REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Section 40(C)(2) and (6)(b) of the Tax Code of 1997, as amended.
BIR Ruling No. S40M-141-2021
S40M- 318-2022
JUN 29 2022

SM PRIME HOLDINGS, INC.
Mall of Asia Annex Arena Bldg.
Coral Way cor. J.W. Diokno Blvd.
Mall of Asia Complex, Pasay City

Attention: **CECILIA R. PATRICIO**
Authorized representative

Gentlemen:

This refers to your request for confirmation that the merger of **SM Prime Holdings, Inc. ("SM Prime")**, as the surviving corporation, and **SM Land, Inc. ("SM Land")**, as the absorbed corporation, qualifies as a tax free merger pursuant to Section 40(C)(2) in relation to Section 40(C)(6)(b) of the National Internal Revenue Code ("Tax Code") of 1997, as amended.

Background:

SM Prime is a corporation duly organized and existing under the laws of the Republic of the Philippines primarily to develop, conduct, operate and maintain the business of modernized commercial shopping centers and all the business appurtenant thereto such as, but not limited to the conduct, operation and maintenance of shopping center spaces for rent, amusement centers, movie or cinema theaters within the compound or premises of the shopping centers and generally to buy, sell, acquire, mortgage, lease, exchange, assign, transfer, convey or otherwise alternate or dispose of any of its real and/or personal properties, and any interest or right therein, including shares of stocks of corporations insofar as necessary or expedient in conducting the business of the corporation. It's shares of stock are listed and traded in the Philippine Stock Exchange ("PSE").

On the other hand, SM Land is a corporation duly organized and existing under the laws of the Republic of the Philippines primarily to acquire by purchase, exchange, assigns, gift or otherwise and to operate, enjoy and dispose of, and all properties of every kind.

Pursuant to the provisions of Sections 76 to 80 of Batas Pambansa ("BP") Blg. 68, otherwise known as "The Corporation Code of the Philippines", the respective Boards of Directors and corresponding stockholders of SM Prime and SM Land deemed it desirable and advantageous to merge the two corporations into a single corporation, with SM Prime as the surviving corporation, in order to consolidate the real estate holdings of the companies owned and/or controlled by the Sy Family ("SM Group"), primarily to (a) create a fully integrated real estate platform to further enhance the value of the SM Group's real estate businesses; (b) simplify corporate structure and increase organizational efficiencies; (c) establish the pre-eminent real estate company in the Philippines and Southeast Asia; (d) enhance ability to capitalize on strong economic fundamentals of the Philippines and Philippine property, consumer and tourism sectors; (e) increase organizational efficiencies and extract synergies; and (f) strengthen the balance sheet providing enhanced capital raising flexibility. Thus, in their respective meetings held on May 31, 2013 and May 30, 2013, at least a majority of the Board

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of Directors of SM Prime and of SM Land, respectively, approved the Plan of Merger. Also in their respective meetings held both on July 10, 2013, the stockholders of SM Prime and SM Land, respectively, representing at least two-thirds (2/3) of the outstanding capital stock of each of the corporations, similarly approved the Plan of Merger.

Pursuant to the Plan of Merger, the merger shall require an increase in the authorized capital stock of SM Prime to support the issuance of the shares of stock to the current shareholders of SM Land in exchange for their issued and outstanding shares of stock in SM Land. Also, under the Plan and Articles of Merger, the merger shall become effective upon the issuance by the Securities and Exchange Commission ("SEC") of a Certificate of Merger.

Prior to the effective date of merger, (i) each corporation shall conduct their respective business in substantially the same manner as previously conducted, provided however, that SM Land shall be authorized to commence and/or complete the Share Tender Offer ("STO"), provided further that, all SM Development Corporation ("SMDC"), and Highlands Prime, Inc. ("HPI") shares obtained through the STO shall automatically form part of the assets of SM Prime by operation of law; and (ii) SM Land shall not declare any type of dividends.

On October 10, 2013, the SEC approved both the Plan and Articles of Merger ("Effective Date"), and the amendment of the Articles of Incorporation of SM Prime increasing its authorized capital stock to Php divided into common shares with par value of Php1.00 per share, in order to allow the issuance of new shares in favor of the stockholders of SM Land as a result of the merger. Subsequent thereto, the SEC also issued an Order in SEC CRMD Case No. 13-502 dated November 29, 2013, approving the Petition of SM Prime for the Amendment of the Plan of Merger.

