REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Secs. 27(D)(5), 39(A)(1) & 196, NIRC of 1997, as amended
BIR Ruling No. 301-18
OT-369-2021
OCT 04 2021

REV. FR. ROY B. CRUCERO
Head, Properties Administration Department
Roman Catholic Bishop of Antipolo, Inc.
Daang Bakal Road, Brgy. Dela Paz
Antipolo City, 1870 Rizal

Dear Fr. Crucero,

This refers to your letter dated October 20, 2017 requesting for a ruling that the sale of a parcel of land by the National Housing Authority (NHA) to the Roman Catholic Bishop of Antipolo Inc. is exempt from taxes.

Documents show that the Roman Catholic Bishop of Antipolo Inc. is a religious organization duly organized and existing in accordance with the laws of the Philippines with principal address at Daang Bakal Road, Barangay Dela Paz, Antipolo City. It is registered with the Securities and Exchange Commission (SEC) under SEC Registration No. on September 1, 1983 as a corporation sole.

On the other hand, the NHA is a government corporation duly organized by virtue of Presidential Decree (P.D.) No. 757 dated July 31, 1975, as amended, with principal office address at NHA Building, Quezon Memorial Elliptical Road, Diliman 1100, Quezon City.

On September 26, 2013, a Deed of Absolute Sale was executed by and between the NHA and the Roman Catholic Bishop of Antipolo Inc. whereby the former conveyed a parcel of land situated in San Andres, Manggahan Floodway, Cainta, Rizal, identified as Lot 10, Block 22 PCS 32259, with an area of 365 sq. m.. more or less, covered by Transfer Certificate of Title (TCT) No. of the Register of Deeds for the Province of Rizal ("Subject Property") subject to the burdens, restrictions and encumbrances as follows:

"1. That the above-described parcel of land shall be used exclusively by the VENDEE for its institutional operations;
2. The VENDEE shall pay all the expenses for the preparation, execution, notarization, and registration of the Deed of Absolute Sale and such other documents as may be necessary for the issuance of the corresponding Transfer Certificate of Title."

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The Divine Mercy Chapel now stands on the subject property and is being used for religious purposes by St. Francis of Assissi Parish in Cainta, Rizal.

In reply, please be informed that in cases of sale, exchange or disposition of lands and/or buildings owned by a corporation, which are not actually used in its business and are treated as capital assets, a final tax of six percent (6%) is imposed on the gain presumed to have been realized on the said transactions, based on the gross selling price or fair market value as determined in accordance with Section 6(E) of the National Internal Revenue Code of 1997, as amended (Tax Code), whichever is higher, of such lands and/or buildings.[1] However, when the lands and/or buildings subject of sale, exchange or disposition are actually used in the business of a corporation and are classified as ordinary assets, the transaction is not subject to capital gains tax, but to creditable withholding tax pursuant to Revenue Regulations No. 6-2001, as amended.

In BIR Ruling No. 301-18 dated March 2, 2018, this office had the occasion to rule that only the sale of socialized housing as defined under Section 3 (r) of Republic Act (RA) No. 7279 comes within the purview of tax exempt transactions of the NHA, viz:

> *"In reply, please be informed that this office affirms its position in BIR Ruling No. 433-2012 that the tax exemption granted to the NHA under Section 19 of RA No. 7279 must be interpreted in relation to its mandate of providing socialized housing for the underprivileged and homeless. We note that the rationale for not imposing the taxes on socialized housing projects is to encourage greater private sector's participation in socialized housing and further reduce the cost of housing units for the benefit of the underprivileged and homeless (Section 20, Republic Act [RA] No. 7279). The sale of commercial lots to persons other than the underprivileged and homeless citizens, who are the target beneficiaries of the law, does not promote the objective of the law. Hence, only the sale of socialized housing as defined under Section 3 (r) of the same Act comes within the purview of tax exempt transactions of the NHA, to wit:*
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> > *'(r) "Socialized housing" refers to housing programs and projects covering houses and lots or homelots only undertaken by the Government or the private sector for the underprivileged and homeless citizens which shall include sites and services development, long-term financing, liberalized terms on interest payments, and such other benefits in accordance with the provisions of this Act;'*
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> *It bears stressing that tax exemptions are construed in strictissimi juris against the taxpayer and liberally in favor of the taxing authority. The basic principle in the construction of laws granting tax exemptions has been very stable. He who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the Legislature intended to exempt him by words too plain to be beyond doubt or mistake (City of Iloilo, et al. vs. Smart Communications, Inc., G.R. No. 167260, dated February 27, 2009)."*

[1] Section 27(D)(5), Tax Code

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Since the sale transaction is not in connection with NHA's mandate of providing socialized housing for the underprivileged and homeless, the transaction is subject to the 6% creditable withholding tax. The burden of paying the tax is imposed upon the buyer in accordance with Section 3 of Revenue Regulations No. 6-2001, to wit:

> "SECTION 3. Revised Rates of Creditable Withholding Tax. - Section 2.57.2 of Revenue Regulations No. 2-98, as amended, is hereby further amended to read as follows:
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> x x x x x x x x x
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> SECTION 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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> x x x x x x x x x
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> (J) 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 — A creditable withholding tax based on the gross selling price/total amount of consideration or the fair market value determined in accordance with Section 6(E) of the Code, whichever is higher, paid to the seller/owner for the sale, transfer or exchange of real property, other than capital asset, **shall be imposed upon the withholding agent/buyer**, in accordance with the following schedule:
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> x x x x x x x x x
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> C. Where the seller/transferor is not habitually engaged in the real estate business - 6.0%" (Emphasis provided.)

In view of the foregoing, the sale of the Subject Property by the NHA to the Roman Catholic Bishop of Antipolo Inc. is subject to the 6% creditable withholding tax to be paid by the latter being the buyer. Moreover, since the above sale is not intended for socialized housing, the same is subject to the documentary stamp tax imposed under Section 196 of the Tax Code.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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