May 15, 2018

BIR RULING NO. 815-18

Sec. 109 (P), * Tax Code; RR 16-2005,
16-2011, 3-2012; 000-00

AAA and BBB

_____

_____

Dear AAA and BBB,

This refers to your letter dated August 26, 2013 requesting for a ruling confirming your opinion that the sale to you by **SM DEVELOPMENT CORP. (SMDC)** is exempt from value-added tax (VAT) pursuant to Section 109 (1) (P) of the Tax Code of 1997, as amended.

Documents submitted show that on April 2, 2012, a Contract to Sell was executed by and between you and SMDC over one (1) condominium unit more particularly described as Unit No. _____ situated at the _____ in Makati City. The gross selling price for the condominium unit is pegged at PhP_____. However, after applying the discount, the net selling price is reduced to PhP_____.

In reply, please be informed that Section 2 of Revenue Regulations (RR) No. 16-2011, amending Section 4.106.3 of RR No. 16-2005, and implementing Section 109 (1) (P) of the Tax Code of 1997, as amended, exempts from VAT the sale of properties held primarily for sale to customers with a selling price not exceeding the thresholds of P1,919,500.00 on sale of residential lots, and P3,199,200.00 for sale of house and lot and other residential dwellings —

> *"**SECTION 2.** **Sale of Real Properties**. — Pertinent portions of Section 4.106-3 of Revenue Regulations No. 16-2005, as amended is hereby further amended to read as follows:*
>
> ***Section 4.106-3.** **Sale of Real Properties**. — Sale of real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business of the seller shall be subject to VAT.*
>
> *Sale of residential lot with gross selling price exceeding P1,919,500.00, residential house and lot or other residential dwellings with gross selling price exceeding P3,199,200.00, where the instrument of sale (whether the instrument is nominated as a deed of absolute sale, deed of conditional sale or otherwise) is*

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executed on or after Nov. 1, 2005, shall be subject to ten percent (10%) output VAT, and starting Feb. 1, 2006, to twelve percent (12%) output VAT.

xxx xxx xxx"

Neither the Contract Unit Price in the amount of PhP_____ nor the Net Selling Price after discount in the amount of PhP2_____ exceed the VAT-exempt threshold of PhP3,199,200 for the sale of "other residential dwellings" under Section 109 (1) (P) of the Tax Code, as amended. Such being the case, the sale by SMDC of that one (1) condominium unit at the _____ in Makati City is exempt from VAT.

However, the VAT exemption does not cover the sale of the parking lot allotted to the condominium unit as provided in RR No. 16-2005 otherwise known as the "Consolidated VAT Regulations of 2005," as amended by RR No. 13-2012. Section 4.109-1 (B) (1) (p) of RR No. 16-2005 provides:

"*SEC. 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 of VAT (input tax) on purchases.*

The person making the exempt sale of goods, properties or services shall not bill any output tax to his customers because the said transaction is not subject to VAT.

(B) ***Exempt transactions****. —*

(1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from VAT:

xxx xxx xxx

(p) The following sales of real properties are exempt from VAT, namely: . . .

(4) x x x

If two or more adjacent residential lots, house and lots or other residential dwellings are sold or disposed in favor of one buyer from the same seller, for the purpose of utilizing the lots, house and lots or other residential dwellings as one residential area, the sale shall be exempt from VAT only if the aggregate value of the said properties do not exceed P1,919,500.00 for residential lots, and P3,199,200.00 for residential house and lots or other residential dwellings. Adjacent residential lots, house and

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lots or other residential dwellings although covered by separate titles and/or separate tax declarations, when sold or disposed to one and the same buyer, whether covered by one or separate Deed/s of Conveyance, shall be presumed as a sale of one residential lot, house and lot or residential dwelling.

This however, does not include the sale of parking lot which may or may not be included in the sale of condominium units. The sale of parking lots in a condominium is a separate and distinct transaction and is not covered by the rules on threshold amount not being a residential lot, house & lot or a residential dwelling, thus, should be subject to VAT regardless of amount of selling price. (Underlining ours.)

xxx xxx xxx"

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 ruling shall be considered null and void.

Very truly yours,

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

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