



Republic of the Philippines  
**DEPARTMENT OF FINANCE**

Roxas Boulevard Corner Pablo Ocampo, Sr. Street  
Manila 1004

**DOF OPINION NO. 013.2022**

**ATTY. DEONAH L. MARCO-GO**

Partner, Tax and Transfer Pricing Services  
SyCip Gorres Velayo (SGV) & Co.  
6760 Ayala Avenue, 1226 Makati City

**SUBJECT: Request for Review of Bureau of Internal Revenue (BIR)  
Ruling No. OT-206-2021 dated 16 June 2021**

Dear **Atty. Marco-Go**:

This refers to the request for review dated 14 June 2022 filed by your Office on behalf of DASMARIÑAS VILLAGE ASSOCIATION, INC. (DVAI) of Bureau of Internal Revenue (BIR) Ruling No. (399-2013) OT-206-2021 dated 16 June 2021, denying DVAI's request for confirmatory ruling of tax exemption and subjecting DVAI to applicable internal revenue taxes on its income from association or membership dues, rentals of facilities, trade business, and other activities.

DVAI is a duly constituted non-stock, non-profit homeowners' association registered with the Securities and Exchange Commission (SEC). Its records were transferred to the Housing and Land Use Regulatory Board (HLURB)<sup>1</sup> in accordance with Section 3 (b) of Republic Act (RA) No. 9904.<sup>2</sup> It is situated within the jurisdiction of the City of Makati, and incorporated with the purpose, among others, of promoting and advancing *"the best interest, general welfare, prosperity and safeguard the well-being of the owners, lessees and occupants of the property in the Damariñas Village."*

On 19 November 2018, DVAI requested from the BIR the issuance of a ruling confirming that the association dues, membership fees, other assessments and charges collected by DVAI and income derived from rentals of its facilities are exempt from income tax and value-added tax (VAT)/percentage tax pursuant to Section 18 of RA No. 9904 and the National Internal Revenue Code (NIRC), as

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<sup>1</sup> Registered with the HLURB under Certificate of Registration No. 01525. DVAI is also registered with the Bureau of Internal Revenue (BIR) with Taxpayer Identification No. 000-448-779-000, and with the Securities and Exchange Commission (SEC) with registration No. 26476.

<sup>2</sup> An Act Providing for a Magna Carta for Homeowners and Homeowners' Associations, and for Other Purposes

amended by RA No. 10963, or the Tax Reform for Acceleration and Inclusion (TRAIN) Act. Section 18, RA No. 9904 provides:

“SECTION 18. Relationship with [Local Government Units] LGUs. — Homeowners' associations shall complement, support and strengthen LGUs in providing vital services to their members and help implement local government policies, programs, ordinances, and rules.

Associations are encouraged to actively cooperate with LGUs in furtherance of their common goals and activities for the benefit of the residents of the subdivisions/villages and their environs.

**Where the LGUs lack resources to provide for basic services, the associations shall endeavor to tap the means to provide for the same. In recognition of the associations' efforts to assist the LGUs in providing such basic services, association dues and income derived from rentals of their facilities shall be tax-exempt: Provided, That such income and dues shall be used for the cleanliness, safety, security and other basic services needed by the members, including the maintenance of the facilities of their respective subdivisions or villages.**

xxx

Meanwhile, Section 109 (1) (y) of the NIRC, as amended, provides:

SEC. 109. Exempt Transactions. —

(1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax.

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**(Y) Associations dues, membership fees, and other assessments and charges collected by homeowners' associations and condominium corporations;**

xxx

In response to DVAI's request, the BIR issued Ruling No. (399-2013) OT-206-2021 dated 16 June 2021 denying DVAI's request for tax exemption, holding as follows:



“A careful review of the Certification issued by the Officer-in-Charge of Makati City dated December 21, 2017 shows that the City Government of Makati does not support the homeowners association not because it lacks resources but because it does not want to provide financial support to programs involving private properties, and as a private organization, the delivery of basic services is with **DASMARIÑAS VILLAGE ASSOCIATION, INC.’s** exclusive control and supervision in accordance with Section 3(d) of RA No. 9904, otherwise known as the Magna Carta of Homeowners Association. Thus, we regret to inform you that **DASMARIÑAS VILLAGE ASSOCIATION, INC.** does not fall within the purview of those homeowners’ association which may be exempted for income tax under Section 18 of RA No 9904 considering that the requisite qualification that the city or municipality concerned must be lacking in resources to provide for basic services is absent.

Consequently, DASMARIÑAS VILLAGE ASSOCIATION, INC. shall be subject to the applicable internal revenue taxes on its income from association dues, rentals of their facilities, trade business and other activities.”

On 18 May 2022, DVAI, through its authorized representative, SGV & Co., received the subject Ruling. SGV & Co filed the instant Request for Review on 14 June 2022, well within the period prescribed under Section 3 of DOF Department Order No. 7-02.<sup>3</sup>

DVAI submits that it has complied with the conditions for tax exemption under Section 18 of RA No. 9904. In addition, DVAI posits that the association dues are not income but are instead capital, not derived from real or personal property or activity conducted for profit, and argues that the association dues are merely held in trust, solely used for administrative expenses. DVAI also submits that the association dues are exempt from VAT pursuant to the provisions of the NIRC, as amended.

