June 6, 2018

BIR RULING NO. 972-18

Section 22 (B) of the National Internal Revenue Code of 1997, as amended; Revenue Regulations No. 10-2012; BIR Ruling No. 263-2013

New Creation 101 Realty and Development Corp.
1915 Capulong St. cor. Juan Luna St., Tondo, Manila

Attention: *AAA*

Gentlemen :

This refers to your letter dated May 28, 2018, requesting for a ruling on whether or not the unregistered Amended Joint Venture Agreement dated December 15, 2017 executed by and between **New Creation 101 Realty and Development Corp.** (successor-in-interest of Villa Crista Monte Realty and Development, Inc.) as residential subdivision developer and **Matimyas, Inc.** as the landowner, is exempt from tax.

In reply, please be informed that Section 3 of Revenue Regulations (RR) No. 10-2012, implementing Section 22 (B) of the National Internal Revenue Code of 1997, provides that:

> *"SEC. 3. Joint Ventures Not Taxable as Corporations. — A joint venture or consortium formed for the purpose of undertaking construction projects which is not considered as corporation under Section 22 of the NIRC of 1997 as amended, should be:*
>
> *(1) for the undertaking of a construction project; and*
>
> *(2) should involve joining or pooling of resources by licensed local contractors that is, licensed as general contractor by the Philippine Contractors Accreditation Board (PCAB) of the Department of Trade and Industry (DTI);*
>
> *(3) the local contractors are engaged in construction business; and*
>
> *(4) the Joint Venture itself must likewise be duly licensed as such by the Philippine Contractors Accreditation Board (PCAB) of the*

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Department of Trade and Industry (DTI).

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Absent any one of the aforesaid requirements, the joint venture or consortium formed for the purpose of undertaking construction projects shall be considered as taxable corporations. In addition, the tax-exempt joint venture or consortium as herein defined shall not include those who are mere suppliers of goods, services or capital to a construction project."

Indubitably, to be a tax exempt Joint Venture undertaking a construction project, it must satisfy or meet the above conditions. However, in this case, there were no evidence submitted to prove that New Creation 101 Realty and Development Corp. and Matimyas, Inc., are duly licensed as general contractors by the Philippine Contractors Accreditation Board (PCAB) of the Department of Trade and Industry (DTI). Also, no proof was submitted that the Joint Venture itself is duly licensed as such by the PCAB of the DTI.

In view thereof, the unregistered Amended Joint Venture Agreement dated December 15, 2017 executed by and between New Creation 101 Realty and Development Corp. as residential subdivision developer and Matimyas, Inc. as the landowner, is not covered by Section 3 of RR No. 10-2012 and, as such, is taxable as a corporation.

Moreover, the transfer of the developed lots from the joint venture to New Creation 101 Realty and Development Corp. shall be subject to ordinary income tax on the part of New Creation 101 Realty and Development Corp. based on the current fair market value of the developed lots it received less the costs it actually, directly and exclusively incurred for the project.

Furthermore, the transfer of the developed lots from the joint venture to Matimyas, Inc. shall be subject to ordinary income tax on the part of Matimyas, Inc. based on the current fair market value of the developed lots it received less the fair market value of the property contributed to the joint venture.

Lastly, their subsequent sale, by themselves directly or indirectly (by trust or agency), of the developed lots received shall be subject to ordinary income tax, creditable withholding tax, value-added tax, and documentary stamp tax.

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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