REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

E.O. 226; RR 2-98
BIR Ruling No. 342-14; BIR Ruling No. 329-14
#080-2016
3-4-2016

HLC CONSTRUCTION AND DEVELOPMENT CORPORATION
HLC Group Compound, R. Castillo St., Agdao,
Davao City *8000*

Attention : **Ms. Abegail T. Tao**
Admin Manager

Gentlemen:

This refers to your letter dated September 17, 2014, applying for tax exemption on the tax consequences of the Income Tax Holiday (ITH) granted by the Board of Investments (BOI) to **HLC CONSTRUCTION AND DEVELOPMENT CORPORATION** under Executive Order (EO) No. 226 otherwise known as the "Omnibus Investments Code of 1987", for a period of four (4) years from the start of commercial operations/ selling.

Documents submitted disclosed that **HLC CONSTRUCTION AND DEVELOPMENT CORPORATION**, with Taxpayer's Identification No.(TIN) is a domestic corporation duly organized and existing under Philippine Laws; that it is registered with the Securities and Exchange Commission (SEC) bearing SEC Certificate of Registration No. that it is engaged in real estate development; that it is registered with the BOI as a New Developer of Low-Cost Mass Housing Project on a Non- Pioneer status; that it is the developer of the following mass housing project:

Project Name	Location	BOI Reg. No.	Date of BOI Registration	Start of Commercial Operation/ ITH	No. of Units
Excellent Living Residences	Brgy. Sinawal, General Santos City		July 10, 2014	July 2014	361

that under its BOI Terms and Conditions, the following project shall construct and sell units of low- cost mass housing units based on the following schedule:

039497

#080-2016
3-4-2016

Project Name	Year	No. of Units	Sales Value (PhP)
Excellent Living Residences	1	69	
	2	180	
	3	112	
Total		**361**	

that **Excellent Living Residences** located at Brgy. Sinawal, General Santos City is duly registered with the Housing and Land Use Regulatory Board (HLURB) under the following Certificate of Registration and was issued Licenses to Sell, to wit:

HLURB Certificate of Registration No./ Date Issued	HLURB Licenses to Sell No./ Date Issued	No. of Units
January 7, 2013	January 7, 2013 / January 7, 2013	142 - Socialized Housing 219 – Economic Housing
	Total	**361**

that according to the Specific Terms and Conditions of its BOI Registration, **HLC CONSTRUCTION AND DEVELOPMENT CORPORATION (Excellent Living Residences-Brgy. Sinawal, General Santos City)** is entitled to ITH for a period of four (4) years from July 2014 or the actual start of commercial operations whichever is earlier, but in no case earlier than the date of registration; that **HLC CONSTRUCTION AND DEVELOPMENT CORPORATION (Excellent Living Residences-Brgy. Sinawal, General Santos City)'s** ITH shall be limited only to the revenue generated from the registered project; and that revenues from units with selling price exceeding P shall not be covered by ITH.

In reply, please be informed that under Section 2.57.5(B)(2) of Revenue Regulations No. 2-98, as amended, by RR No. 6-2001 implementing Section 57(B) of the Tax Code of 1997, as amended, the withholding tax prescribed in the said Regulations shall not apply to income payments to persons enjoying exemption from the income tax provided by the Omnibus Investments Code of 1987. *(BIR Ruling No. 342-14 dated August 26, 2014)*

Accordingly, since **HLC CONSTRUCTION AND DEVELOPMENT CORPORATION (Excellent Living Residences-Brgy. Sinawal, General Santos City)** is a BOI-registered project, this Office is of the opinion that income payments received by **HLC CONSTRUCTION AND DEVELOPMENT CORPORATION** in connection with its housing project, **Excellent Living Residences-Brgy. Sinawal, General Santos City**, (on the 361 low-cost mass housing units as mentioned in the Specific Terms and Conditions of its BOI Registration), are exempt from the creditable withholding tax imposed under RR No. 2-98, as amended by RR No. 6-2001, for a

039497

period of four (4) years from July 2014 or the actual start of commercial operations whichever is earlier but in no case earlier than the date of registration[1].

