REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Section 40(C)(2) & (6)(b), Tax Code of 1997, as amended
BIR Ruling No. 214-12 BIR Ruling No. 075-18
SAOM- 214-2022 MAY 06 2022

A.M. SISON, JR. & PARTNERS
20/F Security Bank Centre,
6776 Ayala Avenue, Makati City

Attention: **ATTY. ANTONIO L. CARDIÑO**
Senior Partner

ATTY. CARLITO P. EGAÑA
Senior Partner

ATTY. EMERSON S. PANGANIBAN
Partner

ATTY. HENSON M. MONTALVO
Partner

Gentlemen:

This refers to your request for a confirmatory ruling that the merger of your clients, Luzviminda Land Holdings, Inc. ("LLHI") and Marangal Properties, Inc. ("MPI"), with LLHI as the surviving corporation, is a tax-free merger pursuant to Section 40(C)(2) and Section 4.106-8(b)(3) of Revenue Regulations (RR) No. 16-2005, as amended.

The facts, as represented, are as follows:

LLHI is a corporation organized and existing under the Philippine laws. Its primary purpose is to own, use, improve, develop, subdivide, sell, exchange, lease and hold for investment or otherwise, real estate of all kinds, including buildings, houses, apartments and other structures. It has authorized capital stock, consisting of Pesos ( ) preferred stocks. divided into shares with a par value of Peso (per share, and Pesos (P common stocks, divided into hares with a par value of Pesos (00) per share. All authorized capital stock has been subscribed by and issued to the following stockholders of record, as of December 31, 2008:

Name of Stockholders	No. of Shares Held	
CCBPI Retirement Plan		*(Preferred)*
Coca-Cola Bottlers Philippines, Inc.		*(Common)*
Vivencia Chaves	1	*(Common)*
Macaria Saldua	1	*(Common)*
David Lyons	1	*(Common)*
Mark Harden	1	*(Common)*
Cristina D. Reyes	1	*(Common)*
TOTAL		*(Preferred)*
		(Common)

On the other hand, MPI is a corporation organized and existing under Philippine laws engaged to own, use, improve, develop, subdivide, sell, exchange, lease and hold for investment or otherwise, real estate of all kinds, including buildings, houses. apartments and other structures. It has authorized capital stock of on Pesos ( ), divided into and es. All authorized capital stock has been subscribed by and issued to the following stockholders of record, as of December 31, 2008:

Name of Stockholders	No. of Shares Held
Coca-Cola Bottlers Philippines, Inc.	
LLHI	
Vivencia Chaves	1
Macaria Saldua	1
David Lyons	1
Mark Harden	1
Cristina D. Reyes	1
TOTAL	

To promote and accomplish efficiencies and economies which will definitely serve to reduce both administrative and operating costs in all aspects of the businesses involved, the respective Board of Directors of LLHI and MPI proposed the merger of the two (2) companies in accordance with Title IX of the Corporation Code of the Philippines, with LLHI as the surviving corporation. The Plan of Merger was approved by the stockholders of LLHI and MPI representing at least two-thirds (2/3) of the outstanding capital stock of each corporation during their respective meetings held on December 18, 2008.

The Securities and Exchange Commission (SEC) approved the Plan of Merger of LLHI and MPI on May 27, 2009. With the approval of the SEC of the merger, by operation of law, the separate corporate existence of MPI ceases.

Upon the effectivity date, all assets, rights, privileges, immunities, franchises and all and every interest of, or belonging to, or due to MPI as of December 31, 2008, shall be taken and deemed transferred to LLHI. Further, LLHI shall be responsible and liable for all the outstanding liabilities and obligations of MPI as of December 31, 2008 and any claim, action or proceeding pending by or against MPI may be prosecuted by or against LLHI. MPI is

automatically dissolved upon the effectivity of the merger. As a result of the merger, all issued and outstanding shares of stock of MPI shall be cancelled.

The net asset of MPI is pegged at Pesos (, sixty percent (60%) of which represents LLHI's shares and the remaining 40% represents Coca-Cola Bottlers Philippines, Inc. ("Coca-Cola") shares. The share of LLHI in the net asset of MPI shall be closed against the investment account of LLHI. On the other hand, in exchange of the interest of Coca-Cola, LLHI will issue One Million Ninety Two Thousand Seven Hundred Eight (1,092,708) common shares to Coca-Cola for the amount of Pesos (. The difference between the value of the new shares issued to Coca-Cola and its share in the net asset of MPI shall be treated as additional paid-in capital in the books of LLHI.

Based on the foregoing representations, you now request confirmation of your opinion that—

1. The merger of LLHI and MPI, with former as the surviving corporation, is a merger within the contemplation of Section 40 (C) (2) (a) and (b), in relation to Section 40 (C) (6) (b) of the Tax Code, as amended. Therefore, no gain or loss shall be recognized by the MPI on the transfer of all its assets and liabilities to LLHI pursuant to the merger. Likewise, no gain or loss shall be recognized by LLHI, as the transferee, on its receipt of the assets and liabilities of MPI;

2. The transfer of assets of MPI to LLHI pursuant to the Plan of Merger will not be subject to any output VAT, and any unused input VAT of the MPI as of the effective date of merger, will be transferred to and absorbed by LLHI pursuant to Section 4.106-8 (b) (3) of RR No. 16-2005, as amended; and

3. The merger transaction is exempt from Documentary Stamp tax (DST)

In reply thereto, please be informed as follows:

1. The foregoing merger of LLHI and MPI, with the former as the surviving corporation, is a merger within the purview of Sections 40(C)(2) in relation to Section 40(C)(6)(b) of the NIRC, as amended, because LLHI will acquire all the assets and liabilities of MPI and said merger was undertaken for a *bona fide* business purpose.

