December 9, 2019

BIR RULING NO. 774-19

Sec. 40 (C) (2) and (6) (c); RR 18-01

Danao & Associates
Unit 304, 3/F UA Building
135 N. Domingo St.
San Juan City

Attention: *AAA*

Gentlemen :

This refers to your letter dated December 9, 2014 requesting for a ruling that no gain or loss is recognized on the transfer of three (3) parcels of land co-owned by **BBB, CCC, DDD, EEE, FFF** and **GGG** (collectively referred to as "Transferors") in favor of **Rosmarinus Co., Inc.** (the "Transferee"), in exchange for its shares of stock pursuant to Section 40 (C) (2) of the Tax Code of 1997, as amended, and as implemented by Revenue Regulations No. 18-2001.

Documents submitted show that the Transferee is a domestic corporation newly incorporated and duly registered with the Securities and Exchange Commission (SEC) with an original authorized capital stock of _____ (P_____) divided into Three Hundred Fifty Million (350,000,000) shares with a par value of One Peso (P_____) per share; that the Transferors are the registered co-owners of three (3) parcels of land located in Brgy. Canlubang, Calamba City, Laguna, described as follows:

Type of Property	TCT No./Tax Declaration (TD)	Fair Market Value	Zonal Value	Historical Cost (based on the issued CAR)
Land	060-2013022532/ AE-00018-43748	P_____	P_____	P_____
Land	060-2013022533/ AE-00018-43746	_____	_____	_____
Land	060-2013022534/ AE-00018-43747	_____	_____	_____

Copyright 2020 CD Technologies Asia, Inc.

TOTAL		**P**_____	**P**_____	**P**_____

that the Transferors executed a Deed of Exchange on November 12, 2014 in favor of the Transferee, whereby the former transferred to the latter the title and ownership over their above-described properties in exchange for and as payment of their subscriptions, to wit:

Name	TIN	No. of Shares Subscribed
BBB	000-000-000	166,599,630
CCC	000-000-000	33,319,926
DDD	000-000-000	33,319,926
EEE	000-000-000	33,319,926
FFF	000-000-000	33,319,926
GGG	000-000-000	33,319,926
Total		**333,199,260**

and that as a result of the above exchange, the Transferors gained control of **Rosmarinus Co., Inc.** by owning 100% of the total voting stocks of the said corporation; that after the exchange, the Transferors/incorporators of the corporation with their corresponding shares subscribed and paid-up are as follows:

Name	No. of Shares Subscribed	Amount of Shares Subscribed	Amount Paid
BBB	166,599,630	P_____	P_____
CCC	33,319,926	_____	_____
DDD	33,319,926	_____	_____
EEE	33,319,926	_____	_____
FFF	33,319,926	_____	_____
GGG	33,319,926	_____	_____
TOTAL	**333,199,260**	**P**_____	**P**_____

In support of its request, the following documents were submitted:

Copyright 2020 CD Technologies Asia, Inc.

1) Letter-Request dated December 9, 2014;

   a. Duly notarized Application and Joint Certification (BIR Form 1927);

   b. Proof of payment of the processing and certification fee;

   c. Original Deed of Exchange.

2) Certified true copies of the Articles of Incorporation and By-Laws of **Rosmarinus Co., Inc.**;

3) Certified true copies of the Transfer Certificates of Title (TCT);

4) Certified true copies of the Tax Declarations;

5) Photocopy of the Certificate Authorizing Registration (CAR) issued by the BIR evidencing the historical cost of the subject parcels of land;

6) Certified true copy of the corresponding zonal value of the property transferred;

7) BIR Form 2000 evidencing payment of DST on the original issuance of shares;

8) Certification from the City Assessor's Office that there is no improvement on the lands; and

9) Other pertinent documents.

In reply, please be informed that under Section 40 (C) (2) (c) of the Tax Code of 1997, as amended, it is provided that no gain or loss shall be recognized if property is transferred to a corporation by a person, in exchange for stocks in such a corporation of which as a result of such exchange, said person, alone or together with others, not exceeding four persons, gains control of said corporation. Section 40 (C) (2) (c) of the Tax Code of 1997, as amended, states:

"**SEC. 40.** ***Determination of Amount and Recognition of Gain or Loss.*** **—**

(C) ***Exchange of Property.*** **—**

(1) ***General Rule***. — Except as herein provided, upon the sale or exchange or property, the entire amount of the gain or loss, as the case may be, shall be recognized.

Copyright 2020 CD Technologies Asia, Inc.

(2) ***Exception***. — No gain or loss shall be recognized if in pursuance of a plan of merger or consolidation —

(a) A corporation, which is a party to a merger or consolidation, exchanges property solely for stock in a corporation, which is a party to the merger or consolidation; or

(b) A shareholder exchanges stock in a corporation, which is a party to the merger or consolidation, solely for the stock of another corporation also a party to the merger or consolidation; or

(c) A security holder of a corporation, which is a party to the merger or consolidation, exchanges his securities in such corporation, solely for stock or securities in such corporation, a party to the merger or consolidation.

No gain or loss shall also be recognized if property is transferred to a corporation by a person in exchange for stock or unit of participation in such a corporation of which as a result of such exchange said person, alone or together with others, not exceeding four (4) persons, gains control of said corporation: *Provided*, That stocks issued for services shall not be considered as issued in return for property." (Emphasis supplied)

Section 40 (C) (6) (c) of the same Code provides that the term "control" shall mean ownership of stocks in a corporation possessing at least 51% of the total voting power of all classes of stocks entitled to vote. Control is determined by the amount of stocks received, *i.e.*, total number of shares subscribed by the transferors. In determining the 51% stock ownership, only those persons who transferred property for stocks in the same transaction may be counted up to a maximum of five.

In the instant case, while the transferors acquired more than 51% of the outstanding shares of the company, it has been noted that there are more than five (5) transferors involved in the exchange, namely, **BBB, CCC, DDD, EEE, FFF** and **GGG**. Clearly, the requirement that that the number of transferors should not exceed five (5) in order to avail of the tax exemption under Section 40 (C) (2) of the Tax Code of 1997, as amended, is wanting in this case.

In view of the foregoing, this Office is of the opinion, as it hereby rules, that the transfer of real properties by **BBB, CCC, DDD, EEE, FFF** and **GGG** in favor of **Rosmarinus Co., Inc.**, in exchange for the latter's shares of stock, does not fall within the purview of Section 40 (C) (2) of the 1997 Tax Code, as amended. Accordingly, your request that the aforesaid transfers be exempt from capital gains tax and documentary stamp tax is hereby denied for lack of legal basis. The transfer of the above real properties is subject to

Copyright 2020 CD Technologies Asia, Inc.

appropriate taxes imposed under the 1997 Tax Code, as amended.

Please be guided accordingly.

Very truly yours,

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

Copyright 2020 CD Technologies Asia, Inc.