REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

27(D)(5); 39(A)(1). RR 7-2003
BIR Ruling No. 014-03; BIR Ruling No. 634-17; BIR Ruling No. 480-17; BIR Ruling No. 187-17
VAT-0404-2020
JUL 23 2020

TERENCIO R. YUMANG JR. & ASSOCIATES
Suite 1102, 11/F 139 Corporate Center, Valero Street
Salcedo Village, 1227 Makati City

Attention: **Atty. Agnes B. Santos**
Associate

Gentlemen:

This refers to your letter dated January 7, 2020 requesting on behalf of your client, Cleon Philippines Holdings Corporation ("Cleon" for brevity), for confirmation that the sale of real properties held by Cleon for investment purposes is subject to the 6% capital gains tax under Section 27(D)(5) and documentary stamp tax under Section 196, both of the Tax Code of 1997, as amended, but is not subject to value-added tax (VAT).

Based on your representations, as well as from the documents submitted, the facts are as follows:

1. Cleon was incorporated as a holding company and registered with the Securities and Exchange Commission (SEC) on January 25, 2016. It was also registered with the BIR on September 19, 2017 under Line of Business or as engaged in Financial Holding Company Activities.

2. Cleon was organized as a holding company pursuant to the purpose of the incorporators, and its primary purpose as originally provided in its Articles of Incorporation was – "to purchase, subscribe for, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal property of every kind and description including but not limited to land, buildings, condominium units, shares of stock, bond, debentures, notes, evidences of indebtedness, and other securities, contract or obligations of any corporation or corporations, associations, domestic or foreign, and to pay therefore, in whole or in part, in cash or by exchanging

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therefore stocks, bonds, or other evidences of indebtedness or securities on any other corporation and while the owner or holder of any such real property, stocks, bonds, debentures, notes, evidences of indebtedness or other securities, contracts, or obligations, to receive, collect and dispose of the interest, dividends and income arising from such property and to possess and exercise in respect thereof, all the rights, powers and privileges of ownership, including all voting power on any stocks so owned, provided, however, that nothing herein shall be construed to authorize the Corporation to engage in the business of an investment company or an investment house and without acting as broker/dealer of securities".

3. Sometime in 2017, Cleon purchased 25 parcels of adjacent lots with a total area of 54,598.17 square meters located at J.P. Rizal St., Barangays Vergara and Namayan, Mandaluyong City, for investment purposes and not for sale or for lease in the ordinary course of business. Consonant with Cleon's objective in acquiring the parcels of land for investment purposes, the said parcels of land was lodged under "Non-current Assets" caption of Cleon's Audited Financial Statement with the account title "Investment Property". These are the only real properties purchased and owned by Cleon up to the present, which it held for capital appreciation consonant with its nature as a holding company. Said properties remained idle and undeveloped and Cleon has remained non-operational and did not engage in any income-producing business activity from the time of its incorporation.

4. The 25 parcels of land are covered by the following Transfer Certificates of Title (TCT) No.

TCT No.	AREA in square meters
[redacted]	5,441.17
[redacted]	206
[redacted]	206
[redacted]	205
[redacted]	195
[redacted]	413
[redacted]	201
[redacted]	206
[redacted]	501
[redacted]	204
[redacted]	3,587
[redacted]	17,181
[redacted]	212
[redacted]	5,054
[redacted]	12,606
[redacted]	190
[redacted]	6,353

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[redacted]	224
[redacted]	224
[redacted]	219
[redacted]	202
[redacted]	150
[redacted]	204
[redacted]	207
[redacted]	207
	54,598.17

5. The issue is whether or not the subject properties are capital assets of Cleon.

In reply, please be informed that the term "capital asset" as negatively defined in Section 39(A)(1) of the Tax Code of 1997, as amended, means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property used in the trade or business, of a character which is subject to the allowance for depreciation provided in Subsection (F) of Section 34, or real property used in trade or business of the taxpayer.

An idle property may be classified as capital asset or ordinary asset. Revenue Regulations (RR) No. 7-2003, particularly Section 3(e) thereof, provides to wit:

> "**SEC. 3. GUIDELINES IN DETERMINING WHETHER A PARTICULAR REAL PROPERTY IS A CAPITAL ASSET OR ORDINARY ASSET.** –
>
> xxx xxx xxx
>
> e. Treatment of abandoned and idle real properties. – Real properties formerly forming part of the stock in trade of a taxpayer engaged in the real estate business, or formerly being used in the trade or business of a taxpayer engaged or not engaged in the real estate business, which were later on abandoned and became idle, shall continue to be treated as ordinary assets. Real property initially acquired by a taxpayer engaged in the real estate business shall not result in its conversion into a capital asset even if the same is subsequently abandoned or becomes idle.
>
> Provided however, that *properties classified as ordinary assets for being used in business by a taxpayer engaged in business other than real estate business as defined in Section 2(g) hereof are automatically converted into capital assets upon showing of proof that the same have*

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not been used in business for more than two (2) years prior to the consummation of the taxable transactions involving said properties. (Emphasis supplied)

Based on the above, an idle property classified as ordinary asset is automatically converted into capital asset upon showing of proof that the same has not been used in business for more than two (2) years prior to the consummation of the taxable transaction involving said properties. The automatic conversion of property into capital asset provided in RR No. 7-2003, however, is not necessary when the idle real property is considered capital asset from the moment it was acquired. The subject real properties were acquired in 2017 for investment purposes and recorded/reported by Cleon as capital assets. The properties were never used in the course of trade or business of Cleon, or depreciated for that purposes. No improvements were introduced to the real properties as certified by the City Assessor of Mandaluyong and Barangay Chairman of Vergara, Zone 26. More importantly, Cleon is not engaged in the real estate business, it did not operate from the time it was incorporated and thus, it has no income-generating activity.

In view of the foregoing, and considering that Cleon is a taxpayer not engaged in the real estate business, being not a real estate dealer, developer or lessor and was organized as a holding company; that the aforementioned properties have been idle and vacant (for more than two years) as shown, aside from the pictures submitted, by the Certifications of the City Assessor of Mandaluyong that there are no improvements erected on the land as well as the Certification of Barangay Chairman of Vergara, Zone 26 that the properties have no reported operation or commercial activity; and that the properties have been treated in the books of accounts and are reflected in the audited financial statement as investment properties and have not been used in the ordinary course of trade or business, it is the considered opinion of this Office that the real properties described above are classified as capital assets, the conveyance of which is subject to capital gains tax and documentary stamp tax. *(BIR Ruling Nos. 187-2017 dated April 17, 2017; 634-2017 dated December 19, 2017 and 480-2017 dated October 18, 2017)*

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,

CAESAR R. DULAY
Commissioner of Internal Revenue

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gps (cleon holdings)