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<sup>3</sup> Department Order No. 7-02. Providing for the Implementing Rules of the First Paragraph of Section 4 of the National Internal Revenue Code of 1997, Repealing for this Purpose Department Order No. 005-99 and Revenue Administrative Order No. 01-99.

*“Section 3. Rulings adverse to the taxpayer. – A taxpayer who receives an adverse ruling from the Commissioner of Internal Revenue may, within thirty (30) days from the date of receipt of such ruling, seeks its review by the Secretary of Finance. xxx”*

RA No. 9904 or the "Magna Carta for Homeowners and Homeowners' Associations" recognizes the commitment and support that communities, such as homeowners' associations, give to their local governments in providing basic community services and facilities to their localities. As such, the law grants tax exemption to certain income and fees collected by associations. These are income from rental of the associations' facilities and dues that associations collect from their members, provided, that such income and dues shall be used for the cleanliness, safety, security and other basic services needed by the members, including the maintenance of the facilities of their respective subdivisions or villages.<sup>4</sup>

For the rental income and association dues to be tax exempt, the following conditions must be complied with pursuant to Revenue Memorandum Circular (RMC) No. 9-13:<sup>5</sup>

*Exemption Under Republic Act No. 9904*

Pursuant to Section 18 of RA No. 9904, the association dues and income derived from rentals of the homeowners' association's properties may be exempted from income tax, VAT and percentage tax subject to the following conditions:

- a. The homeowners' association must be a duly constituted "Association" as defined under Section 3 (b) of RA No. 9904;
- b. The local government unit having jurisdiction over the homeowners' association must issue a certification identifying the basic services being rendered by the homeowners' association and therein stating its lack of resources to render such services notwithstanding its clear mandate under applicable laws, rules and regulations. Provided further, that such services must fall within the purview of the "basic community services and facilities" which is defined under Section 3 (d) of RA No. 9904 as those referring to services and facilities that redound to the benefit of all homeowners and from which, by reason of practicality, no homeowner may be excluded such as, but not limited to: security; street and vicinity

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<sup>4</sup> Section 18, RA No. 9904

<sup>5</sup> Subject: Clarifying the Taxability of Association Dues, Membership Fees, and Other Assessments/Charges Collected by Homeowner's Associations



lights; maintenance, repairs and cleaning of streets; garbage collection and disposal; and other similar services and facilities; and

- c. The homeowners' association must present proof (*i.e.*, financial statements) that the income and dues are used for the cleanliness, safety, security and other basic services needed by the members, including the maintenance of the facilities of their respective subdivisions or villages.

Anent the first condition, DVAI was able to prove that organizational wise, it is a duly constituted association, as defined under Section 3(b) of RA No. 9904 as follows:

(b) "Association" refers to the homeowners' association which is a **nonstock, nonprofit corporation** registered with the Housing and Land Use Regulatory Board (HLURB),<sup>6</sup> or one previously registered with the Home Insurance Guarantee Corporation (now Home Guaranty Corporation) or the Securities and Exchange Commission (SEC), **organized by owners or purchasers of a lot in a subdivision/village or other residential real property located within the jurisdiction of the association; xxx.**<sup>7</sup>

The documents submitted by DVAI disclosed that it was registered with SEC under Registration No. 26476 as a nonstock, nonprofit corporation and its records were transferred by SEC to HLURB, as certified by the latter.<sup>8</sup> One of DVAI's purposes is to promote and advance the best interest, general welfare, prosperity, and safeguard the well-being of the owners, lessees, and occupants in Dasmariñas Village,<sup>9</sup> which is under the territorial jurisdiction of the City of Makati.

With regard to the second condition, the City Government of Makati (CGM) certified that DVAI provided funds and basic services to its members, such as but not limited to: (1) security and safety, (2) garbage collection and free trash

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<sup>6</sup> By virtue of RA No. 11201, the HLURB has been reconstituted into the newly created Department of Human Settlements and Urban Development (DHSUD). Notice to the Public, DHSUD website. <https://dhsud.gov.ph/>

<sup>7</sup> Emphasis supplied. See HLRUB Executive Committee Resolution No. 001, series of 2017. Guidelines in the Kinds of Dues, Fees and Contributions that may be Collected by Homeowners Associations. Homeowners associations are organized to manage the roads, open space and community facilities, and provide services to its members.

<sup>8</sup> Certification dated 14 July 2014 prepared by Emilie E. Pizarro, HHRO III, ENCRFO-HOA, and noted by Teodorico R. Alonzo, Registration Officer III, ENCRFO-HOA, attached as Annex E to the Request for Review.