It must be emphasized, however, that the above exemption from creditable withholding tax covers only income directly attributable to revenues generated from the registered activity, **Excellent Living Residences-Brgy. Sinawal, General Santos City**, involving Three Hundred Sixty One (361) low-cost mass housing units. Furthermore, such exemption shall not cover revenues from units with selling price exceeding Three Million Pesos (P3,000,000.00)[2]. *(BIR Ruling No. 342-14 dated August 26, 2014)*

In the computation of ITH, interest income from in-house financing shall not be considered as part of the revenues generated from the registered activity.

Moreover, the entitlement of **HLC CONSTRUCTION AND DEVELOPMENT CORPORATION (Excellent Living Residences-Brgy. Sinawal, General Santos City))** to ITH is not automatic as such project has to comply with Items 3, 4, 6, 7 a (ii)(iii)(iv)(v), 8, 9 and 13 of the Specific Terms and Condition of its pertinent BOI Registration, *viz:*

(1) The enterprise shall submit a detailed report on low-cost mass housing units sold. Annual report shall be submitted to the BOI reflecting compliance to this condition;

(2) In the grant of incentives, the extent of the project's ITH entitlement shall be based on the project's ability to contribute to the economy's development based on the following parameters: (1) net value added; (2) job generation; (3) multiplier effect; and (4) measured capacity;

a. Net Value Added should be at least 25%

	Yr-0	Yr-1	Yr-2	Yr-3
NVA(%)	92%	92%	92%	92%

b. Job Generation

	Number of Employees			
	Yr-0	Yr-1	Yr-2	Yr-3
Total Employees	84	84	84	84

[1] Movement of ITH period is subject to Art. 7 of E.O. 226 per BOI Specific Terms and Conditions No. 1
[2] Per HLURB License to Sell Nos (socialized) and (economic) both dated January 7, 2013 issued for the project, Excellent Living Residences, the maximum selling price per house and lot package is P for the socialized housing and P for the economic housing, respectively.

039497

c. Investments and Timetable

Activity	Schedule	Related Expenses	Cost (Php)
Land acquisition	June 2012 - December 2012	Land Cost	
Secure necessary license/permit/ registration from the government/training costs	April 2010 - January 2012	Pre-operating Expenses	
Site preparation and development	July 2012 – December 2012	Land/Site Development	
Building Construction	September 2013 – January 2014	Building Construction	
Start of Commercial Operations	July 2014	Working Capital	
Total			

d. Sales Revenues

Year	Volume (No. of units)	Sales Value (Php)
1	69	
2	180	
3	112	
Total	**361**	

Net income qualified for ITH availment shall not be a result of gross revenues exceeding 10% of the projected gross revenue represented by the firm in its application;

(3) The enterprise shall maintain a books of account for this registered project separate from all its other operation/s and/or activity/ies;

(4) The enterprise shall submit the list of cost items common to all its projects/activities (whether BOI or not-BOI-registered) and the methodology adopted in allocating the common costs between the registered and non-registered activity/ies;

(5) The interest Expense on the enterprise's liabilities shall be appropriately allocated between the registered and the non-registered activity/ies;

039497

(6) Interest income from in-house financing shall not be considered as revenues generated from the registered activity;

(7) The enterprise shall secure from HLURB an endorsement that it has faithfully complied with the approved development plan and a "*Certificate of Good Housekeeping*";

(8) An application should be filed with the BOI Incentives Department within one (1) month from the filing of the final Income Tax Return (ITR) with Bureau of Internal Revenue (BIR) in order to validate the claim for income tax exemption. The application shall be accompanied by a certification by SSS that the enterprise is in good standing in the remittance of SSS contributions of its employees. Further, any request for extension of the reckoning date of ITH availment should be filed prior to the scheduled date or within ninety (90) days from the occurrence of the fortuitous events and/or government delays;

(9) The enterprise must secure a Certificate of ITH Entitlement (CoE) from the BOI Legal Service prior to the filing of ITR with the BIR, otherwise, ITH for that particular taxable year without CoE shall be forfeited;

(10) In the event the enterprise fails to maintain the 75:25 debt-equity ratio requirement, it shall show proof that the construction of housing units have been completed and delivered to buyers prior to availment of ITH. Otherwise, the enterprise shall not be entitled to ITH and shall be required to refund any capital equipment incentives availed of;

(11) The enterprise shall submit proof of compliance that at least twenty percent (20%) of the total subdivision area (estimated at 12,203 sq.m.) or total subdivision project cost (estimated at PhP), has been developed and allocated for socialized housing within one year from date of registration or prior to availment of ITH, whichever is earlier. This shall be done through development of new settlement directly undertaken by registered entity. Otherwise, the ITH for that particular taxable year shall be deemed forfeited;

(12) The enterprise must commit to the tenets of Good Corporate Governance.

