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

Section 40(C)(2) and (6)(b) of the National Internal Revenue Code of 1997, as amended.
BIR Ruling No. 075-2018
SLDM-141
APR 27 2021

THE LAW FIRM OF QUIASON MAKALINTAL BAROT TORRES IBARRA SISON & DAMASO
21th Floor, Robinsons-Equitable Tower
4 ADB Ave. corner Pedro Poveda St.
1605 Ortigas Center, Pasig City

Attention: **ATTY. BENEDICT R. TUGONON**
and
ATTY. EARL C. TAGRA

Gentlemen:

This refers to your letter dated February 28, 2019, requesting confirmation that the merger of **Rizal Commercial Banking Corporation ("RCBC")**, as the surviving corporation, and **RCBC Savings Bank, Inc. ("RSBI")**, as the absorbed corporation, is a tax-free exchange pursuant to Section 40(C)(2) in relation to Section 40(C)(6)(b) of the National Internal Revenue Code (Tax Code) of 1997, as amended.

Background:

RCBC, with Securities and Exchange Commission (SEC) Company Registration No. is a universal banking corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at Yuchengco Tower, RCBC Plaza, 6819 Ayala Avenue corner Sen. Gil J. Puyat Avenue, Makati City. It is authorized to engage in the business of expanded commercial banking; to have and exercise, subject to, and in accordance with the provisions of applicable laws, rules and regulations, all powers, rights, privileges and attributes of an expanded commercial bank; to engage in and carry on the business of a trust company; exercise the powers of investment houses as provided in pertinent laws; and have the power and authority to invest in the equity of allied and non-allied corporations, business, or undertakings, in addition to the general powers incident to corporations.

On the other hand, RSBI, with SEC Company Registration No. , is a thrift banking corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at RCBC Savings Bank Corporate Center, 26th and 25th Streets, Bonifacio Global City, Taguig City. It is authorized to engage in the general business of savings and mortgage banking, quasi-banking functions, and in general trust and fiduciary business, including but not limited to dealing in all types of government or private securities and marketable bonds, commercial papers and accounts receivables, drafts, foreign exchange, bills of exchange, acceptances, or notes arising out of commercial transactions or in loans secured by bonds, mortgages on real estate and insured improvements thereon, and other forms of security or in loans for personal or household finance, whether secured or unsecured, and financing for home building and home development, to engage in the business of brokerage of government securities and such other investments and loans which the Monetary Board may prescribe, including the issuance of domestic letters of credit denominated in Philippine currency in accordance with such regulations as the Monetary Board may prescribe.

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RCBC and RSBI deemed it necessary and advisable to merge the corporation into a single corporation, with RCBC as the surviving corporation, as the merger will advance both corporations' long term strategic business interests. Thus, the Plan of Merger dated November 27, 2018 was approved by the majority vote of each of the board of directors of RCBC and RSBI at the meetings duly called for the purpose on November 26, 2018 and November 27, 2018, respectively. Also, at a special meeting of the stockholders of RCBC held on February 26, 2019 at Makati City, at which quorum was present and acting throughout, the stockholders owning 1,877,696,027 shares, representing 96.9% of its total issued and outstanding capital stock voted and approved the Plan of Merger, and no stockholder present at such meeting voted against it. Likewise, at a special meeting of the stockholders of RSBI held on February 18, 2019 at Makati City, at which quorum was present and acting throughout, the stockholders owning 30,872,162 common shares representing 100% of its outstanding capital stock voted and approved the Plan of Merger.

On July 22, 2019, the SEC approved the Plan and Articles of Merger. Under the approved Plan and Articles of Merger, the merger shall become effective on July 1, 2019 following the issuance by the SEC of a Certificate of Merger and subject to the approval of the Bangko Sentral ng Pilipinas (BSP) and the Philippine Deposit Insurance Corporation (PDIC).

