REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

RA 7279	No.	000-00	301-2018 3-2-2018

Person to Contact: Chief, Law Division
Tel. Nos. 926-55-36/ 927-09-63

NATIONAL HOUSING AUTHORITY
Quezon Memorial Elliptical Road
Diliman, Quezon City

Attention: **MARCELINO P. ESCALADA**
General Manager

Gentlemen:

This refers to your letter dated September 13, 2017 reiterating your request that the National Housing Authority (NHA) be exempted from all taxes even on transactions not directly related to socialized housing.

In your letter, you submit that the NHA was meant to be exempted from payment of all fees and charges, without distinction whatsoever, under Section 19 of Republic Act (RA) No. 7279, to wit:

> *"Sec. 19. Incentives for the National Housing Authority. — The National Housing Authority, being the primary government agency in charge of providing housing for the underprivileged and homeless, shall be exempted from the payment of all fees and charges of any kind, whether local or national, such as income and realty taxes. All documents or contracts executed by and in favor of the National Housing Authority shall also be exempt from the payment of documentary stamp tax and registration fees, including fees required for the issuance of transfer certificates of title."*

It is your submission that the above provision did not distinguish as to the kinds of charges and fees that are covered by the exemption, hence, said exemption covers all fees and charges, including taxes, regardless of whether or not the income is derived from transactions directly related to socialized housing. Furthermore, you posit that the exemption covers not only sale of house and lot but also road lots and other open spaces for community facilities. Thus, you argue that the position of this Office in *BIR Ruling No. 433-2012*, as circularized by Revenue Memorandum Circular (RMC) No. 28-2013, subjecting to taxes the proceeds of the sale by the NHA of a commercial lot to certain private individuals, is contrary to the afore-cited provision. Moreover, it is your concern that the expropriation by the NHA of 148 lots located in Cagayan de Oro City might be subject to capital gains tax (CGT), documentary stamp tax (DST) and value-added tax (VAT) in the light of *BIR Ruling No. 433-2012.*

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:

> *"(r) <u>**"Socialized housing" refers to housing programs and projects covering houses and lots or homelots only**</u> 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:" (Underscoring supplied)*

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).

However, as regards your concern that the expropriation by the NHA of 148 lots located in Cagayan de Oro City might be subject to CGT, DST and VAT in the light of *BIR Ruling No. 433-2012*, we rule that the NHA's expropriation of lots for the purpose of acquiring the same for the Slum Improvement and Resettlement Program of Cagayan De Oro City as mandated under Letter of Instruction Nos. 555 and 557 shall not be subject to CGT and DST pursuant to Sections 19 and 20 of RA No. 7279, which reads:

> *"Sec. 19. Incentives for the National Housing Authority. -- The National Housing Authority, being the primary government agency in charge of providing housing for the underprivileged and homeless, shall be exempted from the payment of all fees and charges of any kind, whether local or national, such as income and realty taxes. <u>All documents or contracts executed by and in favor of the National Housing Authority shall also be exempt from the payment of</u>*

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> *documentary stamp tax and registration fees, including fees required for the issuance of transfer certificates of title.*
>
> *Sec. 20. Incentives for the Private Sector Participating in Socialized Housing. — To encourage greater private sector participation in socialized housing and further reduce the cost of housing units for the benefit of the underprivileged and homeless, the following incentives shall be extended to the private sector:*
>
> *xxx xxx xxx*
>
> *"(d) Exemption from the payment of the following:*
>
> *(1) Project-related income taxes;*
> *(2) Capital gains tax on raw lands used for the project;*
>
> *xxx xxx xxx"* (Underscoring supplied)

It is clear from the above-cited provision that the owner of the raw land shall not be subject to the CGT or creditable withholding tax (CWT) on his disposition of the land that will be used for a socialized housing project. This holds true even if the lot was disposed of involuntarily through expropriation. Moreover, the transfer of the expropriated lots to the NHA is not subject to the DST in accordance with Section 19 of RA No. 7279. The transfer of the lots, however, may be subject to VAT if the expropriated property is an ordinary asset of the landowner. (*BIR Ruling No. 388-2011* dated October 20, 2011)

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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