REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
**BUREAU OF INTERNAL REVENUE**

Quezon City

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|---|
| Section 40(C)(2) and (6)(b). Tax Code |
| BIR Ruling No. 075-18 |
| SAGM-330-2021 |
| SEP 14 2021 |

**MARTINEZ VERGARA GONZALEZ & SERRANO**
33rd Floor. The Orient Square
F. Ortigas. Jr. Road. Ortigas Center
1600 Pasig City. Metro Manila

Attention: **Elmer B. Serrano**
**Phil Ivan A. Chan**
**Joanness S. Batimana**

Gentlemen:

This refers to your request for confirmation of your opinion that the merger of **Crown Equities, Inc.** ("CEI" or the "Surviving Corporation"). **CEI Properties, Inc.** ("CEIPI"). **CEI Development Corporation** ("CEIDC"). **Fort Bonifacio Medical Center, Inc.** ("FBMCI"). **Ceres Holdings Inc.** ("CHI") and **Ceres Property Venture, Inc.** ("CPVI"). (collectively referred to as the "Absorbed or Constituent Corporations"). is a tax-free transfer/exchange pursuant to Section 40(C)(2). in relation to Section 40(C)(6)(b). of the National Internal Revenue Code of 1997. as amended (Tax Code).

***Background:***

On August 18, 2014. the Securities and Exchange Commission (SEC) approved the Plan of Merger and the Articles of Merger of the Surviving Corporation and the Constituent Corporations. Under the approved Plan of Merger. the merger shall become effective upon the approval by the SEC of the Constituent Corporations' Articles of the Merger and its issuance of the Certificate of Merger. Accordingly, pursuant to the agreement between CEI and the Constituent Corporations. the merger will take effect on August 18. 2014. the date of the SEC approval of the Plan and Articles of Merger.

CEI is a domestic corporation. with Taxpayer Identification Number (TIN) and SEC Registration No. . The Constituent Corporations were likewise domestic corporations with the following TIN and SEC Registration Nos. before the approval of merger:

| Name of Corporation | TIN | SEC Registration Number |
|---|---|---|
| CEIPI | | |
| CEIDC | | |
| FBMCI | | |
| CHI | | |
| CPVI | | |

Prior to the merger. the respective authorized capital stock. total number of outstanding and issued shares. the par value of each share and the total paid up capital of the Surviving Corporation and the Constituent Corporations are as follows:

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**CEI**

| | Number of Shares | Amount (at ₱0.10 par value per share) |
|---|---|---|
| Authorized Capital Stock | (common) | ₱ [illegible] |
| Subscribed Capital Stock | common) | ₱ [illegible] |
| Paid-Up Capital | (common) | ₱ [illegible] * |

*excluding 40 shared held in the treasury

**CEIPI**

| | Number of Shares | Amount (at ₱1.00 par value per share) |
|---|---|---|
| Authorized Capital Stock | [illegible] | [illegible] |
| Subscribed Capital Stock | [illegible] | [illegible] |
| Paid-Up Capital | [illegible] | [illegible] |

**CEIDC**

| | Number of Shares | Amount (at ₱1.00 par value per share) |
|---|---|---|
| Authorized Capital Stock | [illegible] | [illegible] |
| Subscribed Capital Stock | [illegible] | [illegible] |
| Paid-Up Capital | [illegible] | [illegible] |

**FBMCI**

| | Number of Shares | Amount (at ₱1.00 par value per share) |
|---|---|---|
| Authorized Capital Stock | [illegible] | .00 |
| Subscribed Capital Stock | [illegible] | .00 |
| Paid-Up Capital | [illegible] | [illegible] |

**CHI**

| | Number of Shares | Amount (at ₱1.00 par value per share) |
|---|---|---|
| Authorized Capital Stock | (common) | [illegible] |
| Subscribed Capital Stock | (common) | [illegible] |
| Paid-Up Capital | common) | [illegible] |

**CPVI**

| | Number of Shares | Amount (at ₱1.00 par value per share) |
|---|---|---|
| Authorized Capital Stock | [illegible] | [illegible] |
| Subscribed Capital Stock | [illegible] | [illegible] |
| Paid-Up Capital | [illegible] | [illegible] |

On February 25, 2014, the respective Board of Directors of the Surviving Corporation and the Constituent Corporations approved the Articles of Merger, which were ratified by their respective stockholders on May 6, 2014. The merger was effected for the following business reasons: (i) the merger will streamline the operations of the Surviving Corporation and the Constituent Corporations; and (ii) the merger will enable the Surviving Corporation to utilize its assets more productively.

