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
#002-2016

1-6-2016

HLC CONSTRUCTION CORPORATION
HLC Group Compound, R. Castillo St.
Agdao, Davao City

Attention: **ABEGAIL T. TAO**
Admin Manager/Authorized Representative

Gentlemen:

This refers to your letter dated September 17, 2014 stating that **HLC Construction and Development Corporation** (HLC Construction 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 **(Oakwood Residences – Brgy. New Visayas, Panabo City, Davao Del Norte**) on a Non-Pioneer status under Certificate of Registration No. dated July 10, 2014. HLC Construction has been granted Income Tax Holiday (ITH) by the BOI for a period of four (4) years from July 2014 or actual start of commercial operations/selling, whichever is earlier but in no case earlier than the date of registration. **HLC Construction's Oakwood Residences – Brgy. New Visayas, Panabo City, Davao Del Norte 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 Registration, HLC Construction has been approved to construct and sell one hundred eighty eight (188)[1] units of low-cost mass housing for **Oakwood Residences – Brgy. New Visayas, Panabo City, Davao Del Norte Project** based on the following schedule:

Year	Volume (No. of Units)
1	112
2	57
3	19
Total	**188**

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 HLC Construction, 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.

[1] **HLURB License to Sell No. issued to HLC Construction for Oakwood Residences - Brgy. New Visayas, Panabo City, Davao Del Norte covers only 188 units/lots and provides for maximum selling price ol er House and Lot Package.**

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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 payments to persons enjoying exemption from the income tax provided by Republic Act No. 7916 and the Omnibus Investments Code of 1987.

Accordingly, since **HLC Construction's Oakwood Residences – Brgy. New Visayas, Panabo City, Davao Del Norte Project** is a BOI registered project, this Office is of the opinion as it hereby holds, that income payments received by HLC Construction in connection with its housing project, **Oakwood Residences – Brgy. New Visayas, Panabo City, Davao Del Norte Project** (on the 188 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 July 2014 or actual start of commercial operations/selling, whichever is earlier but in no case earlier than the date of registration[2]. It must be emphasized, however, that the above exemption from CWT covers only income directly attributable to revenues generated from the registered activity, **HLC Construction's Oakwood Residences – Brgy. New Visayas, Panabo City, Davao Del Norte Project** involving 188 low-cost mass housing units. Furthermore, such exemption shall not cover revenues from units with selling price exceeding Pesos (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 **HLC Construction's Oakwood Residences – Brgy. New Visayas, Panabo City, Davao Del Norte 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 in 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, 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 0	Year 1	Year 2	Year 3
NVA	90%	90%	90%	90%

b. **Job Generation**

Number of Employees				
Total	Year 0	Year 1	Year 2	Year 3
Employees	84	84	84	84

c. **Investments and Timetable**

Activity	Schedule	Related	Cost

[2] Movement of ITH period is subject to Art. 7 of E.O. 226 per BOI Specific Terms and Conditions No.1

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		Expense/s	
Land acqusition	Nov 2012-May 2013	Land Cost	
Secure necessary license/permit/registration from the government/training cost	Nov 2012-May 2013	Pre-operating Expenses	
Site preparation and development	April 2012-December 2012	Land/Site Development	
Building Construction	Oct 2013-Jan 2014	Building Construction	
Start of Commercial Operations	July 2014	Working Capital	
TOTAL PROJECT COST			

d. **Sales Revenues**

Year	Volume (No. of Units)	Value (PhP)
1	112	
2	57	
3	19	
Total	**188**	

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 and/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 application for ITH.

2. The enterprise shall submit a list of cost items common to all its projects/activities (whether BOI-registered or non-BOI-registered) and the methodology adopted in allocating the common costs between the registered and the 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 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.

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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 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 subdivision area (estimated at 3,886 sq.m.) or total subdivision project cost (estimated at PhP) 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 the development of new settlement directly undertaken by registered entity. Otherwise, the ITH for that particular taxable year shall be deemed forfeited.

   Compliance with the twenty (20%) percent 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 the 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, **HLC Construction's Oakwood Residences – Brgy. New Visayas, Panabo City, Davao Del Norte Project** was clearly granted a 4-year ITH but such terms and conditions do not provide for any exemption from other taxes that HLC Construction may be subject to on its business transactions. Thus, **HLC Construction's Oakwood Residences – Brgy. New Visayas, Panabo City, Davao Del Norte 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 Pesos (P and below, or house and lot and other residential dwellings valued at Pesos (P and below is VAT-exempt[3]. Thus, only the sales by **HLC Construction's Oakwood Residences – Brgy. New Visayas, Panabo City, Davao Del Norte Project** of housing units with selling price of not more than the aforementioned price ceilings shall be exempt from VAT.

It should be understood that **HLC Construction's Oakwood Residences – Brgy. New Visayas, Panabo City, Davao Del Norte Project** shall be constituted as a withholding agent for

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[3] 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.

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, **HLC Construction's Oakwood Residences – Brgy. New Visayas, Panabo City, Davao Del Norte Project** 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, **HLC Construction's Oakwood Residences – Brgy. New Visayas, Panabo City, Davao Del Norte Project'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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BOI-HLC CONSTRUCTION–OAKWOOD RESIDENCES