February 5, 2020

BIR RULING NO. MS40-132-20

Sec. 40 (C) (2) & (6) (b); RR 18-01; BIR Ruling No. 214-12; BIR Ruling No. 075-18; BIR Ruling No. 1422-18

Cebu Holdings, Inc.
20th Floor, Ayala Center Cebu Tower
Bohol Street, Cebu Business Park
Cebu City 6000

Attention: *AAA*

Gentlemen :

This refers to your letter dated November 12, 2018 requesting for confirmation that the statutory merger of Cebu Property Ventures Development Corp. ("CPVDC"), as the absorbed corporation with Cebu Holdings, Inc. ("CHI"), as the surviving corporation, is a tax-free merger within the contemplation of Section 40 (C) (2) in relation to Section 40 (C) (6) (b) of the National Internal Revenue Code of 1997, as amended ("Tax Code").

Background

CHI is a publicly listed corporation incorporated under Philippine law in 1988, with Securities and Exchange Commission (SEC) Company Registration No. 157912 and Taxpayer's Identification Number (TIN) 000-000-000-000. It has its principal office at 20th Floor, Ayala Center Cebu Tower, Bohol Street, Cebu Business Park, Cebu City. It is a full-line property developer in Cebu City, engaging in real estate development, sale of residential and office condominium units and sports club shares, and lease of commercial spaces.

CPVDC is likewise a publicly listed corporation incorporated under Philippine law in 1990, with SEC Company Registration No. 179655 and TIN 000-000-000-000. It has its principal office at 20th Floor, Ayala Center Cebu Tower, Bohol Street, Cebu Business Park, Cebu City. It is also a full-line property developer headquartered in Cebu Business Park,

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Cebu City. It is engaged in real estate development, sale of residential and condominium units, and lease of commercial office and retail spaces.

CHI and CPVDC are related parties, with Ayala Land, Inc. ("ALI") as the majority owner (direct and indirect) of both corporations. As of December 31, 2017, ALI owns 71.96% of CHI and 7.80% of CPVDC directly, while CHI owns 76.26% of CPVDC.

CHI and CPVDC deemed it advisable and to their best interest to merge into a single publicly listed corporation, pursuant to Section 76 of the Corporation Code of the Philippines, with CHI as the surviving corporation, to streamline the shareholder structure, create a wider shareholder base, increase the liquidity of the shares, address the 20% minimum public ownership requirements of the SEC by 2020, and increase operational synergies.

The Articles of Merger and Plan of Merger were authorized, approved, ratified, and confirmed by an affirmative vote of the majority of the Board of Directors of CHI at its regular meeting held on February 26, 2018, and by the affirmative vote of the majority of the Board of Directors of CPVDC at its regular meeting likewise held on February 26, 2018.

The Articles of Merger and the Plan of Merger were approved, ratified and confirmed by the shareholders of CHI ("CHI Shareholders") representing at least two-thirds (2/3) of the outstanding capital stock of CHI during the annual shareholders meeting on April 10, 2018, and by the shareholders of CPVDC ("CPVDC Shareholders") representing at least two-thirds (2/3) of the outstanding capital stock of CPVDC during the annual shareholders meeting likewise held on April 10, 2018.

The public was apprised of the foregoing corporate approvals by the respective board of directors of CHI and CPVDC, the CHI Shareholders, and the CPVDC Shareholders of the Articles of Merger and the Plan of Merger through the submission of written disclosures to the Philippine Stock Exchange (PSE) in compliance with the PSE Disclosure Rules noting that the merger will be effective upon the approval by the SEC.

On November 6, 2018 (the "Effective Date of the Merger"), the SEC approved the merger between CPVDC and CHI, whereby the entire assets and liabilities of CPVDC were transferred to and absorbed by CHI as the surviving entity. On the same date, the PSE was timely informed of the SEC approval and suspended the trading of CPVDC shares.

Pursuant to the Plan of Merger, CHI will issue a total of 996,771,000 common shares to the CPVDC Shareholders.

