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

Sections 24 (D) (1), 27 (D) (5), 204 (C) and 229, Tax Code.
RMC No. 43-11; RR No. 2-1998; RR No. 09-2012
CT-296-2022
2022

HOME DEVELOPMENT MUTUAL FUND
Gaisano City Mall
Araneta St., Singcang
Bacolod City

Attention: **MR. WILMER B. LIRAZAN**
Department Manager III

ATTY. GILBERT FRANCIS A. UY III
Head, Bacolod Housing Business Center

Gentlemen:

This refers to your request on behalf of Home Development Mutual Fund (the "**Fund**") for: (1) reconsideration of Memorandum No. 18-2015 dated December 16, 2015 issued by then Commissioner Kim S. Jacinto-Henares, RE: "*Home Development Mutual Fund (Pag-IBIG Fund) request for exemption from Creditable Withholding Tax (CWT) on the sale of Pag-Ibig Fund acquired properties in Panay Island and for refund of all payments made from time of approval of RMC No. 43-2011;*" and (2) refund of all the payments it made from the time of the approval of Revenue Memorandum Circular ("**RMC**") No. 43-2011 (collectively, the "**Request**").

Background

1. The Fund requested for tax exemption from payment of creditable withholding tax ("**CWT**")/capital gains tax ("**CGT**") on the sale of its acquired real properties where title is already consolidated in the name of the Fund as provided under Section 19 of Republic Act No. 9679 as circularized by RMC No. 43-2011[1] and RMC No. 6-2012[2].

2. On December 16, 2015, Commissioner Kim S. Jacinto-Henares, the then Commissioner ("**CIR**") of the Bureau of Internal Revenue ("**Bureau**") issued Memorandum No. 18-2015 ("**Memorandum**") wherein it ruled that the sale of real properties of defaulting borrowers-members that were foreclosed by the Fund is

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[1] Circularizing Section 19 of Republic Act No. 9679 known as the "Human Development Mutual Fund Law of 2009," dated September 28, 2011.
[2] Circularizing Section 19 of Republic Act No. 9679 known as the "Home Development Mutual Fund Law of 2009," dated February 15, 2012

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subject to: (a) CGT imposed under Sections 24 (D) (1) and 27 (D) (5) in relation to Section 57 of the National Internal Revenue Code of 1997, as amended ("**Tax Code**") and Revenue Regulations ("**RR**") No. 2-98, as amended, if such property is a capital asset, or CWT imposed under Section 57 of the Tax Code and RR No. 2-1998, as amended, if the same is an ordinary asset; (b) value added tax ("**VAT**") imposed under Section 106 of the Tax Code and RR No. 16-2005, if the property is an ordinary asset; and (c) documentary stamp tax ("**DST**") imposed under Section 196 of the Tax Code, to *wit*:

> *"It is well to note that while it is the Pag-IBIG Fund which sells the real property in a public auction to enforce payment of unpaid loans from its borrowers-members, the CGT is imposed upon capital gains presumed to have been realized by the owner of the property from the sale, exchange, or other disposition of the real property. In short, the PAGIBIG Fund, in selling the foreclosed real properties during public auctions, only acts as the agent of the borrowers-members, and, thus, is the one obligated to ensure collection and payment of the taxes due on the sale thereof. Hence, the Pag-IBIG Fund cannot invoke its tax exemption under Section 19 of RA 9679 to withhold and collect the taxes due on the sale of its acquired real properties during public auctions..."*

3. In relation to the Memorandum, on April 2, 2019, Atty. Gilbert Francis A. Uy III, Head of the Fund, requested for reconsideration and clarified that the subject foreclosed real properties were already acquired assets of the Fund ("**Acquired Properties**"). As such, in selling these Acquired Properties, the Fund was not acting as agent of the borrower-members, but as already the owner of the same. Also, considering that the foreclosure proceeding has long been completed and the redemption period has already expired, the Fund is the absolute owner of the properties. Further, the Fund was selling the Acquired Properties not to enforce the payment from its member-borrower but as an owner of the same.

