REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 40(C)(2)&(6)(b) of the Tax Code of 1997; RR No. 18-2001
BIR Ruling No. S40-0427-2020; BIR Ruling No. S40-0384-2020
S40M- [illegible]
OCT [illegible]

BANIQUED & BANIQUED
8/F Jollibee Centre
San Miguel Avenue
Pasig City

Attention: **Attys. Terence Conrad H. Bello**
Bernadette V. Quiroz
and
Emma Malou U. Lim

Gentlemen:

This refers to your letter dated March 28, 2012 requesting on behalf of your clients, Clarges Realty Corporation ("CLARGES") and Cainta Realty Corporation ("CAINTA"), for confirmation on the tax implications of the merger by and between CLARGES, the surviving corporation, and CAINTA, the absorbed corporation, pursuant to Section 40(C)(2) and (6)(b) of the National Internal Revenue Code (Tax Code) of 1997, as amended.

Background:

CLARGES is a corporation duly organized and existing under the laws of the Philippines with principal office located at 2266 Chino Roces Avenue, Makati City. It was incorporated primarily to acquire, purchase, own, hold, operate, improve, develop, manage, lease and dispose of by sale or by any other manner, real estate, buildings, structures and/or improvements thereon. It has an authorized capital stock of P8,000,000.00 divided into 80,000 shares, with a par value of P100.00 each, all of which has been issued and outstanding.

On the other hand, CAINTA is a corporation duly organized and existing under the laws of the Philippines with principal office located at Don Celso S. Tuazon Avenue, Cainta, Province of Rizal. It was incorporated primarily to acquire by purchase, lease, donation or otherwise, and to own, use, improve, develop, subdivide, sell mortgage, exchange, lease, develop and hold for investment or otherwise dispose of buildings, houses, apartments and other structure of whatever kind, together with their appurtenances. Its authorized capital stock consists of the following:

	Shares	Par Value	Amount
Preferred Stock			
Authorized			
Issued and Outstanding			
Common Stock			
Authorized			
Issued and Outstanding			

Based on the audited financial statements as of December 31, 2010, CAINTA has total assets of P 00, total liabilities of F . 0 and total stockholders' equity of I).

To simplify the organization and legal structure, and promote significant cost efficiency improvements, such as integrating administrative processes, thereby eliminating duplication of functions and attaining greater efficiency and economy in the management of their operations, making possible the more productive use of their resources, achieving more favorable financing and credit facilities and having a single statutory audit and reportorial requirements, the respective Board of Directors and stockholders of CLARGES and CAINTA approved on April 8, 2011 the merger of the two (2) companies with the former as the surviving corporation, subject to the following terms and conditions:

a. CLARGES, the surviving corporation, shall be renamed as "GlaxoSmithKline Landholding Company, Inc.";

b. The authorized capital stock of CLARGES shall be increased from P8,000,000.00 to P20,000,000.00, divided into 20,000 common shares with par value of P100.00 per share;

c. All the rights, privileges and powers arising out of government licenses, permits, and registration as well as all the properties, real or personal, contractual and property rights, claim, bank deposits, and every asset, right or interest belonging to or due to CAINTA as of December 31, 2010, the Cut-Off Date of the Merger, shall be, as they are taken by, conveyed, assigned, transferred to and vested in CLARGES, as the surviving corporation;

d. Any liability and obligation falling due from CAINTA as of December 31, 2010 shall be, as they are hereby, assigned and transferred to and assumed by CLARGES; and

e. The exchange ratio to be applied in the merger is 8.5:1. Hence, each CAINTA shareholder shall have the right to exchange shares of CAINTA, whether preferred or common, held by them into one new common share of CLARGES;

CLARGES filed with the Securities and Exchange Commission (SEC) the Articles and Plan of Merger dated April 20, 2011, with simultaneous applications to increase its authorized capital stock from P8,000,000.00 to P20,000,000.00, and to change its corporate name to GlaxoSmithKline Landholding Company, Inc.

On September 12, 2011, the SEC approved the merger and issued the Certificate of Filing of the Articles and Plan of Merger. On even date, the SEC approved CLARGES' request to increase its authorized capital stock and to change its corporate name, and, accordingly, issued a Certificate of Increase of Approval of Capital Stock and Certificate of Filing of Amendment Articles of Incorporation and By-Laws.

