

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

June 28, 2010

REVENUE MEMORANDUM CIRCULAR NO. 54-2010

SUBJECT: Circularizing Revocation of **BIR Ruling No. DA (C-322) 789-2009.**

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 to the Regional Director of Revenue Region No. 6, Manila, declaring **BIR Ruling DA (C-322) 789-2009** dated December 17, 2009 null and void, as follows:

“MEMORANDUM
TO : ALFREDO V. MISAJON
Regional Director
Revenue Region No. 6
Manila

SUBJECT : Issues on residential condominium project known as
“The Ritzville Residence” of Ernesto Chuakaw, et al.

DATE : June 3, 2010

This refers to the memorandum dated May 13, 2010 of Revenue Officer Allan S. Marasigan recommending that BIR Ruling No. DA(C-322) 789-2009 dated December 17, 2009 granting tax exemptions to Ernesto Chuakaw be re-evaluated by higher authority.

In the said memorandum, it was alleged that Mr. Chuakaw owns a parcel of land located in M. De Binondo Sto. Cristo, San Nicolas, Manila covered by TCT No. 243749; that the property will be developed into a residential condominium with a group of investors (clients) and later will be conveyed to the same group; that the transaction was granted tax exemptions in the aforesaid ruling; that it was verified that the transaction would involved build-to-own, build-your-own and similar concepts earlier employed by Meridien East Realty and Development Corporation; and that the transaction by Meridien was granted exemption from income, value-added and withholding taxes under BIR Ruling No. DA-245-2005 but was later nullified, which was circularized under Revenue Memorandum Circular No. 20-2010.

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 recommendation of RO Marasigan, which was concurred by RDO Rosemarie Ramos-Ragasa, and considering the blatant misrepresentation by Mr. Chuakaw, BIR Ruling No. DA(C-322) 789-2009 is hereby declared null and void.

Furthermore, Revenue District Office No. 29, Tondo-San Nicolas is hereby ordered to conduct a full-blown audit and investigation in order to ascertain the taxes due on the instant transaction.

For your immediate and appropriate action.

JOEL L. TAN-TORRES
Commissioner"

The nullification of BIR Ruling No. DA(C-322) 789-2009, *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 owners (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(C-322) 789-2009 dated December 17, 2009 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