Also, pursuant to the Plan of Merger, as of the effective date, the shares of RSBI shall, without any other action on the part of the respective holders of the shares, become and be converted into the common shares of RCBC, as follows:

1. RSBI shall transfer its net assets to RCBC in exchange for the common shares of RCBC. The number of RCBC common shares that will be issued pursuant to the merger shall be determined using the respective Net Asset Value (NAV) per common share of RCBC and RSBI **as of December 31, 2018 as reflected in their respective Audited Financial Statements (AFS).** The results of operations of RSBI from January 1, 2019 shall not affect the determination of the number of RCBC common shares that will be issued pursuant to the merger and adjustments shall not be made in the NAV per share of RCBC and RSBI after December 31, 2018. Any net income earned by RSBI from January 1, 2019 until the effective date shall be declared and paid as dividends to RCBC and any net loss incurred by RSBI during the same period shall be absorbed and for the account of RCBC.

2. The procedure for determining the number of RCBC common shares that will be issued pursuant to the merger shall be as follows:

   a. RCBC and RSBI shall determine the exchange ratio based on the following formula:

   $$\text{Ratio} = \frac{\text{RSBI NAV/ No. of outstanding RSBI shares}}{\text{RCBC NAV/ No. of outstanding RCBC shares}}$$

   b. The number of RCBC common shares to be issued is equivalent to the number of outstanding RSBI common shares multiplied by the Ratio.

   c. Any fractional shares resulting from the application of the formula shall be disregarded and rounded down to the nearest whole number of RCBC common shares.

3. The RCBC common shares issued shall be acquired and recorded as treasury shares by RCBC in exchange for RCBC's investment in RSBI common shares.

Following the above-mentioned formula, the number of common shares to be issued by RCBC pursuant to the merger shall be 315,287,248 shares, computed based on the AFS of RCBC and RSBI as of December 31, 2018, as follows:

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RCBC	
Equity of RCBC Number of RCBC shares	
Book value per share	

RSBI	
Equity of RSBI Number of RSBI shares	
Book value per share	

Shares to be issued	
Book value of RSBI shares Book value of RCBC shares	
Ratio of shares to be issued Total RSBI issued shares	
Shares to be issued	

As of the date of the Articles of Merger, the respective authorized capital stock, total number of outstanding and issued shares, the par value of each share and the total paid-up capital for RCBC and RSBI are as follows:

RCBC		
	Number of Shares	**Amount (at P10.00 per share)**
Authorized Capital Stock	2,800,000,000	
Outstanding Capital Stock	1,935,896,662	
Total Paid-up Capital	1,935,896,662	

RSBI		
	Number of Shares	**Amount (at P100.00 per share)**
Authorized Capital Stock	50,000,000	
Outstanding Capital Stock	30,872,163	
Total Paid-up Capital[1]	30,872,163	

Based on the foregoing representations, you now request for confirmation of the following:

1. The merger of RCBC and RSBI qualifies as a tax-free exchange of property where no gain or loss shall be recognized under Section 40(C)(2) in relation to Section 40(C)(6)(b) of the Tax Code of 1997, as amended;

2. The basis of the assets and liabilities of RSBI in the hands of RCBC shall be the same as it would be in the hands of RSBI as the absorbed corporation;

3. The transfer of any property pursuant to the merger is not subject to income tax, capital gains tax, or donors tax;

4. The exchange by RSBI shareholders of their shares for RCBC shares and the transfer of assets of RSBI to RCBC pursuant to the merger is not subject to any output value-added tax (VAT); and

[1] Including Additional Paid-in Capital of P102,783,700.00.

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5. The exchange by RSBI shareholders of their shares for RCBC shares and the transfer by RSBI of its properties to RCBC as a result of the merger is not be subject to documentary stamp tax (DST).

In reply thereto, please be informed as follows:

1. The merger of RCBC and RSBI is a merger within the contemplation of Section 40(C)(2), in relation to Section 40(C)(6)(b) of the Tax Code of 1997, as amended, because RCBC shall acquire/assume all the assets and liabilities of RSBI and the same is necessary and advisable and is to the advantage and welfare of the merging corporation and their respective stockholders since the corporation own, hold, and manage various assets for the same beneficial owner. Hence, the merger of RCBC and RSBI is being undertaken for a bona fide business purpose and not for the purpose of escaping the burden of taxation.

The merger of RCBC and RSBI qualifies for non-recognition of gain or loss for income tax purposes in accordance with Section 40(C)(2) of the Tax Code of 1997, as amended, and that no gain or loss shall be recognized by RSBI, as the transferor of all its assets and liabilities, to RCBC pursuant to the Articles and Plan of Merger.