Article V of the Plan of Merger provides that all the shares of the capital stock of the Constituent Corporations shall be cancelled. and a total of [illegible] shares of the

Surviving Corporation, with a par value of Ten centavos (P0.10) per share, shall be issued in exchange of the cancelled shares. As the Surviving Corporation directly and indirectly owns the Constituent Corporations, the net assets of the Constituent Corporations will be added to the assets of the Surviving Corporation.

On August 18, 2014, the SEC approved the Plan of Merger and the Articles of Merger of the Surviving Corporation and the Constituent Corporations. On September 4, 2014, the Surviving Corporation paid in documentary stamp taxes on the issuance of shares in favor of the Constituent Corporations.

In view of the foregoing, you now request for confirmation that the merger between the Surviving Corporation and the Constituent Corporations involves a tax-free exchange under Section 40(C)(2) of the Tax Code and, thus, no capital gains tax (CGT), creditable withholding tax (CWT), donor's tax, value-added tax (VAT) and documentary stamp tax (DST) shall be due on the said transfer.

In reply, please be informed as follows:

1. The foregoing merger of the CEI and the Constituent Corporations is a merger within the contemplation of Section 40 (C)(2) in relation to Section 40 (C)(6)(b) of the Tax Code because CEI's acquisition/assumption of all the assets and liabilities of the Constituent Corporations is being undertaken for a *bona fide* business purpose and not for the purpose of escaping the burden of taxation.

The merger of the Constituent Corporations and CEI qualifies for non-recognition of gain or loss for income tax purposes in accordance with Section 40(C)(2) of the Tax Code. Accordingly, no gain or loss shall be recognized by CEI, as the transferee, on its receipt of the assets and liabilities of the Constituent Corporations pursuant to and as a consequence of the merger.

The basis of the shares of stocks to be received by shareholders of the Constituent Corporations upon the exchange shall be the same as the basis 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.[1]

The basis of the property transferred in the hands of the transferee (CEI) shall be the same as it would be in the hands of the transferors (Constituent Corporations) increased by the amount of the gain, if any, recognized to the transferors (Constituent Corporations) 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 bases of the properties transferred by the Constituent Corporations to CEI should strictly comply with the rule that cash and other cash items will be excluded from the computation of the adjusted bases 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 substituted basis of the properties transferred by the Constituent Corporations shall be as follows:

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[1] Sec. 40 (C)(5)(a) of the Tax Code

[2] Sec. 40 (C)(5)(b), *supra*

[3] Sec. 40 (C)(4)(b), *supra*

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## CEIPI

| Assets as of December 31, 2013 | Amount | Allocated Liabilities | Allocated Shares | Substituted Basis |
|---|---|---|---|---|
| Current Asset- AFS Financial Asset | | | | |
| Noncurrent Asset- Receivables | | | | |
| **Total** | | | | |

| Liabilities | Amount |
|---|---|
| Due to parent company | |
| Deposit for future stock subscription | |
| **Total** | |

## FBMCI

| Assets as of December 31, 2013 | Amount | Allocated Liabilities | Allocated Shares | Substituted Basis |
|---|---|---|---|---|
| Investment in an associate | | | | |
| Other Noncurrent Assets | | | | |
| **Total** | | | | |

| Liabilities | Amount |
|---|---|
| Accrued expenses and other noncurrent liabilities | |
| Due to parent company | |
| Deposit for future stock subscription | |
| **Total** | |

