November 8, 2016

BIR RULING NO. 371-16

RA 7279; Sections 32 (B) (7) (b) & 196, of the Tax Code of 1997, as amended; BIR Ruling No. 190-16

Office of the Secretary to the Mayor
3rd Floor, Main Building, Quezon City Hall
Elliptical Road, Quezon City

Attention: *Tadeo M. Palma*
Secretary to the Mayor and Head, Task Force on Socialized Housing and Development of Blighted Areas

Gentlemen :

This refers to your letter dated December 8, 2015 requesting issuance of Certificate of Tax Exemption for the transfer of title of real property from Quezon City Government to beneficiaries.

Documents submitted disclosed that on October 27, 2011, a Memorandum of Agreement (MOA) for the development of Bistekville 2 was executed by and among, Phinma Property Holdings Corporation, a corporation duly organized and registered with the Securities and Exchange Commission (SEC) under Registration No. CS201019568, AAA, as the landowner, and the Quezon City Government (LGU), as the implementing government agency to address the lack of affordable and decent housing in Quezon City for informal settlers, upgrade living conditions of blighted areas and convert them into a decent and productive community.

Under the MOA, Phinma Property Holdings Corporation shall undertake the land development and construction of 921 [1] lots each with an area of 27 square meters, more or less which shall be made available to qualified beneficiaries of the Quezon City Local Government Housing Program and 83 lots shall remain under the name of the landowner. AAA is the registered owner of parcels of land covered by Transfer Certificate of Title (TCT) No. T-45344 (75105), designated as Lot No. 614 of Tala Estate, GLRO Rec. No. 6563 and Transfer Certificate of Title (TCT) No. N-294617, designated as Lot D of Subd.

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Plan (LRA) psd-384988 approved as a non-subd. project, being a portion of the cones of Lot 381, 475 & 722, Tala Estate LRC Rec. No. 6563 located at Brgy. Kaligayahan containing areas of 44,554 sq.m. and 4,322 sq.m. more or less, respectively. The LGU shall be the proponent and loan originator and partner under the Quezon City Urban Upgrading and Renewal Program and shall identify, pre-qualify, evaluate and award the units to the qualified beneficiaries.

In order to maximize the land area and to provide greater opportunity for a greater number of beneficiaries to avail of in city housing units, the parties executed an Amendment to the Memorandum of Agreement (for the Development of Bistekville 2) on November 26, 2013, which amendment covers alteration of the model/type of housing units for a number of lots earmarked for One-Storey Loft-Type Housing Units to Three-Storey Walk-up Housing Units, thereby increasing the number of housing units of the project to 703 units of one-storey row-house with loft and 375 condominium units of three-storey walk-up or a total of 1078 housing units.

The loan proceeds of every taken-out Walk-up housing units shall be distributed to the parties as return of their contributions based on the agreed proportion sharing scheme as follows:

Share of landowner:	Php_____
Share of PPHC:	Php_____
Share of LGU-QC:	Php_____

However, Amendment to the Amended MOA dated December 10, 2014, was executed to amend specifically the provisions on the loan proceed distribution of the remaining 273 three-storey walk up condominium units as follows:

Share of landowner:	Php_____
Share of PPHC:	Php_____
Share of LGU-QC:	Php_____

Moreover, in BIR Ruling No. 373-2012 dated June 4, 2012, the BIR ruled that the conveyance on the portion of land pertaining to the nine hundred twenty one (921) lots covered by TCT No. T-45344 (75105) is exempt from the payment of capital gains tax or the withholding tax under Revenue Regulations No. 2-98, as amended. However, the sale is subject to the documentary stamp tax imposed under Section 196 of the Tax Code of 1997 based on the actual consideration of the properties transferred, considering that one of the contracting parties is the Government.

In reply, please be informed that Sections 2 and 4 of Republic Act (RA) No. 7279, otherwise known as the Urban Development and Housing Act of 1992 provide as follows:

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Sec. 2. Declaration of State Policy and Program Objectives. — It shall be the policy of the State to undertake, in cooperation with the private sector, a comprehensive and continuing Urban Development and Housing Program, hereinafter referred to as the Program, which shall:

(f) Improve the capability of local government units in undertaking urban development and housing programs and projects.

xxx xxx xxx

Sec. 4. Coverage. — The Program shall cover all lands in urban and urbanizable areas, including existing areas for priority development sites, and in other areas that may be identified by the local government units as suitable for socialized housing.

Moreover, as an instrumentality of the government which acts for the purpose of accomplishing government policies and objectives and extending essential services to the people, the LGU performs governmental and not proprietary functions. *(Peoples' Homesite and Housing Corporation vs. Court of Industrial Relations, 150 SCRA 296, 310 (1987))* Thus, in line with the foregoing and since it is a declared State policy as laid down in Republic Act No. 7279, otherwise known as the "Urban Development and Housing Act of 1992," to provide decent and affordable housing to the underprivileged and homeless citizens and to improve the capability of local government units in undertaking urban development and housing programs and projects, the distribution or transfer of the lots to the beneficiaries [2] of socialized housing project of Bistekville 2 is exempt from capital gains tax. The City Government of Quezon City, which is tasked to implement the distribution of the housing units, shall not be subject to capital gains tax, for it is only performing a mandated governmental function of providing shelter to the beneficiaries of socialized housing project of Bistekville 2. (BIR Ruling 190-2016 dated May 16, 2016)

On the other hand, the distribution or transfer of the lots to the beneficiaries of socialized housing project of Bistekville 2 is subject to the documentary stamp tax (DST) imposed under Section 196 of the Tax Code of 1997, as amended, in accordance with Revenue Regulations No. 11-97, as amended by Revenue Regulations No. 17-2001. The DST herein imposed, however, shall be based on the actual consideration considering that one of the contracting parties is the Government pursuant to Revenue Memorandum Order No. 41-91 and Section 196 of the Tax Code of 1997. (BIR Ruling 190-2016 dated May 16, 2016)

Lastly, the notarial acknowledgment to the individual deed of conveyance is subject to the documentary stamp tax of P15.00 pursuant to Section 188 of the Tax Code of 1997, as amended.

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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. After some technical modifications, the subdivision plan was finally approved (subdivision Plan Pcs-00-013966) with a total of 977 generated lots, 894 lots which were earmarked for the construction of one-storey loft-type housing, while the remaining 83 lots were retained by the landowner.
2. See Annex of Beneficiaries.

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