March 14, 2018

BIR RULING NO. 493-18

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

Housing, Community Development and Resettlement Department
Quezon City Government

Attention: *Ramon T. Asprer*
Department Head

Gentlemen :

This refers to your letter dated May 16, 2016 requesting exemption from the payment of Capital Gains Tax for the sale of government-owned properties to members [1] of Hope for Justice Neighborhood Association, Inc., in accordance with Republic Act (RA) No. 7279, otherwise known as the Urban Development and Housing Act of 1992.

Documents submitted disclosed that on December 7, 2004, Ordinance No. SP-1468, S-2004 was passed by the Quezon City Council approving the subdivision plan of a Socialized Housing Project, under the direct sale program involving Eighty Seven (87) lots covered by Transfer Certificate of Title (TCT) No. N-255253 of the Registry of Deeds of Quezon City, owned by the Quezon City Government, located at Tawid Sapa II, Barangay Kaligayahan, Quezon City, for the benefit of Hope for Justice Neighborhood Association, Inc.

On August 12, 2003, Resolution No. SP-2164, S-2003, [2] was adopted by the Quezon City Council authorizing the City Mayor to enter into a Memorandum of Agreement (MOA) with Hope for Justice Neighborhood Association, Inc. for direct Sale of the abovementioned property; and that on March 15, 2004, a MOA was entered into by and between the Quezon City Government and Hope for Justice Neighborhood Assn., Inc. for the acquisition of Lot 2 (385-A-1) covered by TCT No. 255253 comprising an area of Four Thousand Four Hundred Thirty square meters (4,430 sq. m.) at the agreed selling price of One Thousand Eight Hundred Fifty Pesos (P1,850.00) per square meter.

In reply, please be informed that Sections 2 and 4 of RA No. 7279, provide as follows:

Sec. 2. Declaration of State Policy and Program Objectives. — It shall be the

Copyright 2020 CD Technologies Asia, Inc.

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.

As a political subdivision of the state which acts for the purpose of accomplishing government policies and objectives and extending essential services to the people, the LGU is exercising governmental and not proprietary functions when it sold the subject property to the Hope for Justice Neighborhood Assn., Inc. *(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 of socialized housing project of Hope for Justice Neighborhood Association, Inc. is exempt from capital gains tax. The City Government of Quezon, 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 members of Hope for Justice Neighborhood Association, Inc. (BIR Ruling 190-2016 dated May 16, 2016)

However, the distribution or transfer of the lots to the beneficiaries of socialized housing project of Hope for Justice Neighborhood Association, Inc. 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, as amended. (BIR Ruling 190-2016 dated May 16, 2016)

Moreover, the notarial acknowledgment to the individual deed of conveyance is subject to the DST of P15.00 pursuant to Section 188 of the Tax Code of 1997, as amended.

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

Copyright 2020 CD Technologies Asia, Inc.

ruling shall be considered null and void.

Very truly yours,

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

Footnotes

1. See Annex (Partial List of Beneficiaries).
2. A RESOLUTION AUTHORIZING HIS HONOR, CITY MAYOR FELICIANO R. BELMONTE, JR., TO ENTER INTO A MEMORANDUM OF AGREEMENT AND LATER INTO CONTRACTS TO SELL WITH *BONAFIDE* OCCUPANTS/AWARDEES OF HOPE FOR JUSTICE NEIGHBORHOOD ASSOCIATION, INC. (PHASE III), FOR THE DIRECT SALE OF A PARCEL OF LAND WITH A TOTAL AREA OF FOUR THOUSAND FOUR HUNDRED THIRTY SQUARE METERS (4,430 SQ.M.), SITUATED IN TAWID SAPA DOS PHASE III BARANGAY KALIGAYAHAN, QUEZON CITY, UNDER SUCH TERMS AND CONDITIONS STATED IN THE MEMORANDUM OF AGREEMENT.

Copyright 2020 CD Technologies Asia, Inc.