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

1. The merger of CAINTA with and into CLARGES 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. Hence, no gain or loss shall be recognized on the transfer of assets and liabilities of CAINTA to CLARGES. Likewise, no gain or loss shall be recognized by CLARGES, as the transferee, on its receipt of the assets and liabilities of CAINTA in exchange for CLARGES shares;

2. The basis of the transferred assets and liabilities in the hands of CLARGES shall be the same as it would be in the hands of CAINTA;

3. The transfer of assets of CAINTA to CLARGES pursuant to the merger is not subject to value-added tax (VAT) and any unused input tax of CAINTA as of the effectivity of the merger shall be absorbed by CLARGES, as the surviving corporation, pursuant to Section 4.106-8(b)(3) of Revenue Regulations (RR) No. 16-2005, as amended;

4. The transfer of assets and liabilities by CAINTA to CLARGES for the latter's shares would not be considered as transfer of property for an insufficient consideration subject to donor's tax since there is no intention to donate on the part of the parties in as much as the transaction to be effected purely for a business purposes;

5. The transfer of properties by CAINTA to CLARGES is not subject to documentary stamp tax (DST) pursuant to Section 199(m) of the Tax Code of 1997, as amended. Likewise, the surrender of the shares of stock held by the stockholders of the absorbed corporation to CLARGES in complete redemption and cancellation of the capital stock of the absorbed corporation pursuant to the merger is likewise not subject to DST. However, DST at the rate of P1.00[1] on each P200.00 par value, or fractional part thereof, will be imposed on the original issuance of shares by CLARGES to the stockholders of the CAINTA, as a consequence of the merger, pursuant to Section 174 of the Tax Code of 1997, as amended by Republic Act (RA) No. 9243;

6. The excess and unutilized creditable withholding taxes (CWT) of the absorbed corporation as of the effective date of the merger, which form part of the assets to be transferred by the absorbed corporation to CLARGES as a consequence of the merger, may be applied as a tax credit by CLARGES against its income tax due for the taxable year 2011, the effective date of the merger being December 31, 2010, and in the succeeding taxable years, or may be the subject of a claim for refund or issuance of a tax credit certificate.

In reply thereto, please be informed as follows:

1. The foregoing merger of CAINTA and CLARGES is a merger within the contemplation of Section 40 (C) (2) (a) in relation to 40 (C) (6) (b) of the Tax Code of 1997, as amended, because the acquisition and assumption by CLARGES of all the assets and liabilities of CAINTA will result to an increased financial strength of the parties through pooling of resources, a more diversified and stable capital base, increased operating economies and efficiencies, and reduction of overall business expenses. Hence, the merger of CAINTA and CLARGES is being undertaken for a *bona fide* business purpose and not for the purpose of escaping the burden of taxation.

The merger of CAINTA and CLARGES 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, that no gain or loss shall be recognized by CAINTA, as the transferor of all assets and liabilities, to CLARGES pursuant to the Plan of Merger.

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

On the other hand, the bases of the shares of stocks to be received by the shareholders of CAINTA upon the exchange shall be the same as the bases 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 of 1997, as amended*)

[1] Old tax rate since the Articles and Plan of Merger was approved by SEC on September 12, 2011.

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

Finally, 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 properties transferred pursuant to such exchange, then such excess shall be considered as a gain, on the part of the transferor, 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 basis of the properties transferred by CAINTA to CLARGES shall 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 liabilities, and the substituted basis of the assets transferred by CAINTA to CLARGES, based on CAINTA's audited financial statements as of December 30, 2010 shall be as follows:

Assets	**Amount (in Php)**	**Allocated Liabilities**	**Allocated Shares**	**Substituted Basis (in Php)**
Cash		-		
Prepaid taxes and other current assets				
Investment Property – TCT No. 494266 TD No. 05-0004-06461				
Investment Property – TCT No. 494265 TD No. 05-0004-06462				
TOTAL				

Liabilities	**Amount (in Php)**
Accounts Payable and Other Current Liabilities	
Income Tax Payable	
TOTAL	

2. 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 – CAINTA to donate to CLARGES 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 *bonafide* merger effected solely for business reasons.

3. No DST is due on the transfer of assets made pursuant to the Plan of Merger under Section 199 (m) of the Tax Code of 1997, as amended by Republic Act No. 9243, in relation to Section 40 (C) (2) of the Tax Code of 1997, as amended. *(BIR Ruling No. S40-0427-2020 dated July 30, 2020)*

However, a DST at the rate of P1.00[2] on each P200 par value, or fractional part thereof, shall be imposed on the original issuance of shares by CLARGES to the stockholders of CAINTA as a consequence of the merger as provided under Section 174 of the Tax Code of 1997, as amended.

