June 3, 2019

BIR RULING NO. 320-19

R.A. No. 9904; R.A. No. 8424; RMC No. 9-2013; BIR Ruling No. 105-14

The Hillside at Tagaytay Highlands
Community Homeowner's Association, Inc.
Hillside Drive, The Hillside, Tagaytay Highlands
Brgy. Bunggo, Calamba City, Laguna 4027

Attention: *AAA*

Gentlemen :

This refers to your letter dated December 12, 2017 requesting for a ruling confirming the exemption from income tax and value-added tax/percentage tax of **THE HILLSIDE AT TAGAYTAY HIGHLANDS COMMUNITY HOMEOWNER'S ASSOCIATION, INC.** (**THTHCHAI** for brevity) pursuant to Republic Act No. 9904 otherwise known as the "Magna Carta for Homeowners and Homeowners' Associations," as enunciated in Revenue Memorandum Circular No. 9-2013 which clarifies the taxability of association dues, membership fees, and other assessments/charges collected by Homeowners' Associations.

Documents submitted disclosed that **THE HILLSIDE AT TAGAYTAY HIGHLANDS COMMUNITY HOMEOWNER'S ASSOCIATION, INC.**, is a non-stock and non-profit residential homeowners' association, with Taxpayers Identification No. 000-000-000-000 and duly registered with the Housing and Land Use Regulatory Board (HLURB) with Registration No. 14192; that it is situated and within the jurisdiction of the City of Calamba, Laguna; that among the purposes for which the Association was incorporated are the following:

1. *To adopt and carry out such measures as may be necessary to promote the best interest of and to protect and safeguard, lot and homeowners and their properties in the Project; in this regard, the association shall have the power to contract for security services for the entire project, and in*

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accordance with the Deed of Restriction, to obtain and maintain insurance policies insuring the common areas against loss by fire, casualty, liability, workmen's compensation and other insurable risks as may be applicable and necessary;

2. *To adopt and enforce needful rules and regulations, including the House Rules and Regulations contemplated in the Deed of Restrictions ("Deed"), concerning the proper use, enjoyment and occupancy of all the lots, homes and the common area in the Project and to fix penalties by way of liquidated damages including in extreme cases, expulsion of the errant home owner from the Association for violation thereof;*

3. *To provide and contract services for public utilities and for the maintenance, repair, sanitation and cleanliness of the common areas of the project, as well as for the beautification and improvement thereof, and for the reconstruction and restoration of the common areas when necessitated by damage, destruction, obsolescence, depreciation, expropriation or condemnation of the whole or part thereof;*

4. *To maintain, clean, repair, reconstruct or rebuild any lot or improvement thereon if or when the owner refuses to do so and such is necessary to project, safeguard or conserve the value and attractiveness of the common areas or any portion of the project or of the project itself;*

5. *To contract for the services of persons or firm to assist in the management and operation of the project, including legal, accounting, engineering and other professional and technical services;*

6. *To discharge any lien or encumbrances levied against the entire project, the common areas, or the lots in instances where the Association is authorized or empowered to do so;*

7. *To enforce the limitation, restrictions, covenants and conditions contained in the Deed, the Association Rules and Regulations and in such other rules and regulations that the association may promulgate from time to time and to impose the corresponding penalty for any violation or breach thereof;*

8. *To levy against the lot/homeowners in the project or their guest and lessees and collect from them such assessments, liquidated damages, charges, or amounts as are provided for in the Deed and in special assessment notices;*

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9. *To borrow or raise money for any of the purposes of Association, and from time to time, draw, make, accept, endorse, discount, transfer, assign, execute, and issue promissory notes, drafts, bills of exchange, warrants and other negotiable and transferable instrument and evidences of indebtedness and for the purpose of securing any of its obligations or contracts, to convey, transfer, assign, deliver, mortgage and/or pledge all or any part of the property or assets at any time held or owned by the Association on such terms and conditions the Board of Trustees of the Association or its duly authorized Officers shall determine and as may be required by governing laws;*

10. *To accept donations, acquire, hold, enjoy, operate and maintain to convey, sell, transfer, lease, mortgage, encumber or otherwise dispose of real or personal property in connection with the purposes and activities of the Association; and*

11. *To exercise such other powers as are necessary, incidental or convenient to the accomplishment of the purpose for which the Association is organized.*

and that on December 11, 2017, the Office of the City Mayor of Calamba, Laguna certified that:

> *"This is to certify that the CITY GOVERNMENT OF CALAMBA, having jurisdiction over The Hillside at Tagaytay Highlands, Community HOA, Inc. (THTHCHAI) with business address at Hillside Drive, Tagaytay Highlands, Brgy. Bunggo, Calamba City, Laguna, recognizes the association's effort to assist the LGU in providing basic services and to make association dues and income derived from rentals of their facilities to be tax-exempt.*
>
> *Since the local government unit lacks resources to provide such basic services and facilities needed by the members or homeowners, City of Calamba LGU acknowledges the cooperation of the Association in helping them make these conveniences available."*

xxx xxx xxx

THE HILLSIDE AT TAGAYTAY HIGHLANDS COMMUNITY HOMEOWNER'S ASSOCIATION, INC. bases its request for exemption on Section 18 of R.A. No. 9904, which provides:

> "**SECTION 18.** ***Relationship with LGUs.*** — Homeowners' associations shall complement, support and strengthen LGUs in providing vital services to their

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members and help implement local government policies, programs, ordinances, and rules.

