the latest Financial Statement of **Bennyson Empire Estate Holdings, Inc.**
5) Copy of the Articles of Incorporation of **Long-Tess Realty Investment Corporation;** and
6) Copy of the latest Financial Statements of **Long-Tess Realty Investment Corporation.**

In reply, please be informed that Section 39(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the definition of a capital asset, to wit:

> *"Section 39. Capital Gains and Losses. –*
>
> *(A) Definitions. - As used in this Title -*
> *(1) Capital Assets. - The term 'capital assets' means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property used in the trade or business, of a character which is subject to the allowance for depreciation provided in Subsection (F) of Section 34; or real property used in trade or business of the taxpayer."*

The foregoing provision is being implemented by Revenue Regulations (RR) No. 7-2003, issued on February 11, 2003, providing for the guidelines in the determination of whether a particular real property is a capital asset or an ordinary asset. Section 2(a) of RR 7-2003 defines capital assets as referring to "*all real properties held by a taxpayer, whether or not connected with his trade or business, and which are not included among the real properties considered as ordinary assets under Sec. 39(A)(1) of the Code.*" On the other hand, Section 2(b) of the same Regulations laid down what constitutes ordinary assets as follows:

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> *"b. Ordinary assets shall refer to all real properties specifically excluded from the definition of capital assets under Sec. 39(A)(1) of the Code, namely:*
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> *1. Stock in trade of a taxpayer or other real property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year; or*

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2. *Real property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business; or*

3. *Real property used in trade or business (i.e., buildings and/or improvements) of a character which is subject to the allowance for depreciation provided for under Sec. 34(F) of the Code; or*

4. *Real property used in trade or business of the taxpayer.*

xxx"

c. Real property shall have the same meaning attributed to that term under Article 415 of Republic Act No. 386, otherwise known as the "Civil Code of the Philippines."

d. ***Real estate dealer shall refer to any person engaged in the business of buying and selling or exchanging real properties on his own account as a principal and holding himself out as a full or part-time dealer in real estate.*** (underscoring supplied)

e. Real estate developer shall refer to any person engaged in the business of developing real properties into subdivisions, or building houses on subdivided lots, or constructing residential or commercial units, townhouses and other similar units for his own account and offering them for sale or lease.

f. Real estate lessor shall refer to any person engaged in the business of leasing or renting real properties on his own account as a principal and holding himself out as lessor of real properties being rented out or offered for rent.

g. *Taxpayers engaged in the real estate business shall refer collectively to real estate dealers, real estate developers, and/or real estate lessors. Conversely, the term "taxpayers not engaged in the real estate business" shall refer to persons other than real estate dealers, real estate developers and/or real estate lessors.* ***A taxpayer whose primary purpose of engaging in business, or whose Articles of Incorporation states that its primary purpose is to engage in the real estate business shall be deemed to be engaged in the real estate business for purposes of these Regulations.*** (underscoring supplied)

SECTION 3. Guidelines in Determining Whether a Particular Real Property is a Capital Asset or Ordinary Asset. —

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a. ***Taxpayers engaged in the real estate business.*** *— Real property shall be classified with respect to taxpayers engaged in the real estate business as follows:*

1. ***Real Estate Dealer.*** ***— All real properties acquired by the real estate dealer shall be considered as ordinary assets.*** (underscoring supplied)

2. ***Real estate Developer.*** *— All real properties acquired by the real estate developer, whether developed or undeveloped as of the time of acquisition, and all real properties which are field by the real estate developer primarily for sale or for lease to customers in the ordinary course of his trade or business or which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year and all real properties used in the trade or business, whether in the form of land, building, or other improvements, shall be considered as ordinary assets.*

3. ***Real Estate Lessor.*** *— All real properties of the real estate lessor, whether land and/or improvements, which are for lease/rent or being offered for lease/rent, or otherwise for use or being used in the trade or business shall likewise be considered as ordinary assets.*

4. ***Taxpayers habitually engaged in the real estate business.*** *— All real properties acquired in the course of trade or business by a taxpayer habitually engaged in the sale of real estate shall be considered as ordinary assets. Registration with the HLURB or HUDCC as a real estate dealer or developer shall be sufficient for a taxpayer to be considered as habitually engaged in the sale of real estate. If the taxpayer is not registered with the HLURB or HUDCC as a real estate dealer or developer, he/it may nevertheless be deemed to be engaged in the real estate business through the establishment of substantial relevant evidence (such as consummation during the preceding year of at least six (6) taxable real estate sale transactions, regardless of amount; registration as habitually engaged in real estate business with the Local Government Unit or the Bureau of Internal Revenue, etc.).”*

Based on the above-quoted provisions, it is clear that all real property owned or acquired by a taxpayer engaged in the real estate business are classified as ordinary assets. The classification, therefore, of a particular real property as being capital or ordinary asset does not depend upon its actual use or the purpose for its acquisition, but on the nature of the business of its registered owner. A cursory reading of the Articles of Incorporation (AOI) of **Long-Tess Realty Investment Corporation** reveals that it is engaged in the real estate business. The AOI of **Long-Tess Realty**

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Investment Corporation, in categorical terms, laid down the primary purpose of the corporation as follows:

> *"Second: That the purpose for which the corporation is formed are as follows:*
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> *"PRIMARY PURPOSE*
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> *To engage in the real estate business, generally without limitation as to classes and nature, with full authority to acquire, purchase, hold, own, mortgage, sell, rent, lease, assign, transfer, invest, trade, deal in or deal with any kind of real property and to perform all acts and things necessary and proper to acquire title to and ownership of, whether improved or unimproved and be it residential, commercial or agricultural, and to dispose of the same in the general conduct of the business of the corporation."(underscoring supplied)*

In view of the foregoing, this Office is of the opinion, as it hereby holds that, the subject property sold by **Long-Tess Realty Investment Corporation,** being owned by a corporation engaged in the real estate business, is classified as ordinary asset, thus, subject to the value-added tax (VAT) and creditable withholding tax.

Please be guided accordingly.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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