REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sections 24 (D) (1), 105, 188 and 196 of the Tax Code; Sections 2.57.1 (A) (6) and 2.57.2 (F) of RR No. 02-98, as amended; RR No. 7-2003; RR No. 16-2005, as amended
~~BIR Ruling No. 083-99~~ OT- 304-2022
JUN 23 2022

SM DEVELOPMENT CORPORATION
15th Floor, TwoE-Com Center
Harbor Drive, Mall of Asia Complex
Pasay City

Attention: **ATTY. DAVID P. TAN, JR.**
Authorized Representative

Gentlemen:

This refers to your request for confirmation of your opinion that the assignment by **SM Development Corporation** ("**SMDC**" or the "**Assignor**") of its rights, interests and obligations under a Memorandum of Agreement ("**MOA**") to its designated Assignee is not subject to capital gains tax ("**CGT**") or expanded withholding tax ("**EWT**"), value-added tax ("**VAT**") and documentary stamp tax ("**DST**").

It is represented that sometime in June 2021, SMDC executed two (2) separate MOAs with two (2) different sellers over certain parcels of land (collectively, the "**Properties**") situated in [1], , as follows:

Date of Execution	Original Sellers	Lot No.	Area (m²)	Transfer Certificate of Title ("TCT") No.	Purchase Price (in Php)
June 21, 2021	Heirs of Ponciano Ramos and Juliana Castro Ramos	10			
June 4, 2021	Nancy Mortiz	14			

The purchase price of the Properties is per square meter, inclusive of CGT, 25% of which is payable upon signing of the MOA and the remaining balance of seventy-five percent 75% to be paid within seven (7) months from signing of the MOA and submission of certain documents by the Sellers in two (2) equal installments.

It is further represented that SMDC has paid the equivalent of 62.5% of the selling price to the Original Sellers, while the CGT has been fully paid. As the above-named Original Sellers have yet to submit or comply with the conditions and requirements stated in item three (3) of the MOA, the Deeds of Absolute Sale and the remaining balance of the purchase price have not been executed and released, respectively.

Pending the compliance of the Original Sellers, SMDC assigned its rights, interests and obligations under each MOA in favor of Julie Ann B. Lachica (the "Assignee"), in exchange for a total amount of Php which was paid by the Assignee, with details as follows:

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1 Now: TCT No. under the names of Luciano Ramos, et. al

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Sellers	Lot No.	Area (m^2)	Purchase Price (in Php)	Amount Received by SMDC (in Php)
Heirs of Ponciano Ramos (Luciano Ramos, et. al)	10			
Nancy Mortiz	14			
Total				

The assignment is in accordance with item 16[2] of the MOA. On this note, the Original Sellers have given their respective consent either individually or through an attorney-in-fact as evidenced in the 'conforme' section of the Deeds of Assignment.

In this regard, you now request confirmation that the assignment of rights, interests and obligations of SMDC under the MOAs to the Assignee is not subject to CGT/EWT, VAT and DST.

We reply as follows:

On CGT/EWT

Section 24 (D)(1) of the National Internal Revenue Code of 1997 (Tax Code), as amended, provides:

"SEC. 24. Income Tax Rates. -

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(D) Capital Gains from Sale of Real Property. --

*(1) In General. - The provisions of Section 39(B) notwithstanding, **a final tax of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, is hereby imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines, classified as capital assets,** including pacto de retro sales and other forms of conditional sales, by individuals, including estates and trusts: Provided, That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned or controlled corporations shall be determined either under Section 24 (A) or under this Subsection, at the option of the taxpayer;"* (Underscoring and emphasis ours)

In connection therewith, ***Section 2.57.1 of Revenue Regulations (RR) No. 02-98***, as amended, implemented the afore-quoted provision, to wit:

"Sec. 2.57.1. Income Payments Subject to Final Withholding Tax – The following forms of income shall be subject to final withholding tax at the rates herein specified:

(A) Income Payments to a Citizen or to a Resident Alien Individual:

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*(6) **On capital gains presumed to have been realized from the sale, exchange or other disposition of real property** located in the Philippines, classified as capital assets, including pacto de retro sales and other forms of conditional sales*

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[2] "16. ASSIGNMENT. The BUYER has the option to assign its rights, interest and obligations under this Agreement to its assignee provided prior written consent of the SELLERS is obtained by the BUYER."