Accordingly, no gain or loss shall be recognized by RCBC, as the transferee, on its receipt of the assets and liabilities of RSBI pursuant to and as a consequence of the merger.

The basis of the shares of stocks to be received by shareholders of RSBI upon the exchange shall be the same as the basis of the properties, stocks or securities they exchanged, decreased by (1) the money they received, and (2) the fair market value of the other property/ies they received and increased by (a) the amount treated as dividend of the shareholders and (b) the amount of any gain that was recognized in the exchange[2].

The basis of the property transferred in the hands of the transferee (RCBC) shall be the same as it would be in the hands of the transferor (RSBI) increased by the amount of the gain, if any, recognized to the transferor on the transfer[3].

If the amount of the liabilities assumed plus the amount of the liabilities to which the property is subject exceed the total of the adjusted basis of the property transferred pursuant to such exchange, then such excess shall be considered as a gain from the sale or exchange of a capital asset or of property which is not a capital asset, as the case may be[4].

The substituted basis of the properties transferred by RSBI to RCBC should strictly comply with the rule that cash and other cash items will be excluded from the computation of the adjusted basis of the properties transferred for purposes of determining whether liabilities assumed and to which the property is subject do not exceed the adjusted basis of the property transferred, pursuant to No. IV(A)(2) of Revenue Memorandum Ruling (RMR) No. 2-2002 dated June 10, 2002.

Accordingly, the allocated shares and the substituted basis of the properties transferred by RSBI based on its AFS as of December 31, 2018 shall be as follows:

Assets	Amount	Allocated Liabilities	Allocated Shares	Substituted Basis
Cash and Other Cash Items		-		
Due from Bangko Sentral ng Pilipinas				

[2] Sec. 40 (C)(5)(a) of the Tax Code of 1997, as amended.
[3] Sec. 40 (C)(5)(b), supra
[4] Sec. 40 (C)(4)(b), supra

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Due from other banks				
Interbank Call Loans				
Loans and Receivables Arising From Reverse Repurchase Agreement				
Trading and Invesment Securities				
Loans and Receivables				
Investments in Subsidiaries				
Bank Premises, Furnitures, Fixtures, and Equipment				
Investment Properties				
Assets Held-for-Sale and Disposal Group				
Deferred Tax Assets				
Other Resources				
Total				

Liabilities	**Amount**
Deposit Liabilities	
Manager's Check Payable	
Accrued Interest, Taxes and Other Expenses	
Other Liabilities	
Total	

2. Well-settled in our jurisprudence is the fact that the essential elements of a valid donation are: (1) the reduction of the patrimony of the donor; (2) the increase in the patrimony of the donee; and (3) the intent to do an act of liberality (*animus donandi*).

Clearly, there is no intention on the part of any of the parties to the merger - RSBI to donate to RCBC their assets since the transaction is purely for a legitimate business purpose. Thus, the merger will not be subject to donor's tax since there is no intention to donate, and the transaction is a *bona fide* merger effected solely for business reasons.

3. The transfer of assets/properties of RSBI to RCBC as a consequence of the merger is exempt from VAT pursuant to Section 109 (X) of the Tax Code of 1997, as amended. The transfer of assets/properties to effectuate a merger is not made in the course of business but by operation of law pursuant to the merger.

4. No DST is due on the transfer of assets made pursuant to the merger under Section 199 (m) of the Tax Code of 1997, as amended by Republic Act (RA) No. 9243, in relation to

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Section 40 (C) (2) of the Tax Code of 1997, as amended. Consequently, no DST is due on the surrender by RSBI shareholders of their RSBI shares for cancellation.

On the other hand, pursuant to Section 174 of the Tax Code of 1997, as amended, DST at the rate of P2.00 on each P200 par value, or fractional part thereof, shall be imposed on the original issuance of shares by RCBC in favor of the shareholders of RSBI as a consequence of the merger.

5. The excess and unutilized CWT of the absorbed corporation, RSBI, as of the effective date of the merger, which form part of the assets to be transferred by the absorbed corporation to RCBC as a consequence of the merger, may be applied as a tax credit by RCBC against its income tax due for the taxable year 2019, the effective date of the merger being July 22, 2019, and in the succeeding taxable years, or may be the subject of a claim for refund or issuance of a tax credit certificate (TCC).