Furthermore, BOI-registered enterprises enjoy no tax exemption/privileges other than those granted under E.O. 266. In this regard, under the terms and conditions of its BOI registration, HLC CONSTRUCTION AND DEVELOPMENT CORPORATION (Excellent Living Residences-Brgy. Sinawal, General Santos City)) was clearly granted 4-year ITH but such terms and conditions do n ot provide for any exemption from other taxes that it may be subject to on its business transactions. Thus,

039497

HLC CONSTRUCTION AND DEVELOPMENT CORPORATION (Excellent Living Residences-Brgy. Sinawal, General Santos City)) will remain subject to Value- Added Tax (VAT) and Documentary Stamp Tax (DST) on its sales of housing units pursuant to Sections 106 (A)(1)(a) and 196 of the Tax Code of 1997, as amended. (BIR Ruling No. 329-14 dated August 14, 2014)

In relation thereto, Section 109(1)(P) of the Tax Code of 1997 provides, that the sale of residential lot valued at one million nine hundred nineteen thousand five hundred pesos (P1,919,500.00) and below, or house and lot and other residential dwellings valued at three million one hundred ninety nine thousand two hundred pesos (P3,199,200.00) and below is VAT-exempt3. Thus, only the sales by HLC CONSTRUCTION AND DEVELOPMENT CORPORATION (Excellent Living Residences-Brgy. Sinawal, General Santos City)) of housing units with selling price of not more than the aforementioned price ceiling shall be exempt from VAT. (BIR Ruling No. 329-14 dated August 14, 2014)

Pursuant to Section 4 of Republic Act (R.A.) No. 10708, HLC CONSTRUCTION AND DEVELOPMENT CORPORATION is required to file its tax returns and pay its tax liabilities, on or before the deadline as provided under the 1997 Tax Code, as amended, using the electronic system for filing and payment of taxes of the BIR. Furthermore, HLC CONSTRUCTION AND DEVELOPMENT CORPORATION shall file with the BOI a complete annual tax incentives report of its income-based tax incentives, value-added tax (VAT) and duty exemptions, deductions, credits or exclusions from the tax base, as may be provided under E.O. 226, within thirty (30) days from the deadline for filing of tax returns and payment of taxes.

It should be understood that HLC CONSTRUCTION AND DEVELOPMENT CORPORATION (Excellent Living Residences-Brgy. Sinawal, General Santos City) shall be constituted as a withholding agent for the government if its acts as employer and any of its employees received compensation income subject to compensation withholding tax, or if it makes payments to individuals or corporations, subject to the withholding taxes as source as required under Chapter XIII and Section 57 of the Tax Code of 1997, as amended and implemented by RR No. 2-98, as amended.

Likewise, HLC CONSTRUCTION AND DEVELOPMENT CORPORATION (Excellent Living Residences-Brgy. Sinawal, General Santos City)) is required to file on or before the 15TH day of the fourth month following the close of its accounting period of a Profit and Loss Statement and Balance Sheet with the Annual Information Return under oath, stating its gross income and expenses incurred during the taxable year.

---

3 The increase in the threshold amount for the sale or lease of goods or properties or the performance of services covered by Section 109 (P), (Q) and (V) of the 1997 Tax Code took effect on January 1, 2012, pursuant to Revenue Regulations No. 16-2011 dated October 27, 2011.

039497

#088-2016
3-4-2016

Finally, **HLC CONSTRUCTION AND DEVELOPMENT CORPORATION (Excellent Living Residences-Brgy. Sinawal, General Santos City)'s** books of accounts and other pertinent records shall be subject to periodic examination by revenue enforcement officers of this Bureau for the purpose of ascertaining whether it has been complying with the conditions under which it has been granted tax exemption or tax incentives and its tax liability, if any, pursuant to Section 235 of the Tax Code of 1997, as amended.

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.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

039497
MAR 0 2 2016

K-1-JAC