The authorized capital stock, issued and outstanding capital stock of each of CHI and CPVDC as set forth in their respective Audited Financial Statements are as follows:

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CHI (as of December 31, 2017 prior to the Effective Date of the Merger)

Type of Share	Authorized Capital Stock (Amount in PhP)	Issued and Outstanding (No. of Shares)	Par Value (Amount)	No. of Shares	Amount (in PhP)
Common Share	_____	1,920,073,623	_____	1,920,073,623	P_____

CPVDC (as of December 31, 2017 prior to the Effective Date of the Merger)

Type of Share	Authorized Capital Stock (Amount in PhP)	Issued and Outstanding (No. of Shares)	Par Value (Amount)	No. of Shares	Amount (in PhP)
Common A	_____	564,210,000	_____	564,210,000	_____
Common B	_____	376,140,000	_____	376,140,000	_____
Total	_____	940,350,000		940,350,000	_____

Under the Plan of Merger, CHI shall issue and additionally list new shares out of its current authorized capital stock to the CPVDC Shareholders. After considering the assets and liabilities of both CHI and CPVDC, the corporations agreed that CPVDC Shareholders shall swap their existing CPVDC shares at a ratio of 1.06 CHI Shares for 1 CPVDC Share as follows:

CPVDC Shareholder	No. of CPVDC shares	Percentage of Ownership	Exchange Ratio	No. of CHI Shares to be Issued, including fractional shares	Fractional Shares to be paid in Cash
CHI	717,064,047	76.26%	1.06	760,087,889.82	0.82
Province of Cebu	77,865,406	8.28%	1.06	82,537,330.36	0.36
ALI	73,341,993	7.80%	1.06	77,742,512.58	0.58
Others	72,078,554	7.67%	1.06	76,403,267.24	100.24
Total	940,350,000	100%	1.06	996,771,000.00	102.00

All fractional shares will be given in cash based on the average closing sale price of the CHI shares for each of the thirty (30) consecutive trading days ending on the date of execution of the Plan of Merger on April 10, 2018.

Beginning on the Effective Date of the Merger, the authorized capital stock, issued and outstanding capital stock of CHI as the surviving entity will be:

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Type of Share	Authorized Capital Stock	Issued and Outstanding	Par Value	No. of Shares	Amount
Common Share	P_____	2,916,844,623	P_____	2,916,844,623	P_____

Based on the foregoing, you now request for confirmation that:

1. The statutory merger of CHI and CPVDC qualifies for non-recognition of gain or loss for income tax purposes in accordance with Section 40 (C) (2) in relation to 40 (C) (6) (b) of the Tax Code and, as such, neither CHI nor CPVDC will be subject to income tax, withholding tax, or capital gains tax on the transfer.

2. The cost basis of CHI in the assets of CPVDC is the same as the cost basis of CPVDC in those assets.

3. The CPVDC shareholders do not recognize any gain or loss upon the surrender of their CPVDC Shares in exchange for the issued CHI Shares; their cost basis in the CHI Shares is the same as their cost basis in their CPVDC shares.

4. The transfer of assets of CPVDC to CHI pursuant to the merger and the surrender by the CPVDC Shareholders of their CPVDC Shares in exchange for CHI Shares are not subject to income tax, capital gains tax, withholding tax, donor's tax, value-added tax, and documentary stamp tax (DST) pursuant to the pertinent provisions of the Tax Code.

5. The issuance of new shares by CHI to the CPVDC Shareholders is subject to DST at the rate of P2.00 on each P200.00 par value, or a fractional part thereof.

6. The unutilized creditable withholding tax (CWT) of CPVDC as of the Effective Date of Merger is among the rights, privileges, immunities, franchises, property, receivables, and interest of CPVDC transferred to CHI by operation of law pursuant to the merger, and may be applied as credit by CHI against its income tax due for the taxable year 2018, and in the succeeding taxable years, or may be subject of a claim for refund or issuance of tax credit certificate. Beginning the Effective Date of Merger, any withholding tax certificate issued by a payor of income in the name of CPVDC may be applied by CHI against its income tax due for the taxable year 2018, and in its succeeding taxable years, or may be subject of a

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claim for refund or issuance of a tax credit certificate.

