

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

REVENUE MEMORANDUM CIRCULAR NO. 20-2010

SUBJECT: Circularizing Revocation of **BIR Ruling No. DA-245-2005**.

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 **BIR Ruling DA -245-2005** dated June 7, 2005, null and void, as follows:

“MEMORANDUM

TO	:	DIR. ALFREDO V. MISAJON Revenue region No. 8 Makati
SUBJECT	:	Issues on Joint Venture Transactions between Meridien East Realty & Development Corporation (Meridien) and Century Properties, Inc. (CPI).
DATE	:	April 28, 2009

This refers to the memorandum of RDO Gerry O. Dumayas and ARDO Christina C. Barroga dated March 26, 2009, seeking confirmation that the co-development concept employed by Meridien and CPI is considered as pre-selling and that there is a need to re-examine the ruling exempting it from taxes.

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 request for ruling. Hence, the transactions should be treated as pre-selling and therefore subject to EWT and DST.

It must be noted that the ruling was 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 blatant misrepresentation by Meridien and CPI, it is hereby declared that the ruling is null and void.

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)
SIXTO S. ESQUIVIAS, IV
Commissioner of Internal Revenue”

The nullification of DA-245-2005, *supra*, 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/co-developers 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 owner (individual investors/co-developers), as stipulated in the Agreement, is claimed not to be a taxable event being merely a transaction to effect the return of their respective capital contribution to the joint venture. 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 BIR Ruling No. DA-245-2005 dated June 7, 2005 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