6. The excess and unexpired MCIT of the absorbed corporation, RSBI, as of the effective date of the merger shall be carried forward and credited against the regular corporate income tax due of the surviving corporation, RCBC, for the three (3) immediately succeeding taxable years pursuant to Section 27(E)(2) of the Tax Code of 1997, as amended. Since the excess and unexpired MCIT of RSBI are among the rights, privileges, property and/or interest of RSBI, their excess and unexpired MCIT shall be transferred to and vested in RCBC on the effective date of the merger. Thus, RSBI' excess and unexpired MCIT shall be carried forward and credited against the regular corporate income tax of RCBC subject to the three-year-carry-forward period reckoned from the date of payment of RSBI of their MCIT.

7. It is to be emphasized, however, that the NOLCO under Section 34(D)(3) of the Tax Code of 1997, as amended, and as implemented by Revenue Regulations (RR) No. 14-2001, of the absorbed corporation, RSBI, if any, is not one of their assets that can be transferred and absorbed by the surviving corporation, RCBC, as this privilege or deduction can be availed of merely by the absorbed corporation. Accordingly, the tax-free merger does not cover the NOLCO of RSBI that can be transferred and absorbed by RCBC.

8. The retained earnings pertaining to the individual shareholders of RSBI, the absorbed corporation, are subject to the ten percent (10%) final withholding tax on dividends constructively received by its individual shareholders pursuant to Section 24 (B) (2) of the Tax Code of 1997, as amended.

However, in order that the above-described reorganization can be considered as merger under Section 40(C)(2) and (6)(b) of the Tax Code of 1997, as amended, the parties to the merger should comply with the following requirements set forth under RR No. 18-2001:

A. The plan of reorganization should be adopted by each of the corporation, parties thereto, the adoption being shown by the acts of its duly constituted responsible officers and appearing upon the official records of the corporation. Each corporation, which is a party to the reorganization, shall file, as part of its return for the taxable year within which the reorganization occurred a complete statement of all facts pertinent to the non-recognition of gain or loss in connection with the reorganization, including:

   1. A copy of the plan of reorganization, together with a statement executed under the penalties of perjury, showing in full the purposes thereof and in detail all transactions incident to, or pursuant to the plan;

   2. A complete statement of all cost or other basis of all property, including all stocks or securities, transferred incident to the plan;

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5. The excess and unutilized CWT of the absorbed corporation, RSBI, as of the effective date of the merger, which form part of the assets to be transferred by the absorbed corporation to RCBC as a consequence of the merger, may be applied as a tax credit by RCBC against its income tax due for the taxable year 2019, the effective date of the merger being July 22, 2019, and in the succeeding taxable years, or may be the subject of a claim for refund or issuance of a tax credit certificate (TCC).

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A. The plan of reorganization should be adopted by each of the corporation, parties thereto, the adoption being shown by the acts of its duly constituted responsible officers and appearing upon the official records of the corporation. Each corporation, which is a party to the reorganization, shall file, as part of its return for the taxable year within which the reorganization occurred a complete statement of all facts pertinent to the non-recognition of gain or loss in connection with the reorganization, including:

    1. A copy of the plan of reorganization, together with a statement executed under the penalties of perjury, showing in full the purposes thereof and in detail all transactions incident to, or pursuant to the plan;

    2. A complete statement of all cost or other basis of all property, including all stocks or securities, transferred incident to the plan;

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3. A statement of the amount of stock or securities and other property or money received from the exchange, including a statement of all distribution of other disposition made thereof. The amount of each kind of stock or securities and other property received shall be stated on the basis of the fair market value thereof at the date of the exchange;

4. A statement of the amount and nature of any liabilities assumed upon the exchange, and the amount and nature of any liabilities to which any of the property acquired in the exchange is subject.