In reply thereto, please be informed as follows:

1. The foregoing merger of CPVDC and CHI is a merger within the contemplation of Section 40 (C) (2) and (6) (b) of the Tax Code because CHI's acquisition/assumption of all the assets and liabilities of CPVDC is being undertaken to merge into a single publicly listed corporation, to streamline the shareholder structure, create a wider shareholder base, increase the liquidity of the shares, address the 20% minimum public ownership requirements of the SEC by 2020, and to increase operational synergies. Thus, said merger was undertaken for a *bona fide* business purpose and not for the purpose of escaping the burden of taxation.

   The merger of CPVDC and CHI qualifies for non-recognition of gain or loss for income tax purposes in accordance with Section 40 (C) (2) of the Tax Code. Accordingly, no gain or loss shall be recognized by CHI, as the transferee, on its receipt of the assets and liabilities of CPVDC and CPVDC, as the transferor of its assets and liabilities to CHI, pursuant to and as a consequence of the merger.

2. The basis of the shares of stocks to be received by the stockholders of CPVDC upon the exchange shall be the same as the basis of the properties, stocks or securities exchanged, decreased by (1) the money received, and (2) the fair market value of the other property/ies 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. *(Sec. 40 (C) (5) (a) of the Tax Code)*

   The basis of the properties transferred in the hands of the transferee (CHI) shall be the same as it would be in the hands of the transferor (CPVDC) increased by the amount of the gain, if any, recognized to the transferor (CPVDC) on the transfer. *(Sec. 40 (C) (5) (b), supra)*

   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. *(Sec. 40 (C) (4) (b), supra)*

   The substituted bases of the properties transferred by CPVDC to CHI

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should strictly comply with the rule that cash and other cash items will be excluded from the computation of the original or 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 properties transferred, pursuant to No. IV (A) (2) of Revenue Memorandum Ruling (RMR) No. 2-2002 dated June 10, 2002.

Accordingly, the allocated shares and liabilities and the substituted basis of the properties transferred by CPVDC are as follows:

	Amount (in Php)	**Allocated Liabilities**	**Allocated Shares** [1]	**Substituted Basis (in Php)**
Cash and Cash Equivalents				
Short-term investments				
Financial Assets at Fair Value through Profit or Loss				
Receivables				
Other Current Assets				
Non-current portion of receivables				
Land and Improvements [2]				
Investment in a subsidiary, an associate and a joint venture [3]				
Investment properties				
Property and Equipment				
Other noncurrent assets				
TOTAL				

Liabilities	**Amount (in Thousands)**
Current Liabilities	

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Accounts & other payables	_____
Income Tax Payable	_____
Total Current Liabilities	_____
Non-current liabilities	
Deposits and other noncurrent liabilities	_____
Deferred tax liabilities	_____
Total Noncurrent Liabilities	_____
TOTAL	_____

3. 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 — CPVDC and its Shareholder to donate to CHI its assets and surrender of shares for cancellation, respectively, since the transaction is purely for a legitimate business purpose. Thus the aforesaid merger will not be subject to gift tax since there is no intention to donate, and the transaction is a *bona fide* merger effected solely for business reasons.

4. No DST is due on the transfer made pursuant to the Plan of Merger under Section 199 (m) of the Tax Code, as amended by Republic Act (R.A.) No. 9243, in relation to Section 40 (C) (2) of the Tax Code. However, the original issuance of shares by CHI to the stockholders of CPVDC, as a consequence of the merger shall be subject to DST at the rate of P2.00 on each P200.00 par value, or fractional part thereof, as provided under Section 174 of the Tax Code, as amended.

