October 17, 2019

BIR RULING NO. 634-19

Sections 57 (B), 188, 195 & 196 of the
National Internal Revenue Code of 1997,
as amended; RR No. 02-98, as amended;
BIR Ruling No. 568-12

T-Mar Industries, Inc.
2878 LMG Bldg., Burgos Ext. Cor. North Drive,
Villamonte, Bacolod City 6100

Attention: *AAA*

Gentlemen :

This refers to your letter dated September 27, 2017 requesting for re-issuance of BIR Ruling No. DA-642-2007 dated December 13, 2007 issued to **T-Mar Industries, Inc.**

Documents submitted disclosed that the housing loan accounts of your clients are processed under the "WITH BUYBACK GUARANTY" credit window under the Housing Loan Program of the Home Development Mutual Fund ("HDMF" for brevity). Under HDMF Circular No. 259, the Buyback Guarantee scheme has the following features:

a. The developer shall receive, evaluate, pre-process and approve the housing loan applications of the HDMF's member-borrowers in accordance with the applicable Guidelines of the Pag-IBIG Housing Loan Program;

b. The developer shall buy back CTS/REM accounts that default or are affected by breach of warranties during the first two years of the loan;

c. The developer shall execute a Contract-to-Sell with the Pag-IBIG member to cover the purchase of the residential property or lot used as collateral for the Pag-IBIG housing loan of the member;

d. The developer shall execute a Deed of Assignment assigning the CTS in favor of HDMF which shall be annotated in the title of the property;

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e. The developer shall convert the security of eligible accounts from CTS to REM not later than the 24th month from date of loan takeout; and

f. Transfer of title to the property is not a requisite in the granting of the loan application and such transfer shall take place only within a period of two (2) years from the date of loan take-out and after receipt of formal notification from HDMF to convert the security of eligible accounts from CTS to REM.

In reply thereto, please be informed that pursuant to Revenue Regulations (RR) No. 2-98 as amended, the following rules are provided for buyers, engaged or not engaged in trade or business, of real property classified as ordinary asset:

> *"SEC. 2.57.2. Income payment subject to creditable withholding tax and rates prescribed thereon. — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:*
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> xxx xxx xxx
>
> *(F)* [1] *Gross selling price or total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange or transfer of real property classified as ordinary asset. —*
>
> xxx xxx xxx
>
> *(ii) If, on the other hand, the sale is on a "cash basis" or is a "deferred-payment sale not on the installment plan" (that is, payments in the year of sale exceed 25% of the selling price), the buyer shall withhold the tax based on the gross selling price or fair market value of the property, whichever is higher, on the first installment.*
>
> xxx xxx xxx"

Likewise, RR No. 2-98, as last amended by RR No. 11-2018, laid down the rules on the period for the filing of the withholding tax return and the payment of the proper tax thereon, thus:

> *"SEC. 2.58. Returns and Payment of Taxes Withheld at Source. —*
>
> *(A) Manner, Venue and Time of Filing of Withholding Tax Returns and Payment of Taxes Withheld at Source — Taxpayers mandated to electronically file and pay shall use the BIR's electronic system, while those not mandated has the option to either use the said electronic system, or file with the Authorized Agent Banks (AABs) under the jurisdiction of the Revenue District Office where they are registered. Withholding agents located at municipalities where there is no AAB, the returns shall be filed with the Revenue Collection Officer assigned in the said municipality. The filing of the withholding tax*

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returns (BIR Form No. 1601EQ for creditable withholding tax and Form Nos. 1602 for final tax on interest on bank deposits, 1603 or final tax withheld on fringe benefits, and 1601FQ for all other final withholding taxes) and payment of the taxes withheld at source ***shall be made not later than the last day of the month following the close of the quarter during which the withholding was made****.*

For this purpose, the quarter shall follow the calendar quarter, e.g., for taxes withheld during the quarter ending March 31, the same shall be remitted by the withholding agent on or before April 30. The return filed shall be accompanied by the Quarterly Alphabetical List of Payees (QAP), reflecting the name of income payees, Taxpayer Identification Number (TIN), the amount of income paid segregated per month with total for the quarter (all income payments prescribed as subject to withholding tax under these regulations, whether actually subjected to withholding tax or not subjected due to exemption), and the total amount of taxes withheld, if any.