B. Every taxpayer, other than a corporation, party to the reorganization, who received stock or securities and other property or money upon a tax-free exchange in connection with a corporate reorganization shall incorporate in his income tax return for the taxable year in which the exchange takes place a complete statement of all facts pertinent to the non-recognition of gain or loss upon such exchange, including:

1. A statement of the cost or other basis of the stock or securities transferred in the exchange; and

2. A statement in full of the amount of stock or securities and other property or money received from the exchange, including any liabilities assumed upon the exchange, and any liabilities to which property received is subject. The amount of each kind of stock or securities and other property (other liabilities assumed upon the exchange) received shall be set forth upon the basis of the fair market value thereof at the date of the exchange.

C. Records in substantial form shall be kept by every taxpayer who participates in a tax-free exchange in connection with a corporate reorganization showing the cost or other basis of the transferred property or money received (including any liabilities assumed on the exchange, or any liabilities to which any of the properties received were subject), in order to facilitate the determination of gain or loss from subsequent disposition of such stock of securities and other property received from the exchange.

In addition to the foregoing requirements, the parties shall enclose with their respective income tax returns for the taxable year in which the tax-free exchange occurred a copy of the request for ruling filed with, and the corresponding ruling issued by the Bureau of Internal Revenue, both duly stamped received by the appropriate office of the Bureau of Internal Revenue. Such parties shall include as a note to their respective audited financial statements for the taxable year in which the exchange occurred a statement to the effect that they hold such assets/shares acquired in a tax-free exchange and the year in which such exchange occurred, and in the taxable years until the subject properties are subsequently transferred to another transferee.

Moreover, the shareholders of the absorbed/dissolving corporation and the surviving/ transferee corporation shall record in their respective books the mandatory accounting entries stated in **Annex "A"** hereof, pursuant to Revenue Memorandum Order (RMO) No. 17-2016.

Furthermore, the parties shall cause to annotate at the back of the Transfer Certificates of Title (TCT) and Certificates of Stock, the date the merger was executed, the original or historical cost of acquisition of the properties or shares of stock involved, and the fact that no gain or loss was recognized as a result of such merger; provided however, that any violation by the Register of Deeds or by the Corporate Secretary of this condition shall be penalized under Section 269 or 275, as the case maybe, of the Tax Code of 1997, as amended.

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Finally, it is required that within ninety (90) days from receipt of this ruling, the parties to the transaction must submit to the Law and Legislative Division, Bureau of Internal Revenue, certified true copies by the Corporate Secretary, of duly annotated Certificates of Stock, in respect of the shares of stock of the transferee corporation, including the revised allocation of shares and re-computation of the substituted bases of the properties which shall be in accordance with RMR No. 2-2002.

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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ANNEX "A"

<table>
<tr><th>Particulars</th><th>Individual Shareholder's Book
(The entry/ies shall be per individual shareholder of the absorbed corporation)</th><th>Transferee/Surviving Corporation's Book</th></tr>
<tr><td>Journal Entry to Record the Tax Free Exchange</td><td>Investment in (transferee's name) xxx.xx
Investment in (name of dissolving corp.) xxx.xx
Dividend Income (net of FWT on dividend) xxx.xx

To record the Tax-Free Exchange of investment in (share type) shares of (name of issuing corporation/s) with aggregate fair market value of P_____ in exchange for (type and no. of share) of (name of transferee) with par value of P_____ per share.</td><td>Investment in (issuing corp., for shares of stock) xxx.xx
PPE - Land & Improvement (for real props.) xxx.xx
Other Assets (as applicable) xxx.xx
Liabilities xxx.xx
Capital Stock xxx.xx
Additional Paid-In Capital xxx.xx