In reply, please be informed that the Fund is a government-owned and controlled corporation ("**GOCC**") created under Republic Act ("**RA**") No. 9679,[3] which is involved in, among others, extending housing loans to Fund members.[4]

Having this on regard, in the event of non-payment by a borrower-member of its obligations, the Fund is granted a right to foreclose the real properties of such defaulting borrower-mortgagor, auction the same publicly, and apply the proceeds to the debt of the same, to *wit*:

> *"SECTION 13. Powers and Functions of the Fund. — The Fund shall have the powers and functions specified in this Act and the usual corporate powers*
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> *xxx xxx xxx*
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> <u>*(q) To ensure the collection and recovery of all indebtedness, liabilities and/or accountabilities, including unpaid contributions in favor of the Fund arising from any cause or source or whatsoever, due from all obligors, whether public or private;*</u>

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[3] Republic Act No. 9679, An Act Further Strengthening the Home Development Mutual Fund, and for Other Purposes, June 1, 2009.
[4] Ibid.

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to demand pay · · of the obligations referred to herein, and in the event of failure or refusal of th · o ligor or debtor to comply with the demand, to initiate or institute the necessary · p oper actions or suits, criminal, civil, administrative, or otherwise, before the cou ·s, tribunals, commissions, boards or bodies of proper jurisdiction: Provided, howeve That the Fund may compromise or release, in whole or in part, any interest, pe al y or civil liability to the Fund in connection with the collection of contributions · nd the lending operations of the Fund, under such terms and conditions as p es·ribed by the Board of Trustees: Provided, further, That the Board may, upon rec mmendation of the Chief Executive Officer, deputize any member of the Fund's leg l s aff to act as special sheriff in foreclosure cases, in the sale or attachment of he debtor's properties, and in the enforcement of court writs and processes in ca es involving the Fund. The special sheriff of the Fund shall make a report to the pr pe court after any action taken by him, which shall treat such action as if it were an ·ct of its own sheriffs in all respects."

Fund Circular N ·. 424[5] ("**Circular**") provides the procedure or guidelines for the recovery of the Fun l's investment from housing loan accounts secured by real estate mortgage that are in lef ult through extrajudicial foreclosure. Under RA No. 9679 and the Circular, the Fund ma p rticipate in the public auction.

It is worthy t n te that there are two (2) transactions involved in the event the Fund opt to collect the obl gations of the borrower-mortgagor through extrajudicial foreclosure of mortgaged real proper ie·.

1. Sale of fc rec losed properties of the borrower-mortgagor, wherein the proceeds r ce ved from the highest bidder will be applied to the debt of the borrow r-mortgagor ("**Sale of Foreclosed Properties**"); and

2. Sale of pr pe ties acquired by the Fund during foreclosure of properties (The Fund be ng the highest bidder) to a third party via a public auction ("**Sale of A cq ired Properties**").

1. Sale of Foreclose P operties

In the event th t the Fund participates in a bid and is the highest bidder, it shall pay the Sheriff's percenta e fees, secure the certificate of sale and register the Certificate of Sale ("**COS**") with the cor ce ned Registry of Deeds within sixty (60) calendar days from receipt of the said COS.[6]

Section II (E) of the Circular provides that the borrower-mortgagor, his successor/s-in-interest or any judi ia creditor, or any person having a lien on the property mortgaged, whether natural or jur di al person, may redeem the foreclosed property within one (1) year from the date of regis ration of the COS by paying the redemption price in accordance with Item No. I.C.15 of the Ci cular, to *wit*:

"II. SPEC F PROVISIONS

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[5] April 16, 2019. This circ ar mended HDMF Circular No. 304 dated March 23, 2012.
[6] Section I (D) (1) of Circu ar ·. 424.

