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
#151-2016
4-25-2016

SM DEVELOPMENT CORPORATION
15th Floor Two E-Com Center, Harbor Drive
Mall of Asia Complex, Brgy. 76, Zone 10, CBP-1A
Pasay City

Attention: **CECILIA R. PATRICIO**
Authorized Representative

Gentlemen:

This refers to your letter dated March 05, 2015 stating that SM Development Corporation ('SMDC' for brevity) with Tax Identification No. is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) under Company Reg. No. . It is registered with the Board of Investments (BOI) as a New Developer of Low-Cost Mass Housing Project **(Shell Residences Buildings A, B, C, D – SM Mall of Asia Complex, Pasay City)** on a Non-Pioneer status under Certificate of Registration No. dated December 29, 2011. SMDC has been granted Income Tax Holiday (ITH) by the BOI for a period of three (3) years from December 2012 or actual start of commercial operations/selling, whichever is earlier but in no case earlier than the date of registration. **SMDC's Shell Residences Buildings A, B, C, D – SM Mall of Asia Complex, Pasay City Project** is registered with Housing and Land Use Regulatory Board (HLURB) Expanded National Capital Region Field Office, particularly described as follows:

Certificate of Registration No.	License to Sell No.	Name of Project/Location	No. of Saleable Lots	Maximum Selling Price
		Shell Residences/ EDSA cor. Sunshine Drive, CBP Island-A, Pasay City	3,093 residential units / 23 commercial/ 690 parking slots	n/a

Under the Specific Terms and Conditions of its BOI Registration, the ITH of SMDC shall cover only two thousand three hundred forty seven (2,347) units of low-cost mass housing for **SMDC's Shell Residences Buildings A, B, C, D – SM Mall of Asia Complex, Pasay City Project.**

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 SMDC, 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

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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.

Accordingly, since **SMDC's Shell Residences Buildings A, B, C, D – SM Mall of Asia Complex, Pasay City Project** is a BOI registered project, this Office is of the opinion as it hereby holds, that income payments received by SMDC in connection with its housing project, **Shell Residences Buildings A, B, C, D – SM Mall of Asia Complex, Pasay City** (on the 2,347 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 December 2012 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 the registered activity, **SMDC's Shell Residences Buildings A, B, C, D – SM Mall of Asia Complex, Pasay City Project** involving 2,347 low-cost mass housing units. Furthermore, such exemption shall not cover revenues from units with selling price exceeding ; (P). 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 **SMDC's Shell Residences Buildings A, B, C, D – SM Mall of Asia Complex, Pasay City Project** is not automatic as it still has to comply with the following provisions of the Specific Terms and Conditions of their BOI Registration, *viz:*

1. The enterprise shall construct and sell 2,347 units of low-cost mass housing based on the following schedule:

Year	(No. of Units)	Sales Value (P'000)
1	1,408	
2	704	
3	235	
Total	2,347	

2. The enterprise shall observe the following project timetable:

Activity	**Schedule**	**Related Expense/s**	**Cost (P'000)**
1. Site Acquisition	Completed	Raw land cost (22,000sq.m.)	
2. Obtaining appropriate licenses/agreements/permits from the government agencies	On-going	Government application fees (LGU,DENR, HLURB,HDMF), Traffic Study, Soil Investigation	
3. Acquisition of Equipment	March 2012	Capital Equipment	
4. Site Preparation and House Construction	November 2011 to	Building equipment facilities, surveying	

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	May 2015	works, road and walkway preparations, site preparation, drainage system, riprap, electrical and water distribution, amenities, and greening and tree planning.	
5. Building Construction	November 2011 to May 2015		
6. Start of Commercial Operations	December 2012	Working capital	
TOTAL PROJECT COST			

3. 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.

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

5. 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.

6. Secure a Certificate of ITH Entitlement (CoE) from the BOI Supervision and Monitoring Department (SMD) prior to filing of ITR with the BIR; otherwise, ITH for that particular taxable year without CoE shall be forfeited.

7. 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.

8. The enterprise shall submit proof of compliance that it has developed socialized housing projet using either of the following schemes, otherwise, the ITH for that particular taxable year shall be deemed forfeited:

   a. Investment: 20% of total saleable area (estimated at 12,881.2 sqm); or
   b. Direct Participation Scheme (at the option of the registered developer);

      i. 30% x (20% of the Building Construction Cost)(estimated at P118.5M; or
      ii. 40% of ITH (P124.022 M)

   The investment scheme may be complied with through any of the following modes: (1) Development of New Settlement; (2) Slum Upgrading; and (3)

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Joint Venture Projects with either the local government units or any of the housing agencies.

9. The enterprise must abide by the principles 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, **SMDC's Shell Residences Buildings A, B, C, D – SM Mall of Asia Complex, Pasay City Project** was clearly granted a 3-year ITH but such terms and conditions do not provide for any exemption from other taxes that SMDC may be subject to on its business transactions. Thus, **SMDC's Shell Residences Buildings A, B, C, D – SM Mall of Asia Complex, Pasay City 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 **SMDC's Shell Residences Buildings A, B, C, D – SM Mall of Asia Complex, Pasay City Project** of housing units with selling price of not more than the aforementioned price ceilings shall be exempt from VAT.

Pursuant to Section 4 of Republic Act (RA) No. 10708, **SMDC** 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, **SMDC** shall file with 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 **SMDC** 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.

Likewise, **SMDC** 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, **SMDC**'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

[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. 15-2011* dated October 27, 2011.

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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

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