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WITHHOLDING TAX PAYMENTS UNDER RR 1-90 AS AMENDED BY RR 12-94 ON SALE OF CONDOMINIUM UNITS ON A DEFERRED PAYMENT BASIS

BIR REVENUE MEMORANDUM CIRCULAR NO. 30-96, January 04, 1996

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For the information and guidance of all revenue officials and employees, quoted hereunder is BIR Ruling No. 019-96 dated 2-20-96 modifying BIR Ruling No. 078-94 dated March 18, 1994.

"E. L. Punsalan & Associates
Suite 403, Valgosons Realty Bldg.
2151 Pasong Tamo, Makati City

Attention: Atty. Eranio L. Punsalan

Gentlemen:

This refers to BIR Ruling No. 078-94 dated March 18, 1994 where this Office held that —

"In reply thereto, I have the honor to inform you that pursuant to Revenue Regulations No. 1-90 sale, exchange or transfer of real property whether capital or ordinary asset by a corporation which is habitually engaged in the real estate business, certified as such by the Chamber of Real Estate and Builders Association, Inc. (CREBA), and who is registered with HUDCC shall be subject to a creditable withholding tax of two and one-half percent (2.5%) based on the gross selling price or total amount of consideration or its equivalent paid to the seller/owner. Revenue Regulations No. 1-90 covers all types of sale, i.e., cash sale, sale on installment basis and sale on a deferred payment basis. Thus, even if the aforementioned sales of your clients' condominium units are on a deferred payment basis, the sales are still subject to the creditable withholding tax under Revenue Regulations No. 1-90 based on their gross selling price.

The Certificate Authorizing Registration (CAR) is issued upon presentation by the seller of proof of actual full payment of capital gains tax/expanded withholding tax and documentary stamp tax due on the sale of real property.

Such being the case, the aforementioned sales of condominium units, the gross selling price of which has been fully paid as of this date and the gain realized from said sales has been reflected as part of their taxable income in the year of sale, the RDO concerned may now issue the CAR to the seller upon submission of the following:

(1) Quarterly ITR or final ITR and receipts of payment of income tax on the year the specified condominium units were reported as part of the Gross Income;

(2) The withholding tax payment under RR 1-90 on the initial or downpayment on said units;

(3) Instrument of Sales;

(4) Breakdown of cash (sales) transaction during the quarter/year".

After a careful restudy of the aforesaid ruling, this Office is of the opinion as it hereby holds that since the initial or downpayments on the sale of the condominium units of your clients exceeds twenty-five percent

(25%) of the selling price such that the sale is considered a cash sale, the withholding tax payment under RR 1-90 as amended by RR 12-94 should not only be on the initial or downpayment on said units but on the entire selling price.

Such being the case, before the RDO concerned may issue the CAR to the seller the following documents must be submitted:

(1) Quarterly ITR or final ITR and receipts of payment of income tax on the year the specified condominium units were reported as part of the Gross Income;

(2) The withholding tax payment under RR 1-90 based on the gross selling price and not merely on the initial or downpayment on said units which exceeds 25% of the selling price;

(3) Instrument of Sales;

(4) Breakdown of cash (sales) transaction during the quarter/year.

This modifies BIR Ruling No. 078-94 dated March 18, 1994 insofar as the withholding tax payment under RR 1-90 as amended by RR 12-94 is concerned which should be on the entire selling price of the condominium units and not only on the initial or downpayment.

Very truly yours,

LIWAYWAY VINZONS-CHATO
Commissioner of Internal Revenue"

All revenue officials and employees are enjoined to give this Circular as wide a publicity as possible.

Adopted: 4 Jan. 1996

(SGD.) LIWAYWAY VINZONS-CHATO
Commissioner of Internal Revenue

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