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(E) REDEMPTION OF THE FORECLOSED PROPERTY

In all cases in which an extrajudicial foreclosure sale has been made under a special power of attorney, the borrower-mortgagor, his successor/s-in-interest or any judicial creditor or judgment creditor of said borrower-creditor, or any person having a lien on the property subsequent to the mortgage under which the property has been sold, may redeem the foreclosed property within a period of one (1) year from the date of registration of the COS by paying the redemption price in accordance with the provision of Item No. I.C.15 hereof." (Underscoring supplied)

In the event that the borrower-mortgagor, his successor/s-in-interest or any judicial creditor, or any person having a lien on the property mortgaged, failed to redeem the foreclosed real properties within the redemption period, the title of the said properties will be consolidated in the name of the Fund. Upon consolidation of title, the respective tax declarations covering the subject properties shall also be consolidated in the name of the Fund.[7]

When it comes to payment of taxes, the Fund should be guided by Section I (G) of the Circular and Section 2 of RR No. 09-2012:[8]

Circular No. 424

"I. GENERAL PROVISIONS

G. CONSOLIDATION OF TITLE

1 The Fund shall comply secure the following requirements:
1.1 Pay the Capital Gains Tax (CGT);
1.2 Pay the Documentary Stamp Tax (DST);
1.3 Secure Certificate Authorizing Registration (CAR) from the Bureau of Internal Revenue (BIR);
1.4 Secure separate certified true copies of the Tax Declaration of Land and Building from the City or Municipal Assessor's Office;
1.5 Secure Tax Clearance by paying the Real Estate Tax (RET) and Transfer Fee at the City/Municipal Treasurer's Office."

Revenue Regulations No. 9-2012

"SECTION 2. Taxability of Owner's/Mortgagor's Failure to Redeem His Foreclosed/Auctioned Off Property/ies within the Applicable Statutory Redemption Period. -- In case of non-redemption of properties sold during involuntary sales, regardless of the type of proceedings and personality of mortgagees/selling persons or entities, the Capital Gains Tax (CGT) imposed under Sections 24 (D) (1) and 27 (D) (5) of the Tax Code, in relation to Section 57 of the Tax Code and RR 2-98, as amended, if the property is a capital asset; or the Creditable Withholding Tax (CWT) imposed under Section 57 and RR 2-98, as amended, if the property is an ordinary asset; the Value Added Tax (VAT) imposed under Section 106 of the Tax Code and RR 16-2005, as amended; and the Documentary Stamp Tax (DST) imposed under Section 196 of the Tax Code shall become due.

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[7] Section I (G) of Circular No. 424.
[8] Implementing Sections 24 (D) (1), 27 (D) (5), 57, 106 and 196 of the National Internal Revenue Code of 1997 on Non-Redemption of Properties Sold During Involuntary Sales, May 31, 2012.

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*The bu[illegible]er of the subject property, **who is deemed to have withheld the CGT or CWT due fr[illegible]om the sale**, shall then file the CGT return and **remit the said tax** to the Bureau wi[illegible]thin thirty (30) days from the expiration of the applicable statutory redemption pe[illegible]riod, or file the CWT return and **remit the said tax** to the Bureau within ten (10) da[illegible]ys following the end of the month after expiration of the applicable statutory reden[illegible]tion period, provided that, for taxes withheld in December, the CWT return shall be fil[illegible]ed and the taxes remitted to the Bureau on or before January 15 of the following ye[illegible]ar.* (Underscoring and emphasis supplied)

Based on the fo[illegible]re-cited provisions, the buyer of the real property foreclosed, in case of non-redemption of pr[illegible]operties sold during involuntary sales (i.e., foreclosure of mortgaged properties), who is de[illegible]emed to have withheld the CGT or CWT due from the sale, shall file the CGT return and remit the CGT to the Bureau within thirty (30) days from the expiration of the applicable statutory r[illegible]edemption period. If the subject property is an ordinary asset, the buyer shall file the CWT re[illegible]turn and remit the CWT within ten (10) days following the end of the month after expiration of the applicable statutory redemption period.

If the subject property sold is under the circumstances which warrant the imposition of VAT, the same must be paid to the BIR by the VAT-registered borrower-mortgagor on or before the 20[th] day o[illegible] 25[th] day, whichever is applicable, of the month following the month when the right of rede[illegible]mption prescribes.

