December 16, 2016

BIR RULING NO. 433-16

RA 7279; RR 11-97; RR 16-05; BIR Ruling No. 129-12; BIR Ruling No. 223-13

Kaia Homes, Inc.
23rd Floor, The World Centre,
330 Sen. Gil Puyat Ave., Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated November 16, 2015, requesting for a ruling that:

a. the income of Kaia Homes, Inc. from its socialized housing projects be exempted from income tax, and withholding taxes, if any; and

b. the sale of its socialized housing units be exempted from value-added tax.

It is represented that Kaia Homes, Inc. with Taxpayer's Identification No. 000-000-000, is a domestic corporation engaged in real estate business and registered with the Securities and Exchange Commission (SEC) under SEC Registration No. CS201417453 dated September 9, 2014. Kaia Homes, Inc. is the owner and developer of two housing projects known as Kaia Homes and Kaia Homes Phase II both located in Gen. Trias and Trece Martires, Cavite, respectively.

KAIA HOMES

Kaia Homes is a housing project of Kaia Homes, Inc. located in Brgy. Pasong Kawayan II, Gen. Trias, Cavite, with a total land area of 67,577 sq. mtrs. covered by Transfer Certificate of Title Nos. 057-2015051868, 057-2015047738, and 057-2015047739 issued by the Registry of Deeds of the Province of Cavite.

Kaia Homes, Inc. developed the property into a socialized housing project. The project is duly registered with the Housing and Land Use Regulatory Board (HLURB) under

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Certificate of Registration No. 25927, with License to Sell No. 029691 for 893 socialized housing units, to wit:

Block Nos.	Lot Nos.	No. of Lots	Area in Sq. Mtrs.
1	1-4	4	216
2	1-59	59	2,699
4	1-32	32	1,322
5	1-57	57	2,469
6	1-61	61	2,579
7	1-74	74	3,480
8	1-53	53	2,489
9	1-55	55	2,294
10	1-54	54	2,270
11	1-45	45	1,911
12	1-54	54	2,295
13	1-19	19	851
14	1-61	61	2,451
15	1-57	57	2,276
16	1-54	54	2,185
17	1-52	52	2,111
18	1-50	50	2,037
19	1-11	11	532
20	1-21	21	831
21	1-20	20	893
TOTAL		Saleable lots/units	Saleable Area
		893	**38,191**

KAIA HOMES PHASE II

Kaia Homes Phase II is housing project Kaia Homes, Inc. located in Brgy. Hugo Perez, Trece Martires City, Cavite, with a total area of 44,350 sq. mtrs. covered by Transfer Certificate of Title No. 2823 issued by the Registry of Deeds of the Province of Cavite.

On August 20, 2015, Kaia Homes, Inc. purchased the property from Severino F. PortoBBB for the purpose of developing the property into a socialized housing project. The project is duly registered with the Housing and Land Use Regulatory Board (HLURB) under Certificate of Registration No. 26877, with License to Sell No. 030539 for 685 socialized housing units, to wit:

Block Nos.	Lot Nos.	No. of Lots	Area in Sq. Mtrs.
1	1-145	145	5,919
2	1-9	9	491

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3	2-54	53	2,475
4	1-25	25	1,327
5	1-45	45	2,001
6	1-98	98	3,938
7	1-93	93	3,934
8	1-98	98	2,4893 *
9	1-98	98	2,294
10	1-21	21	2,270
TOTAL		Saleable lots/units	Saleable Area
		1,786	**38,191**

We reply as follows:

Section 20 of R.A. No. 7279, reads:

"Sec. 20. *Incentives for the Private Sector Participating in Socialized Housing.* — To encourage greater private sector participation in socialized housing and further reduce the cost of housing units for the benefit of the underprivileged and homeless, the following incentives shall be extended to the private sector:

xxx xxx xxx

"(d) Exemption from the payment of the following:

"(1) Project-related income taxes;

"(2) Capital gains tax on raw lands used for the project;

"(3) Value-Added Tax for the project contractor concerned;"

Only the sale of socialized housing units covered by License to Sell No. 029691 for 893 socialized housing units (Kaia Homes) and License to Sell No. 030539 for 685 socialized housing units, to qualified beneficiaries shall be exempt from income taxes, and consequently, from creditable expanded withholding tax prescribed under Revenue Regulations (R.R.) No. 2-98, as amended.

Thus, a buyer of socialized housing unit covered by HLURB Licenses to Sell Nos. 029691 and 030539 shall be required by the developer/owner/seller to execute a sworn statement that he is eligible as a socialized housing beneficiary provided under Section 5 (A) of R.R. No. 11-97.

