November 22, 2016

BIR RULING NO. 405-16

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

City Woods Homeowners Association, Inc.
Rampano Road, Brgy. Sicsican
Puerto Princesa City, Palawan

Attention: *AAA*

Gentlemen :

This refers to the letter of Ma. Ana R. Oliveros, President of the Social Housing Finance Corporation (SHFC) dated March 9, 2016, endorsing the sale transaction between BBB (married to CCC) and City Woods 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 Erlinda Tan PeBBB (married to Ramon PeCCC) (TIN 000-000-000-000) is the registered owner of a parcel of land, identified as Lot No. 555, Pls-110 (HV-211334) covered by Transfer Certificate of Title (TCT) No. 19628 issued by the Registry of Deeds for Puerto Princesa City. The aforesaid property is situated at Brgy. Sicsican, Puerto Princesa City with an area of Sixty Eight Thousand Seven Hundred Twenty One square meters (68,721 sq.m.), more or less. City Woods 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 June 1, 2015, the parties executed a Deed of Absolute Sale whereby BBB represented by her Attorney-in-Fact, DDD, transferred and conveyed Thirty Four Thousand Four Hundred Twenty Five square meters (34,425 sq.m.) portion of the subject property to City Woods Homeowners Association, Inc. at an agreed price of _____ Pesos and 75/100 (P_____). Pursuant to a certification issued by SHFC, 34,425 sq.m. out of 68,721 sq.m. covered by TCT No. 19628 is actually a Community Mortgage Program (CMP) Project and shall be proportionately distributed to the association's qualified member-beneficiaries. [1] For this purpose, City Woods Homeowners Association, Inc.

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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, City Woods Homeowners Association, Inc. has completely submitted on March 18, 2016 the following documents:

1) SHFC letter application for tax exemption;

2) Certification of the President of the SHFC, 34,425 sq.m. portion of the subject property qualifies and is actually a CMP project;

3) SHFC Letter of Guaranty No. 1082;

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 landowners who sold their properties for use in a socialized housing project are exempt from the payment of capital gains tax.

Such being the case, the sale by BBB represented by her Attorney-in-Fact, DDD, to City Woods Homeowners Association, Inc. of the 34,425 sq.m. portion out of 68,721 sq.m. covered by TCT No. 19628 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 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.

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. See Annex for the masterlist of qualified beneficiaries consisting of six (6) pages.

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