Moreover, the D[illegible]T return shall be filed and paid to the BIR within five (5) days after the close of the month af[illegible]ter the lapse of the applicable redemption period.

Please note th[illegible]at the CGT/CWT/VAT and DST shall be based on the higher of the consideration (bid pri[illegible]ce of the highest bidder) or the fair market value or zonal value as determined in accor[illegible]dance with Section 6(E) of the Tax Code.

This Office is of the opinion that this position is not in conflict with Section 19 of RA No. 9679, as impleme[illegible]nted by Section 11 of its implementing rules and regulations ("**IRR**"), which provides that [illegible]he Fund and all its assets and properties are exempt from any tax, assessment, fee, charg[illegible]e or customs or import duty, to *wit:*

"SECTION 19. Ex[illegible]emption from Tax, Legal Process and Lien. — All laws to the contrary notwit[illegible]hstanding, the Fund and all its assets and properties, all contributions collected and a[illegible]ll accruals thereto and income or investment earnings therefrom, as well as all supp[illegible]lies, equipment, papers or documents shall be exempt from any tax, assessment, fee, charge, or customs or import duty; and all benefit payments made by the Pag-IBIG F[illegible]und shall likewise be exempt from all kinds of taxes, fees or charges, and shall not be liable to attachments, garnishments, levy or seizure by or under any legal or equitable process whatsoever, either before or after receipt by the person or persons entitled thereto, except to pay any debt of the member to the Fund. No tax measure of wh[illegible]atever nature enacted shall apply to the Fund, unless it expressly revokes the dec[illegible]lared policy of the State in Section 2 hereof granting tax exemption to the Fund. An[illegible]y tax assessment against the Fund shall be null and void." (Underscoring s[illegible]upplied)

Following the [illegible]cited Circular and RR No. 9-2012, and to ensure collection and payment of taxes due on the sale, the Fund, which is the buyer (assuming that it was the highest bidder), and deeme[illegible]d to have withheld the taxes due from the sale, must file the necessary return and remit the [illegible]taxes to the Bureau within the prescribed period.

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Clearly, with the said procedure, the Fund merely acts as an agent of the borrowers-mortgagors. Thus, it cannot invoke its tax exemption under Section 19 of RA No. 9679 in order not to withhold and collect the taxes due on the Sale of the Foreclosed Properties during public auctions. It must be emphasized that the Fund is not the entity liable to pay tax, but it is required to withhold and remit to the Bureau the withheld taxes relating to the sale of the Foreclosed Properties.

2. *Sale of Acquired Properties*

Sale of Acquired Properties to a third party via a public auction is governed by Fund Circular No. 428.[9]

Pursuant to Section 19 of RA No. 9679 as circularized by RMC No. 43-2011 and RMC No. 6-2012, the Fund, and its assets and properties, including, for the avoidance of doubt, the Acquired Properties, are exempt from any tax, assessment, fee, charge, or customs or import duty, to *wit*:

> *"SECTION 19. Exemption from Tax, Legal Process and Lien. — <u>All laws to the contrary notwithstanding, the Fund and all its assets and properties,</u> all contributions collected and all accruals thereto and income or investment earnings therefrom, as well as all supplies, equipment, papers or documents <u>shall be exempt from any tax, assessment, fee, charge, or customs or import duty</u>; and all benefit payments made by the Pag-IBIG Fund shall likewise be exempt from all kinds of taxes, fees or charges, and shall not be liable to attachments, garnishments, levy or seizure by or under any legal or equitable process whatsoever, either before or after receipt by the person or persons entitled thereto, except to pay any debt of the member to the Fund. <u>No tax measure of whatever nature enacted shall apply to the Fund, unless it expressly revokes the declared policy of the State in Section 2 hereof granting tax exemption to the Fund. Any tax assessment against the Fund shall be null and void.</u>"* (Underscoring supplied)

In view of the foregoing, this Office hereby confirms that the sale by the Fund of the Acquired Properties are exempt from any tax, assessment, fee, or charges without prejudice to the existing laws, rules and regulations. Take note however, that the DST relating to such sale shall be paid by the third-party buyer pursuant to Section 173 of the Tax Code.

