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- 0611-2020
OCT 27 2020

CHERYL ANGELA A. IBARRA
Counselor-at Law
1008 Paragon Plaza, EDSA cor. Reliance St.,
Mandaluyong City

Dear Atty. Ibarra:

This refers to your letter request on behalf of your client, Grand Alliance Holdings Corp. ("GAHC" for brevity), for confirmation that the sale of real property held by GAHC 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 creditable withholding tax and value-added tax (VAT).

It is represented that GAHC is a domestic corporation with principal place of business at 8F Basic Petroleum Bldg. C, Palanca St., Legaspi Village, Makati City. It is duly registered with the Securities and Exchange Commission (SEC) on March 6, 2000. It is also registered with the BIR on June 27, 2000 with TIN under Line of Business 7499 or as engaged in N.E.C activities.

It is organized as a holding company and its primary purpose is to "*to purchase, subscribe for or otherwise acquire and own, hold, use, manage, develop, sell, assign, transfer, mortgage, pledge, exchange or otherwise dispose of real and personal property of every kind and description, including but not limited to shares of stock, debentures, notes, evidences of indebtedness and other securities, contracts and obligations of any corporation or corporations, association or associations, domestic or foreign, and to pay therefore in whole or in part, in cash or by exchanging therefore stocks, bonds or other evidences of indebtedness or securities of this or any other corporation while the owner or holder of any such real or personal property, to collect, receive, and dispose of the 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 without however engaging in dealership in securities or in the stock brokerage business or in the business of an investment company under the investment company act and to do any act designed to protect, preserve, improve or enhance the value of any real or personal property at any time held or controlled by the corporation or in which at that time be interested;*"

As a holding company, GAHC 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. On April 2, 2014, GAHC acquired a residential house and lot ("subject property") located at No. 17

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Kawayan St. North Forbes Park, Makati City for investment purposes only, and not for sale or for lease in the ordinary course of business. The subject property is covered by Transfer Certificate of Title (TCT) No. [redacted] issued by the Registry of Deeds of Makati City with an area of 1,542 square meters, more or less and Tax Declaration Nos. [redacted] and [redacted] issued by the City Assessor of Makati City.

Since its acquisition, the subject property was not developed nor utilized by GAHC in its operations. It has been reported in the Audited Financial Statements (AFS) of GAHC as "Investment Properties". As disclosed in Note 6 of the Notes to Financial Statement, the Company purchased land and building in Makati City which was booked under Investment Properties in taxable year 2014. To prove the non-use of the subject real property for business purposes, the concerned Barangay issued a certification stating such fact.

GAHC executed a Deed of Absolute Sale over the subject property located at No. 17 Kawayan St. North Forbes Park, Makati City in favor of SGOC Holdings Corporation. The corresponding taxes due on the sale of the said property were already paid. Hence, this query on whether or not the subject property owned by GAHC for investment and capital appreciation purposes is considered capital asset.

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. –**
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> 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 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*

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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. In the instant case, the subject property was acquired for investment purposes and recorded/reported by GAHC as capital asset. The property was never used in the course of trade or business of GAHC, or depreciated for that purposes. The concerned Barangay also issued a Certification of non-Use of the subject property for business purposes. More importantly, GAHC is not engaged in the real estate business. In fact, GAHC 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 GAHC 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 concerned Barangay Chairman where the property is located issued a Certification as to the non-use of the subject property for business purposes; and that the property has been treated in the books of accounts and is reflected in the audited financial statement as investment property and has not been used in the ordinary course of trade or business, it is the considered opinion of this Office that the subject property described above is classified as capital asset, 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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