December 19, 2016

BIR RULING NO. 441-16

RA 7279; RR 11-97; BIR Ruling No. 066-2011; BIR Ruling No. 353-2013

RFN Construction and Development Corporation
Rm. 210 Tia Maria Building
C.V. Starr Avenue, Pamplona
Las Piñas City

Attention: *AAA*

Gentlemen :

This refers to your letter dated November 18, 2014 requesting, on behalf of **RFN CONSTRUCTION AND DEVELOPMENT CORPORATION** ("RFN CONSTRUCTION" for brevity), tax exemption on the socialized housing project, **Amadeo Heights Phase 2**, consisting of **729** [1] housing units located at Brgy. Halang, Amadeo, Cavite, pursuant to Republic Act (RA) No. 7279, otherwise known as the "Urban Development and Housing Act of 1992."

Documents submitted show that the National Housing Authority (NHA), as the sole government agency engaged in direct shelter production to provide housing to the members of the AFP/PNP, BJMP, BFP and BuCor, acquired five (5) parcels of land from the following individuals, hereafter referred to as "landowners":

Registered Owner	Date of DOAS	Title	Area (sq.m.)	Contract Price
BBB	December 18, 2013	OCT No. OP-6663	24,676	P_____
CCC	December 18, 2013	OCT No. (P-9170) 4405	14,959	_____
DDD	December 18,	OCT No. (P-5487)	3,029	_____

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	2013	3198		
EEE	December 18, 2013	OCT No. OP-6345	3,120	_____
FFF	December 18, 2013	OCT No. OP-3825	18,596	_____
			_____	_____
Total			**64,380**	**P**_____
			=====	==========

The acquired properties will be developed into a residential project known as "Amadeo Heights Phase 2, Brgy. Halang, Amadeo, Cavite" under the Community Initiative Approach Program (CIAP) of the NHA.

On January 7, 2014, a Contract Agreement [2] was executed by and between RFN CONSTRUCTION and AFP Housing Homeowners Association, Inc. (AFPHOAI) and PNP Housing Homeowners Association, Inc. (PNPHOAI), homeowners organizations registered with the Housing and Land Use Regulatory Board (HLURB), whereby RFN CONSTRUCTION has agreed to sell to AFPHOAI's and PNPHOAI's individual members the 729 developed lots and completed housing units on Amadeo Heights Phase 2 under the Community Initiative Approach Program (CIAP) of the NHA for _____ Pesos (P_____) per member/family.

Moreover, on January 13, 2014, a Memorandum of Agreement [3] (MOA) was executed by and among RFN CONSTRUCTION, as the landowner/developer, AFPHOAI and PNPHOAI, as the beneficiaries, and the NHA.

Under the MOA, members [4] of the AFPHOAI and PNPHOAI shall be provided by the NHA with a financial grant for the acquisition of 729 house and lot packages through the CIAP in the amount of P240,000.00 for a house and lot package of 40 square meter lot and 22 square meter floor area.

To give effect to the Contract Agreement and MOA, on July 23, 2014, a Deed of Conveyance was executed by and between RFN CONSTRUCTION and NHA, whereby the former agreed to sell to NHA, 729 developed lots covering an area of ***Twenty Nine Thousand One Hundred Twenty square meters (29,120 sq.m.)*** portion of the above-described properties for _____ Pesos (P_____).

A certification was issued by the NHA dated April 29, 2014, certifying that the housing project known as Amadeo Heights Phase 2 situated in Brgy. Halang, Amadeo, Cavite, consisting of an aggregate area of Sixty Four Thousand Three Hundred Eighty

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(64,380) square meters is a socialized housing project intended for the qualified personnel/beneficiaries of the AFP and PNP; and that the said project consists of 729 units and has a total saleable area of 29,160 sq.m. and non-saleable area of 37,767 sq.m. and will be undertaken by RFN CONSTRUCTION.