Under the approved Amended Plan of Merger all the assets and properties of SM Land, real or personal, tangible and intangible, and all receivables due on whatever account, including subscription to shares and choses in action, and all and every other interest of, belonging to, or due to SM Land shall be deemed transferred to and vested in SM Prime without further act or deed. For avoidance of doubt, said assets shall include all shares of SMDC and HPI that will be acquired by SM Land pursuant to the STO. Likewise, all the liabilities and obligations of SM Land shall be transferred to and become the liabilities and obligations of SM Prime, in the same manner as if SM Prime had itself incurred such liabilities and obligations, and in order that the rights and interest of creditors of SM Land or Liens upon the property of SM Land shall not be impaired by the merger.

Upon the Effective Date of the merger, SM Prime shall issue a total of common shares at a par value of Php1.00 in exchange for all the issued and outstanding stock of SM Land equivalent to the total net assets (including the value of the remaining outstanding shares of SM Prime after the STO) of SM Land as of March 31, 2013 (Cut-off Date). Likewise, at the Effective Date of the merger, whatever assets or liabilities assumed by SM Land after the Cut-off Date shall be transferred to SM Prime.

The assets, liabilities and equity of SM Land based on its Audited Financial Statements ("AFS") as of the Effective Date of the merger are summarized as follows:

	Amount (in PhP)		**Amount (in PhP)**
Assets		Liabilities	
		Equity	
Total		-	

Based on the foregoing representations, you now request for a ruling confirming that:

1. The merger between SM Prime and SM Land, with SM Prime as the surviving corporation, is a merger within the contemplation of Section 40(C)(2) in

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relation to Section 40(C)(6)(b) of the Tax Code of 1997, as amended. Therefore, no gain or loss shall be recognized by SM Prime and SM Land on the transfer of all assets and assumption of liabilities pursuant to the Plan of Merger for income tax purposes;

2. The transfer of real properties and shares of stocks owned by SM Land to SM Prime pursuant to the merger is not subject to documentary stamp tax ("DST") under the Tax Code of 1997, as amended;

3. No DST shall be due on the surrender of SM Land shares for cancellation as a result of the transfer of assets and assumption of liabilities by SM Prime;

4. The transfer of properties by SM Land to SM Prime shall not be subject to donor's tax since there is no intention to donate on the part of SM Land and that the merger which was undertaken purely for legitimate business purposes;

5. The transfer of assets by SM Land to SM Prime pursuant to the merger is not subject to value-added tax ("VAT") and any unused input tax of SM Land as of the Effective Date of the merger shall be absorbed by SM Prime as the surviving corporation; and

6. SM Prime is entitled to carry forward and apply the excess and unutilized creditable withholding taxes ("CWT") attributable to SM Land as tax credit against its income tax due.

In reply thereto, please be informed as follows:

1. The merger of SM Prime and SM Land is a merger within the contemplation of Section 40(C)(2), in relation to Section 40(C)(6)(b) of the Tax Code of 1997, as amended, because SM Prime shall acquire/assume all the assets and liabilities of SM Land and the same is desirable and advantageous in order to consolidate the real estate holdings of the companies owned and/or controlled by SM Group, primarily to (a) create a fully integrated real estate platform to further enhance the value of the SM Group's real estate businesses; (b) simplify corporate structure and increase organizational efficiencies; (c) establish the pre-eminent real estate company in the Philippines and Southeast Asia; (d) enhance ability to capitalize on strong economic fundamentals of the Philippines and Philippine property, consumer and tourism sectors; (e) increase organizational efficiencies and extract synergies; and (f) strengthen the balance sheet providing enhanced capital raising flexibility. Hence, the merger of SM Prime and SM Land is being undertaken for a bona fide business purpose and not for the purpose of escaping the burden of taxation.

The merger of SM Prime and SM Land qualifies for non-recognition of gain or loss for income tax purposes in accordance with Section 40(C)(2) of the Tax Code of 1997, as amended, and that no gain or loss shall be recognized by SM Land, as the transferor of all its assets and liabilities, to SM Prime pursuant to the Articles and Plan of Merger.

Accordingly, no gain or loss shall be recognized by SM Prime, as the transferee, on its receipt of the assets and liabilities of SM Land pursuant to and as a consequence of the merger.

The basis of the shares of stocks to be received by shareholders of SM Land upon the exchange shall be the same as the basis of the properties, stocks or securities they exchanged, decreased by (1) the money they received, and (2) the fair market value of the other property/ies they 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[1].

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[1] Sec. 40 (C)(5)(a) of the Tax Code of 1997, as amended.

The basis of the property transferred in the hands of SM Prime shall be the same as it would be in the hands of SM Land increased by the amount of the gain, if any, recognized to the transferor on the transfer[2].

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[3].

