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
OT-0489-2020
SEP 07 2020

PILAR GAVIOLA AND COMPANY
Unit 5b 5th Floor, Universal Re Building
106 Paseo de Roxas cor. Perea Street,
Legaspi Village, Makati City

Attention: ***Gilbert H. Pilar***

Gentleman:

This refers to your letter dated June 15, 2020 requesting on behalf of your client, Eduardo Cojuangco Jr. and Sons Enterprises, Inc. ("ECJSEI" for brevity), for confirmation that the sale of real properties held by ECJSEI 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).

It is represented that ECJSEI is a domestic corporation with principal place of business at Unit E 5/F, Universal-Re Building, 106 Paseo de Roxas corner Perea St., Legaspi Village, Makati City. It is duly registered with the Securities and Exchange Commission (SEC) on February 23, 1973. It is also registered with the BIR on June 28, 1994 with TIN [redacted] under Line of Business of Financial Holding Company with PSIC Code 6694.

It is organized as a holding company and its primary purpose is to invest in, purchase or 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, subscriptions, bond, debentures, notes, evidences of indebtedness, and other securities or obligations of any person, corporation or association, domestic or foreign; to receive, collect and dispose of 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 powers of any stock so owned; provided it will not engage or act as broker or dealer of securities.

As a financial holding company, ECJSEI did not engage in real estate business nor advertise or hold itself out in public as engaged in buying and selling of real estate properties. From the time of its incorporation, ECJSEI purchased ten (10) parcels of land for investment purposes and not for sale or lease in the ordinary course of business. The ten (10) parcels of land ("subject real properties" for brevity) are covered by the following Transfer Certificates of Title (TCT) No. with their corresponding area and location:

TCT No.	AREA (in square meters)	LOCATION
[redacted]	[redacted]	Brgy. Mandalagan, Bacolod City
[redacted]	[redacted]	Brgy. Mandalagan, Bacolod City

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[redacted]	[redacted]	Brgy. Mandalagan, Bacolod City
[redacted]	[redacted]	Brgy. Mandalagan, Bacolod City
[redacted]	[redacted]	Brgy. Mandalagan, Bacolod City
[redacted]	[redacted]	Brgy. Mandalagan, Bacolod City
[redacted]	[redacted]	Brgy. Mandalagan, Bacolod City
[redacted]	[redacted]	St. Vincent Village, Brgy. Tangub, Bacolod City
[redacted]	[redacted]	St. Vincent Village, Brgy. Tangub, Bacolod City
[redacted]	[redacted]	Purok Santol, Brgy. Mandalagan, Bacolod City

Since its acquisition, the subject real properties were not developed nor utilized by ECJSEI in its operations. It has been reported in the Audited Financial Statements (AFS) of ECJSEI as "Investment Properties". As disclosed in Note 9 (d) of the AFS, *these lots were being held mainly for investment and capital appreciation*. To prove the non-use of the subject real properties, the concerned Barangay issued a certification stating such fact. Also, the concerned Office of the City Assessor issued a Certification for Land with No Improvement stating that "there is no building or any improvement introduced on the aforementioned lot".

On March 9, 2020, ECJSEI executed a Deed of Absolute Sale over seven (7) adjacent parcels of land[1] located at Brgy. Mandalagan, Bacolod City in favor of SGOC Holdings Corporation. On the same date, another Deed of Absolute Sale was executed by ECJSEI in favor of LOCC Holdings Corporation over two (2) adjacent parcels of land[2] located at St. Vincent Village, Brgy. Tangub, Bacolod City. On April 17, 2020, ECJSEI again executed a Deed of Absolute Sale in favor of Radyo Pilipino Corporation over a parcel of land[3] located at Purok Santol, Brgy. Mandalagan, Bacolod City. The corresponding taxes due on the sale of the said properties were already paid. Hence, this query on whether or not the subject real properties owned by ECJSEI for investment and capital appreciation purposes are considered capital assets.

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 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

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[1] TCT No. [redacted], (T-[redacted]) [redacted], [redacted], [redacted]

[2] TCT No. [redacted] and [redacted]

[3] TCT No. ([redacted]) [redacted]

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> 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 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 for investment purposes and recorded/reported by ECJSEI as capital assets. The properties were never used in the course of trade or business of ECJSEI, or depreciated for that purposes. No improvements were introduced to the subject real properties as certified by the concerned City Assessor where the properties are located. The concerned Barangay also issued a Certification of Non-Use of the subject real properties. More importantly, ECJSEI 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 ECJSEI 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 since the time of its acquisition as shown, by the Certifications of the concerned City Assessor; that there are no improvements erected on the land as well as the Certification of concerned Barangay Chairman where the properties are located 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 subject real properties described above are classified as capital assets, the conveyance of which is subject to capital gains tax and documentary stamp tax but not subject to VAT and creditable withholding 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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