Accordingly, your opinion that no gain or loss shall be recognized both to the transferor and the transferee corporation on the transfer by MPI of all of its assets and liabilities to LLHI pursuant to a merger under Sections 40 paragraphs (C)(2) and (C)(6)(b) of the NIRC of 1997, as amended, is hereby also confirmed.

2. The basis of the assets to be received by LLHI shall be the same as it would be in the hands of the absorbed corporation, MPI. The substituted bases of the properties transferred by MPI to LLHI should strictly comply with the rule that cash and other cash items will be excluded from the computation of the adjusted bases 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.

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Thus, the substituted basis of the assets received by LLHI from MPI shall be:

Assets	Amount	Allocated Liabilities	Allocated Shares	Substituted Basis
Cash & Cash Equivalents			111,545	16,772,369
Receivables			460	53,855
Prepaid Expenses			423	49,550
Investment Properties[1]- at cost			789,864	92,579,400
Available for sale (AFS) Investments[2]			16,393	1,921,479
Leasehold Rights[3]			174,023	20,397,037
TOTAL			**1,092,708**	**131,773,690**

Liabilities	Amount
Accounts Payables and Accrued Expenses	
Income Tax Payable	
Rental Deposit	
TOTAL	

3. The issuance of 1,092,708 common shares by LLHI to Coca-cola stockholders pursuant to the merger shall be subject to DST on original issuance of shares of stock under Section 174 of the NIRC of 1997. No DST shall be due on the surrender by MPI stockholders of their shares for cancellation.

4. Well-settled 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*).

The abovementioned merger between LLHI and MPI is not subject to the gift tax, since there is no intention to donate on the part of either or both parties and the transaction is a *bona fide* merger effected for purely business reasons.

5. Section 105 of the NIRC of 1997, as amended, identifies the persons who are subject to VAT, as follows:

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[1] Please see Annex "A"
[2] Please see Annex "B"
[3] Camp John Hay Cabin, Baguio City

"SEC. 105. *Persons Liable.* – Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code."

On the other hand, Section 4.106-8 (b) (3) of Revenue Regulations (RR) No. 16-2005, otherwise known as the "Consolidated Value-Added Tax Regulations of 2005, Implementing Republic Act No. 9337", specifically excludes mergers or consolidations from being subject to output tax. Thus,

"SEC. 4.106-8. *Change or Cessation of Status as VAT-registered Person.*

xxx xxx xxx

(b) *Not subject to output tax.*

The VAT shall not apply to goods or properties existing as of the occurrence of the following:

(1) …

(2) …

(3) Merger or consolidation of corporations. The unused input tax of the dissolved corporation, as of the date of the merger or consolidation, shall be absorbed by the surviving or new corporation."

Accordingly, the transfer of the tangible assets of MPI, which are not primarily held for sale or lease, to LLHI is not subject to VAT, and any unused input tax of MPI as of the date of the effectivity of the merger shall be absorbed by LLHI pursuant to Section 4.106-8(b)(3) of RR No. 16-2005.

6. Since the excess and unexpired MCIT of MPI is among the rights, privileges, property and/or interest of MPI, the excess and unexpired MCIT of MPI shall be transferred to and vested in LLHI on the effective date of merger. Thus, any excess MCIT of MPI shall be carried forward and credited against the normal income tax liability of LLHI for three immediately succeeding taxable years pursuant to Section 27(E)(2) of the NIRC of 1997, as amended.

Finally, since the income tax credits of MPI will also form part of the assets transferred to and vested in LLHI on the effective date of the merger, LLHI may apply said income tax credits against its normal income tax liability.

7. Since MPI had no shares of stock or real property in its name to transfer to LLHI pursuant to the Plan of Merger, neither party shall be liable for DST on transfers or exchanges of shares of stock and real property, under Sections 175 and 196 of the NIRC of 1997, as amended, respectively. Furthermore, no DST shall be imposed on the transfer of assets to, and absorption thereof by, LLHI as a result of the merger under Section 199 (m) of the NIRC of 1997, as amended, which provides:

"SEC. 199. *Documents and Papers Not Subject to Stamp Tax.* – The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from documentary stamp tax:

xxx xxx xxx

(m) Transfer of property pursuant to Section 40(c)(2) of the National Internal Revenue Code of 1997, as amended."

8. The retained earnings of MPI, the absorbed corporation, are subject to the final withholding tax on dividends constructively received by its individual shareholders and non-resident foreign corporate shareholders, if any, pursuant to Sections 24(B)(2), 25(A)(2) and 28(B)(5)(b) of the Tax Code of 1997, as amended.

In order that the above-described reorganization can be considered as merger under Section 40 (C) (2) and (6) (b) of the Tax Code, 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 corporations, 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 the cost or other basis of all properties, including all stocks or securities, transferred incident to the plan;

   (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 or 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; and

   (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, who is a 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 the stock or securities and other property or money received from the exchange, including any liability assumed upon the

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exchange, and any liability 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 exchange.

C. Permanent 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 liability assumed on the exchange, or any liability to which any of the properties received were subject), in order to facilitate the determination of gain or loss from a subsequent disposition of such stock or 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 merger 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 merger occurred a statement to the effect that they hold such assets/shares acquired in a merger and the year in which such merger 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 of accounts the mandatory accounting entries stated in Annex "C" hereof, pursuant to Revenue Memorandum Order No. 17-2016.

The parties shall cause to annotate at the back of the Transfer Certificates of Title 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 Corporate Secretary of this condition shall be penalized under Section 275 of the same Code. It is further 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 ascertained 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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By:

MARISSA O. CABREROS
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Legal Group
Officer-in-Charge

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