4. The transfer of properties of CAINTA to CLARGES 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 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 CLARGES, as the surviving corporation pursuant to Section 4.106-8(b)(3) of RR No. 16-2005, as amended by RR Nos. 4-2007 and 10-2011.

5. Any excess and unutilized creditable withholding taxes (CWT), if any, which form part of the assets to be transferred by CAINTA as of the effective date of the merger, shall be transferred to and vested in CLARGES, as the surviving corporation, and such excess CWT may be utilized by the latter against its income tax liabilities for 2010 and succeeding years or may be the subject of a claim for refund or issuance of a tax credit certificate (TCC) subject to existing laws, rules and regulations on the claim for refund and issuance of TCC. *(BIR Ruling No. 100-2017 dated March 2, 2017)*

6. The excess and unexpired Minimum Corporate Income Tax (MCIT), of the absorbed corporation, CAINTA, as of the effective date of the merger, shall be carried forward and credited against the normal income tax due of the surviving corporation, CLARGES, 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 CAINTA, is among the rights, privileges, property and/or interest of CAINTA, the excess and unexpired MCIT of the latter shall be transferred to and vested in CLARGES on the effective date of the merger. Thus, CAINTA's excess and unexpired MCIT, if any, shall be carried forward and credited against the normal corporate income tax of CLARGES subject to the three-year-carry-forward period reckoned from the date of payment of CAINTA 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 CAINTA, if any, is not one of the assets that can be transferred and absorbed by the surviving corporation, CLARGES, as this privilege or deduction can be availed of by CAINTA only. Accordingly, the tax-free merger between CAINTA and CLARGES does not cover the NOLCO of the former.

8. The retained earnings, if any, of CAINTA 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, as amended. *(BIR Ruling No. 1422-18 dated December 7, 2018)*

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 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:

[2] The Plan of Merger was approved by SEC on December 29, 2010

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 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 "A" hereof, pursuant to Revenue Memorandum Order (RMO) 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 merger was executed, the original/historical/adjusted costs 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 Tax Code of 1997. 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 Internal Revenue, proof of annotation of the original/historical/adjusted bases of the properties and/or real properties involved in the transfer and 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

K-I
gps(cainta-clarges merger)

PROFORMA ENTRIES - MERGER

Annex "A"

Particulars	Individual Shareholders' Book (The entry/ies shall be per individual shareholder of the absorbed corporation)	Transferee's Book
Journal Entry to Record the Tax-Free Exchange	Investment in (name of transferee) xxx.xx Investment in (name of dissolving corporation) xxx.xx Dividend Income (net of FWT on dividend) xxx.xx To record the Tax-Free Exchange (TFE) of investment in (share type) shares of (name 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	Investment in (issuing corp. for shares of stock) xxx.xx PPE - Land & Improvement (for real props) xxx.xx Others Assets (as applicable) xxx.xx Liabilities xxx.xx Capital Stock xxx.xx Additional Paid-In Capital xxx.xx To record the Tax-Free Exchange (TFE) of real properties, investment in (share type) shares of (name issuing corp/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	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__________	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 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	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	Cash or Accounts receivables xxx.xx Investment in (name of issuing corporation) / PPE - Land & Improvement / Other Assets xxx.xx Gain on Sale of Investment xxx.xx To record subsequent sale / transfer of real properties, investment/s and/or other assets acquired thru Tax-Free Current xxx.xx Tax Payable xxx.xx Provision for tax as follows

Individual Shareholders' Book – Provision for Tax

Tax Type		Tax Rate*	Multiply By	Amount
1)	Net Capital Gains Tax	5% on P100,000 and 10% on excess	Gains realized on TFE	
OR	Stock Transaction Tax	1/2 of 1%	FMV of inv's at the time of TFE	xxx.xx
2)	Net Capital Gains Tax	15%	Gains realized on subsequent sale of investment/s	
OR	Stock Transaction Tax	6/10 of 1%	Selling Price of investment at the time of subsequent sale	xxx.xx
Total Tax Payable				xxx.xx

* If subsequent sale/s of 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 tax-free exchange shall apply

* Computation of Gain Realised 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 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's Book – Provision for Tax

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

Tax Type		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
Total Tax Payable				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