REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

E.O. 226; RR 16-2011
Secs. 57(B); 106(A)(1)(a) ; 196 NIRC
BIR Ruling No. 334-11
#090-2016
3-14-2016

COMMUNITIES PAMPANGA, INC.
Mezzanine Floor, Starmall Complex
EDSA cor. Shaw Blvd.
Mandaluyong City

Attention : **Atty. Cecilia A. Ramilo**
Tax Department Head

Gentlemen:

This refers to your letter dated March 07, 2015 stating that Communities Pampanga, Inc. ('Communities Pampanga' for brevity) with Tax Identification No. is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) under Company Reg. No. 1. It is registered with the Board of Investments (BOI) as an Expanding Developer of Low-Cost Mass Housing Project (**Sorrento Phase 3 – Brgy. Panipuan, Mexico, Pampanga**) on a Non-Pioneer status under Certificate of Registration No. lated March 06, 2015. Communities Pampanga has been granted Income Tax Holiday (ITH) by the BOI for a period of three (3) years from March 2015 or actual start of commercial operations/selling, whichever is earlier but in no case earlier than the date of registration. **Communities Pampanga's Sorrento Phase 3 – Brgy. Panipuan, Mexico, Pampanga Project** is registered with Housing and Land Use Regulatory Board (HLURB) under Certificate of Registration No. dated Dec. 23, 2013 and holds HLURB License to Sell No. dated Dec. 23, 2013; and under the Specific Terms and Conditions of its BOI Registration, Communities Pampanga shall construct and sell two hundred thirty two (232) units of low-cost mass housing for **Sorrento Phase 3 – Brgy. Panipuan, Mexico, Pampanga Project** based on the following schedule:

Year	Volume (No. of Units)
1	71
2	85
3	76
Total	**232**

On the basis of the foregoing, you now request for an opinion on the tax consequences of the said ITH granted by BOI. Specifically, if Communities Pampanga, being a BOI- registered enterprise is exempt from the payment of the creditable withholding tax (CWT) imposed under Revenue Regulations No. 2-98 on income payments received during the aforementioned period with respect to its registered activity.

In reply, please be informed that under Section 2.57.5 (B)(2) of Revenue Regulations (RR) 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 Republic Act No. 7916 and the Omnibus Investments Code of 1987.

039741

#090-2016
3-14-2016

Accordingly, since **Communities Pampanga's Sorrento Phase 3 – Brgy. Panipuan, Mexico, Pampanga Project** is a BOI registered project, this Office is of the opinion as it hereby holds, that income payments received by Communities Pampanga in connection with its housing project, **Sorrento Phase 3 – Brgy. Panipuan, Mexico, Pampanga** (on the 232 low-cost mass housing units as mentioned in the Specific Terms and Conditions of its BOI Registration), is exempt from CWT under RR No. 2-98, as amended by RR No. 6-2001, for a period of 3 years from March 2015 or actual start of commercial operations/selling, whichever is earlier but in no case earlier than the date of registration. It must be emphasized, however, that the above exemption from CWT covers only income directly attributable to revenues generated from its registered activity, **Communities Pampanga's Sorrento Phase 3 – Brgy. Panipuan, Mexico, Pampanga Project** involving 232 low-cost mass housing units used solely for family home or dwelling purposes and not for commercial purposes such as leasing, retail stores, offices, etc. Furthermore, such exemption shall not cover revenues from units with selling price exceeding Three Million Pesos (P3,000,000.00). In the computation of ITH, interest income from in-house financing shall not be considered as revenues generated from the registered activity.

Moreover, the entitlement to ITH of **Communities Pampanga's Sorrento Phase 3 – Brgy. Panipuan, Mexico, Pampanga Project** is not automatic as it still has to comply with the following provisions of the Specific Terms and Conditions of its BOI Registration, *viz:*

1. The enterprise shall submit a duly notarized Affidavit executed by a licensed engineer or architect indicating the area or the number of lots and actual units built and the construction costs on the development of the compliance project for its existing registered projects before availment of ITH.

