**November 15, 2018**

# BIR RULING NO. 1328-18

E.O. 226, Section 57, NIRC of 1997
Revenue Regulations No. 2-98; BIR
Ruling No. 320-11 and 117-99

*HOGP Land Holding, Inc.*
111 East Main Avenue,
Special Export Processing Zone
Laguna Technopark, Biñan, Laguna 4024

Attention: *AAA*

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Gentlemen :

This refers to your letter dated October 29, 2012, requesting for confirmation that the sale of land by the **FPIP PROPERTY DEVELOPERS AND MANAGEMENT CORPORATION (FPIP)** to **HOGP LAND HOLDING, INC. (HOGPLHI)** is not subject to the creditable withholding tax pursuant to Section 2.57.5 (B) (2) of Revenue Regulations No. 2-98.

**HOGPLHI** with Taxpayers' Identification No. 000-000-000-000 is a domestic corporation registered with the SEC under Registration No. A1997-21034; that it is operating outside Philippine Export Zone Authority (PEZA) and is not a Registered PEZA enterprise. **FPIP**, on the other hand, is a PEZA-registered land holding company under Registration Certificate No. 00-04-F dated June 2, 2000 and engaged in the following registered activities:

> "(**1**) construction and management of seven (7) factory buildings for lease to PEZA-registered enterprises; (**2**) construction of three (3) warehouse-type factory building with a total floor area of 6,210 square meters on a 14,486-square meter lot; (**3**) construction of warehouse-type factory building with a total floor area of 5,040 square meters, which will be constructed within the 11,828 square meter lot, identified as portions of Lot 5 and 10, Phase 1A, for lease to PEZA-registered export enterprises; (**4**) a) construction of ready-built factory building, RBF Model H, on lot 4-D (portion of lot 4) b) the conversion of two existing buildings as ecozone facilities, RBF Model A2 and RBF Model I, which stand on Lot 7 and Lot 2 (portion of Lot 15-B), respectively, for lease to PEZA-registered export enterprises; (**5**) construction of two (2) ready-built warehouses with a gross floor area of 13,490-sq. m., which will be constructed on 71,513-sq. m. lot, for lease to

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PEZA-registered export enterprises; (**6**) construction of one (1) ready-built warehouse with a gross floor area of 1,566-sq. m., more or less, which will be constructed on a 3,362-sq. m. lot for lease to PEZA-registered export enterprises; (**7**) construction of one (1) unit ready-built warehouse building with a gross floor area of 11,997 square meter to be established on a 69,249 square meter lot for lease to PEZA-registered export enterprise; (**8**) construction of four (4) storey I.T. facility with a gross floor area of 2,885.5 square meters, to be established on a 22,366-square meter lot, adjacent to the FPIP-SEZ Administrative Building, for lease to PEZA-registered export enterprise; and (**9**) registration of additional buildings for lease to PEZA-registered enterprises, with a gross floor area of 32,00 * square meters, more or less, constructed on lots identified as Lots 1A, 1B and 3 with an aggregate area of 200,000 square meters."

that it was granted by the PEZA the following incentive:

"Exemption from national and local taxes and in lieu thereof, payment of five percent (5%) special tax on gross income earned in accordance with Section 24 of R.A. 7916, as amended and its implementing rules."

that FPIP sold to HOGPLHI a Sixty-One Thousand Seven Hundred Eighty-Five square meter (61,785 sq. m.) property, covered by Transfer Certificate of Title (TCT) No. T-138159 and located in Tanauan City, Batangas; that for the said transfer, HOGPLHI has applied for the issuance of Certificate Authorizing Registration (CAR) with the Revenue District Office (RDO) No. 059 — Lipa, Batangas. However, it was informed by the said RDO that the transaction is subject to withholding tax.

Based on the foregoing representations, you now request for confirmation of your opinion that the payment made by the HOGPLHI to FPIP, a PEZA-registered enterprise, enjoying a preferential tax rate of 5% in lieu of paying all national and local taxes, is exempt from income tax and consequently from withholding tax.

In reply thereto, please be informed that the Revenue Regulations No. 2-98, as amended, implementing Section 57 (B) of the Tax Code of 1997, as amended, provides:

"***SEC. 2.57.5. Exemption from Withholding***. — The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:

xxx xxx xxx

(B) Persons enjoying from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:

*(2) Corporations registered with the Board of Investments and enjoying exemption from the income tax provided by the Republic Act No. 7916 and the Omnibus Investment Code of 1987;*

However, considering that the sale of properties is not among the registered

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activities of FPIP, the sale by FPIP of the Tanauan City property covered by TCT No. T-138159 shall be subject to creditable withholding tax prescribed by the Revenue Regulations No. 2-98, as amended.

Being an unregistered business activity, Revenue Regulations No. 20-02 clarifies its tax treatment, as follows:

> "***Sec. 1. Tax Treatment.*** — Income derived by an enterprise registered with the Subic Bay Metropolitan Authority (SBMA), the Clark Development Authority (CDA), or the Philippine Economic Zone Authority (PEZA) from its registered activities shall be subject to such tax treatment as may be specified in its terms of registration (*i.e.*, the 5% preferential tax rate, the income tax holiday, or the regular income tax rate, as the case may be). Nonetheless, whatever the tax treatment of said enterprise with respect to its registered activities, income realized by such registered enterprise that is not related to its registered activities shall be subject to the regular internal revenue taxes, such as the 20% final income tax on interest from Philippine Currency bank deposits and yield or any other monetary benefit from deposit substitutes, and from trust funds and similar arrangements, the 7.5% tax on foreign currency deposits and the 5%/10% capital gains tax or 1/2% stock transaction tax, as the case may be, on the sale of shares of stock."

The above cited Revenue Regulation categorically provides that income realized by a registered enterprise that it is not related to its registered activities is subject to the regular internal revenue taxes.

It is also worth emphasizing that in BIR Ruling No. 117-99 dated August 10, 1999, this office had the occasion to rule that income derived by PEZA-registered enterprise from unregistered activities is considered as ordinary income subject to regular corporate income tax (BIR Ruling No. 320-11 dated August 22, 2011). Accordingly, the income derived by FPIP from the sale of its property to HOGPLHI is subject to creditable withholding tax prescribed by the Revenue Regulations No. 2-98, as amended.

Please be guided accordingly.

Very truly yours,

**(SGD.) CAESAR R. DULAY**
*Commissioner of Internal Revenue*

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