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

Sec. 28(B)(5)(c) & Sec. 98 of the Tax Code of 1997, as amended
BIR Ruling No. OT-101-2022
OT- 339 - 2022
2022

NAVARRO AMPER & CO.
19th Floor Six/NEO Building
5th Avenue corner 26th Street
Bonifacio Global City
Taguig City

Attention: **Glenn T. Del Rosario**
Manager, Tax and Corporate Service

Gentlemen:

This refers to your request on behalf of your client, **SINOCHEM INTERNATIONAL (OVERSEAS) PTE. LTD.** (hereinafter referred to as "**SIPL**"), for confirmation of your opinion that the transfer of shares by **SIPL** in **SINOCHEM CROP PROTECTION (PHIL.) INC.** (hereinafter referred to as "**SCPI**") to **SINOCHEM INTERNATIONAL CROP CARE (OVERSEAS) PTE. LTD.** (hereinafter referred to as "**SICCPL**") is not subject to capital gains tax and donor's tax since the transfer is part of the corporate reorganization and also for the reason that the beneficial ownership of **SCPI's** shares will remain within the Sinochem Group of Companies.

BACKGROUND

SIPL is a company incorporated and existing under the laws of Singapore with Company Registration No. and has its registered office at 9 Raffles Place, No. 56-01 Republic Plaza, Singapore 048619. Having its official seat in the Republic of Singapore as evidenced by the Proof of Residence issued on April 18, 2012, **SIPL** is neither registered as a corporation nor as a partnership licensed to engage in business in the Philippines as confirmed by the relevant Certificate of Non-Registration of Corporation/Partnership issued by the Securities and Exchange Commission on May 28, 2012.

SICCPL is a company incorporated in the Republic of Singapore with Company Registration No. and having its place of business at 9 Raffles Place, No. 56-02 Republic Plaza, Singapore 048619 and is not registered neither as a corporation nor as a partnership licensed to engage in business in the Philippines.

SCPI, a corporation organized and existing under the laws of the Philippines with registered address at 22F Tower II Insular Life Corporate Centre, Insular Life Drive, Filinvest Corporate City, Alabang, Muntinlupa City, is organized to engage in any or all business relating and allied to chemicals, pesticides, fertilizers including manufacturing, repacking, marketing and wholesale trading thereof. **SCPI's** current Stockholder of Record as of April 26, 2012, as certified by its Corporate Secretary on April 27, 2012, are as follows:

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Name of Stockholder	*Number of Shares*	*Value of Shares*
Sinochem International (Overseas) Pte. Ltd.	common	PhP.
Li Dajun	1 common	1
Zhang Wei	1 common	1
Ramil Bonifacio	1 common	1
Leila G. Amor	1 common	1
Paulito B. de Pano	1 common	1
Total Common		**PhP.**

As certified by **SCPI**'s Corporate Secretary, **SIPL** owns , and (common shares with par value of One Peso (Php 1.00) per share of **SCPI,** which shares of stock make up almost one hundred percent (100%) of the latter's subscribed and paid-up capital stock.

On May 17, 2012, a Business Transfer Agreement was entered into by **SIPL** and **SICCPL** whereby the former sells, transfers, assigns, conveys and delivers to the latter any and all right, title and interest in **SCPI**, (*i.e.*, 32,519,995 common shares with par value of Php 1.00 per share) free from all liens charges, mortgages, trusts and encumbrances. In consideration thereto, Sinochem Crop International (Incorporated in China) shall pay a sum of US Dollars (USD1)

As provided in the Corporate Organizational Structure of Sinochem Group of Companies, the entire title and interest of **SIPL** in **SCPI** will be transferred to its affiliate **SICCPL** as part of its corporate reorganization. In view of the foregoing structure, the sale transaction will not result in the transfer of beneficial ownership of the **SCPI** shares, considering that both **SIPL** and **SICCPL** are 100% owned directly or indirectly by Sinochem International Corporation (Incorporated in China).

Based on the foregoing, you now request for confirmation that the transfer of shares by **SIPL** in **SCPI** to **SICCPL** is not subject to capital gains tax and donor's tax.

In reply, please be informed as follows:

The transfer of SCPI shares from SIPL to SICCPL pursuant to a corporate reorganization of Sinochem Group of Companies is not subject to income tax/capital gains tax

Section 28 (B) (5) (c) of the National Internal Revenue Code (Tax Code), as amended, provides for the taxability of gains derived by a non-resident foreign corporation from the sale, exchange or other disposition of shares of stock not traded in the stock exchange, to wit:

"*SEC. 28. Rates of Income Tax on Foreign Corporations.* -

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(B) Tax on Non-Resident Foreign Corporation. -

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(c) Capital Gains from Sale of Shares of Stock not Traded in the Stock Exchange.

- A final tax at the rate of fifteen percent (15%) is hereby imposed upon the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation, except shares sold, or disposed of through the stock exchange."

