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Diana Beinart
General Counsel/Deputy Commissioner

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XXXXXX XXXX
XXXXXX XXXX XXXXXXX, XXX XXXXXX
XXXXXXXXXX, XX XXXXXX

Re: Request for Letter Ruling
NYC Real Property Transfer Tax
FLR No.: 22-5019

Dear XXX XXXX:

This letter is in response to your request for a letter ruling dated April 15, 2022, regarding the application of the New York City Real Property Transfer Tax (“RPTT”) to the hypothetical transaction described below. Additional information was received on May 31, 2022.

FACTS

The hypothetical facts you have presented are as follows:

A developer (the “Purchaser”) buys commercial property located in New York City (the “Property”) for a total purchase price of \$100 million (“Total Consideration”). The Purchaser and the seller of the Property (the “Seller”) have agreed that out of the total Consideration, \$10 million may be satisfied by a transfer of 3 residential condominium units (the “Units”) by the Purchaser’s affiliate (the “Units Owner”) to the Seller. The Units are specifically identified in the agreement and are located in New York City. In the case that the Units are not available for transfer at the same time as the Property, they may be transferred within a reasonable time frame therefrom, provided that the Seller and the Units Owner enter into a separate purchase and sale agreement for the Units. All closing costs related to the transfer of the Units will be covered by the Seller.

Because the Units are occupied by tenants at the time of the transfer of the Property, they will be transferred once vacant, in accordance with the agreement. The parties expect that it will take about 2 months for the Units to become available.

The Seller will pay RPTT based on the amount of the Total Consideration at the time of the transfer of the Property.

ISSUE

Whether the transfer of the Units will be separately subject to RPTT?

CONCLUSION

Yes, the transfer of the Units is subject to the RPTT separately from the tax paid for the transfer of the Property.

DISCUSSION

Under the New York City Administrative Code (the “Code”) section 11-2102 the RPTT is imposed on the conveyance of real property or the transfer of an economic interest in real property located in the City where the consideration for the conveyance or transfer exceeds \$25,000. Section 11-2101 of the code defines “consideration” as the “price actually paid or required to be paid for real property or economic interest therein, without deduction for mortgages... and whether paid or required to be paid by money, property, or any other thing of value.”

Based on the above definition, the consideration for the transfer of the Property was equal to the Total Consideration. The fact that a part of the payment may be satisfied at a later date and with real property instead of cash does not exclude it from the consideration for the sale of the Property. The RPTT on this transaction was paid in full by the Seller prior to the transfer of the Units.

If the Buyer chooses to exercise the option to use the Units as consideration for the Property, the Units Owner will enter into a separate agreement with the Seller, where the Units Owner will become the grantor and the Seller - the grantee. Since the transfer of the Units is also a conveyance of real property, it is subject to RPTT independently from the transfer of the Property. The consideration for the Units will be a \$10 million portion of the Property, as per the agreement between the Buyer and the Seller. Since there are multiple Units at issue, the \$10 million of consideration would have to be apportioned among the Units using some reasonable method, such as relative value. Additionally, to the extent that the Seller, as grantee, pays any closing costs on behalf of the Units Owner, such closing costs would be included in the consideration for the Units. An RPTT return must be filed for each individual Unit.

The Department reserves the right to verify the information submitted. Please advise the Department of any material change in the facts presented.

Sincerely,

Diana Beinart
General Counsel

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