The substituted basis of the properties transferred by SM Land to SM Prime should strictly comply with the rule that cash and other cash items will be excluded from the computation of the adjusted basis 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 SM Land based on its AFS as of the Effective Date of the merger shall be as follows:

Assets	Amount	Allocated Liabilities	Allocated Shares	Substituted Basis
Cash and cash equivalents				
Receivables				
Advances and other current assets				
Available for sale investments				
Investments in shares of stocks - cost				
Property and equipment - net				
Investment properties - net				
Net pension asset				
Other noncurrent assets				
Total				

Liabilities	Amount
Accounts payable and other current liabilities	
Loans payable - current portion	
Loans payable - net of current portion	
Deposits from tenants and others	
Deferred tax liabilities - net	
Total	

2. No DST is due on the transfer of assets made pursuant to the merger under Section 199 (m) of the Tax Code of 1997, as amended, in relation to Section 40 (C) (2) of the Tax Code of 1997, as amended. Consequently, no DST is due on the surrender by SM Land shareholders of their SM Land shares for cancellation.

On the other hand, pursuant to Section 174 of the Tax Code of 1997, as amended, DST at the rate of P1.00[4] on each P200 par value, or fractional part thereof, shall be imposed on the

[2] Sec. 40 (C)(5)(b), supra
[3] Sec. 40 (C)(4)(b), supra
[4] Old DST rate was used since the transaction took place prior to Republic Act (RA) No. 10963.

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original issuance of shares by SM Prime in favor of the shareholders of SM Land as a consequence of the merger.

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 - SM Land to donate to SM Prime its assets since the transaction is purely for a legitimate business purpose. Thus, the merger will not be subject to donor's 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 SM Land to SM Prime as a consequence of the merger shall not be subject to any output tax, pursuant to Section 4.106-8 (b) (3) of Revenue Regulations ("RR") No. 16-2005, as amended. 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 shall be absorbed by SM Prime, as the surviving corporation, pursuant to Section 4.106-8 (b) (3) of RR No. 16-2005, as amended.

5. The excess and unutilized CWT of the absorbed corporation, SM Land, as of the Effective Date of the merger, which form part of the assets to be transferred by the absorbed corporation to SM Prime as a consequence of the merger, may be applied as a tax credit by SM Prime against its income tax due for the taxable year 2013, the Effective Date of the merger being October 10, 2013, and in the succeeding taxable years, or may be the subject of a claim for refund or issuance of a tax credit certificate ("TCC").

6. The excess and unexpired Minimum Corporate Income Tax ("MCIT") of the absorbed corporation, SM Land, as of the Effective Date of the merger shall be carried forward and credited against the regular corporate income tax due of the surviving corporation, SM Prime, for the three (3) immediately succeeding taxable years pursuant to Section 27(E)(2) of the Tax Code of 1997, as amended. Since the excess and unexpired MCIT of SM Land are among the rights, privileges, property and/or interest of SM Land, its excess and unexpired MCIT shall be transferred to and vested in SM Prime on the Effective Date of the merger. Thus, SM Land's excess and unexpired MCIT shall be carried forward and credited against the regular corporate income tax of SM Prime subject to the three-year-carry-forward period reckoned from the date of payment of SM Land 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 of 1997, as amended, and as implemented by RR No. 14-2001, of the absorbed corporation, SM Land, if any, is not one of their assets that can be transferred and absorbed by the surviving corporation, SM Prime, as this privilege or deduction can be availed of merely by the absorbed corporation. Accordingly, the tax-free merger does not cover the NOLCO of SM Land that can be transferred and absorbed by SM Prime.

However, in order that the above-described reorganization can be considered as merger under Section 40(C)(2) and (6)(b) of the Tax Code of 1997, as amended, 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 corporation, 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:

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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 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. 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 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 tax-free exchange 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 AFS for the taxable year in which the exchange occurred a statement to the effect that they hold such assets/shares acquired in a tax-free exchange and the year in which such exchange 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 the mandatory accounting entries stated in **Annex "A"** hereof, pursuant to Revenue Memorandum Order ("RMO") No. 17-2016.

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Furthermore, the parties shall cause to annotate at the back of the Transfer Certificates of Title ("TCT") 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 Register of Deeds or by the Corporate Secretary of this condition shall be penalized under Section 269 or 275, as the case maybe, of the Tax Code of 1997, as amended.

Finally, it is 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 disclosed 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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ANNEX "A"

Particulars	Individual Shareholder's Book (The entry/ies shall be per individual shareholder of the absorbed corporation)	Transferee/Surviving Corporation's Book

Journal Entry to Record the Tax Free Exchange

Individual Shareholder's Book

Investment in (transferee's name)	xxx.xx	
Investment in (name of dissolving corp.)		xxx.xx
Dividend Income (net of FWT on dividend)		xxx.xx

To record the Tax-Free Exchange of investment in (share type) shares of (name of issuing corporation/s) with aggregate fair market value of P______ in exchange for (type and no. of share) of (name of transferee) with par value of P______ per share.

