June 8, 2021

BIR RULING NO. OT-201-21

Revenue Regulations (RR) No. 6-2008

GDSK Development Corporation
569 Quintin Paredes Street
Binondo, Manila, Philippines

Attention: *AAA*

Gentlemen :

This refers to your letter dated September 02, 2019, requesting on behalf of GDSK Development Corporation ("GDSK"), for confirmation that the basis in computing capital gains tax on the subsequent sale of shares of stock received as liquidating dividend and held as capital asset, is the adjusted cost used as basis in computing the capital gains tax when such asset was received as liquidating dividend.

It is represented that GDSK is a domestic corporation duly registered under the laws of the Republic of the Philippines with address at 359 Quintin Paredes St., Binondo, Manila; that GDSK owned 31.02% stock in Sinclair Philippines, Inc. ("Sinclair"), a corporation duly registered under the laws of the Republic of the Philippines with address at No. 7433 Yakal St., Makati City, Metro Manila; that on June 30, 2016, Sinclair declared a voluntary dissolution of its company, resulting to the issuance of liquidating dividends in favor of GDSK, which comprise of 6,278 shares in Medical Doctors, Inc., valued at _____ Pesos (Php_____); that in order to distribute the said shares to GDSK, Sinclair executed a Deed of Assignment in favor of GDSK resulting in the imposition of 30% income tax rate; and that on April 05, 2019, GDSK sold one-half of the 6,278 share in Medical Doctors, Inc., or 3,139 shares to BBB, for the amount of _____ Pesos (Php_____). Based on the foregoing representation, GDSK and BBB are of the position that the basis in computing capital gains tax in the subsequent sale of 3,139 shares in Medical Doctors, Inc. is the value used when the liquidating dividend was received, or _____ Pesos (Php_____).

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Please be informed that Section 7 of Revenue Regulations (RR) No. 06-2008 provides the rules on the taxability on the sale, barter or exchange of shares of stock not traded through the local stock exchange, to wit:

"SECTION 7. Sale, Barter or Exchange of Shares of Stock Not Traded Through a Local Stock Exchange Pursuant to Secs. 24 (C), 25 (A)(3), 25 (B), 27 (D) (2), 28 (A) (7) (C), 28 (B) (5) (C) of The Tax Code, as amended. —

(a) Tax Rate. — x x x.

(b) Tax Base. — The tax imposed in Subsection (a) above shall be ***upon the net capital gains realized during the taxable year from the sale, barter, exchange or disposition of shares of stock****, except shares sold or disposed of through the Local Stock Exchange which is covered by the provisions of Secs. 5 and 6 above.*

(c) Determination of Amount and Recognition of Gain or Loss. —

(c.1) Determination of Selling Price. — In determining the selling price, the following rules shall apply:

(c.1.1) ***In the case of cash sale, the selling price shall be the total consideration per deed of sale****.*

(c.1.2) If the total consideration of the sale or disposition consists partly in money and partly in kind, the selling price shall be sum of money and the fair market value of the property received.

(c.1.3) In the case of exchange, the selling price shall be the fair market value of the property received.

(c.1.4) ***In case the fair market value of the shares of stock sold, bartered, or exchanged is greater than the amount of money and/or fair market value of the property received, the excess of the fair market value of the shares of stock sold, bartered or exchanged over the amount of money and the fair market value of the property, if any, received as consideration shall be deemed a gift subject to the donor's tax*** *under Sec. 100 of the Tax Code, as amended.*

(c.2) Definition of "fair market value" of the Shares of Stock.

(c.2.1) x x x

(c.2.2) x x x

(c.2.3) x x x

(c.3) Determination of Gain or Loss from Sale or Disposition of Shares of

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*Stock. — **The gain from the sale or other disposition of shares of stock shall be the excess of the amount realized therefrom over the basis or adjusted basis for determining gain**, and the loss shall be the excess of the basis or adjusted basis for determining loss over the amount realized. The amount realized from the sale or other disposition of property shall be the sum of money received plus the fair market value of the property (other than money) received, if any.*

*(c.3.1) Basis for Determining Gain or Loss from Sale or Disposition of Shares of Stock. — **Gain or loss from the sale, barter or exchange of property, for a valuable consideration, shall be determined by deducting from the amount of consideration contracted to be paid, the vendor/transferor's basis for the property sold or disposed plus expenses of sale/disposition**, if any.*

(c.3.1.1) Acquired by Purchase. — If the property is acquired by purchase, the basis is the cost of such property.

Determination of the Cost. — The cost basis for determining the capital gains or losses for shares of stock acquired through purchase shall be governed by the following rules:

*(i) **If the shares of stock can be identified, then the cost shall be the actual purchase price plus all costs of acquisition, such as commissions, documentary stamp taxes, transfer fees, etc.***

(ii) If the shares of stock cannot be properly identified, then the cost to be assigned shall be computed on the basis of the first-in first-out (FIFO) method.

(iii) x x x

(iv) x x x" (Emphasis Ours)

In relation thereto, in the event that the stocks were given as a liquidating dividend and the corresponding taxes were duly settled as in the case at bar, it is tantamount to a sale or purchase in favor of the stockholder. As discussed in the case of *Commissioner of Internal Revenue vs. Goodyear Philippines*, G.R. No. 216130 dated August 03, 2016, the Supreme Court held that:

"It is also worth mentioning that one of the primary features of an ordinary dividend is that the distribution should be in the nature of a recurring return on stock which, however, does not obtain in this case. x x x

In Wise & Co., Inc. v. Meer: The amounts thus distributed among the plaintiffs were not in the nature of a recurring return on stock — in fact, they surrendered and relinquished their stock in return for said distributions, thus ceasing to be stockholders of the Hongkong Company, which in turn ceased to exist in its own right as a going

concern during its more or less brief administration of the business as trustee for the Manila Company, and finally disappeared even as such trustee.

"The distinction between a distribution in liquidation and an ordinary dividend is factual; the result in each case depending on the particular circumstances of the case and the intent of the parties. If the distribution is in the nature of a recurring return on stock it is an ordinary dividend. However, if the corporation is really winding up its business or recapitalizing and narrowing its activities, the distribution may properly be treated as in complete or partial liquidation and as payment by the corporation to the stockholder for his stock. x x x (Montgomery, Federal Income Tax Handbook [1938-1939], 258 x x x) (Emphases and underscoring supplied)"

Perforce, if the shares of stock in Medical Doctors, Inc. were acquired at a total cost of Php_____ or at _____ Pesos per share (Php_____/share), the cost basis for 3,139 shares sold to BBB is Php_____, as identified when the stocks were acquired.

In computing the net capital gains or loss realized on the sale, barter, exchange or disposition of shares of stock, the identifiable amount of the vendor/transferor's basis for the property sold or disposed plus expenses of sale/disposition, if any, shall be deducted from the consideration contracted to be paid. In case, however, that the fair market value of the shares of stock sold is greater than the amount of money received, the excess of the fair market value of the shares of stock sold over the amount of money received as consideration shall be deemed as gift subject to the donor's tax under Section 100 of the Tax Code, as amended, unless shown to have been made at arm's length and free from donative intent.

In view of the foregoing, this office confirms the position of GDSK and BBB that the basis in computing capital gains tax in the subsequent sale of 3,139 shares in Medical Doctors, Inc. is the value used when the liquidating dividend was received, or Php_____.

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,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

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