May 24, 2019

BIR RULING NO. 300-19

EO 226; RR 2-98; BIR Ruling No. 052-2015

Vista Residences, Inc.
LGF Bldg. B. Evia Lifestyle Center
Daang Hari, Almanza Dos
Las Piñas City

Attention: *AAA*

Gentlemen :

This refers to your letter dated January 20, 2016 requesting on behalf of Vista Residences, Inc. (the "Corporation") for confirmation that the income tax holiday (ITH) incentives granted by the Board of Investments (BOI) under Executive Order (EO) No. 226, otherwise known as the "Omnibus Investment Code of 1987," on the Corporation's condominium housing project "Camella Condo Homes-Taft" covers all its sales transactions pertaining to the 954 residential condominium units within the period covered by the ITH commencing from January 10, 2013 until January 9, 2016.

It is represented that under the terms of the afore-mentioned BOI registration, the Corporation is exempted from the payment of income tax on the sale of residential condominium units with selling price of not more than Three Million Pesos (P3,000,000.00) and that consequently, the Corporation is likewise exempt from the creditable withholding tax (CWT) on its sale of housing units not exceeding the aforesaid selling price. Such tax exemption has been confirmed by the Commissioner of Internal Revenue in BIR Ruling No. 052-2015 issued on February 24, 2015, which states:

> "In reply, please be informed that under Section 2.57.5(B)(2) of Revenue Regulations (RR) No. 2-98, as amended by RR No. 6-2001 implementing Section 57(B) of the Tax Code of 1997, as amended, the withholding tax prescribed in the said Regulations shall not apply to income payments to persons enjoying exemption from the income tax provided by Republic Act No. 7916 and the Omnibus Investments Code of 1987.
>
> Accordingly, since Vista Residences' Camella Condo Homes-Taft, 2587 Taft Avenue, Malate, Manila Project is a BOI-registered project, this Office is of the opinion as it hereby holds, that income payments received by Vista Residences in

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connection with its housing project, Camella Condo Homes-Taft, 2587 Taft Avenue, Malate, Manila Project (on the 954 low-cost mass housing units as mentioned in the Specific Terms and Conditions on its BOI Registration), is exempt from CWT under RR 2-98, as amended by RR 6-2001, for a period of 3 years from January 2013 or actual start of commercial operations/selling, whichever is earlier but in no case earlier than the date of registration."

Furthermore, the Corporation's actual sales of condominium units under different financing schemes, as reported to the BOI, during the ITH period, are as follows:

	Contracted Sales — Units		
Taxable Period	**Cash/Deferred Cash**	**Installment**	**Total**
Jan. 10 to Dec. 31, 2013	25	246	271
Jan. 1 to Dec. 31, 2014	32	188	220
Jan. 1 to Dec. 31, 2015	108	92	200
Jan. 1 to Jan. 9, 2016	120	4	124
Total	285	530	815
Less: Registered Capacity			954
Variance			**-139**

From the above data, the Corporation was not able to avail of the tax incentives on all its registered capacity of 954 residential units. The sale of the 815 units, all of which were contracted within the ITH period, have been duly reported by the Corporation to the BOI. The corresponding income and ITH therefor have been properly reported as well in the Corporation's Annual Income Tax Return, duly filed with the BIR.

Based on the foregoing, you are now seeking confirmation that the Corporation is exempt from CWT on the sale of 815 housing units even if the Certificate Authorizing Registration (CAR) for the said residential condominium units will be processed after the ITH period since the Deeds of Absolute Sale are executed by the Corporation and its buyers only after full payment of the total contract price.

In reply, please be informed that based on BIR Ruling No. 052-2015 dated February 24, 2015 issued to the Corporation, its low-cost housing project, "Camella Condo Homes-Taft," consisting of 954 units was duly registered with the BOI on January 10, 2013. The said BOI Registration further provides that the Corporation is entitled to an income tax holiday (ITH) for the said project for a period of three (3) years beginning from January 2013 or actual start of commercial operation/selling, whichever is earlier, but in no case earlier than the date of registration of the project with the BOI.

The grant of ITH by the BOI in favor of the Corporation entails tax incentives particularly exemption from income tax, creditable withholding tax and value-added tax (for the sale of residential lot valued at P1,919,500.00 and below, or house and lot and other residential dwellings valued at P3,199,200.00 and below). In the present case, the

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BIR Ruling serves as a confirmation by the BIR of the tax incentives granted by the BOI to the Corporation.

As such, all income directly attributable to the revenues generated from the sale of low-cost housing units in "Camella Condo Homes-Taft" made by the Corporation with selling price not exceeding P3,000,000.00, starting January 2013 until January 2016, shall be covered by the tax exemptions provided in its BOI Certificate of Registration No. 2013-009 and its Specific Terms and Conditions dated January 10, 2013 and was later confirmed in BIR Ruling No. 052-2015 dated February 24, 2015.

Furthermore, a contract of sale is perfected at the moment there is a meeting of the minds upon the thing which is the object of the contract and upon the price *(Article 1475 of the New Civil Code of the Philippines)*. There can be no uncertainty that the contract of purchase and sale is perfected from the moment the parties have agreed upon a determinate thing, *i.e.*, the object of the contract and a price certain therefor, even if neither is delivered. Thus, delivery of the thing sold is not necessary for the perfection of the contract.

In the instant case, the contracts to sell, whether it be in installment, cash or deferred cash is deemed perfected upon execution, although delivery of the thing sold had not been effected until the total contract price had been fully paid and the corresponding Deeds of Absolute Sale are executed thereafter.

Accordingly, this Office hereby confirms your opinion that the Corporation is exempt from CWT on the sale of its 815 housing units in its low-cost housing project, "Camella Condo Homes-Taft," provided its corresponding "Contracts to Sell" were executed within the period covered by the ITH, even if the Certificates Authorizing Registration (CAR) for the said residential condominium units will be processed after the ITH period since the Deeds of Absolute Sale are executed by the Corporation and its buyers only after full payment of the total contract price.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation it shall 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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