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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
#298-2016

6-28-2016

AboitizLand, Inc.
21/F NAC Tower 32nd St. Bonifacio Global City
1634 Taguig, Metro Manila

Attention: **Robin Sarmiento**
Chief Financial Officer

Gentlemen:

This refers to your letter dated April 07, 2016 stating that **Aboitiz Land, Inc.** ('ALand' for brevity) with Tax Identification No. [redacted] is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) under Company Reg. No. [redacted]. It is registered with the Board of Investments (BOI) as a New Developer of Low-Cost Mass Housing Project **(Ajoya Residences Phase 1 – Brgy. Gabi, Cordova, Cebu)** on a Non-Pioneer status under Certificate of Registration No. [redacted] dated October 18, 2010. ALand has been granted Income Tax Holiday (ITH) by the BOI for a period of four (4) years from January 2011 or actual start of commercial operations/selling, whichever is earlier but in no case earlier than the date of registration. **ALand's Ajoya Residences Phase 1 – Brgy. Gabi, Cordova, Cebu Project** is registered with Housing and Land Use Regulatory Board (HLURB) Region VII Office, particularly described as follows:

Certificate of Registration No.	License to Sell No.	Name of Project/Location	No. of Saleable Lots	Maximum Selling Price
[redacted]	[redacted]	Ajoya Residences Phase 1 – Brgy. Gabi, Cordova, Cebu	148 units	[redacted]

Under the Specific Terms and Conditions of its BOI Registration, the ITH of ALand shall cover only one hundred forty (148) units of low-cost mass housing for **ALand's Ajoya Residences Phase 1 – Brgy. Gabi, Cordova, Cebu 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 ALand, 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

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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 **ALand's Ajoya Residences Phase 1 – Brgy. Gabi, Cordova, Cebu Project** is a BOI registered project, this Office is of the opinion as it hereby holds, that income payments received by ALand in connection with its housing project, **Ajoya Residences Phase 1 – Brgy. Gabi, Cordova, Cebu Project** (on the 148 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 4 years from January 2011 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, **ALand's Ajoya Residences Phase 1 – Brgy. Gabi, Cordova, Cebu Project** involving 148 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). 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 **ALand's Ajoya Residences Phase 1 – Brgy. Gabi, Cordova, Cebu 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 148 units of low-cost mass housing based on the following schedule:

Year	Volume (No. of Units)	Value (P'000)
1	37	
2	37	
3	37	
4	37	
Total	**148**	

2. The enterprise shall adhere to the following selling prices as represented:

Model Type	Floor Area (in sq.m.)	Selling Price (P'000)
Duplex	44	
2-storey townhouse	76	
1-storey single detached	40	
2-storey single detached	64	
2-storey single detached	80	
2-storey single detached	102	

3. The enterprise shall observe the following project timetable:

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Activity	Schedule Date (month, year)	Related Expenses	Cost (P'000)
Site/ and acquisition	Completed	Raw Land	
Obtain appropriate license/agreement/permit from the government	On-going	DA, DENR,EMB,DAR, HLURB	
Site Preparation and Development	On-going	Building temporary facilities, surveying works, site preparation, road and walkway preparation, drainage system, rip-rap, electricity, water supply	
House Construction	On-going		
Start of Commercial Operation	January 2011	Working capital (3 mos.)	
TOTAL PROJECT COST			

4. The enterprise shall maintain a separate book of accounts for this mass housing project.

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.

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

8. The enterprise shall maintain the 75:25 debt-equity requirement 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. Prior to availment of ITH and subject to HLURB certification, the enterprise shall submit proof of compliance that at least twenty (20%) percent of the total

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subdivision area or total subdivision project cost, at the option of the developer, has been developed and allocated for socialized housing whether within or outside the same city or municipality. This may be done through any of the following modes: (1) New Settlement; (2) Slum Upgrading; and (3) Joint-Venture Projects. Otherwise, the ITH for that particular taxable year shall be deemed forfeited.

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, **ALand's Ajoya Residences Phase 1 – Brgy. Gabi, Cordova, Cebu Project** was clearly granted a 4-year ITH but such terms and conditions do not provide for any exemption from other taxes that ALand may be subject to on its business transactions. Thus, **ALand's Ajoya Residences Phase 1 – Brgy. Gabi, Cordova, Cebu 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 **ALand's Ajoya Residences Phase 1 – Brgy. Gabi, Cordova, Cebu 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, **ALand** 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, **ALand** 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 ALand 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, **ALand** 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, **ALand'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

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[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.

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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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JUN 24 2016