November 8, 2016

BIR RULING NO. 376-16

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

Asis Homeowners Association, Inc.
Brgy. Banica, Roxas City, Capiz

Attention: *AAA*

Gentlemen :

This refers to the letter of Ma. Ana R. Oliveros, President of the Social Housing Finance Corporation (SHFC) dated March 16, 2016, endorsing the sale transaction between BBB, et al. and Asis 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 BBB (8/14 share), CCC, (married to DDD) (1/14 share), EEE, [1] (married to FFF) (1/14 share), GGG, (married to HHH) (1/14 share), III (married to JJJ) (1/14 share), KKK, (married to LLL (1/14 share) and MMM, (married to NNN) (1/14 share) are the registered owners of a parcel of land, identified as Lot 1770-A-1, Psd-06-073897, being a portion of lot 1770-A, Psd-06-0377355 covered by Transfer Certificate of Title (TCT) No. T-59362 issued by the Registry of Deeds for City of Roxas. The aforesaid property is situated at Brgy. Banica, Roxas City, Capiz with an area of Twenty Thousand Six Hundred Eighty square meters (20,680 sq.m.), more or less. Asis 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 October 27, 2015, the parties executed a Deed of Absolute Sale whereby the landowner transferred and conveyed Nineteen Thousand Eight Hundred Fifty square meters (19,850 sq.m.) portion of the subject property to Asis Homeowners Association, Inc. at an agreed price of _____ Pesos (P_____). Pursuant to the certification issued by SHFC, 19,850 sq.m. out of 20,680 sq.m. covered by TCT No. T-59362 actually comprises a Community Mortgage Program (CMP) Project and shall be proportionately distributed to the association's qualified member-beneficiaries. [2] For this purpose, Asis Homeowners

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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, Asis Homeowners Association, Inc. has completely submitted on March 23, 2016 the following documents:

1) SHFC letter application for tax exemption;

2) Certification of the President of the SHFC, 19,850 sq.m. portion of the subject property qualifies and is actually a CMP project;

3) SHFC Letter of Guaranty No. CMP-1141;

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

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

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

7) Certified true copies of the TCT and Latest Tax Declaration of the Property Sold to the Community Association;

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

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

10) *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"*

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the landowner who sold his properties under the CMP are exempt from the payment of capital gains tax.

Such being the case, the sale by landowners to Asis Homeowners Association, Inc. of the 19,850 sq.m. out of 20,680 sq.m. covered by TCT No. T-59362 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 name 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 landowners are 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 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.

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,

(SGD.) CAESAR R. DULAY

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Footnotes

1. Entry No. 2014000802 dated April 30, 2014, Affidavit: Executed by OOO and PPP stating that they know personally QQQ for a long period of time they being closely associated; that it is their personal knowledge that his true and correct name is QQQ and not EEE appearing in TCT No. T-59362; that QQQ and EEE is one and the same person and that his true and correct name is QQQ, in accordance with Doc. No. 446, Page No. 91, Book No. IX, Series of 2014, of Notary Public of Roxas City, RRR, Dated April 29, 2014.
2. See Annex for the masterlist of qualified beneficiaries consisting of six (6) pages.

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