Quezon City

Section 39 of the Tax Code of 1997, as amended; Revenue Regulations No. 7-2003
BIR Ruling No. 489-2020; BIR Ruling No. 404-2020; BIR Ruling No. 014-2003
VAT-334-2021
SEP 23 2021

STA. ANA PARK SQUARE HOLDINGS, INC.
23 E. Rodriguez Avenue, Dona Josefa
Quezon City 1113

Attention: **DEWEY YU**
President

Gentlemen:

This refers to your request for confirmation that the real properties owned by **Sta. Ana Park Square Holdings, Inc. ("Sta. Ana")** located at A.P. Reyes, Street, Brgy. Carmona, Makati City are classified as capital assets for taxation purposes.

Documents submitted disclosed that Sta. Ana is a *holding company* duly registered with Securities and Exchange Commission (SEC) under Company Registration No. A200117071 and with registered address at 23 E. Rodriguez Avenue, Dona Josefa, Quezon City 1113; that its primary purpose is to invest in, purchase, 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 shares of stock, bonds, debentures, notes, evidences of indebtedness and other securities or obligations of any other corporation or partnership or association, domestic or foreign, for whatever lawful purpose or purposes the same may have been organized and to exercise in respect thereof all the rights, powers and privileges of ownership, except management of funds, portfolio and similar assets of the managed corporation nor shall it engage in stock brokerage or dealership of securities; and that it is likewise registered with the Bureau of Internal Revenue (BIR) as a *financial holding company* under OCN , and Taxpayer Identification Number (TIN) with registration fee, income tax, value-added tax (VAT), and withholding tax as its tax types, with PSIC Code 6694.

Sta. Ana owns two parcels of land with an aggregate area of 40,000 square meters both located at A.P. Reyes, Street, Brgy. Carmona, Makati City, which are recorded in its Audited Financial Statements (AFS) as *"Investment Properties"* under the Non-Current Assets caption and more particularly described as follows:

Transfer Certificate of Title (TCT) No.	**Tax Declaration (TD) No.**	**Area (sq. m.)**
		6,225
		33,775

that of the above-described property covered by TCT No. with TD No. F-00790, a small portion thereof with an area of only 930 square meters out of a total of 33,775 square meters is being leased to Makati Development Corporation as a temporary staging and fabrication area since March 2017 and reported for income and VAT purposes and such corresponding taxes are paid and remitted to the BIR; that per Certification issued by the Assessment Department of the City of Makati, the above-mentioned properties have no buildings erected thereon; and that per Certification issued by Barangay Carmona, Makati City, the said properties have been idle for more than two (2) years and have not been used in trade or business by Sta. Ana.

In reply, please be informed that Section 39(A)(1) of the National Internal Revenue Code (Tax Code) of 1997, as amended, states:

> "*SEC. 39. Capital Gains and Losses. -*
>
> *(A) Definitions. - As used in this Title -*
>
> > *(1) Capital Assets. –* ***The term 'capital assets' 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."* (Emphasis supplied)

In relation thereto, Section 2 of Revenue Regulations (RR) No. 7-2003[1] dated December 27, 2002, states that:

> "*SEC. 2. DEFINITION OF TERMS. – For purposes of these Regulations, the following terms shall be defined as follows:*
>
> ***a. <u>Capital assets</u> shall refer to all real properties held by a taxpayer, whether or not connected with his trade or business, and which are not included among the real properties considered as ordinary assets under Sec. 39(A)(1) of the Code.***
>
> *b. Ordinary assets shall refer to all real properties specifically excluded from the definition of capital assets under Sec. 39(A)(1) of the Code, namely:*
>
> > *1. Stock in trade of a taxpayer or other real 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*
> >
> > *2. Real property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business; or*
> >
> > *3. Real property used in trade or business (i.e., buildings and/or improvements) of a character which is subject to the allowance for depreciation provided for under Sec. 34(F) of the Code; or*
> >
> > *4. Real property used in trade or business of the taxpayer."* (Emphasis and underscoring supplied)

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[1] Providing the Guidelines in Determining Whether a Particular Real Property is a Capital Asset or an Ordinary Asset Pursuant to Section 39(A)(1) of the National Internal Revenue Code of 1997 for Purposes of Imposing the Capital Gains Tax under Sections 24(D), 25(A)(3), 25(B) and 27(D)(5), or the Ordinary Income Tax under Sections 24(A), 25(A) & (B), 27(A), 28(A)(1) and 28(B)(1), or the Minimum Corporate Income Tax (MCIT) under Sections 27(E) and 28(A)(2) of the same Code

Under the above quoted provisions, it is undisputed that the yardstick for determining whether the property is capital asset or ordinary asset is the actual use of the said property. Thus, if the property is not actually used in trade or business of the taxpayer, whether or not connected with his trade or business, or not held for lease or sale to customers, it will be classified as a capital asset. Also, if the property is merely held for capital appreciation and investment purposes and remains vacant and idle, it is deemed a capital asset.

In stressing the rationale of the above-mentioned rule, this Office elucidated the matter in *BIR Ruling No. 014-2003 dated October 28, 2003*, as follows:

> *"It is apparent under the foregoing provision that for a property to be considered an ordinary asset is must be actually used in the business of the corporation. Accordingly, on the condition that Wendell Holdings Co., Inc. is not habitually engaged in the real estate business as represented, the property under consideration is capital asset. The property was neither held primarily for sale to customers nor actually used in the business of Wendell Holdings Co., Inc.... The property is not actually used in the business of Wendell Holdings., Inc. as it has remained idle and undeveloped. Therefore, the sale of the property under consideration is a sale of capital asset, not an ordinary asset. As such, the transaction is subject to capital gains tax of 6% under Section 27(D)(5) and not to the creditable withholding tax."*

In the instant case, Sta. Ana which is a *financial holding company* is not considered as a company habitually engaged in the real estate business. Where the taxpayer is not engaged in the real estate business, a property not forming part of its inventory is considered a capital asset.

Furthermore, Section 3 (e) of RR No. 7-2003 provides that:

> *"SECTION 3. Guidelines in determining whether a particular real property is a capital asset or ordinary asset. -*
>
> *xxx xxx xxx*
>
> *e. <u>Treatment of abandoned and idle real properties.</u> - 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* ***<u>a taxpayer engaged in business other than real estate business</u>*** *as defined in Section 2 (g) hereof are automatically converted into capital assets upon showing of proof that the same have not been used for more than two (2) years prior to the consummation of the taxable transactions involving said properties."* (Emphasis and underscoring supplied)

In applying the above provision of RR No. 7-2003, real properties owned by taxpayers not engaged in the real estate business or referring to those persons other than real estate dealers, real estate developers and/or real estate lessors shall, upon showing of proof that the same have not been used in business for more than two (2) years prior to the consummation of the taxable transactions involving the said real properties, and though classified as ordinary assets, be automatically converted into capital assets.

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In view of all the foregoing, since Sta. Ana is a *financial holding company* and a taxpayer not engaged in a real estate business, being not a real estate dealer, developer or lessor, this Office is of the opinion as it hereby holds that the 6,225 square meter parcel of land covered by TCT No. with TD No. and the 32,845 square meter portion covered by TCT No. with TD which have been idle for more than two (2) years and have not been used in trade or business, are classified as capital assets. However, with regard to the 930 square meter portion of the 33,775 square meters covered by TCT No. and TD No. being leased to Makati Development Corporation as a temporary staging and fabrication area, such portion shall be considered as ordinary asset for taxation purposes.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it is 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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