March 18, 2019

BIR RULING NO. 219-19

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

Guevent Investment Development Corporation
3F Guevent Building
No. 52 Domingo M. Guevara St. Cor. Calbayog Ext.
Mandaluyong City

Attention: *AAA*

Gentlemen :

This refers to your request for confirmation on the tax consequences of the merger between Guevent Investments Development Corporation ("GIDC") and Docara Realty Development Corporation II ("Docara"), resulting in GIDC as the surviving corporation.

It is represented that GIDC (TIN 000-000-000-000) is a corporation organized and existing under the laws of the Philippines and is duly registered with the Securities and Exchange Commission (SEC) under SEC Registration No. 18170; and that it has an authorized capital stock of One Million Five Hundred Thousand (1,500,000) shares with a par value of _____ (P_____) per share, and with an outstanding capital stock of Sixty Thousand Four Hundred Forty Eight (60,448) shares.

Docara (TIN 000-000-000-000), on the other hand, is a corporation registered with the SEC under SEC Registration No. ASO92-001370; and that it has an authorized capital stock of One Million (1,000,000) shares with a par value of _____ Pesos (P_____) per share, and with an outstanding capital stock of Five Hundred Twenty Thousand (520,000) shares.

Considering that GIDC and Docara have common shareholders, and in order to achieve greater efficiency and economy in their management and operations, their respective Board of Directors deemed it advisable to merge Docara into GIDC, which was reflected in a Plan of Merger and Articles of Merger executed by GIDC and Docara on April 28, 2011; that the SEC approved the merger on September 7, 2011; that as a result, effective on September 7, 2011, all assets, rights, powers, privileges, immunities, franchises and business of Docara, and all and every other interest of or belonging to or

Copyright 2020 CD Technologies Asia, Inc.

due to Docara shall be taken and deemed to pass and be transferred to and vested to GIDC by operation of law and as provided for under Section 80 (4) of the Corporation Code, without need of any further act or deed; that in turn, all liabilities and obligations falling due from Docara and all liabilities and obligations incurred thereafter shall as well be assumed by GIDC; and that pursuant to the Plan of Merger, all holders of common stock of Docara would become holders of common stock of GIDC in accordance with a procedure in which all outstanding Docara common stock shall be deemed surrendered and cancelled in exchange for Three Hundred Thirty Two Thousand Six Hundred Eleven (332,611) common shares of GIDC from the unissued portion of GIDC's authorized capital stock, at the exchange ratio of One Thousand Five Hundred Sixty Three and 28/100 (1,563.28) Docara common shares for every One Thousand (1,000) shares of GIDC common stock.

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

1. The merger 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 (6) (b) of the Tax Code of 1997, as amended (Tax Code);

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

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

4. The transfer of assets of Docara to GIDC pursuant to the plan of merger will not be subject to any output value-added tax (VAT), and any unused input VAT of Docara as of the effective date of the merger will be transferred to and absorbed by GIDC;

5. The transfer by Docara of its properties (assets and liabilities) to GIDC as a result of the merger is not subject to documentary stamp tax (DST); however, the issuance by GIDC of its shares of stock to the stockholders of Docara pursuant to the plan of merger shall be subject to DST under Section 174 of the Tax Code.

In reply, please be informed as follows:

1 & 2. The foregoing merger of GIDC and Docara is a merger within the contemplation of Section 40 (C) (2) in relation to Section 40 (C) (6) (b) of the Tax Code because GIDC's acquisition/assumption of all the assets and liabilities of Docara is being undertaken for a *bona fide* business purpose and not for the purpose of escaping the burden of taxation.

The merger of DOCARA and GIDC qualifies for non-recognition of gain or loss

Copyright 2020 CD Technologies Asia, Inc.

for income tax purposes in accordance with Section 40 (C) (2) of the Tax Code. Accordingly, no gain or loss shall be recognized by GIDC, as the transferee, on its receipt of the asset and liabilities of DOCARA pursuant to and as a consequence of the merger.

The basis of the shares of stocks to be received by Shareholders of DOCARA 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 property transferred in the hands of the transferee (GIDC) shall be the same as it would be in the hands of the transferor (DOCARA) increased by the amount of the gain, if any, recognized to the transferor 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 DOCARA to GIDC 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.

Accordingly, the allocated shares and the substituted basis of the properties transferred by DOCARA shall be as follows:

DOCARA

	Amount (as of December 31, 2010	**Allocated Liabilities**	**Allocated Shares**	**Substituted Basis**
Cash	_____		380	_____
Trade and other receivables	_____	_____	2,384	_____
Other current assets	_____	_____	8,299	_____
Property and equipment	_____	_____	10,185	_____
Investment property	_____	_____	307,303	_____

Copyright 2020 CD Technologies Asia, Inc.

Deferred tax asset	_____	_____	1,459	_____
Other noncurrent asset	_____	_____	2,601	_____
TOTAL	_____	_____	**332,611**	_____

Liabilities	**Amount**
Trade and other payable	P_____
Other current liabilities	_____
Refundable deposit	_____
Due to related parties	_____
Deferred tax liability	_____
Total	**P**_____

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 any act of liberality *(animus donandi)*.

Clearly, there is no intention on the part of DOCARA to donate to GIDC its assets since the transaction is purely for 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. The transfer of properties of DOCARA to GIDC as a consequence of merger will not be subject to any output VAT, 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 VAT as of the effective date of merger will be absorbed by GIDC, as the surviving corporation, pursuant to Section 4.106-8 (b) (3) of RR No. 16-2005, as amended.

5. 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 same Tax Code. However, DST at the rate of P1.00 [1] on each P200.00 par value, or fractional part thereof, shall be imposed on the original issuance of shares by GIDC to the stockholders of DOCARA as a consequence of the merger as provided under Section 174 of the Tax Code.

6. The excess and unutilized CWT of the DOCARA, as of the effective date of the merger, which form part of the assets to be transferred to GIDC as a consequence of the merger, may be applied as a tax credit by GIDC against its income tax due for the **taxable year 2011**, the effective date of the merger being **September 7, 2011**, and in the succeeding taxable years, or may be the subject of a claim for refund or issuance of a tax credit certificate (TCC).

Copyright 2020 CD Technologies Asia, Inc.

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 RR No. 14-2001, of the Tax Code, of the Absorbed Corporation, if any, is not one of the assets of the latter that can be transferred and absorbed by the surviving corporation, GIDC, as this privilege or deduction can be availed of by the absorbed corporation only. Accordingly, the tax-free merger between DOCARA and GIDC does not cover the NOLCO of the former.

8. The unrestricted retained earnings of DOCARA 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.

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.

Copyright 2020 CD Technologies Asia, Inc.

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 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.

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 Legal and Legislative Division, Bureau of

Copyright 2020 CD Technologies Asia, Inc.

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,

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

Footnotes

1. Old DST rate is used since the transaction took place prior to the effectivity of Republic Act No. 10963 or the TRAIN Law.

Copyright 2020 CD Technologies Asia, Inc.