Moreover, the third-party buyer of the Acquired Properties shall be responsible for the transfer of the relevant title in his favor and shall shoulder the corresponding transfer costs, and other related expenses pursuant to Section VI (3.2) of Circular No. 428, to *wit*:

> *"VI MECHANICS*
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> *xxx xxx xxx*
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> *3 Documentation on the Sale of Pag-IBIG Fund Acquired Assets*
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> *xxx xxx xxx*

[9] Omnibus Guidelines on the Sale of Pag-IBIG Fund Real and Other Properties Acquired, July 31, 2019.

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3.2 A D ea of Absolute Sale shall be issued to the buyer upon full payment of the ur hase price. Said buyer shall be responsible for the transfer of the titl in is favor and shall shoulder the corresponding transfer costs, and oth r lated expenses." (Underscoring supplied)

With regard to th request for refund of all the payments it made from the time of the approval of RMC N . 43-2011, please note that Sections 204 (C) and 229 of the Tax Code provides that no cre lit r refund of taxes or penalties shall be allowed unless the taxpayer files in writing with he Commissioner a claim for credit or refund within two (2) years after the payment of the t x r penalty, to *wit:*

"SEC. 204. Au ty of the Commissioner to Compromise, Abate and Refund or Credit Taxes. - h Commissioner may

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(C) Credit or r fu d taxes erroneously or illegally received or penalties illegally imposed without au hority, refund the value of internal revenue stamps when they are returned in go d ondition by the purchases, and, in his discretion, redeem or change unused ta ps that have been rendered unfit for use and refund their value upon proof of d str ction. No credit or refund of taxes or penalties shall be allowed unless the taxp ye files in writing with the Commissioner a claim for credit or refund within t o (2) years after the payment of the tax or penalty: Provided, however, That turn filed showing an overpayment shall be considered as a written claim fo cr dit or refund.

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SEC. 229. Rec ve y of Tax Erroneously or Illegally Collected. – No suit or proceeding shal b maintained in any court for the recovery of any national internal revenue tax her af er alleged to have been erroneously or illegally assessed or collected, or of ny penalty claimed to have been collected without authority, or of any sum allege t have been excessively or in any manner wrongfully collected, until a claim for ef nd or credit has been duly filed with the Commissioner: ...

In any case, no uc suit or proceeding shall be filed after the expiration of two (2) years from the te of payment of the tax or penalty regardless of any supervening cause that may is after payment..." (Underscoring supplied)

Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund. It bears stressing that in an administrative claim for refund, the same shall be filed with the C R within the prescribed period and supported by source documents required under exis ing laws and rules and regulations. Also, it is essential that an administrative claim be filed as a condition precedent in order for a judicial claim for refund to prosper.[10]

Actions for tax ref und or credit are in the nature of a claim for exemption. As such, the law is not only construed in *strictissimi juris* against the taxpayer, the pieces of evidence presented entitling a axpayer to an exemption must also be *strictissimi* scrutinized and duly proven. The burden is on the taxpayer to show that he has strictly complied with the

[10] Aeon Credit Service (hil ppines), Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9770 (Resolution), January 4, 20 1.

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conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented. They are not intended to be liberally construed.[11]

Accordingly, in the absence of proof that the Fund has filed with the CIR a claim for tax credit or refund within the two (2) year period as prescribed by law, the taxes it had paid can no longer be the subject of a refund or credit.[12]

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue
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Copy furnished:

MAHINARDO G. M ILIG
Regional Director
Revenue Region No. 1
Iloilo City

[11] Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 221694 (Notice), January 19, 2021.
[12] Revenue Memorandum Circular No. 017-2018, Amending RMC No. 89-2017 and Certain Provisions of RMC No. 54-2014 on Processing of Claims for Issuance of Tax Refund TCC in Relation to Amendments Made in NIRC of 1997, as Amended by RA No. 10963, February 27, 2018.