REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Secs. 39(A)(2)&(3); 73; 105; 175; 196 of NIRC; RR 6-08; RR 26; RR 13-04
BIR Ruling No. 028-02 BIR Ruling No. 092-99
DT-_0574-2020
OCT 06 2020

SGV & Co.
6760 Ayala Avenue
1226 Makati City

Attention: **Atty. Lucil Q. Vicerra**
Principal, Tax and Customs Services

Gentlemen:

This refers to your letter dated November 25, 2013 requesting on behalf of your client, **C. Alcantara & Sons, Inc. ("CASI"**, for brevity), for confirmation of your opinion on the tax consequences of CASI's dissolution as to distribution of real and personal properties as liquidating dividends to its remaining shareholders, Alsons Consolidated Resources, Inc. ("ACR") and Alsons Development & Investment Corp. ("Aldevinco").

It is represented that CASI is a domestic corporation primarily engaged in the manufacture and sale of plywood. On August 15, 2013, its Board of Directors resolved to shorten the corporate life of the company until March 30, 2014. Pursuant to its dissolution, the company intends to transfer its remaining assets, consisting of land and biological assets, to its remaining shareholders as liquidating dividends.

It is further represented that as of date, the remaining shareholders of the company are ACR and Aldevinco.

In connection therewith, you are now requesting for confirmation of your opinion that:

1. The shareholders of CASI will be subject to income tax on its net gains, if any, from the receipt of the liquidating dividends.
2. CASI shall not be liable for income tax or capital gains tax either on its receipt of surrendered shares or its transfer of remaining assets to its shareholders as liquidating dividends;

3. The transfer of the remaining assets of CASI to its shareholders, as liquidating dividends, shall not be subject to value-added tax (VAT);
4. The transfer of the real property as liquidating dividends to the shareholders shall not be subject to documentary stamp tax (DST); and
5. The surrender and cancellation of the outstanding shares shall not be subject to DST.

We reply, as follows:

(1) Pursuant to Section 8 of Revenue Regulation (RR) No. 6-2008 dated April 22, 2008, corporate shareholders shall recognize capital gains upon surrender of shares computed as excess of the cash and fair market value of property received over the cost of the investment in shares and that such gain shall be subject to the 30% corporate income tax rate, to wit;

> "**SECTION 8. Taxation of Surrender of Shares by the Investor Upon Dissolution of the Corporation and Liquidating of Assets and Liabilities of said Corporation.** – Upon surrender by the investor of the shares in exchange for cash and property distributed by the issuing corporation upon its dissolution and liquidation of all assets and liabilities, the investor shall recognize either capital gain or capital loss upon such surrender of shares computed by comparing the cash and fair market value of property received against the cost of the investment in shares. The difference between the sum of the cash and the fair market value of property received and the cost of the investment in shares shall represent the capital gain or capital loss from the investment, whichever is applicable. If the investor is an individual, the rule on holding period shall apply and the percentage of taxable capital gain or deductible capital loss shall depend on the number of months or years the shares are held by the investor. Section 39 of the Tax Code, as amended, shall herein apply in all possible situations.
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> The capital gain or loss derived therefrom shall be subject to the regular income tax rates imposed under the Tax Code, as amended, on individual taxpayers or to the corporate income tax rate, in case of corporations."

Based on the above provision of RR No. 6-2008, if the fair market value of the assets received by ACR and Aldevinco exceeds their respective cost of investment in shares, they shall recognize a gain subject to the 30% corporate income tax. Conversely, if the fair market value of the assets received as liquidating dividends does not exceed the cost of their investment, no taxable gain will be recognized by ACR and Aldevinco. [*Section 256, RR No. 2, Income Tax Regulations*] (BIR Ruling No. 028-2002 dated July 22, 2002)

(2) No tax shall be imposed on the liquidating corporation's receipt of the shares surrendered by the shareholders because the transaction is not treated as a sale.

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In BIR Ruling No. 092-99 dated July 8, 1999 this Office ruled, viz:

> "The transfer by the liquidating corporation of its remaining assets to its stockholders is not considered as a sale of these assets. Thus, a liquidating corporation does not realize gain or loss in partial or complete liquidation. [W.P. Fax & Sons Inc., Petitioner v. Commissioner of Internal Revenue, Respondent, 15 BTA 115; Jordan Petroleum Company, 13 AFTR 2d 1692 (227 F. Supp. 174); J.T.S Brown & Son Company v. Commissioner of the Internal Revenue, 10 TC 840] Hence, the transfer by Fundamental Development Corporation of its assets, i.e., one (1) parcel of land, to its controlling stockholders by way of liquidating dividends is not subject to the expanded creditable withholding tax imposed under Revenue Regulations No. 6-85, as amended by Revenue Regulations No. 12-94, as last amended by Revenue Regulations No. 2-98 (BIR Ruling No. 059-90 dated April 17, 1990), and consequently, the same is not subject to the corporate income tax."