2. The enterprise shall submit proof of verified compliance with the 20% socialized housing requirement for its existing project before availment of ITH. Compliance with the 20% socialized housing requirement should be proportionate to the number of low cost housing units being applied for ITH for the taxable year.

3. 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. The Board may reduce the ITH if the project does not realize the extent of economic benefits represented by the proponent at the time of its application. The enterprise shall comply with the following representations:

   a. **Net Value Added (NVA) should be at least 25%**

	Year 1	Year 2	Year 3
NVA	97%	97%	97%

   b. **Job Generation**

Total Employees	Number of Employees			
	Pre-op	Year 1	Year 2	Year 3
	2	97	117	105

039741

#090-2016
3-24-2016

c. **Investments and Timetable**

Activity	Schedule	Related Expense/s	Cost (In PhP'000)
Land Acqusition	March 2012 to May 2015	Land Cost	
Secure necessary license/permit/registration from the government/training cost	December 2013 to March 2015	Pre-operating expenses	
Site preparation and development	December 2014 to June 2017	Land/site development	
House Construction	January 2015 to November 2017	House construction cost	
Start of Commercial Operations	March 2015	Working capital	
Total Project Cost (TPC)			

d. **Sales Revenues**

Year	Volume (No. of Units)	Value (PhP' 000)
1	71	
2	85	
3	76	
Total	**232**	

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 cases where the project's actual revenues exceed the projections in its application due to e.g., new markets/orders, additional employment/shifts, additional investments, the Board may increase the project's ITH availment proportionately. Request/s for adjustment of projected revenue must be filed before the filing of application for ITH.

4. The enterprise shall submit a list of cost items common to all its projects/activities (whether BOI-registered or non-registered) and methodology adopted in allocating the common costs between the registered and non-registered activity/ies.

5. Secure from the HLURB an endorsement that it has faithfully complied with the approved development plan and a "Certificate of Good Housekeeping".

6. File an application with the BOI Incentives Department within one (1) month from filing of the final Income Tax Return (ITR) with the Bureau of Internal Revenue (BIR) in order to validate the claim for income tax exemption. The application shall be accompanied by a certification from the Social Security System (SSS) that the enterprise is in good standing in the remittance of SSS contributions of its employees.

039741

#090-2016
3-14-2016

7. Secure a Certificate of ITH Entitlement (CoE) from the BOI Legal and Compliance Service prior to filing of ITR with the BIR; otherwise, ITH for that particular year without CoE shall be forfeited.

8. 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.

9. The enterprise shall submit proof of compliance that at least twenty percent (20%) of the total subdivision area (estimated at 9,451 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 will be done through development of new settlement through a joint venture with Lumina Homes, Inc. Otherwise, the ITH for that particular year shall be deemed forfeited.

10. 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. 226. In this regard, under the terms and conditions of its BOI registration, **Communities Pampanga's Sorrento Phase 3 – Brgy. Panipuan, Mexico, Pampanga Project** was clearly granted a 3-year ITH but such terms and conditions do not provide for any exemption from other taxes that Communities Pampanga may be subject to on its business transactions. Thus, **Communities Pampanga's Sorrento Phase 3 – Brgy. Panipuan, Mexico, Pampanga Project** will remain subject to Value-Added Tax (VAT) and Documentary Stamp Tax (DST) on its sales of house and lot units pursuant to Sections 106 (A)(1)(a) and 196 of the Tax Code of 1997, as amended. *(BIR Ruling No. 334-11* dated September 7, 2011)

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-exempt[1]. Thus, only the sales by **Communities Pampanga's Sorrento Phase 3 – Brgy. Panipuan, Mexico, Pampanga Project** of housing units with selling price of not more than the aforementioned price ceilings shall be exempt from VAT.

It should be understood that **Communities Pampanga** shall be constituted as a withholding agent for the government if it 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 Revenue Regulations No. 2-98, as amended.

[1] 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.

039741

Likewise, **Communities Pampanga** 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.

Finally, **Communities Pampanga'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 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

039741

K-1-GPS