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
#263-2016
6-22-2016

LAND CRIS SOMERSET DEVELOPMENT CORPORATION
Block 100 Lot 1 Mary Cris Complex, Pasong Camachille II
Gen. Trias, Cavite 4107

ATTENTION : ENGR. JEFFERSON S. BONGAT
President

Gentlemen:

This refers to your letter dated November 18, 2015 stating that **LAND CRIS SOMERSET DEVELOPMENT CORPORATION ("Land Cris"** 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 Economic Low-Cost Housing Project **(Lancris Residences – Dominic Savio Street, Barangay Don Bosco, Parañaque City)** on a Non-Pioneer status under Certificate of Registration No. dated May 08, 2015. **Land Cris** has been granted Income Tax Holiday (ITH) by the BOI for a period of three (3) years from May 2015 or actual start of commercial operations/selling whichever is earlier but in no case earlier than the date of registration. **Land Cris' Lancris Residences – Dominic Savio Street, Barangay Don Bosco, Parañaque City Project** is registered with Housing and Land Use Regulatory Board (HLURB) under Certificate of Registration No. and holds HLURB License to Sell No. ; and under the Specific Terms and Conditions of its BOI Registrations, **Land Cris** shall construct and sell One Hundred Sixty Six (166) units of low-cost mass housing for **Lancris Residences – Dominic Savio Street, Barangay Don Bosco, Parañaque City Project** based on the following schedule:

Year	Volume (No. of units)	Value (P '000)
1	42	
2	42	
3	42	
4	40	
Total	**166**	

[1] HLURB License to Sell No. ssued to Land Cris for Lancris Residences – Dominic Savio Street, Barangay Don Bosco, Parañaque City covers 175 residential and 42 parking slots however, under the Specific Terms and Conditions of its BOI Registration the ITH of Land Cris shall cover only one hundred sixty six (166) low cost mass housing units.

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#263-2016
6-22-2016

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 **Land Cris**, 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 payment 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 tax payments to persons enjoying exemptions from the income tax provided by Republic Act No. 7916 and the Omnibus Investments Code of 1987.

Accordingly, since **Land Cris' Lancris Residences – Dominic Savio Street, Barangay Don Bosco, Parañaque City Project** is a BOI registered project, this Office is of the opinion as it hereby holds, that income payments received by **Land Cris** in connection with its housing project, **Lancris Residences – Dominic Savio Street, Barangay Don Bosco, Parañaque City Project** (on the 166 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 May 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, **Land Cris' Lancris Residences – Dominic Savio Street, Barangay Don Bosco, Parañaque City Project** involving 166 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 **Land Cris' Lancris Residences – Dominic Savio Street, Barangay Don Bosco, Parañaque City 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. In the grant of incentives, the extent of the project's ITH entitlement shall be based in the projects 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	Year 4
NVA	93%	93%	93%	93%

b. **Job Generation**

042240

	Number of Employees			
	Yr-1	Yr-2	Yr-3	Yr-4
Total Employees	174	174	174	174

c. **Investments and Timetable**

Activity	Schedule* (Month/Year)	Related Expenses	Cost (In Php'000)
Land acquisition	2011	Rawland Cost	
Secure necessary license/permit/registration from the government/training costs	June 2011-May 2013	Pre-operating expenses	
Site preparation and development	June 2013-December 2014	Land/Site development Cost	
Building/House construction	January 2015-December 2018	Building/House construction Cost	
Start of Commercial Operations	May 2015	Working Capital	
		Total Project Cost	

d. **Sales Revenues**

Year	Volume (No. of units)	Value (P '000)
1	42	
2	42	
3	42	
4	40	
Total	**166**	

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.

In cases where the project's actual revenues exceed the projections in its application due to 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 applications for ITH.

042240

2. 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 activity/ies and non-registered activity/ies.

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

4. File an application with the BOI Incentives Administration Service 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.

5. 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 taxable year without CoE shall be forfeited.

6. 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.

7. The enterprise shall submit proof of compliance that at least twenty percent (20%) of the total saleable subdivision area (estimated at 1,298.52 sq.m.) 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 may be done through development of new settlement through joint venture with a developer accredited by HLURB. Otherwise, the ITH for that particular taxable year shall be deemed forfeited.

8. Compliance with the twenty percent (20%) socialized housing requirement shall be computed based on the number of low-cost housing units sold and covered by the enterprise's ITH application for the taxable year.

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. **Land Cris' Lancris Residences – Dominic Savio Street, Barangay Don Bosco, Parañaque City Project** will remain subject to Value-Added Tax (VAT) and Documentary Stamp Tax (DST) on its sale 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. Thus, only the sales by **Land Cris' Lancris Residences – Dominic Savio Street, Barangay Don Bosco, Parañaque 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, **Land Cris** 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, **Land Cris** 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 **Land Cris** 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 at 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, **Land Cris** is required to file on or before the 15th day of the fourth month following the close of its accounting period 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, **Land Cris'** 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

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JUN 20 2016

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