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based on the gross selling price or fair market value as determined in accordance with Sec. 6(E) of the Code (i.e. authority of the Commissioner to prescribe the real property values), whichever is higher – Six percent (6%)

In case of sale on installment of real property classified as capital asset, the procedures stated under Section 2.57.2(J) [now Section 2.57.2(F)] hereof on the sale of real property classified as ordinary asset shall apply with the exception that the withholding tax on the former shall be final whereas that on the latter shall be creditable. " (Underscoring and emphasis ours)

Under the above-quoted second paragraph of Section 2.57.1 (A)(6) of RR No. 02-98, as amended[3], it provides that in case the sale of real property classified as capital asset is made in installment, such as in the case of SMDC, the rule and procedure provided in Section 2.57.2(J) [now Section 2.57.2(F)] of the said RR shall govern, to wit:

"Sec. 2.57.2. Income Payment Subject to Creditable Withholding Tax and Rates Prescribed Thereon – Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:

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(F) Gross selling price or total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange or transfer of real property classified as ordinary asset.[4] – A creditable withholding tax based on the gross selling price/total amount of consideration or the fair market value determined in accordance with Section 6 (E) of the Code, whichever is higher, paid to the seller/owner for the sale, transfer or exchange of real property, other than capital asset, shall be imposed upon the withholding agent/buyer, in accordance with the following schedule:

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However, if the buyer is engaged in trade or business, whether a corporation or otherwise, these rules shall apply:

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(ii) If, on the other hand, the sale is on a 'cash basis' or is a 'deferred-payment sale not on the installment plan' (that is, payments in the year of sale exceed 25% of the selling price), the buyer shall withhold the tax based on the gross selling price or fair market value of the property, whichever is higher, on the first installment.

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If upon completion of the payment of the purchase price of real property classified as ordinary asset, but before the execution of the Deed of Sale, the buyer decides to assign his right over the property to another person for a consideration, the assignment shall be considered a separate sale of real property and, therefore, subject to the creditable expanded withholding tax

[3] Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes, April 17, 1998.

[4] As Amended by RR No. 08-98, RR No. 06-01 and RR No. 17-03.

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(EWT) or final withholding of capital gains tax, as the case may be, which shall be withheld by the assignee of such property based on the consideration per Deed of Assignment or the fair market value of such property at the time of assignment, whichever is higher, and to the DST imposed under Sec. 196 of the same Code using the same basis.

*It is to be clarified, however, that **sale of interest in real property (real property purchased on installment covered by Contract to Sell which was sold by the original buyer before it was fully paid) shall be taxable on the part of the original buyer (now seller) based on the realized gain thereon which is measured by the difference between the agreed consideration and the amount actually paid by the said original buyer.**"* (Underscoring and emphasis ours)

In the instant case, there were two (2) sets of transactions: (1) sale of the Properties by the Original Sellers to SMDC ("**First Transaction**"); and (2) assignment of rights, interest and obligations over the Properties by SMDC to the Assignee pending full payment of the purchase price relating to the First Transaction ("**Second Transaction**").

It is indubitable that the First Transaction involves a sale by the Original Sellers to SMDC of real properties that are classified as capital assets. Thus, the said sale is subject to CGT pursuant to Section 24 (D) (1) of the Tax Code, as amended. As represented, the CGT pertaining to the full purchase price of the Properties was already paid and remitted to the Bureau.

With regard to the Second Transaction, the rules stated under Section 2.57.2(J) [now Section 2.57.2(F)] of RR No. 02-98, as amended, shall apply with the exception that the withholding tax on the former shall be final whereas that on the latter shall be creditable, as follows:

(1) if after full payment of the purchase price but before execution of the DOAS, the assignment shall be considered a separate sale of real property which is subject to CGT, or CWT/EWT, as the case may be; or

(2) if before it was fully paid, the difference between the: (a) agreed consideration between the buyer (in this context, the assignor) and the assignee; and (b) amount actually paid by the assignor to the original seller shall be subject to CGT or CWT/EWT, as the case may be.[5]

In view thereof, considering that: (1) the Original Sellers are not yet fully paid by SMDC; and (2) the amount actually paid by the Assignee is equivalent to the amount paid by SMDC to the Original Sellers, this Office hereby rules that the assignment of the rights, interest and obligations under each MOA covering the Properties to the Assignee will not result in any realized gain. Hence, the same is not subject to CWT/EWT or CGT.[6]

On VAT

Section 105 of the Tax Code, as amended, as implemented by Section 4.105-1 of RR No. 16-2005,[7] as amended, provides that:

"Sec. 105. Persons Liable. — Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to value-added tax (VAT) imposed in Sections 106 to 108 of the said Code.

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5 BIR Ruling [DA-(C-172) 449-09], August 10, 2009; BIR Ruling [DA-377-08], June 24, 2008.
6 BIR Ruling [DA-229-02], December 3, 2002; BIR Ruling [DA-149-01], September 3, 2001.
7 Consolidated Value-Added Tax Regulations of 2005, September 1, 2005.

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"The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity"

It is clear from the above-cited provisions that insofar as goods or properties are concerned, VAT is imposed on the sale, barter or exchange thereof in the course of trade or business, including transactions incidental thereto. It must be emphasized that VAT is imposed once there is an actual sale transaction where ownership is passed to the buyer.