Furthermore, in *Victoria Fernando vs. Sps. Lim (G.R No. 176282, August 22, 2008)*, the Supreme Court held that no tax shall be imposed on the liquidating corporation's receipt of the shares surrendered by the shareholders because the transaction is not treated as a sale. In the said case, the Court had the opportunity to discuss the nature of a liquidating dividend and its tax consequence, to wit:

> "The share of each stockholder in the remaining assets of the corporation upon liquidation, after the payment of all corporate debts and liabilities, is what is known as liquidating dividend. In its interpretation of recent tax laws, the Bureau of Internal Revenue viewed the distribution of liquidating dividends not as sale of asset by the liquidating corporation to its stockholder but as a sale of shares by the stockholder to the corporation or the surrender of the stockholder's interest in the corporation, in place of which said stockholder receives property or money from the corporation about to be dissolved. Thus, on the part of the stockholder, any gain or loss is subject to tax, while **on the part of the liquidating corporation, no tax is imposed on its receipt of the shares surrendered by the stockholder or transfer of assets to said stock holder because said transaction is not treated as a sale.**" *(Citations omitted and emphasis supplied.)*

Considering the foregoing, CASI shall not be liable for any income tax from the distribution of liquidating dividends nor from the receipt of surrendered shares. Consequently, the transfer of assets by CASI, such as land and biological assets, to its shareholders by way of liquidating dividends is not subject to creditable withholding tax *(BIR Ruling Nos. 092-99 dated July 8, 1999 citing BIR Ruling No. 059-90 dated April 17, 1990; and 028-2002 dated July 22, 2002).*

(3) The retirement from or cessation of business, with respect to inventories of taxable goods existing as of such retirement and cessation shall be "deemed sale" pursuant to Section 106 (B)(4) of the Tax Code of 1997, as amended and implemented by Section 4.106-7 of RR No. 16-2005.

Consequently, the distribution of remaining assets, such as land and biological assets, by CASI to its shareholders as of such retirement or cessation of business shall be subject to 12% VAT. (BIR Ruling No. 363-14 dated September 22, 2014)

(4) The DST imposed under Section 196 of the Tax Code of 1997, as amended, shall not apply in transfers of real property as liquidating dividends to its remaining stockholders. Section 196 of the Tax Code, as amended, provides:

> "***SEC. 196. Stamp Tax on Deeds of Sale and Conveyances of Real Property.*** *– On all conveyance, deeds, instruments, or writings, other than grants, patents, or original certificates of adjudication issued by the Government, whereby any lands, tenements or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax at the following rates:*
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> *"(a) When the consideration, or value received or contracted to be paid for such realty, after making proper allowance of any encumbrance, does not exceed one thousand pesos (P1,000), Fifteen pesos (P15.00)."*
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> *"(b) For each additional One thousand pesos (P1,000), or fractional part thereof in excess of One thousand pesos (P1,000) of such consideration or value, Fifteen pesos (P15.00)."*

However, the above provision does not apply to transfers of property as return of capital. RR No. 26 further provides that conveyance of real property by a corporation without consideration to the owner of its capital stock is not subject to DST. Section 189 of RR No. 26 provides:

> "***Section 189. Conveyance by corporation to owner of all the capital.*** *- A conveyance of real estate by a corporation without valuable consideration to an owner of all its capital stock in consequence of its dissolution is not subject to tax."*

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In BIR Ruling No. 028-2002 dated July 22, 2002, this Office ruled that:

> "Since the stockholders of Rose Packaging Company, Inc. will receive upon its liquidation its assets consisting of the aforementioned land as liquidating dividends, they will thereby realize capital gain or loss. The gain, if any, derived by the individual stockholders consisting of the difference between the fair market value of the liquidating dividends and the adjusted cost to the stockholders of their respective shareholdings in the said corporation [Sec. 256, Income Tax Regulations] shall be subject to income tax at the rates prescribed under then Section 21(a) of the Tax Code, as amended by Executive Order No. 37. Moreover, pursuant to then Section 33(B) of the Tax Code, as amended, only 50% of the aforementioned capital gain is reportable for income tax purposes if the shares were held by the individual stockholders for more than twelve months and 100% of the capital gains if the shares were held less than twelve months. Finally, this Office has ruled that the conveyance of real property in the form of liquidating dividends to the stockholders is not subject to documentary stamp tax under Section 196 of the Tax Code." (Underscoring ours.)