Section 5 (A) of R.R. No. 11-97 provides that:

SEC. 5. *Requirements/Conditions for the Availment of Tax*

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Incentives/Exemptions. —

A. To qualify for socialized housing program, a beneficiary

(a) must be a Filipino citizen;

(b) must be an underprivileged and homeless citizen, as defined in Section 3 (t) of the Act and Section 2(r) of these Regulations;

(c) must not own any real property, whether in the urban or rural areas; and

(d) must not be a professional squatter or a member of squatting syndicates.

In this connection, any sale made by the owner and developer to interested parties other than the principal target beneficiaries under the Sections 3 (t) and 16 of R.A. No. 7279, shall not be entitled to the foregoing tax exemption should there be non-compliance with any of the aforestated *sine qua non* terms and conditions (BIR Ruling No. 223-13 dated June 20, 2013). The developer shall submit the said sworn statement to the BIR during the processing of the Certificate Authorizing Registration (CAR) for the transfer of the socialized housing unit.

It is, however, understood that the CAR shall only be issued after it is established upon proper verification by the Revenue District Officer (RDO) concerned that, considering the rules on valuation of real property, the actual selling price per sale transaction of the house and lot packages covered by HLURB Licenses to Sell Nos. 029691 and 030539 does not really exceed P450,000.00. Thus, sale of a house and lot above the maximum amount shall be subject to the corresponding internal revenue taxes. (BIR Ruling No. 129-12 dated February 23, 2012)

Nonetheless, it is observed that documentary stamp tax is not one of the taxes covered by the exemption clause in Section 20 of RA No. 7279. Such being the case, the owner/project developer/seller shall be liable to pay documentary stamp tax on the documents conveying the properties imposed under Section 196 of the Tax Code of 1997, as amended, based on the consideration contracted to be paid for such realties or on the fair market value determined in accordance with Section 6 of the said Code, whichever is higher.

Moreover, a project contractor of a socialized housing project shall also be exempt from the payment of value-added tax (VAT) insofar as the socialized housing units are concerned. However, purchases of goods/articles by the project contractor shall be subject to value-added tax, even if the said purchases are to be used for the socialized housing project. Moreover, it shall be understood that it must be issued non-VAT official receipts on its gross receipts from the said socialized housing project.

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Relative thereto, Section 4.109-1 (B) (1) (p) (3) of RR No. 16-2005 states that:

> SECTION 4.109-1. *VAT-Exempt Transactions.* — (A) In general. — "VAT-exempt transactions" refer to the sale of goods or properties and/or services and the use or lease of properties that is not subject to VAT (output tax) and the seller is not allowed any tax credit on VAT (input tax) previously paid.
>
> xxx xxx xxx
>
> (B) *Exempt transactions.* — (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from VAT:
>
> (p) The following sales of real properties are exempt from VAT, namely:
>
> (3) Sale of real properties utilized for socialized housing as defined under R.A. No. 7279, and other related laws, such as R.A. No. 7835 and R.A. No. 8763, wherein the price ceiling per unit is P225,000.00 or as may from time to time be determined by the HUDCC and the NEDA and other related laws. . . .

Furthermore, pursuant to Housing and Urban Development Coordinating Council (HUDCC) Resolution No. 1, Series of 2013 dated October 16, 2013, and as circularized by Revenue Memorandum Circular No. 35-2014, pertinent portion of which reads:

> "THEREFORE BE IT RESOLVED, AS IT HEREBY RESOLVED that the price ceiling for horizontal socialized housing be adjusted from P400,00.00 to P450,000.00."

Thus, beginning December 18, 2013, the newly adjusted price ceiling of P450,000.00 for horizontal socialized housing shall apply to sale of real properties utilized for socialized housing, as defined under R.A. No. 7279 otherwise known as "Urban Development and Housing Act," and other related laws such as R.A. No. 7835 otherwise known as the "Comprehensive and Integrated Shelter Financing Act of 1994" and R.A. No. 8763 otherwise known as the "Home Guaranty Act of 2000."

Moreover, Section 2 of Revenue Regulations No. 17-2001 provides:

> *Section 2. Definition of Terms. — As used in these Regulations, the following terms shall have the following meaning:*
>
> xxx xxx xxx
>
> *"A socialized housing unit shall not exceed P150,000.00 (now P400,000.00) for a house and lot package, subject to periodic adjustment or increase as the Housing and Land Use Regulatory Board (HLURB) may effect from time to time. In the case of sale of homelots only, the price shall not exceed forty percent (40%) of the maximum limit*

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prescribed for the house and lot package." (Emphasis supplied)

Thus, the sale of the socialized housing units covered by HLURB Licenses to Sell Nos. 029691 (893 units) and 030539 (685 units), wherein the maximum price of the House and Lot is P450,000.00, to qualified beneficiaries are exempt from income taxes and, consequently, from creditable expanded withholding tax and from VAT pursuant to R.A. No. 7279.

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 represented are different, then this ruling shall be considered null and void.

Very truly yours,

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

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