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

RA7279
BIR Ruling No. 036-16
#473-2017
10-4-2017

TRANSUNION CORPORATION
331 Gil Puyat Ave., Makati City

Attention : **JOCELYN B. CRUZ**
President

Gentlemen:

This refers to the letter of Ma. Ana R. Oliveros, President of Social Housing Finance Corporation (SHFC) dated November 18, 2014, endorsing the sale transaction between Transunion Corporation and SHFC for exemption from the payment of Capital Gains Tax and other taxes in accordance with Section 32(b) of the Republic Act (RA) No. 7279, otherwise known as the "Urban Development and Housing Act of 1992".

Documents submitted show that Transunion Corporation (TIN) is the registered owner of the following parcels of land covered by two (2) Transfer Certificates of Title (TCT) located at Sauyo, San Bartolome, Quezon City, to wit:

TCT	Tax Declaration	Area (sq. m.)
		2,730
		356
	Total Area	**3,086**

SHFC (TIN), on the other hand, is a government-owned and controlled corporation created under Executive Order (EO) No. 272 Series of 2004. On November 19, 2014, the parties executed a Deed of Absolute Sale whereby Transunion Corporation transferred and conveyed the subject properties to SHFC at an agreed price of Pesos (P . SHFC is buying the property pursuant to the provisions of RA Nos. 8974 and 7279 for the housing project of Pascualer Ville ISF Homeowners' Association, Inc., a homeowner's organization duly registered with the Housing and

Land Use Regulatory Board (HLURB) under Registration No. . Pursuant to the Certification issued by SHFC, the subject properties were acquired by SHFC for Pascualer Ville ISF Homeowners' Association, Inc. covered by TCT Nos. and under an allocated funding for the ISF Housing Program, where the SHFC is tasked to implement this through its High Density Housing (HDH) Program. The purpose of the program is to relocate ISFs who are living along waterways and danger zones in Metro Manila and provide them with in-city or near-city relocation. The acquisition by SHFC of said property shall be under its High Density Housing (HDH) Program, a modified Community Mortgage Program (CMP) where community loans are given for land acquisition as well as site development and housing construction for the Nine Hundred Ninety Four (994) Informal Settler Families (ISF). For this purpose, Pascualer Ville ISF Homeowners' Association, Inc. secured a housing loan under the Informal Settler Families (ISF) Housing Program from SHFC.

In reply, please be informed that Section 32 of RA No. 7279 provides:

> *Sec. 32. Incentives. -- To encourage its wider implementation, participants in the CMP shall be granted with the following privileges or incentives:*
>
> *(a) Government-owned or -controlled corporations and local government units, may dispose of their idle lands suitable for socialized housing under the CMP through negotiable sale at prices based on acquisition cost plus financial carrying costs;*
>
> *(b) Property sold under the CMP shall be exempted from the capital gains tax; and*
>
> *(c) Beneficiaries under the CMP shall not be evicted nor dispossessed of their lands or improvements unless they have incurred arrangements in payments of amortizations for three (3) months.*

In this particular HDH scheme which SHFC described as modified CMP, SHFC buys the land identified for socialized housing with a funding to be drawn out of the ISF Housing Fund to be released by the Department of Budget and Management[1]. The ISF's member beneficiary/relocatee then enters into a Usufruct Agreement (with option to buy) on the land with SHFC and from whom he may take out a community loan for land acquisition, site development and building construction[2].

Considering that the acquisition of the parcels of land by SHFC from Transunion Corporation is not under CMP, hence, it is not qualified for exemption from capital gains tax under Section 32 of RA 7279.

Note that the CMP is a mortgage financing program of the National Home Mortgage Finance Corporation which assists legally organized associations of underprivileged and homeless citizens to purchase and develop a tract of land under

[1] SHFC Secretary's Certificate dated August 1, 2014
[2] Usufruct Agreement dated January 23, 2015

the concept of community ownership. The primary object of the program is to assist residents of blighted or depressed areas to own the lots they occupy, or where they choose to relocate to, and eventually improve their neighborhood and homes to the extent of their affordability. (Sec. 31, RA 7279)

Moreover, Section 15 of the same RA provides that:

> *Sec. 15. Policy. — Socialized housing, as defined in Section 3 hereof, shall be the primary strategy in providing shelter for the underprivileged and homeless. However, if the tenurial arrangement in a particular socialized housing program is in the nature of leasehold or **usufruct**, the same shall be **transitory** and the beneficiaries must be encouraged to become independent from the Program within a given period of time, to be determined by the implementing agency concerned.* (emphasis supplied)

In the case of Pascualer Ville ISF Homeowners' Association, Inc., a 50-year Usufruct Agreement with option to buy was executed by SHFC and the Pascualer Ville ISF Homeowners' Association, Inc. It is likewise noted that the Letters of Guaranty were granted not in favor of the Pascualer Ville ISF Homeowners' Association, Inc. but for the purchase by SHFC of the property of Transunion Corporation. The members of the Pascualer Ville ISF Homeowners' Association, Inc. are only given an option to buy the units that will be allotted to them, otherwise, they must surrender the same at the end of 50-year usufruct period, Section 32 of RA No. 7279 therefore does not apply in this case. The concept and primary objective of the CMP are absent in the transaction.

Moreover, as a socialized housing strategy under usufruct, the possession of the housing unit is considered temporary and the beneficiary should be encouraged to own the housing unit within a given period of time.

In this case, although the HDH program provides for a time-barred usufruct, the agreement only presents the relocatee/beneficiary an option to buy the housing unit within the usufruct period or else he must surrender the same at the end of the usufruct period. The usufruct agreement also states that the same shall be executed for projects where ISFs cannot afford to buy the land, as determined by the owner, or do not opt to buy the land.

Therefore, the HDH Scheme, as herein presented, is not among those transactions that are entitled to the tax incentives under CMP of Article VIII of RA No. 7279. Consequently, the sale by Transunion Corporation of the subject properties covered by TCT Nos. and shall be treated as ordinary sale of real property that is subject to applicable revenue taxes *i.e.* CWT/ VAT/ DST. (BIR Ruling No. 036-16 dated January 12, 2016)

It should be remembered that laws and statutes granting tax exemptions are strictly construed against the taxpayer. Exemptions are never presumed and the burden is upon the taxpayer to establish his right to exemption beyond reasonable

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doubt[3]. In the case of *Mactan Cebu International Airport Authority v. Marcos*[4], the Supreme Court held:

> *"Accordingly, tax statutes must be construed strictly against the government and liberally in favor of the taxpayer. But since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting the exemptions are thus construed strictissimi juris against the taxpayer and liberally in favor of the taxing authority. A claim of exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption therefrom is the exception."*

In view of the foregoing, this Office regrets to deny your request for exemption from the payment of Capital Gains Tax and other taxes of the sale transaction between Transunion Corporation and SHFC in accordance with Section 32(b) of RA No. 7279 for lack of legal basis.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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[3] Dimaampao, Japar B., Tax Principles and Remedies, Second Edition (2005)
[4] G.R. No. 120082, 11 September 1996, 261 SCRA 667