REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Secs. 57 & 109, NIRC of 1997, as amended; RA No. 7916; RR No. 2-98
BIR Ruling No. 320-11; BIR Ruling No. 117-99; VAT Ruling No. 076-02
[illegible]523-2017
11-9-2017

OHMORI DEVELOPMENT CORP.
15 Floor TGU Tower, Cebu IT Park,
Apas, Cebu City 6000

Attention: **CRYSTAL CHLOE ONG-CHUA**
Chief Finance Officer

Gentlemen:

This refers to your letter dated November 11, 2015, requesting for confirmation that the sale of land by Philippine Economic Zone Authority (PEZA)-registered **CEBU LIGHT INDUSTRIAL PARK, INC. (CLIP)** to **OHMORI DEVELOPMENT CORP.** is not subject to the creditable withholding tax, value-added tax and documentary stamp tax.

It is represented that **CLIP**, with Taxpayers' Identification No. is a domestic corporation registered with the SEC under Registration No. that it is a PEZA-registered Ecozone Developer/Operator under Certificate of Registration No. - dated 21 July 1998; that its registered activity consists of the establishment, development, construction, administration, management and operation of a Special Economic Zone known as the Cebu Light Industrial Park-Special Economic Zone (SEZ)[1]; that as an Ecozone Developer/Operator, CLIP is authorized to lease and sell properties to registered entities or entities entitled to be registered with PEZA; and that it is entitled to the five percent (5%) Special Tax on gross income in lieu of national and local taxes except Real Property Tax (RPT) on land owned by the Developer.

It is also represented that **OHMORI DEVELOPMENT CORP.** with Taxpayers' Identification No. is a domestic corporation registered with the SEC under Registration No. that it is a PEZA–registered enterprise under Certificate of Registration No. dated 20 December 2012; that its registered activity consists of the construction of two (2), 2-storey buildings with a combined gross floor area of 35,250 square meters, more or less, on two parcels of lot with an aggregate area of 28,695 square meters located at Lots 5 and 6, Block 3, Cebu Light Industrial Park-SEZ, for lease/sale to PEZA-registered enterprises; and that it is exempt from the payment of all national and local taxes and in lieu thereof, it shall pay 5% final tax on gross income derived from its sale/leasing activities[2].

CLIP sold to **OHMORI DEVELOPMENT CORP.** two parcels of land situated in Cebu Light Industrial Park, Barrio of Basak, City of Lapu-Lapu, Island of Mactan, particularly described as follows:

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[1] PEZA-ERD Form No. certificate No.
[2] Registration Agreement dated December 21, 2012 between PEZA and Ohmori Development Corp.

Transfer Certificate of Title No.	Address	Area
	Lot 5 Block 3 Cebu Light Industrial Park	12,628 sq.m.
	Lot 6 Block 3 Cebu Light Industrial Park	16,067 sq.m.
Total Area		**28,695 sq. m.**

Based on the foregoing representations, you now request for confirmation of your opinion that the sale of real property by **CLIP,** a PEZA-registered Ecozone Developer/Operator enjoying a preferential tax rate of 5% in lieu of paying all national and local taxes, to **OHMORI DEVELOPMENT CORP.**, another PEZA-registered entity, is exempt from income tax and consequently from withholding tax as well as from value-added tax and documentary stamp tax.

In reply thereto, please be informed that the sale by **CLIP** to **OHMORI DEVELOPMENT CORP.** of two parcels of land within the Cebu Light Industrial Park, being the former's registered activity, is exempt from income tax, value added tax and documentary stamp tax, pursuant to Section 24 of Republic Act No. 7916, as amended, which provides:

> ***"SECTION 24. Exemption from Taxes Under the National Internal Revenue Code.*** *- Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:*
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> *(a) Three percent (3%) to the National Government;*
>
> *(b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located."*

Since **CLIP** is exempt from income tax on its sale transaction with **OHMORI DEVELOPMENT CORP.**, the income payment by the latter shall also be exempt from expanded withholding tax pursuant to Section 2.57.5 of Revenue Regulations (RR) No. 2-98, as amended, implementing Section 57 (B) of the Tax Code of 1997, as amended, which states:

> ***"SEC. 2.57.5. Exemption from Withholding.*** *- The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:*
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> *xxx xxx xxx*
>
> *(B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:*
>
> *xxx xxx xxx*
>
> *(2) Corporations duly registered with the Board of Investments, Philippine Export Processing Zones and Subic Bay Metropolitan Authority enjoying exemption from the income tax pursuant to E.O. 226, as amended, R.A. 7916 and the Omnibus Investment Code of 1987 and R.A. 7227, as amended, respectively;*
>
> *xxx xxx xxx"*

Such being the case, development, operation, sale or lease of lots by the PEZA registered ecozone developer/operator, is exempt from income tax/creditable withholding tax, capital gains tax, value added tax and all other national internal revenue taxes. In lieu thereof, the ecozone developer/operator is liable to pay the five (5%) preferential rate on its gross income from said activities, in lieu of all taxes, including value-added taxes (VAT) pursuant to Section 1 (A) of Rule XIV, Rules and Regulations to Implement RA 7916.

Moreover, the law provides that the same sale transaction is exempt from VAT pursuant to Section 109 (K) of the Tax Code of 1997, as amended by Republic Act No. 9337, and in relation to Section 24 of RA 7916, as amended, which provides:

> *"Sec. 109. Exempt Transactions. - (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:*
>
> *xxx xxx xxx*
>
> *(K) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree No. 529;"*

Thus, **CLIP**, being a PEZA registered enterprise, is not subject to VAT on the sale of its real properties in favor of **OHMORI DEVELOPMENT CORPORATION**, which is likewise a PEZA-registered enterprise, but is subject to the 5% preferential tax in lieu of all taxes (*VAT Ruling No. 076-02 dated November 11, 2002*).

Lastly, while it is provided in Section 196 in relation to Section 173 of the Tax Code of 1997, as amended, that whenever one party to the taxable document enjoys exemption from the documentary stamp tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax, it should be noted that both companies being PEZA-registered, **CLIP** and **OHMORI DEVELOPMENT CORP.** are exempt from the payment of documentary stamp tax on their transaction. (*BIR Ruling No. 008-99 dated January 19, 1999*)

In view of the foregoing, this Office hereby confirms your opinion that the sale of real property by **CLIP**, a PEZA-registered Ecozone Developer/Operator enjoying a preferential tax rate of 5% in lieu of paying all national and local taxes, to **OHMORI DEVELOPMENT CORP.**, another PEZA-registered entity, is exempt from income tax and consequently from withholding tax as well as from value-added tax and documentary stamp tax.

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,

CAESAR R. DULAY
Commissioner of Internal Revenue

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