October 19, 2016

BIR RULING NO. 359-16

Section 32, RA No. 7279; BIR Ruling No. 053-15

Nazario K. Navarro Sr. Homeowners Association, Inc.
Purok Sagittarius, Brgy. Lasang, Davao City

Attention: *AAA*

Gentlemen :

This refers to the letter of Ma. Ana R. Oliveros, President of the Social Housing Finance Corporation (SHFC) dated December 20, 2015, endorsing the sale transaction between BBB, et al., and Nazario K. Navarro Sr. Homeowners Association, Inc. for exemption from the payment of Capital Gains Tax and other taxes in accordance with the Republic Act (RA) No. 7279, otherwise known as the "Urban Development and Housing Act of 1992."

Documents submitted disclose that the CCC, BBB, DDD, EEE, FFF, GGG and HHH are the registered owners of a parcel of land, identified as Lot 3, Pcs-11-004092, being a portion of lots 2026-E-2-B-3-N & 2026-B-2-B-3-0, Psd-11-030222 covered by Transfer Certificate of Title (TCT) No. T-390833 issued by the Registry of Deeds for Davao City. The aforesaid property is situated at Brg. Lasang, Davao City with an area of Forty Five Thousand Seven Hundred Eighty Three square meters (45,783 sq.m.), more or less. Nazario K. Navarro Sr. Homeowners Association, Inc. (TIN 000-000-000-000), on the other hand, is a homeowner's organization duly registered with the Housing and Land Use Regulatory Board (HLURB). On September 4, 2006, an Extrajudicial Settlement of Estate with Sale [1] was executed by BBB, DDD, EEE, FFF, GGG and HHH to settle the estates of their parents as well as transfer and convey the parcel of land covered by TCT No. T-390833 to Nazario K. Navarro Sr. Homeowners Association, Inc. at an agreed price of _____ Pesos (P_____). Pursuant to a certification issued by SHFC, the subject property covered by TCT No. T-390833 is actually a Community Mortgage Program (CMP) Project and shall be proportionately distributed to the association's qualified member-beneficiaries. [2] For this purpose, Nazario K. Navarro Sr.

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Homeowners Association, Inc. secured a housing loan under the CMP, a financing assistance program of the SHFC, a subsidiary of the National Home Mortgage Finance Corporation (NHMFC). Documentary Stamp Tax (DST) due on the sale has been paid.

In support of its request, Nazario K. Navarro Sr. Homeowners Association, Inc. has completely submitted on March 11, 2016 the following documents:

1) SHFC letter application for tax exemption;

2) Certification of the President of the SHFC that the subject property qualifies and is actually a CMP project;

3) Certified true copy of the Deed of Absolute Sale to the Community Association;

4) Certified true copy of the Articles of Incorporation of the Community Association;

5) Certified true copy of the Masterlist of Qualified Beneficiaries duly certified by the SHFC;

6) Certified true copies of the TCT and latest Tax Declaration of the Property sold to the Community Association;

7) Certified true copy of the Location Plan of the Lot Sold to the Community Association;

8) TIN ID/BIR Certificate of Registration of the seller and the Homeowner Association; and

9) *Other pertinent documents.*

In reply, please be informed that pursuant to Section 32 of RA No. 7279, pertinent portions of which state that:

> "Sec. 32. *Incentives.* — To encourage its wider implementation, participants in the CMP shall be granted with the following privileges or incentives:
>
> xxx xxx xxx
>
> (b) Properties sold under the CMP shall be exempted from the capital gains tax; and"

the landowner who sold their property under the CMP are exempt from the payment of

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capital gains tax.

Such being the case, the sale by BBB, DDD, EEE, FFF, GGG and HHH to Nazario K. Navarro Sr. Homeowners Association, Inc. of the subject property covered by TCT No. T-390833 is exempt from the capital gains tax.

Upon issuance of this letter of exemption, and upon registration of the document of sale, a lien on the Certificate of Title of the land to be issued in the time of the Homeowner's Association shall be annotated by the Register of Deeds having jurisdiction over the property, to the effect that the said property shall be used for socialized housing pursuant to RA No. 7279. (BIR Ruling No. 053-15 dated February 27, 2015)

However, the documentary stamp tax is not one of the taxes covered by the tax exemption clause in Sec. 32 of RA 7279. Accordingly, the landowner is liable to pay the documentary stamp tax on the document conveying the afore-stated property imposed under Section 196 of the Tax Code of 1997, based on the consideration contracted to be paid for such realty or its fair market value determined in accordance with Section 6 (E) of the said Code, whichever is higher.

It is, however, understood that this ruling is never intended and shall not be construed as giving authority to the concerned Register of Deeds to effect transfer of the land title in the name of the buyer without the necessary certificate of authority to register issued by this Bureau. In this regard, this ruling shall be presented to the Revenue District Office (RDO) concerned in order for the latter to issue the Certificate Authorizing Registration (CAR). The CAR shall only be issued after the submission of the requirements provided under RMO No. 15-2003. (BIR Ruling No. 053-15 dated February 27, 2015)

Notwithstanding the foregoing, the Bureau of Internal Revenue shall conduct verification and post-audit to ascertain that the actual occupants of the property transferred under the CMP are qualified beneficiaries and therefore, the sellers are entitled to exemption from capital gains tax or income tax imposed under the Tax Code of 1997.

On the other hand, the exemption granted under R.A. 7279 is without prejudice to the right of the government to collect the proper amount of estate tax to the legal heirs pursuant to Section 84 of the Tax Code, as amended.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different, then this ruling shall be considered as null and void.

Very truly yours,

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

Footnotes

1. Certificate Authorizing Registration No. CAR200600007554 dated June 21, 2007 was issued to the Estate of CCC, certifying that the said estate had fully paid the estate tax.
2. See Annex for the materlist of qualified beneficiaries consisting of nine (9) pages.

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