

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

June 28, 2010

REVENUE MEMORANDUM CIRCULAR NO. 55-2010

SUBJECT: Circularizing Revocation of BIR Rulings issued to G&W Architects, Engineers and Project Development Consultants Relative to its “Build-To-Own” Transactions

TO : All Internal Revenue Officials, Employees and Others Concerned

For the information and guidance of all internal revenue officials, employees and others concerned, quoted hereunder is the full text of the memorandum letter to the Regional Director of Revenue Region No.8, Makati, declaring the following rulings null and void:

1. BIR Ruling No. DA-056-2003 dated February 24, 2003 (Penhurst Parkplace Condominium)
2. BIR Ruling No. DA-624-2004 dated December 10, 2004 (Kensington Place Condominium)
3. BIR Ruling No. DA-455-2007 dated August 17, 2007 (Kensington Condominium)
4. BIR Ruling No. DA-410-2007 dated July 26, 2007 (Sapphire Residences)
5. BIR Ruling No. DA-409-2007 dated July 26, 2007 (Blue Sapphire Residences Condominium)
6. BIR Ruling No. DA-337-2007 dated June 20, 2007 (Grand Hamptons Place Condominium)

“MEMORANDUM

TO: **DIR. JAIME B. SANTIAGO**
Revenue Region No. 8
Makati

SUBJECT: Issues on “Build-To-Own” Transactions of G&W Architects, Engineers and Project Development Consultants

DATE:

This refers to the memorandum of RDO Gerry O. Dumayas and ARDO Christina C. Barroga dated March 28, 2010, seeking confirmation that the “Build-To-Own or Build-Your-Own” concept employed by G&W Architects, Engineers and Project Development Consultants is considered pre-selling/selling that should have been subjected to EWT and DST.

In the said memorandum, it was alleged that, upon investigation of RDO No.44, the facts are not as represented by the subject taxpayer in their requests for ruling. Hence, the transactions should be treated as pre-selling/selling and therefore subject to EWT and DST.

It must be noted that the rulings were issued with a very specific collatilla, to wit:

"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."

Finding merit in the arguments of our revenue officers and considering the misrepresentation by G&W Architects, Engineers and Project Development Consultants, it is hereby declared that the following rulings are null and void:

1. BIR Ruling No. DA-056-2003 dated February 24, 2003 (Penhurst Parkplace Condominium)
2. BIR Ruling No. DA-624-2004 dated December 10, 2004 (Kensington Place Condominium)
3. BIR Ruling No. DA-455-2007 dated August 17, 2007 (Kensington Condominium)
4. BIR Ruling No. DA-410-2007 dated July 26, 2007 (Sapphire Residences)
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6. BIR Ruling No. DA-337-2007 dated June 20, 2007 (Grand Hamptons Place Condominium)

Furthermore, the revenue district offices under your region are ordered to:

- a. Conduct a full blown audit and investigation in order to ascertain the amount of taxes owed by the said taxpayers; and
- b. Determine whether other taxpayers granted similar rulings ought to be investigated as well.

For your immediate and appropriate action.

(Original Signed)
JOEL L. TAN-TORRES
Commissioner of Internal Revenue

The nullification of the abovementioned rulings, is anchored on the findings that the *scheme of build-to-own, build-your-own, and similar concepts* mainly consist of the developer making it appear that it merely manages the construction of the condominium project, and that the funds as contributed by the individual investors are pooled in a bank with the developer, as project manager, receiving a project management fee only. Moreover, in the above scheme, the assignment and delivery of the developed units to joint owners (individual investors), is claimed not to be a taxable event being merely a transfer of property held in trust by the Trustee for the individual Trustors. The foregoing effectively resulted in the non-payment of income taxes and value-added tax by the developer on the gross project amount.

In addition, the House and Land Use Regulatory Board (HLURB) rejects the above scheme being contrary to the policy behind Presidential Decree (P.D.) No. 957, otherwise known as "The Subdivision And Condominium Buyer's Protective Decree" (as amended by P.D.1216).

The revocation of the abovementioned rulings is hereby circularized for the guidance and information of all revenue district offices. All concerned are hereby enjoined to report similar schemes for appropriate investigation, and to give this circular as wide a dissemination as possible.

(Original Signed)
JOEL L. TAN-TORRES
Commissioner of Internal Revenue