The above-cited provision does not apply in the instant case. The transfer by **SIPL** of **SCPI** shares to **SICCPL** in exchange for US Dollars (USD) to be paid by Sinochem International Corporation (Incorporated in China) which owns directly and indirectly 100% of **SIPL** and **SICCPL** is not the sale, barter or exchange being contemplated under the foregoing provision since the transfer in this case is made pursuant to a global restructuring plan of the Sinochem Group of Companies. In BIR Ruling No. DA 088-06 dated March 6, 2006, the BIR had the occasion to rule that:

"[T]he proposed transfer of the TPC shares from TTC to THBV, pursuant to a worldwide reorganization of The Thomson Group of Companies, is not subject to capital gains tax as (1) there is no effective transfer of beneficial ownership of the TPC shares since both Transferor and Transferee belong to The Thomson Group of Companies and (2) the proposed transfer is a mere realignment of stockholdings effectively consolidating beneficial and legal ownership of the TPC shares. Since there is no transfer of beneficial ownership, no gain will be realized by TTC and THBV for income tax purposes."

The foregoing opinion was reiterated in BIR Ruling No. DA-406-07 which involved Synovate, Inc. (Synovate), a corporation duly existing under Philippine laws and a wholly-owned subsidiary of Synovate (Asia-Pacific-BVI) Limited (BVI), a corporation existing under the laws of British Virgin Islands. BVI, on the other hand, is a wholly-owned company of Synovate Holdings BV ("Holdings"), a corporation existing under the laws of the Netherlands. Synovate, BVI and Holdings are all part of Synovate Far East Group and that in view of the corporate reorganization of the Synovate Far East Group, it is envisioned that the entire Synovate shares currently registered under the name of BVI will be transferred from BVI to Holdings. This Office ruled that the proposed transfer of Synovate shares from BVI to Holdings pursuant to a legitimate Asian corporate reorganization and without consideration is not subject to capital gains tax and donor's tax.

In the instant case, the transfer by **SIPL** of **SCPI** shares to **SICCPL** in exchange for US Dollars (USD to be paid by Sinochem International Corporation (Incorporated in China) is made pursuant to a global restructuring plan of the Sinochem Group of Companies. It is considered a legitimate business practice which entails a realignment of stockholdings effectively consolidating beneficial and legal ownership of the **SCPI**'s shares, in which, no effective transfer of beneficial ownership of the **SCPI**'s shares is made since both Transferor and Transferee belong

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to the Sinochem Group of Companies and Sinochem International Corporation (Incorporated in China) also owns 99.99% of the outstanding capital stock of **SICCPL**.

Since the beneficial ownership over the **SCPI** shares remain with Sinochem International Corporation (Incorporated in China), being the owner of the 99.99% shares of SICCPL, there is no actual transfer of ownership of the said share, and therefore, no gain or profit shall be recognized.

The transfer of **SCPI** shares from **SIPL** to **SICCPL**, however, is subject to DST imposed under Section 175 of the Tax Code of 1997, as amended. Moreover, Section 4 of Revenue Regulations (RR) No. 13-2004 provides that all transfers of shares of stocks of a domestic corporation are subject to 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 Tax Code of 1997, as amended.

The transfer of SCPI shares from SIPL to SICCPL pursuant to a corporate reorganization of Sinochem Group of Companies is not subject to donor's tax.

Section 98 of the Tax Code of 1997, as amended, provides that a donor's tax is generally imposed on the transfer by any person, resident or non-resident, of property by gift. The donor's tax applies, whether such transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

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*). In this case, there is no intention to donate on the part of **SIPL** as the transfer was made in pursuance to a corporate reorganization of the Sinochem Group of Companies. Moreover, the parties to the transaction are part of the Sinochem Group of Companies, hence there is no transfer of beneficial ownership of the **SCPI** shares. The BIR has previously ruled as follows:

> *"This Office has consistently ruled that the transfer of property, without consideration, and primarily made for business considerations is not subject to donor's tax under Section 98 of the Tax Code because under such circumstances no donative intent can be attributed to the transferor."*[1]

Also, in BIR Ruling No. DA 088-06 dated March 6, 2006, the BIR held that:

> *"Furthermore, both the Transferor and the Transferee are subsidiaries and part of The Thomson Group of Companies and there is no transfer of beneficial ownership of the TPC shares . . . there can be no donative intent on the part of the transferor in a transfer of properties to the member-beneficiaries, considering that a person or entity cannot donate properties the ownership of which belongs to themselves."*

[1] BIR Ruling Nos. DA-1[illegible]-98 dated April 30, 1998; DA-028-05 dated January 24, 2005; and DA-136-05 dated April 7, 2005

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In the instant case, the transfer of the **SCPI** shares was made pursuant to a corporate reorganization of the Sinochem Group of Companies, hence, there is no showing of donative intent on the part of **SIPL** to donate the subject shares to **SICCPL**. It has been consistently held that in a direct gift, the element of donative intent must be present in the transfer of property to be donated. Thus, the said transfer of shares, having been made pursuant to a valid corporate restructuring without donative intent, is not subject to donor's tax.[2]

This ruling is issued on the basis of the foregoing facts as represented. However, if upon investigation it shall 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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[2] Perez vs. Commissioner of Internal Revenue, CTA Case No. 1707, February 10, 1969