Considering the foregoing, Section 196 of the Tax Code of 1997, as amended, shall not apply to the distribution of assets as liquidating dividends. Therefore, the distribution of the remaining assets of CASI to its shareholders shall not be subject to DST.

It is, however, understood that an application for Certificate Authorizing Registration (CAR) shall be made to the Revenue District Office (RDO) where CASI is registered or previously registered, if registration has been cancelled. Once issued, it shall be presented to the proper Register of Deeds. This ruling exempting the transaction from payment of DST shall also be presented to the said RDO before any transfer of title could be made to the parties concerned.

(5) Under Section 175 of the Tax Code of 1997, as amended, DST shall be imposed on the sale or transfer of shares of stock, to wit:

> "***SEC. 175. Stamp Tax on Sales, Agreements to Sell. Memoranda of Sales, Deliveries or Transfer of Shares or Certificates of Stock.*** – *On all sales, or agreements to sell, or memoranda of sales, or deliveries, or transfer of shares or certificates of stocks in any association, company, or corporation, or transfer of such securities by assignment in blank, or by delivery, or by any paper or agreement, or memorandum or other evidences of transfer or sale whether entitling the holder in any manner to the benefit of such stock, or to secure the future payment of money, or for the future transfer of any stock, there shall be collected a documentary stamp tax of Seventy-five-centavos (P0.75) on each Two hundred pesos (P200), or fractional part thereof, of the par value of such stock: Provided, that only*

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> *one tax shall be collected on each sale or transfer of stock from one person to another, regardless of whether or not a certificate of stock is issued, indorsed, or delivered in pursuance of such sale or transfer: and Provided, further, that in the case of stock without par value the amount of the documentary stamp tax herein prescribed shall be equivalent to twenty-five percent (25%) of the documentary stamp tax paid upon the original issue of said stock."*

However, Section 175 of the Tax Code of 1997, as amended, is not applicable for shares surrendered upon dissolution of a corporation. Section 4 of RR No. 13-2004 provides that for an exchange to be subject to DST, there must be an actual or constructive transfer of the beneficial ownership of the shares of stock, to wit:

> "All transfer of shares of stocks of a domestic corporation [is] subject to the DST upon execution of the deed transferring ownership or rights thereto, or upon delivery, assignment or indorsement of such shares in favor of another. No transfer of shares of stock shall be recorded unless DST thereon has been duly paid for in accordance with Section 201 of the Code.
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> "For a sale or exchange to be taxable, there must be an actual or constructive transfer of beneficial ownership of the shares of stock from one person to another. Such transfer may be manifested by the clear exercise of attributes of ownership over such stocks by the transferee, or by an actual entry indicating transfer of beneficial ownership in any form of registry including those of a duly authorized scripless registry, such as those maintained for or by the Philippines Stock Exchange."

Further, it was previously held that the surrender of shares does not constitute a sale, assignment or transfer because the dissolved corporation is not taking title to the shares, and the shares are retired and not retained as treasury shares. In effect, the dissolved corporation does not realize any benefit from its receipt of the shares *(BIR Ruling No. 039-2002 dated November 11, 2002).*

Based on the foregoing, the surrender of shares resulting from the dissolution and liquidating of a corporation is not an actual transfer of the beneficial ownership of the shares. The dissolved corporation merely receives the shares for cancellation and does not exercise any attribute of ownership over the shares of stock. Thus, the surrender of the shares by shareholders to CASI as a result of its dissolution should not be subject to DST.

Finally, cancellation of business registration due to closure/cessation or termination of business requires the filing of a notice of closure or cessation of business to the RDO where it is registered, by accomplishing the prescribed registration updates form and submission of unused

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sales invoices/official receipts (SI/OR) and all other unutilized accounting forms. Likewise, all business notices and permits and the Certificate of Registration shall be surrendered for cancellation in accordance with Revenue Regulations (RR) No. 11-2008.

This ruling is issued based on the facts as represented. However, if upon investigation it shall be disclosed that the facts are different, then this ruling shall be without force and effect insofar as the herein parties are concerned.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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