November 22, 2016

BIR RULING NO. 406-16

Sec. 127 (B); RR 6-2008; BIR Ruling No. 238-12; BIR Ruling No. 148-10; BIR Ruling No. DA-005-08

Bernas Law Offices
8/F Raha Sulayman Bldg., 108 Benavidez St.,
Legaspi Village, Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated August 19, 2016 requesting on behalf of Berjaya Auto Philippines, Inc. ("BAPI") for confirmation that the initial public offering ("IPO") to be undertaken by BAPI will not be subject to the IPO tax imposed under Sec. 127 (B) of the National Internal Revenue Code of 1997, as amended, and as implemented by Revenue Regulations No. 6-2008.

Background:

1. BAPI is a corporation duly registered with the Securities and Exchange Commission (SEC) under SEC Registration No. CS201214749 with TIN 000-000-000. It is primarily organized —

> "To engage in the business of purchasing, acquiring, owning, selling, transferring, encumbering, and generally dealing in all types of new automobiles, trucks, and other motor vehicles and any parts or accessories used in the business of purchasing, acquiring, owning, selling, and generally dealing in all types of supplies used by all types of motor vehicles, without engaging in retail business."

2. As of August 18, 2016, BAPI has a capital stock of _____ Pesos (P_____) and said capital stock is divided into Two Hundred Ninety Million (290,000,000) Shares with a par value of _____ (P_____) each.

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3. BAPI has a total of 19 corporate and individual stockholders.

Listed below are the details of BAPI's subscribers:

Name of Subscriber	Nationality	No. of Shares Subscribed	Amount Subscribed	Amount Paid
Berjaya Philippines, Inc.	Domestic corporation with more than 40% foreign equity	73,149,997	_____	P_____
Bagan Resources Pte., Inc.	Filipino	10,449,999	_____	_____
BBB	Filipino	1	_____	_____
CCC	Filipino	1	_____	_____
DDD	Malaysian	1	_____	_____
EEE	Malaysian	6,600,000	_____	_____
FFF	Malaysian	1	_____	_____
Bermaz Motor International, Ltd.	Malaysian	173,400,000	_____	_____
Terrific Dynamics Sdn. Bhd.	Malaysian	3,993,478	_____	_____
Esquire Financial Management Corporation	Filipino	2,200,000	_____	_____
Alpha Market Global Ltd.	Malaysian	1,793,478	_____	_____
GGG	Filipino	1,081,260	_____	_____
HHH	Filipino	486,378	_____	_____
Autospectrum Corporation	Filipino	546,307	_____	_____

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III	Filipino	552,616	_____	_____
JJJ	Filipino	301,541	_____	_____
KKK	Filipino	250,759	_____	_____
LLL	Filipino	368,095	_____	_____
Prima Merdu Sdn. Bhd.	Malaysian	11,956,522	_____	_____
		_____	_____	_____
TOTAL		**287,130,434**	**P**_____	**P**_____
		==========	==========	==========

4. Currently, 60.39% of BAPI's outstanding shares of stock is owned by Bermaz Motor International Ltd. ("Bermaz Motor"). In turn, 100% of Bermaz Motor's outstanding shares is owned by Bermaz Motor Sdn Bhd. Bermaz Motor Sdn. Bhd is a wholly-owned subsidiary of Berjaya Auto Berhad ("BAuto"), which is a publicly-listed company.

BAuto was incorporated in Malaysia on May 11, 2010. It assumed the name Berjaya Auto Sdn. Bhd. and was subsequently converted into a public company on July 11, 2011. BAuto was listed on the Main Market of Bursa Malaysia Securities Berhad on November 18, 2013.

BAuto is a publicly-listed corporation whose shares of stock are owned by at least 7,071 corporate and individual shareholders.

5. Berjaya Philippines, Inc. ("Berjaya Philippines") is another corporate stockholder in BAPI, with 25.47% ownership in BAPI's outstanding shares of stock.

Berjaya Philippines is a domestic corporation organized and existing under the laws of the Philippines with more than 40% foreign equity.

Berjaya Philippines is a publicly-listed corporation with at least 139 stockholders.