To record the Tax-Free Exchange of real properties, investment in (share type) shares of (name of issuing corporation/s), and other assets with aggregate fair market value of P_____, including liabilities assumed resulting from merger, in exchange for (type and no. of share) of (name of transferee) with par value of P_____ per share.</td></tr>
<tr><td>Balance Sheet Notes Entry</td><td>Investment includes (no. and type of share/s) with par value of P_____ in (name of transferee) resulting from the Tax-Free Exchange of investment in (no. and type of share/s) of (issuing corporation/s) covered by Stock Certificate No/s. _____ which were acquired for the total cost of (substituted basis) and which have fair market value as of the date of exchange amounting to P_____.</td><td>Real properties, investment in (no. and type of share/s) of (issuing corporation/s), and other assets were acquired through merger as evidenced by Plan of Merger and Articles of Merger, including the increase of the Authorized Capital Stock of (name of transferee), approved by the Securities and Exchange Commission on (date). The total acquisition cost/substituted cost to (name of transferee) of the investment/s amounts to (FMV at the time of the exchange). The real properties, investment/s, and other assets were previously covered by Transfer Certificate of Title and Stock Certificate No/s. _____ issued by (issuing corporation/s) and are now presently covered by Stock Certificate No/s. _____ constituting (no. and type of share/s) [total] shares in the name of (name of transferee).</td></tr>
<tr><td>Proforma Entries to Record Subsequent Sale/Transfer</td><td>Cash or Accounts Receivables xxx.xx
Investment in (name of transferee) xxx.xx
Gain on Sale of Investment xxx.xx

To record subsequent sale / transfer of investment acquired thru tax-free exchange

Current xxx.xx
Tax Payable xxx.xx

Provision for Tax as follows:

<table>
<tr><th colspan="2">Tax Type</th><th>Tax Rate*</th><th>Multiply by</th><th>Amount</th></tr>
<tr><td>1)</td><td>Net Capital Gains Tax</td><td>5% on P100,000 and 10% on excess</td><td>Gains realized on tax-free exchange</td><td rowspan="2">xxx.xx</td></tr>
<tr><td>OR</td><td>Stock Transaction Tax</td><td>1/2 of 1%</td><td>FMV of investment/s at the time of the tax-free exchange</td></tr>
<tr><td>2)</td><td>Net Capital Gains Tax</td><td>15%</td><td>Gains realized on subsequent sale of investment/s</td><td rowspan="2">xxx.xx</td></tr>
<tr><td>OR</td><td>Stock Transaction Tax</td><td>6/10 of 1%</td><td>Selling price of investment at the time of subsequent sale</td></tr>
<tr><td colspan="4">Total Tax Payable</td><td>xxx.xx</td></tr>
</table>

* If subsequent sale/s on investment/s was/were made before January 1, 2018, the tax rates used in the computation of Net Capital Gains Tax and Stock Transaction Tax at the time of the tax-free exchange shall apply

* Computation of Gain Realized on Subsequent Sale of Investment:
Selling Price xxx.xx
Less: Cost (Substituted Basis) xxx.xx
Net Capital Gain on sale of unlisted shares xxx.xx

* Per RMO No. 17-2016, the substituted basis of the stock or securities received by the transferor on a tax-free exchange shall be as follows: (1) The original basis of the property, stock or securities to be transferred, (2) Less: (a) money received, if any, and (b) the fair market value of the other property received, if any, (3)Plus: (a) the amount treated as dividend of the shareholder, if any, and (b) the amount of any gain that was recognized on the exchange, if any</td><td>Cash or Accounts Receivables xxx.xx
Investment in (name of issuing corp.) / xxx.xx
PPE - Land & Improvement / Other Assets
Gain on Sale of Property/ies* xxx.xx

To record subsequent sale/transfer of investment/s acquired thru tax-free exchange

Current xxx.xx
Tax Payable xxx.xx

Provision for Tax as follows:

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<tr><td colspan="4">Total Tax Payable</td><td>xxx.xx</td></tr>
</table>

<table>
<tr><th colspan="2">Tax Type</th><th>Tax Rate</th><th>Multiply by</th><th>Amount</th></tr>
<tr><td>1)</td><td>Withholding Tax - ONETT</td><td>1.5% to 6% per RR No. 6-2001</td><td rowspan="3">Fair Market Value (FMV) of the property/ies at the time of subsequent sale / transfer</td><td>xxx.xx</td></tr>
<tr><td>2)</td><td>Documentary Stamp Tax (DST)</td><td>1.5% for every P1,000 and fractional part thereof)</td><td>xxx.xx</td></tr>
<tr><td>3)</td><td>Value-Added Tax (VAT)</td><td>12%</td><td>xxx.xx</td></tr>
</table>

* Gain on sale of property/ies is subject to Normal Corporate Income Tax (NCIT)

* FMV at the time of subsequent sale / transfer refers to the selling price, zonal value or the value reflected in the tax declaration, whichever is highest</td></tr>
</table>