It bears stressing that in assignment of rights, the assignee merely steps into the shoes of the assignor without acquiring a better right than what the assignor had in the property to which the rights assigned pertain.[8]

In BIR Ruling [DA-(C-266) 671-09],[9] citing BIR Ruling No. 83-1999,[10] this Office has ruled that a deed of assignment of rights in real property does not equate to a sale and an assignment of rights in real property is not a sale of real property itself but the rights pertaining to such property.[11], to *wit*:

"From the foregoing, it is clear that only sales, exchanges or transfers of real properties are subject to the final withholding tax imposed under Section 24 (D) (1) of the Tax Code of 1997, as amended, and as implemented by RR No. 2-98. Hence, assignments of rights over realty although classified as real property under the Civil Code, are not included within the purview of the said regulations considering that in assignments of rights the assignee merely steps into the shoes of the assignor without acquiring a better right than what the assignor had in the property to which the rights assigned pertain.

Thus, the assignment of rights over the Contract to Sell involving a residential condominium unit by Prestige Labels to La Vie under the Deed of Assignment with Assumption of Obligations does not equate to a sale. A deed of assignment of rights in real property is not a deed of sale of real property itself but the rights pertaining to such property (BIR Ruling No. DA-252-96 dated July 18, 1996).

Since no sale is involved, there is no basis for the imposition of withholding tax under Revenue Regulations (RR) No. 2-98, as amended (BIR Ruling No. 031-01, dated March 15, 2001). In the same vein, there is no basis for the imposition of the CGT or the VAT.

Further, the assignment of rights, not being a sale of real property, is not subject to DST under Section 196 of the 1997 Tax Code, as amended. Said section refers to the sale of real property, which is obviously not the case in this instance. In this regard, no DST can be imposed on said assignment (BIR Ruling No. DA-240-01, dated November 16, 2001)" (Underscoring supplied)

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[8] BIR Ruling [DA-(C-266) 671-09], November 15, 2009; BIR Ruling [DA-504-05], December 16, 2005; *Solid Homes, Inc. v. Spouses Artemio Jurado and Consuelo O. Jurado*, G.R. No. 219673, September 2, 2019.
[9] November 15, 2009.
[10] June 22, 1999, signed by Beethoven L. Rualo, then Commissioner of Internal Revenue.
[11] *Id.*

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Applied in this case, clearly, the assignment of rights over the Properties by SMDC to the Assignee cannot be considered as a sale. Consequently, since there was no sale, barter, exchange or lease of the subject Properties, there is no basis for the imposition of the VAT.[12]

On DST

Under ***Section 196 of the Tax Code, as amended***, DST is imposed on all conveyances, deeds, instruments or writings whereby land or realty sold shall be conveyed to the purchaser, to wit:

> *"SEC. 196. Stamp Tax on Deeds of Sale, Conveyance and Donation of Real Property. – on all conveyance, donations, deeds, instruments, or writings, other than grants, patents or original certificates of adjudication issued by the Government, whereby any land, tenement or other realty sold shall be granted, assigned, transferred, donated or otherwise conveyed to the purchases or purchasers, or donee, there shall be collected a documentary stamp tax, at the rates herein below prescribed, based on the consideration contracted to paid for such realty or on its fair market value determined in accordance with Section 6 (E) of this Code, whichever is higher: Provided, That when one of the contracting parties is the Government, the tax herein imposed shall be based on the actual consideration...xxx"* (Underscoring supplied)

Thus, the assignment of rights, not being a sale of real property but merely rights pertaining to such property is not subject to DST under Section 196 of the Tax Code, as amended. Said section refers to the sale of real property, which is obviously not the case in this instance. In this regard, no DST shall be imposed on said assignment[13]. However, the said Deeds of Assignment is subject to the P30.00 DST on the notarial acknowledgment imposed under ***Section 188 of the Tax Code, as amended***.

It is however important to note that, considering that the First Transaction was a sale of real property paid under installment payment or deferred payment basis, the payment of the DST imposed under Section 196 of the Tax Code, as amended, accrues upon the execution of the respective Deeds of Absolute Sale but the basis for the imposition thereof shall be the gross selling price or fair market value of the property, whichever is higher, at the time of the execution of the related MOAs.[14] Thus, the DST over the same shall be paid by the Assignee (to whom the rights, interest and obligations under each of the MOAs were transferred) upon execution of the respective Deeds of Absolute Sale.

This ruling is issued on the basis of the facts as represented. However, if upon investigation it shall be disclosed that the actual facts are different, then this ruling shall be without force and effect insofar as the herein parties are concerned.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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[12] BIR Ruling [DA-(C-266) 671-09], November 15, 2009.
[13] BIR Ruling No. DA-240-01, dated November 16, 2001
[14] BIR Ruling No. 634-2019, October 17, 2019; RR No. 17-2003 dated March 31, 2003 amending RR No. 2-1998, as amended.