6. BAPI is in the process of preparing its application for listing at the Philippines Stock Exchange (PSE) Main Board.

In reply thereto, please be informed that —

1. Section 127 (B) of the National Internal Revenue Code of 1997, as amended, provides that:

"***SEC. 127. Tax on Sale, Barter or Exchange of Shares of Stock***

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Listed and Traded through the Local Stock Exchange or through Initial Public Offering. —

xxx xxx xxx

(B) Tax on shares of stock sold or exchanged through initial public offering. — There shall be levied, assessed and collected on every sale, barter, exchange or other disposition through initial public offering of shares of stock in closely held corporation, as defined herein, a tax at the rates provided hereunder based on the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed in accordance with the proportion of shares of stock sold, bartered, exchanged or otherwise disposed to the total outstanding shares of stock after the listing in the local stock exchange: (Underscoring Supplied)

Up to twenty-five percent (25%)	*4%*
Over twenty-five percent (25%) but not over thirty three and one third percent (33 1/3%)	*2%*
Over thirty-three and one third percent (33 1/3%)	*1%*

The tax herein imposed shall be paid by the issuing corporation in primary offering or by the seller in secondary offering.

For purposes of this Section, the term "closely held corporation" means any corporation at least fifty percent (50%) in value of the outstanding capital stock of all classes of stock entitled to vote is owned directly or indirectly by or for not more than twenty (20) individuals.

For purposes of determining whether the corporation is a closely held corporation, insofar as such determination is based on stock ownership, the following rules shall be applied:

(1) Stock Not Owned by Individuals. — Stock owned directly or indirectly by or for a corporation, partnership, estate or trust shall be considered as being owned proportionately by its shareholders, partners or beneficiaries.

xxx xxx xxx"

Thus, under Section 2 (q) of Revenue Regulations (RR) No. 6-2008, a closely-held corporation pertains to a corporation at least fifty percent (50%) in value of the outstanding capital stock or at least fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote is owned directly or indirectly by or for not more than twenty (20) individuals. For purposes of determining whether the corporation is a closely-held corporation, it is provided therein that stock owned directly or indirectly by or for a

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corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

Since BAPI is owned by several individual and corporate shareholders at the time of the application to list the shares of BAPI with the PSE, the BAPI shares held by corporate shareholders will be considered as being proportionately owned by the shareholders of said corporations. Since Bermaz Motor holds 60.39% of the outstanding shares of stock in BAPI and 100% of the outstanding shares of stock of Bermaz Motor is owned by Bermaz Motor Sdn Bhd., a wholly-owned subsidiary of BAuto, which is a publicly-listed company, then 60.39% of the outstanding shares of stock of BAPI are considered owned proportionately by BAuto's shareholders through Bermaz Motor Sdn Bhd. and Bermaz Motor. BAuto is a publicly-listed corporation whose shares of stock are owned by at least 7,071 corporate and individual shareholders.

In the case of a multi-tiered corporation, the stock attribution rule must be allowed to run continuously along the chain of ownership until it finally reaches the individual stockholders. This is in consonance with the "grandfather rule" adopted in the Philippines under Section 96 of the Corporation Code (Batas Pambansa Blg. 68) which provides that notwithstanding the fact that all the issued stocks of a corporation are held by not more than twenty persons, among others, a corporation is nonetheless not to be deemed a close corporation when at least two thirds of its voting stock or voting rights is owned or controlled by another corporation which is not a close corporation. *(BIR Ruling No. DA-327-07 citing BIR Ruling Nos. DA-001-06 dated January 4, 2006; 072-97 dated July 02, 1997)*

Since the shareholders of BAuto, consisting of more than 7,000 corporate and individual shareholders, are considered to indirectly hold 60.39% of the outstanding shares of BAPI through BAuto's wholly-owned subsidiaries Bermaz Motor Sdn Bhd. and Bermaz Motor, BAPI cannot be considered as a closely-held corporation prior to its listing with the PSE.

Accordingly, this Office is of the opinion as it hereby holds that the sale of BAPI's shares of stock through an initial public offering done through the facilities of the PSE will not be subject to the IPO tax imposed under Section 127 (B) of the National Internal Revenue Code of 1997, as amended. *(BIR Ruling Nos. 238-12 dated March 29, 2012; 148-10 dated December 17, 2010; DA 001-06 dated January 4, 2006)*

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 as null and void.

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Very truly yours,

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

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