5. The transfer of properties of CPVDC to CHI as a consequence of the merger will not be subject to any output tax, pursuant to Section 4.106-8 (b) (3) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007 and as further amended by RR No. 10-2011. The conveyance of properties to effectuate a merger is not made in the course of business but by operation of law pursuant to the merger. Thus, any unused input tax as of the effective date of merger will be absorbed by CHI, as the surviving corporation pursuant to Section 4.106-8 (b) (3) of RR No. 16-2005, as amended.

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6. The excess and unutilized creditable withholding taxes (CWT) of CPVDC as of the effective date of the merger, which form part of the assets to be transferred by CPVDC to CHI as a consequence of the merger, may be applied as a tax credit by CHI against its income tax due for the taxable year 2018, the effective date of the merger being November 6, 2018, and in the succeeding taxable years, or may be the subject of a claim for refund or issuance of a tax credit certificate (TCC).

   The excess and unexpired MCIT of CPDVC, if any, shall be carried forward and credited against the normal corporate income tax of CHI subject to the three-year-carry-forward period reckoned from the date of payment of CPDVC of its MCIT.

7. It is to be emphasized, however, that the net operating loss carry-over (NOLCO) under Section 34 (D) (3) of the Tax Code, and as implemented by Revenue Regulations No. 14-2001, of CPVDC, if any, is not one of their assets that can be transferred and absorbed by the surviving corporation, CHI, as this privilege or deduction can be availed of by CPVDC only. Accordingly, the tax-free merger between CPVDC and CHI does not cover the NOLCO of the former.

8. The retained earnings of the absorbed corporation are subject to the ten percent (10%) final withholding tax on dividends constructively received by its shareholders pursuant to Section 24 (B) (2) of the Tax Code except those pertaining to inter-corporate dividends pursuant to Sections 27 (D) (4) and 28 (A) (7) (d) of the same Tax Code.

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 Revenue Regulations 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

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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;

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. 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 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

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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 merger occurred a copy of the request for ruling filed with, and the corresponding ruling issued by, the Bureau of Internal Revenue, both duly stamp-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 deed of exchange 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 exchange; provided, however, that any violation by the Corporate Secretary of this condition shall be penalized under Section 275 of the same Code.

Finally, the parties are required to submit to the Law and Legislative Division, Bureau of Internal Revenue, proof of annotation of the substituted basis of the shares of stock and/or real properties involved in the transfer within ninety (90) days from receipt of this ruling. Violation of this requirement is subject to the penalties provided in Section 275 of the Tax Code of 1997.

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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ANNEX A

Land, Improvements and Investment Properties

No.	Transfer Certificate of Title and/or Tax Declaration	Property Description and Classification	Valuation (Original or Adjusted, as indicated) (in PhP)
1	TCT# 107-2017000071	Lot 912-B, PSD-4323; Commercial	_____
2	TCT# 107-2017000072	Lot 904; Commercial	_____
3	TCT# 107-2012002667 TD GRC6-03-020-07702	Lot 1-A-1 (LRA) PSD-425375; Commercial	_____
4	TCT# 107-2012002669 TD GRC6-03-020-07702	Lot 1-A-3 (LRA) PSD-425375; Commercial	_____
5	TCT# 146979 TD GRC6-03-20-03455	Lot 1, Blk 9, PSD-07-037105; Commercial	_____
6	TCT# 146980 TD GRC6-03-20-03456	Lot 2, Blk 9, Psd-07-037105; Commercial	_____
7	TCT# 107-2010002862 TD GRC6-03-020-07703	Lot 1-C PSD-413747; Commercial	_____
8	TCT# 107-2012000518 TD GRC6-03-020-08301	Lot 934-B, PSD-07-063043; Residential	_____
9	TCT# 145944 TD GRC6-03-20-03429	Lot 9, Blk 1 PSD-07-037105; Commercial	_____
10	TCT# 146982 TD GRC6-03-20-03458	Block 10, PSD-07-037105; Commercial	_____
11	TCT# 146983 TD GRC6-03-20-03461	Block 11, PSD-07-037105; Commercial	_____
12	TCT# 146984 TD GRC6-03-20-03462	Block 12, PSD-07-037105; Commercial	_____
13	TCT# 162258 TD GRC6-03-20-05901	Lot 5, PCS-07-004170; Commercial	_____
14	TCT# 162259 TD GRC6-03-20-05902	Lot 6 (Road Lot), PCS-07-004170; Commercial	_____
15	TCT# 162253 TD GRC6-03-20-03491	Lot 7, PCS-07-004183; Commercial	_____
16	TCT# 162169 TD GRC6-03-20-03498	Lot 7, PCS-07-004184; Commercial	_____
17	TCT# 146981 TD GRC6-03-20-03457	Lot 3, Blk 9, PSD-07-037105; Commercial	_____
18	TCT# 146985	Road Lot 1, PSD-07-037105;	