Associations are encouraged to actively cooperate with LGUs in furtherance of their common goals and activities for the benefit of the residents of the subdivisions/villages and their environments.

Where the LGUs lack resources to provide for basic services, the associations shall endeavor to tap the means to provide for the same. In recognition of the associations' efforts to assist the LGUs in providing such basic services, association dues and income derived from rentals of their facilities shall be tax-exempt: *Provided*, That such income and dues shall be used for the cleanliness, safety, security and other basic services needed by the members, including the maintenance of the facilities of their respective subdivisions or villages. x x x"

In reply thereto, considering the fact that **THE HILLSIDE AT TAGAYTAY HIGHLANDS COMMUNITY HOMEOWNER'S ASSOCIATION, INC.** is a duly registered Homeowners Association with the HLURB; that its financial statements show the delivery of basic community services defined under Sec. 3 (d) of R.A. 9904; and that the Local Government Unit covering the jurisdiction of the Homeowners Association has issued a Certificate that it lacks the resources to provide these services to the Association, hence, this Office hereby holds that the income derived from association dues and rentals of facilities of **THE HILLSIDE AT TAGAYTAY HIGHLANDS COMMUNITY HOMEOWNER'S ASSOCIATION, INC.** is exempt from income tax, value-added tax or percentage tax, whichever is applicable. Provided, that such income and dues shall be used for the cleanliness, safety, security and other basic services needed by the members, including the maintenance of the facilities of their respective subdivisions or villages.

However, **THE HILLSIDE AT TAGAYTAY HIGHLANDS COMMUNITY HOMEOWNER'S ASSOCIATION, INC.** shall be subject to the applicable internal revenue taxes on its other income from trade, business or other activities. Specifically:

Income Tax

It shall be subject to the corresponding internal revenue taxes imposed under the Tax Code of 1997 on its income not derived from association dues nor rentals of its facilities, which income should be returned for taxation. Likewise, interest income from currency bank deposits and yield or any other monetary benefit from deposit substitute instruments and from trust funds and similar arrangements, and royalties derived from sources within the Philippines are subject to the 20% final withholding tax; provided, however, that interest income derived from it from a depository bank under the expanded foreign currency deposit system shall be subject to 15% [1] final withholding tax pursuant to Section 27 (D) (1) in relation to Section 57 (A), both of the Tax Code of 1997, as amended. Moreover, it is

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required to file on or before April 15 of each year a profit and loss statement and balance sheet with the annual information return under oath, stating its gross income and expenses incurred during the year and a certificate showing that there has not been any change in its By-Laws, Articles of Incorporation, manner of operation and activities as well as resources and disposition of income.

Value-Added Tax or Percentage Tax

Likewise, **THE HILLSIDE AT TAGAYTAY HIGHLANDS COMMUNITY HOMEOWNER'S ASSOCIATION, INC.**'s gross receipts from operations not derived from association dues, membership fees, other assessments and charges on a purely reimbursement basis, and rentals of its facilities shall be subject to the 12% VAT as imposed under Section 108 of the Tax Code of 1997, as amended, which tax payment may legitimately be passed on to buyers of such goods and services; or 3% percentage tax imposed under Section 116 in relation to Section 109 (BB) of the same Code if the gross sales or receipts from such sale of goods and services do not exceed Three Million Pesos (P3,000,000.00). [2]

It is requested that a copy of this letter of exemption be attached to the annual information return which **THE HILLSIDE AT TAGAYTAY HIGHLANDS COMMUNITY HOMEOWNER'S ASSOCIATION, INC.** will file on or before the 15th day of the fourth month of each year.

Under Section 235 of the Tax Code of 1997, as amended, any provision of existing general or special law to the contrary notwithstanding, the Revenue District Officer shall conduct an audit of annual information return filed, the books of accounts and other pertinent records of **THE HILLSIDE AT TAGAYTAY HIGHLANDS COMMUNITY HOMEOWNER'S ASSOCIATION, INC.** to determine compliance with the conditions set forth in this letter of tax exemption and tax liabilities, if any.

It should be understood that **THE HILLSIDE AT TAGAYTAY HIGHLANDS COMMUNITY HOMEOWNER'S ASSOCIATION, INC.** shall be constituted as withholding agent of the government if it acts as an employer and its employees receive compensation income subject to the withholding tax under Section 57 of the Tax Code of 1997, as amended.

Finally, **THE HILLSIDE AT TAGAYTAY HIGHLANDS COMMUNITY HOMEOWNER'S ASSOCIATION, INC.** is also subject to the payment of the annual registration fee of PhP500.00 as prescribed in Section 236 (B) of the Tax Code of 1997, as amended. It is also required under Section 6 (C) in relation to Section 237 of the same Code to issue duly registered receipts for services rendered which do not comprise income from

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association dues and rentals of their facilities.

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

Footnotes

1. As amended by Republic Act No. 10963.
2. R.A. 10963 increased the VAT threshold from P1,919,500.00 to P3,000,000.00 effective January 1, 2018.

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