Transferee/Surviving Corporation's Book

Investment in (issuing corp., for shares of stock)	xxx.xx	
PPE - Land & Improvement (for real props.)	xxx.xx	
Other Assets (as applicable)	xxx.xx	
Liabilities		xxx.xx
Capital Stock		xxx.xx
Additional Paid-In Capital		xxx.xx

To record the Tax-Free Exchange of real properties, investment in (share type) shares of (name of issuing corporation/s), and other assets with aggregate fair market value of P______, including liabilities assumed resulting from merger, in exchange for (type and no. of share) of (name of transferee) with par value of P______ per share.

Balance Sheet Notes Entry

Individual Shareholder's Book

Investment includes (no. and type of share/s) with par value of P______ in (name of transferee) resulting from the Tax-Free Exchange of investment in (no. and type of share/s) of (issuing corporation/s) covered by Stock Certificate No/s. ______ which were acquired for the total cost of (substituted basis) and which have fair market value as of the date of exchange amounting to P______.

Transferee/Surviving Corporation's Book

Real properties, investment in (no. and type of share/s) of (issuing corporation/s), and other assets were acquired through merger as evidenced by Plan of Merger and Articles of Merger, including the increase of the Authorized Capital Stock of (name of transferee), approved by the Securities and Exchange Commission on (date). The total acquisition cost/substituted cost to (name of transferee) of the investment's amounts to (FMV at the time of the exchange). The real properties, investment/s, and other assets were previously covered by Transfer Certificate of Title and Stock Certificate No/s. ______ issued by (issuing corporation/s) and are now presently covered by Stock Certificate No/s. ______ constituting (no. and type of share/s) [total] shares in the name of (name of transferee).

Proforma Entries to Record Subsequent Sale/Transfer

Individual Shareholder's Book

Cash or Accounts Receivables	xxx.xx	
Investment in (name of transferee)		xxx.xx
Gain on Sale of Investment		xxx.xx

To record subsequent sale / transfer of investment acquired thru tax-free exchange

Current	xxx.xx	
Tax Payable		xxx.xx

Provision for Tax as follows:

	Tax Type	Tax Rate*	Multiply by	Amount
1)	Net Capital Gains Tax	5% on P100,000 and 10% on excess	Gains realized on tax-free exchange	xxx.xx
OR	Stock Transaction Tax	1/2 of 1%	FMV of investment/s at the time of the tax-free exchange	
2)	Net Capital Gains Tax	15%	Gains realized on subsequent sale of investment/s	xxx.xx
OR	Stock Transaction Tax	6/10 of 1%	Selling price of investment at the time of subsequent sale	
	Total Tax Payable			xxx.xx

- If subsequent sale/s on investment/s was/were made before January 1, 2018, the tax rates used in the computation of Net Capital Gains Tax and Stock Transaction Tax at the time of the tax-free exchange shall apply.
- Computation of Gain Realized on Subsequent Sale of Investment:

Selling Price	xxx.xx
Less: Cost (Substituted Basis)	xxx.xx
Net Capital Gain on sale of unlisted shares	xxx.xx

- Per RMO No. 17-2016, the substituted basis of the stock or securities received by the transferor on a tax-free exchange shall be as follows: (1) The original basis of the property, stock or securities to be transferred; (2) Less: (a) money received, if any, and (b) the fair market value of the other property received, if any; (3)Plus: (a) the amount treated as dividend of the shareholder, if any, and (b) the amount of any gain that was recognized on the exchange, if any.

Transferee/Surviving Corporation's Book

Cash or Accounts Receivables	xxx.xx	
Investment in (name of issuing corp.) / PPE - Land & Improvement / Other Assets		xxx.xx
Gain on Sale of Property/ies*		xxx.xx

To record subsequent sale/transfer of investment/s acquired thru tax-free exchange

Current	xxx.xx	
Tax Payable		xxx.xx

Provision for Tax as follows:

	Tax Type	Tax Rate*	Multiply by	Amount
1)	Net Capital Gains Tax	15%	Gains realized on subsequent sale of investment/s	xxx.xx
OR	Stock Transaction Tax	6/10 of 1%	Selling price of investment at the time of subsequent sale	
	Total Tax Payable			xxx.xx

	Tax Type	Tax Rate	Multiply by	Amount
1)	Withholding Tax - ONETT	1.5% to 6% per RR No. 6-2001	Fair Market Value (FMV) of the property/ies at the time of subsequent sale / transfer	xxx.xx
2)	Documentary Stamp Tax (DST)	1.5% for every P1,000 and fractional part thereof)		xxx.xx
3)	Value-Added Tax (VAT)	12%		xxx.xx

- Gain on sale of property/ies is subject to Normal Corporate Income Tax (NCIT)
- FMV at the time of subsequent sale / transfer refers to the selling price, zonal value or the value reflected in the tax declaration, whichever is highest.