REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sections 27(C) of the Tax Code of 1997, as amended BIR Ruling No. 477-11; BIR Ruling No. 308-14
483-2017

10-19-2017

Date

MA. VICTORIA D. VERGEL de DIOS
President
DR. VICTORIANO R. POTENCIANO MEDICAL CENTER, INC.
163 EDSA, Malamig, Mandaluyong City 1550

Madam:

This refers to your letter dated May 27, 2016 requesting for legal opinion/clarification as to whether the sale of a parcel of land by the Government Service Insurance System (GSIS) to Dr. Victor R. Potenciano Medical Center, Inc. is subject to expanded withholding tax or capital gains tax.

Documents submitted disclosed that GSIS is a social insurance institution created and existing pursuant to the provisions of Commonwealth Act (CA) No. 186, as amended, and operating under its present Charter, Republic Act No. 8291, otherwise known as the GSIS Act of 1997, and with principal address at the GSIS headquarters Building, Financial Center Area Pasay City, Philippines. It is registered owner of a parcel of land located at No. 161 (Blk. 53, Lot 21-B), E. Delos Santos Avenue, Mandaluyong City, covered by Transfer Certificate Title No. of the Registry of Deeds for the Province of Rizal containing an area of four hundred ninety-five square meters (495sq. m.).

On the other hand, Dr Victor R. Potenciano Medical Center, Inc. with BIR Certificate of Registration No and Taxpayers Identification Number (TIN) s a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, registered with the Securities and Exchange Commission with SEC Company Registration No.

On May 13, 2015, the GSIS executed a Deed of Absolute Sale transferring the aforementioned property in favor of Dr. Victor R. Potenciano Medical Center, Inc., for the total amount of , Pesos (Php). On June 4, 2015, the corresponding documentary stamp tax for the transaction was paid by Dr. Victor R. Potenciano Medical Center Inc.

In reply, please be informed that in BIR Ruling No. 477-2011, dated December 5, 2011, this Office ruled as follows:

> "On July 8, 2009, the GSIS executed a Deed of Absolute Sale transferring the above-described property in favor of the Spouses Eduardo C. Rafer and Gracita O. Rafer for the total amount of
> (Php)
>
> In reply, please be informed that in a similar case, this Office ruled as follows:
>
> "... in cases of sale, exchange or disposition of lands and/or buildings owned by a corporation, which are not actually used in its business and are treated as capital assets, a final tax of six percent (6%) is imposed on the gain presumed to have been determined in accordance with Section 6(E) of the Tax Code of 1997, as amended, whichever is higher, of such lands and/or buildings (Section 27(D)(5), Tax Code of 1997). However, when the land and/or buildings subject to sale, exchange or disposition are actually used in the business of a corporation and are classified as ordinary assets the transaction is subject to ordinary income, and not capital gains tax, which includes any gain from the sale or exchange of property which is not a capital asset as defined in Section 39(A)(1) of the same Code (Section 22(Z), Tax Code of 1997)
>
> On the other hand, Section 27(C) of the Tax Code provides as follows:
>
> "(C) Government-owned or controlled Corporations, Agencies or Instrumentalities – The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), and the Philippine Charity Sweepstakes Office (PCSO), shall pay such rate of tax upon their taxable income as are imposed by this section upon corporation or associations engaged in a similar business, industry or activity."
>
> It is clear from the foregoing provisions, that in cases of sale, exchange or disposition by a corporation of lands and/or buildings classified as capital assets/ ordinary assets, the burden of paying the 6% capital gains tax/ creditable withholding tax rests upon the seller/transferor because the latter is the one who realized the capital gains tax/ordinary income subject to tax, unless there is a stipulation to the contrary.
>
> In the instant case, GSIS is the one directly liable to pay the corresponding taxes due on the sale transaction, it being the registered owner of the subject property. However, Section 27(C) of the Tax Code of 1997, as amended, provides, among

others, that GSIS is not liable to pay such rate of tax as are imposed on other domestic corporations which necessarily includes the payment of capital gains tax.

Wherefore, in view of the foregoing, this Office holds that the sale of the aforesaid 78 lots by GSIS to GMC is neither subject to income tax nor to capital gains tax. However, GMC, as Vendee, and which is not exempt from the payment of any tax arising from the above-mentioned transaction shall be the one liable to pay the documentary stamp tax imposed under Section 196 of the Tax Code of 1997, as amended. (*BIR Ruling No. 143-05 dated April 12, 2005 citing BIR Ruling No. DA-167-02 dated September 17, 2002*)

Applying the foregoing provisions of law and ruling, the sale of the above-described parcel of land by GSIS in favor of Spouses Eduardo C. Rafer and Gracita O. Rafer is not subject to capital gains tax. However, Spouses Eduardo C. Rafer and Gracita O. Rafer shall be ones liable to pay the documentary stamp tax imposed under Section 196 of the Tax Code 1997, as amended."

From the foregoing, the sale of the abovementioned parcel of land by GSIS, a government-owned and controlled corporation, not engaged in real estate business, in favor of Dr. Victor R. Potenciano Medical Center Inc., is not subject to expanded withholding tax. Nor is the transaction subject to capital gains tax as GSIS is an income tax-exempt corporation under the Tax Code.

This ruling is 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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K-I/spt