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
CTE 437-2021
DEC 0 6 2021

2402 BOUGAINVILLA HOLDINGS, INC
6786 Ayala Avenue, Brgy. San Lorenzo
Makati City, 1226

Attention: **Atty. Ronaldo Modesto J. Ventura**
Authorized Representative

Gentleman:

This refers to your letter dated June 28, 2021 requesting on behalf of your client, **2402 BOUGAINVILLA HOLDINGS, INC.** (BHI for brevity) for confirmation that the sale of real property held by 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 BHI is a domestic corporation with principal place of business at 6786 Ayala Avenue, Brgy. San Lorenzo, Makati City, 1226; that it is duly registered with the Securities and Exchange Commission (SEC) on September 06, 2017 under Company Registration No. CS201729888; and that is also registered with the BIR on September 20, 2017 with Taxpayers Identification Number (TIN) No. under Line of Business 6694 or as engaged in Financial Holdings Company.

BHI was organized as a holding company whose primary purpose is to "*to acquire, hold, sell, exchange, deal and invest in real or personal property of all kinds, including stocks, bonds, or securities of any public or private corporation, including any government or any subdivision thereof, in the same manner and to the extent as natural person, might could or would do, to exercise all the rights, powers and privilege or ownership, including the right to vote therein, or consent in respeet thereof, for any and all purposes without however managing securities, portfolio or funds of the managed entity or firm nor the corporation shall act as stock dealer in securities. Provided that the corporation shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts.*"

As a holding company, BHI 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 September 20, 2017, BHI acquired a residential house and lot located at Bougainvilla St., Dasmariñas Village, Makati City, NCR for investment purposes and not for sale or for lease in the ordinary course of business. This residential house and lot are covered by Transfer Certificate of Title No. issued by the Registry of Deeds for Makati City with an area of 1,288 square meters, more or less, and Tax Declaration Nos. and issued by the City of Makati.

Since its acquisition, the subject house and lot has not been developed nor utilized by BHI in its operations. It has been reported in the Audited Financial Statements (AFS) of BHI as "Investment Property". As disclosed in Note 6 of the Notes to Financial Statement, the Company purchased lot and building in Makati City for P235,000,000.00 which was booked under Investment Property on taxable year 2018. To prove the non-use of the subject real property, the concerned Barangay issued a certification stating such fact.

On November 27, 2020, BHI executed a Deed of Absolute Sale over the subject house and lot in favor of Ricky Chan Sy, an individual who is married to Eleanor Lynn Dy Sy, with residence at 2412 Bougainvilla St., Dasmariñas Village, Makati City. The corresponding taxes due on the sale of the said property were already paid. Hence, this query on whether or not the subject real property owned by BHI 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 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 property. 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 BHI as capital assets. The property was never used in the course of trade or business of BHI, or depreciated for that purposes. The concerned Barangay also issued a Certification of Non-Use of the subject real property. More importantly, BHI 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 BHI 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 property has been idle since the time of its acquisition as shown, by the Certifications issued by concerned City Assessor; that the concerned Barangay Chairman where the property is located issued a Certification that the property has no reported operation or commercial activity; and that the property has been treated in the books of accounts and are 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 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

047573