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	TD GRC6-03-20-03464	Commercial	_____
19	TCT# 146986 TD GRC6-03-20-03465	Road Lot 2, PSD-07-037105; Commercial	_____
20	TCT# 146987 TD GRC6-03-20-03467	Road Lot 3, PSD-07-037105; Commercial	_____
21	TCT# 146988 TD GRC6-03-20-03468	Road Lot 4, PSD-07-037105; Commercial	_____
22	TCT# 146989 TD GRC6-03-20-03469	Road Lot 5, PSD-07-037105; Commercial	_____
23	TCT# 146990 TD GRC6-03-20-03470	Road Lot 6, PSD-07-037105; Commercial	_____
24	TCT# 146991 TD GRC6-03-20-03471	Road Lot 7, PSD-07-037105; Commercial	_____
25	TCT# 146992 TD GRC6-03-20-03472	Road Lot 8, PSD-07-037105; Commercial	_____
26	TCT# 146993 TD GRC6-03-20-03473	Road Lot 9, PSD-07-037105; Commercial	_____
27	TCT# 146994 TD GRC6-03-20-03474	Road Lot 10, PSD-07-037105; Commercial	_____
28	TCT# 146995 TD GRC6-03-20-03475	Road Lot 11, PSD-07-037105; Commercial	_____
29	TCT# 146996 TD GRC6-03-20-03476	Road Lot 12, PSD-07-037105; Commercial	_____
30	TCT# 146997 TD GRC6-03-20-03477	Road Lot 13, PSD-07-037105; Commercial	_____
31	TCT# 146998 TD GRC6-020-05628	Road Lot 14, PSD-07-037105; Commercial	_____
32	TCT# 147000 TD GRC6-03-20-03480	Road Lot 16, PSD-07-037105; Commercial	_____
33	TCT# 147001 TD GRC6-03-20-03481	Road Lot 17, PSD-07-037105; Commercial	_____
34	TCT# 147002 TD GRC6-03-20-03482	Road Lot 18, PSD-07-037105; Commercial	_____
35	TCT# 107-2012002668 TD GRC6-03-020-07702	Lot 1-A-2 (LRA) PSD-425375; Commercial	_____
36	TD GRC6-03-020-08313	The Walk Retail Building	_____
		TOTAL	_____

ANNEX B

Investment in Subsidiary, Associate and Joint Venture

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Subsidiary/Associate/Joint Venture	Stock Certificate No.	Number of Shares
Asian I-Office Properties, Inc.	001	6,245
	009	173,750
	019	90,454
	027	3
	026	405,678
	001	56,250
	002	1,563,750
	004	814,086
	006	3,651,129
Central Block Developers, Inc.	002	315,000
	004	267,120
	008	34,999
	010	29,681
Cebu District Properties Enterprise, Inc.	4 (Common)	37,500
	17 (Common)	112,500
	4 (Preferred Series "A")	337,500
	8 (Preferred Series "A")	1,012,500

ANNEX C

Proforma Entries — Merger

Footnotes

1. Land and improvements are adjusted to their current market value for the purpose of allocation of shares.
2. See Annex "A" for the list of real properties.
3. See Annex "B" for the list of shares of stocks.

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