June 11, 2018

BIR RULING NO. 987-18

Section 105, RA 8424, as amended; RR No. 16-2005, as amended RMC No. 65-2012

Soho Central Condominium Corporation
748 Shaw Blvd. Corner Mayflower St.,
Greenfield District, Mandaluyong, 1552

Attn: *AAA*

Gentlemen :

This refers to your letter received by this office on June 17, 2014 inquiring whether real property taxes paid to a condominium corporation is subject to the 12% value added tax (VAT) imposed under Section 105 of the National Internal Revenue Code of 1997, as amended, as reiterated in Revenue Memorandum Circular (RMC) No. 65-2012.

In reply, please be informed that real property taxes imposed by the local government units on the individual units in a condominium development shall not be subject to the 12% VAT since they do not form part of the "gross receipts" of the condominium corporation.

"Gross receipts" under Sec. 4.108-4 of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 04-2007, is defined as follows:

> *"SEC. 4.108-4. Definition of Gross Receipts. — 'Gross receipts' refers to the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits applied as payments for services rendered and advance payments actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the VAT, except those amounts earmarked for payment to unrelated third (3rd) party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor. A payment is a payment to a third (3rd) party if the same is made to settle an obligation of another person, e.g., customer or client, to the said third party, which obligation is evidenced by the sales invoice/official receipt issued by said*

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third party to the obligor/debtor (e.g., customer or client of the payor of the obligation).

An advance payment is an advance payment on behalf of another if the same is paid to a third (3rd) party for a present or future obligation of said another party which obligation is evidenced by a sales invoice/official receipt issued by the obligee/creditor to the obligor/debtor (i.e., the aforementioned "another party") for the sale of goods or services by the former to the latter.

For this purpose, 'unrelated party' shall not include taxpayer's employees, partners, affiliates (parent, subsidiary and other related companies), relatives by consanguinity or affinity within the fourth (4th) civil degree, and trust fund where the taxpayer is the trustor, trustee or beneficiary, even if covered by an agreement to the contrary. 'Constructive receipt' occurs when the money consideration or its equivalent is placed at the control of the person who rendered the service without restrictions by the payor. The following are examples of constructive receipts:

(1.) deposits in banks which are made available to the seller of services without restrictions;

(2.) issuance by the debtor of a notice to offset any debt or obligation and acceptance thereof by the seller as payment for services rendered; and

(3.) transfer of the amounts retained by the payor to the account of the contractor."

The above definition excludes from the purview of gross receipts any amount that is due to a payee different from the receiving party to settle an obligation of another person. Thus, real property taxes being paid to the local government units to settle the real property tax liabilities of the individual unit owners, not being part of the condominium corporation's gross receipts, are not subject to VAT.

However, real property taxes imposed by the local government units on the condominium corporation's common areas, being part of the gross receipts of the condominium corporation are subject to the 12% VAT imposed under Section 105 of the National Internal Revenue Code of 1997, as amended, as reiterated in RMC 65-2012.

Very truly yours,

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

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