Considering that taxes withheld by the withholding agents are held in trust for the government and its availability is an imperious necessity to ensure sufficient cash inflow to the National Treasury, withholding agents shall file BIR Monthly Remittance Form (BIR Form No. 0619E and/or 0619F) every tenth (10th) day of the following month when the withholding is made, regardless of the amount withheld. For withholding agents using EFPS facility, the due date is on the fifteenth (15th) day of the following month. Withholding agents with zero remittance are still required to use and file the same form.

In the case of sale of shares of stocks not traded thru a local stock exchange and sale of real property considered as capital asset, the filing and payment of the tax due thereon shall be made within thirty (30) days after the sale or disposition using BIR Form Nos. 1707 and 1706, respectively. For sale of real property considered as ordinary asset, the remittance of tax withheld shall be made on or before the tenth (10th) day following the month of transaction using BIR Form No. 1606.

(B) Withholding Tax Statement for Taxes Withheld — Every payor required to deduct and withhold taxes under this subsection shall furnish each payee, a withholding tax statement, in triplicate, within twenty (20) days from the close of the quarter. The prescribed form (BIR Form No. 2307 for creditable withholding tax and BIR Form 2306 for final withholding tax) shall be used, showing the monthly income payments made, the quarterly total, and the amount of taxes withheld. Provided, however, that upon request of the payee, the payor must furnish such statement, simultaneously with the income payment. (Emphasis supplied)

Based on the foregoing, the appropriate creditable withholding tax, in the case of HDMF grant or release of housing loans, shall be withheld upon release or receipt of the loan and should be remitted based on the deadline provided under the above quoted provisions of RR No. 2-98, as amended. The execution of a Contract to Sell by a

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developer in favor of a client/unit purchaser does not vest on the latter title over the subject property. Likewise, the execution of a Deed of Assignment by a developer in favor of HDMF, of the property subject to said Contract to Sell, does not vest title to the HDMF nor to a client/unit purchaser, since the purpose of executing said deed and annotating the same in the title is just to secure the housing loan contracted by a client/unit purchaser with HDMF. Thus, the execution by T-Mar Industries, Inc. of a Contract to Sell in favor of a client/unit purchaser and subsequently its execution of a Deed of Assignment in favor of HDMF, in order to secure the housing loan of a client/unit purchaser, are not subject to the CWT under Section 2.57.2 (F) of RR No. 2-98, implementing Section 57 (B) of the National Internal Revenue Code of 1997, as amended, nor to the DST under Section 196 of the same Code. However, the notarial acknowledgements of both documents are subject to the DST under Section 188 [2] of the same Code.

Moreover, in case of sale of real property paid under installment payment or deferred payment basis, the payment of the documentary stamp tax (DST) imposed under Section 196 of the National Internal Revenue Code of 1997, as amended, accrues only upon the execution of the Deed of Absolute Sale but the basis for the imposition thereof shall be the gross selling price or fair market value of the property, whichever is higher, at the time of the execution of the Contract to Sell in accordance with RR No. 17-2003 dated March 31, 2003.

Finally, in the case of sale of property on installment basis or deferred payment basis where the Contract to Sell is always executed before the execution of the Deed of Sale, the said Contract to Sell must be attached to the Deed of Absolute Sale executed upon completion of the payments and the duly notarized original duplicate copy of both documents must be presented to the RDO having jurisdiction of the place where the property is located for validation of the correctness of payment of all applicable taxes before the issuance of CAR/TCL.

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 the ruling shall be considered null and void.

Very truly yours,

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

Footnotes

1. As renumbered by RR No. 11-2018 dated January 31, 2018 (Amending Certain Provisions of Revenue Regulations No. 2-98, as Amended, to Implement Further Amendments Introduced by Republic Act No. 10963, Otherwise Known as the "Tax Reform for Acceleration and Inclusion (TRAIN)" Law, Relative to Withholding of Income Tax).

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2. Republic Act (RA) No. 10963 increased the DST from P15.00 to P30.00 effective January 01, 2018.

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