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
#265-2016

6-22-2016

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. [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 **(Shine Residences – Meralco Avenue, Brgy. Ugong, Pasig City)** on a Non-Pioneer status under Certificate of Registration No. [redacted] dated September 20, 2013. SMDC has been granted Income Tax Holiday (ITH) by the BOI for a period of three (3) years from September 2013 or actual start of commercial operations/selling, whichever is earlier but in no case earlier than the date of registration. **SMDC's Shine Residences – Meralco Avenue, Brgy. Ugong, Pasig 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
[redacted]	[redacted]	Shine Residences – Meralco Avenue, Brgy. Ugong, Pasig City	892 residential units / 222 parking slots	n/a

Under the Specific Terms and Conditions of its BOI Registration, the ITH of SMDC shall cover only eight hundred thirteen (813) units of low-cost mass housing for **SMDC's Shine Residences – Meralco Avenue, Brgy. Ugong, Pasig 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 Shine Residences – Meralco Avenue, Brgy. Ugong, Pasig 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, **Shine Residences – Meralco Avenue, Brgy. Ugong, Pasig City** (on the 813 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 September 2013 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 Shine Residences – Meralco Avenue, Brgy. Ugong, Pasig City Project** involving 813 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 **SMDC's Shine Residences – Meralco Avenue, Brgy. Ugong, Pasig 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. 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; (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%

	Pre-OP	**Y1**	**Y2**	**Y3**
NVA	94%	94%	62%	94%

b. Job Generation

	Number of Employees			
	Y0	**Y1**	**Y2**	**Y3**
Total Employees	508	1,100	1,100	508

c. Investments and Timetable

Activity	**Schedule**	**Related Expenses**	**Cost (In PhP'000)**
Land acquisition	May 2009	Land cost	

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Secure necessary license/permit/registration from the government/training costs	October 2009 to June 2010	Pre-operating expenses	
Site preparation and development	November 2012 to June 2016	Land/site development cost	
Building construction	November 2012 to June 2016	Building construction cost	
Capital Equipment Acquisition	May 2013 to June 2016	Cost of capital equipment	
Start of Commercial Operations	September 2013	Working capital	
Total Project Cost (TPC)			

d. Sales Revenues

Year	Volume (No. of Units)	Value (PhP'000)
1	714	
2	99	
3	-	-
Total	**813**	

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.

2. The enterprise should endeavor to undertake meaningful and sustainable Corporate Social Responsibility (CSR) activities in the locality where the project is implemented.

3. The enterprise shall maintain books of account for this registered project separate from all its other operation/s and/or activity/ies.

4. 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 by SSS that the enterprise is in good standing in the remittances of SSS contributions of its employees. Further, any request for extension of the reckoning date of ITH availment should be filed prior to the scheduled date or within ninety (90) days from the occurrence of the fortuitous events and/or government delays.

5. Secure a Certificate of ITH Entitlement (CoE) from the BOI Legal Service prior to the 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

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entitled to ITH and shall be required to refund any capital equipment incentives availed of.

7. The enterprise shall submit proof of compliance that it has developed socialized housing project 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 3,875 sq.m.); or
   b. Direct Participation Scheme (at the option of the registered developer);
      i. 30% x (20% of the Building Construction Cost)(estimated at P 34.730 M); or
      ii. 40% of ITH

   The investment scheme may be complied with through any of the following modes: (1) Development of a new settlement directly undertaken by the registered entity; (2) Slum upgrading; and (3) Development of a new settlement through joint venture agreements with either: a Local Government Unit, the National Housing Authority, a subsidiary of the BOI-registered entity, or a developer accredited by the HLURB.

   Under the Direct Participation Scheme, the Developer shall make contribution to an Compliance with the 20% socialized housing requirement must be completed within the ITH availment period and should be proportionate to the number of low-cost housing units being applied for ITH for taxable year.

8. 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, **SMDC's Shine Residences – Meralco Avenue, Brgy. Ugong, Pasig 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 Shine Residences – Meralco Avenue, Brgy. Ugong, Pasig 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 Shine Residences – Meralco Avenue, Brgy. Ugong, Pasig 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,

[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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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 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 17 2016

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