<sup>9</sup> Amended Articles of Incorporation of Dasmariñas Village Association Inc.

bags, (3) repair, maintenance and cleaning of streets, sidewalks, parks, building & facilities and other common areas, (4) streetlights, (5) lighted street name signs, (6) provision of space for water and sewer facilities, and (7) other similar services and facilities. CGM further stated that:

**“The City Government of Makati (CGM) did not appropriate fund and resources intended for the above basic services to the members of DVAI since it involves private properties. Hence, the aforesaid basic services to the members of DVAI is not included among the programs and projects of the City.** Furthermore, as a private organization, the delivery of basic services is with their exclusive control and supervision in accordance with Section 3(d) of the Republic Act No. 9904, otherwise known as the Magna Carta of Homeowners Association.

**Considering that the CGM lacks resources due to the reason stated above, we would like to recommend the approval of their application for tax exemption.”<sup>10</sup>**

Verily, in denying DVAI’s request for tax exemption, the BIR assumed that the second condition was wanting as the LGU does not really lack the resources to render basic services, but merely opted not to provide the same as they involve private properties.

We beg to differ.

We believe that the second requisite in RMC 09-2013 is complied with in the instant case. Upon perusal of the Certification<sup>11</sup> issued by CGM, it is clearly stated therein that *“CGM lacks resources due to the reason stated above, we would like to recommend the approval of their application for tax exemption.”<sup>12</sup>*

When the City certified that it did not appropriate funds and resources for the basic services to the members of DVAI since it involves private properties, the same admits the fact that the City has only been able to provide funds for basic services where these are most needed, i.e. public streets, sidewalks, parks, buildings, and common areas.

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<sup>10</sup> Emphasis supplied.

<sup>11</sup> Certification dated 21 December 2017 issued by the Officer-in-Charge of Makati City, Aileen Soriano.

<sup>12</sup> *Id.*



Moreover, as certified by CGM, the services that DVAI provides to its members (services for security and safety, general hygiene and sanitation, garbage collection and solid waste disposal, and other similar services), fall within the purview of the "basic community services and facilities" as provided by law.<sup>13</sup> As such, DVAI was able to comply with the second condition.

We also opine that DVAI complied with the third condition upon submission of its financial documents<sup>14</sup> showing that the rental income and the dues collected are used in providing the basic community services needed by the members, including the maintenance of the facilities of their village. DVAI's submitted financial statements detailed its expenses for security services, garbage services, street repairs and maintenance, and street lights, among others, which fall within the contemplation of "basic community services and facilities" as defined under the law.

With that said, this Office rules that DVAI met the conditions for tax exemption of rental income and dues under Section 18 of RA No. 9904, as enunciated under RMC No. 9-2013.

Consistent with the ruling of the BIR in BIR Ruling No. 391-2016 dated 18 November 2016, we believe that DVAI's income derived from association dues and rentals of facilities of DVAI is exempt from income tax, VAT or percentage tax, whichever is applicable. Provided, that such income and dues shall be used for the cleanliness, safety, security, and other basic services needed by the members, including the maintenance of the facilities of their respective subdivisions or villages.

However, DVAI shall be subject to applicable internal revenue taxes on its other income from trade, business, or other activities. Specifically:

### ***Income Tax***

DVAI shall be subject to the corresponding internal revenue taxes imposed under the NIRC, as amended, on its income **not derived** from association dues nor rentals of its facilities, which income should be returned for taxation. Likewise, interest income from currency bank deposits and yield or any other monetary benefit from deposit substitute instruments and from trust funds and

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<sup>13</sup> See Section 3 (d) of RA No. 9904. See also Section 17 (Basic Services and Facilities), Chapter II, Title 1, Book 1, Local Government Code of 1991.

<sup>14</sup> Audited Financial Statements for taxable years 2015, 2016, 2017, 2020, and 2021

similar arrangements, and royalties derived from sources within the Philippines are subject to the 20% final withholding tax; provided, however, that interest income derived by it from a depository bank under the expanded foreign currency deposit system shall be subject to 15% final withholding tax pursuant to Section 27(D)(1) in relation to Section 57(A), both of the NIRC, as amended. Moreover, it is required to file on or before April 15 of each year a profit and loss statement and balance sheet with the annual information return under oath, stating its gross income and expenses incurred during the year and a certificate showing that there has not been any change in its By-Laws, Articles of Incorporation, manner of operation and activities as well as resources and disposition of income.

***Value-Added Tax (VAT) or Percentage Tax***

DVAI's gross receipts from operations **not derived** from rentals of its facilities, association dues, membership fees, other assessment and charges collected in purely reimbursement basis shall be subject to the 12% VAT imposed under Section 108 of the NIRC, as amended, or to the three percent (3%) tax imposed under Section 116 in relation to Section 109(BB) of the NIRC if the gross sales or receipts from such sale of goods and services do not exceed Three Million Pesos (P3,000,000.00).

In view of the foregoing, this Office grants the request for review. Kindly note that this ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it shall be disclosed that the facts are different, then this ruling shall be considered as null and void.

Thank you.

Very truly yours,

**BENJAMIN E. DIOKNO**

Secretary JUL 20 2022



DEPARTMENT OF FINANCE  
Republic of the Philippines



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CC: **HON. LILIA CATRIS GUILLERMO**  
Commissioner, Bureau of Internal Revenue

**DASMARIÑAS VILLAGE ASSOCIATION, INC.**  
1417 Campanilla Street, Dasmariñas Village, Makati City