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-0556-2020~~

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BACOLOD GOLDEN ROCK CONSTRUCTION AND DEVELOPMENT CORPORATION
ACFC Bldg., Libertad-Lopez Jaena Sts.,
Bacolod City

Attention: ***WILLY UY AU***
President

Gentleman:

This refers to your letter dated August 17, 2020 requesting on behalf of your client, Bacolod Golden Rock Construction and Development Corporation ("BGRCDC" for brevity), for confirmation that the sale of real property held by BGRCDC 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 BGRCDC is a domestic corporation with principal place of business at Reclamation Area, Bacolod City. It is duly registered with the Securities and Exchange Commission (SEC) with Registration No. [redacted] It is also registered with the BIR on February 12, 2007, with Taxpayer Identification Number (TIN) [redacted], under Line of Business of general construction business with the following PSIC Codes [redacted] and [redacted]

It is organized as a general construction business and its primary purpose is to engage in general construction, including the construction, enlarging, developing or engaging in any work upon building, houses and condominium, roads, plants, bridges, airfields, piers, waterworks, and other structures, buying and selling of general construction materials and supplies and its accessories as steel bars, cements and all elements as paints, plywood, electrical supplies and others.

As a general construction business, BGRCDC 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. BGRCDC owns a parcel of land for investment purposes and not for sale or lease in the ordinary course of business. The parcel of land ("subject real property" for brevity) is covered by Transfer Certificate of Title (TCT) No. [redacted] with an area of [redacted] square meters located at Poblacion, Bacolod City.

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Since its acquisition, the subject real property was not developed nor utilized by BGRCDC in its operations. It does not form part of its inventory nor was held primarily for sale in the ordinary course of trade or business and has been recorded and reported in the Audited Financial Statements (AFS) of BGRCDC as "Investment Properties and disclosed under Notes to Financial Statement No. 6, "land for capital appreciation". The subject real property was never claimed as depreciable expense as can be seen in its audited financial statements and Income Tax Return (ITR). To prove that it is an idle lot and has never been used in business of the subject real property, the concerned Barangay issued a certification stating such fact. Also, the concerned Office of the City Assessor of Bacolod City issued a Certification for Land with No Improvement stating that "records of this Office do not show of any residential house/improvement/s situated on the property/ties".

BGRCDC executed a Deed of Absolute Sale over the subject real property in favor of Tri Star Megalink Corporation. The corresponding taxes due on the sale of the said real property were already paid. Hence, this query on whether or not the subject real property owned by BGRCDC 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. –**
>
> 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.
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> 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*

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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 property was acquired for investment purposes and recorded/reported by BGRCDC as capital asset. The property was never used in the course of trade or business of BGRCDC, or depreciated for that purposes. No improvements were introduced to the subject real property as certified by the concerned City Assessor where the property is located. The concerned Barangay also issued a Certification of Non-Use of the subject real property. More importantly, BGRCDC 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 BGRCDC is a taxpayer not engaged in the real estate business, being not a real estate dealer, developer or lessor and was organized as a general construction business; that the aforementioned property has been idle and vacant since the time of its acquisition as shown by the Certification of the concerned City Assessor that there is no improvement erected on the land, as well as the Certification of concerned Barangay Chairman where the property is located; that the property has no reported operation or commercial activity; 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 real property described above is classified as capital asset, the conveyance of which is subject to capital gains tax and documentary stamp tax and consequently 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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