In reply, please be informed that pursuant to Sections 19 and 20 of RA No. 7279, pertinent portions of which state that:

> *"Sec. 19. Incentives for the National Housing Authority. — The National Housing Authority, being the primary government agency in charge of providing housing for the underprivileged and homeless, shall be exempted from the payment of all fees and charges of any kind, whether local or national, such as income and realty taxes. All documents or contracts executed by and in favor of the National Housing Authority shall also be exempt from the payment of documentary stamp tax and registration fees, including fees required for the issuance of transfer certificates of title.*
>
> *"Sec. 20. Incentives for 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;"*
>
> xxx xxx xxx

Sale by the Landowners to NHA

The land owners who sell their lots for use in a socialized housing project is exempt from the payment of the capital gains tax and project-related income taxes. *(BIR Ruling No. 066-2011 dated March 9, 2011)*

Accordingly, the sale by BBB, CCC, DDD, EEE and FFF to the NHA of the ***Sixty Four Thousand Three Hundred Eighty square meters (64,380 sq.m.)*** area of the subject properties covered by OCT No. OP-6663, OCT No. OP-6345, OCT No. (P-5487) 3198, OCT No. (P-9170) 4405 and OCT No. 3825, on which the 729 socialized housing units shall be constructed, is exempt from the payment of capital gains tax imposed under Sec. 24 (D) of the Tax Code of 1997, as amended or creditable withholding tax under Revenue

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Regulations No. 2-98, as amended.

Likewise, the sale of the ***Sixty Four Thousand Three Hundred Eighty square meters (64,380 sq.m.)*** area of the subject properties covered by OCT No. OP-6663, OCT No. OP-6345, OCT No. (P-5487) 3198, OCT No. (P-9170) 4405 and OCT No. 3825, on which the 729 socialized housing units shall be constructed, is exempt from the documentary stamp tax imposed under Section 196 of the Tax Code of 1997, as amended.

Transaction between RFN CONSTRUCTION and NHA

The developer of properties who sells its properties for use in a socialized housing project are exempt from the payment of project-related income taxes pursuant to Section 20 of RA No. 7279.

Such being the case, the sale by RFN CONSTRUCTION to NHA of the ***729 developed lots and housing units in Amadeo Heights Phase 2*** shall be exempt from the capital gains tax, project-related income taxes and consequently from withholding tax. *(BIR Ruling No. 353-2013 dated September 20, 2013)*

Moreover, it must be noted that the exemption from the documentary stamp tax of NHA, in connection with any of its socialized housing projects, extends to the other party (either seller or buyer) that deals or transacts with the NHA. Consequently, since NHA is a party to the sale, no documentary stamp tax shall be due on such sale, either on NHA or the party with which NHA is transacting. Accordingly, the transfer by RFN CONSTRUCTION to NHA of the ***729 developed lots and housing units in Amadeo Heights Phase 2*** shall be exempt from the payment of documentary stamp tax under Section 196 of the Tax Code of 1997, as amended. *(BIR Ruling No. 353-2013 dated September 20, 2013)*

Furthermore, under Section 20 (d) (3) of RA 7279, the sale of a socialized housing as defined therein shall also be exempt from the payment of value-added tax (VAT). Thus, the sale by RFN CONSTRUCTION to NHA of the ***729 developed lots and housing units in Amadeo Heights Phase 2*** shall be exempt from VAT. However, its purchases of goods/articles shall be subject to VAT, even if the said purchases are to be used for the socialized housing project, since VAT is an indirect tax which can be passed on by the seller of the goods/services. Moreover, it shall be understood that RFN CONSTRUCTION must issue non-VAT official receipts on its gross receipts from the said socialized housing project.

Upon application for exemption, a lien on the titles of the land shall be annotated by the Register of Deeds having jurisdiction over the properties, to the effect that the same is to be applied or is being applied to a socialized housing project pursuant to RA 7279.

Please take note that this ruling is never intended and shall not be construed as giving

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authority to the concerned Register of Deeds to effect transfer of the land 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) after the submission of the requirements provided under RMO 15-2003.

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
Commissioner of Internal Revenue

Footnotes

1. Per Certification dated April 29, 2014 issued by the National Housing Authority and Contract Agreement dated January 7, 2014.
2. (Financing Acquisition of 729 Housing Units) Amadeo Heights-Phase 2, Brgy. Halang, Amadeo, Cavite.
3. (For 729 Developed Lots and Completed Housing Units) Amadeo Heights-Phase 2, Brgy. Halang, Amadeo, Cavite.
4. Please see attached partial Masterlist of beneficiaries consisting of four (4) pages and containing one hundred seventy seven (177) beneficiaries.

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