## CPVI

| Assets[5] as of December 31, 2013 | Amount | Allocated Liabilities | Allocated Shares | Substituted Basis |
|---|---|---|---|---|
| Cash and cash equivalents | | | | |
| Receivables-net | | | | |
| Installment contract receivables | | | | |
| Real estate inventories[6] | | | | |
| Prepaid expenses and other current assets | | | | |
| Installment contract receivables-net of current portion | | | | |
| Investment properties-net[7] | | | | |
| Investment in a subsidiary[8] | | | | |
| Property and equipment-net | | | | |
| Other noncurrent assets | | | | |
| **Total** | | | | |

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[4] **The excess of the liabilities over the adjusted bases of the assets transferred ( shall be considered gains subject to applicable capital gains tax or regular income tax depending on the classification of the assets (ordinary or capital).**

[5] Including real properties covered by TCT Nos. and based on the Sworn certification dated November 29, 2016 executed by Christopher Brian C. Dy, Treasurer of CPVI.

[6] Consist of condominium units and parking slots in Cypress Towers in Taguig City.

[7] Consist of parcels of land in Taguig City and a commercial space in Cypress Towers, Taguig City.

[8] Consist of shares of stocks in Crown Central Properties Corp.

| Liabilities | Amount |
|---|---|
| Accounts payable and accrued expenses | |
| Retirement liability | |
| **Total** | |

## CHI

| Assets as of December 31, 2013 | Amount | Allocated Liabilities | Allocated Shares | Substituted Basis |
|---|---|---|---|---|
| AFS Financial Assets | | | | |
| Other Noncurrent Assets | | | | |
| **Total** | | | | |

| Liabilities | Amount |
|---|---|
| Due to parent company | |
| Deposit for future stock subscription | |
| **Total** | |

## CEIDC

| Assets[10] as of December 31, 2013 | Amount | Allocated Liabilities | Allocated Shares | Substituted Basis |
|---|---|---|---|---|
| Cash | | | | |
| Receivables | | | | |
| Installment contracts receivable | | | | |
| Real estate inventories | | | | |
| Other current assets | | | | |
| Installment contracts receivable- net of current portion | | | | |
| Investment in property[11] | | | | |
| **Total** | | | | |

| Liabilities | Amount |
|---|---|
| Accounts payable and accrued expenses | |
| Due to parent company | |
| Deposit for future stock subscription | |
| 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 any act of liberality (*animus donandi*).

Clearly, there is no intention on the part of the Constituent Corporations to donate to CEI their 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 *bona fide* merger effected solely for business reasons.

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[9] **The excess of the liabilities over the adjusted bases of the assets transferred (352,388.00) shall be considered gains subject to applicable capital gains tax or regular income tax depending on the classification of the assets (ordinary or capital).**

[10] Including real properties covered by TCT Nos. and based on the Sworn certification dated November 29, 2016 executed by Christopher Brian C... ...urer of CEIDC.

[11] Consist of parcels of land in Sto. Tomas, Batangas with a total area of 51.62 hectares.

[12] **The excess of the liabilities over the adjusted bases of the assets transferred (₱ .00) shall be considered gains subject to applicable capital gains tax or regular income tax depending on the classification of the assets (ordinary or capital).**

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3. No DST is due on the transfer made pursuant to the Plan of Merger under Section 199 (m) of the Tax Code, as amended by Republic Act (RA) No. 9243, in relation to Section 40 (C)(2) of the Tax Code. However, DST at the rate of P1.00[13] on each P200.00 par value, or fractional part thereof, shall be imposed on the original issuance of shares by CEI to the stockholders as a consequence of the merger as provided under Section 174 of the Tax Code.

4. The transfer of properties of the Constituent Corporations to CEI as a consequence of merger will 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 CEI, 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 Constituent Corporations, as of the effective date of the merger, which form part of the assets to be transferred by the Constituent Corporations to CEI as a consequence of the merger, may be applied as a tax credit by CEI against its income tax due for the taxable year 2014, the effective date of the merger being August 18, 2014, 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 MCIT of the Constituent Corporations, as of the effective date of the merger as of year 2014 shall be carried forward and credited against the normal income tax due of the surviving corporation, CEI, for the three (3) immediately succeeding taxable years pursuant to Section 27 (E)(2) of the Tax Code.

7. It is to be emphasized, however, that the net operating loss carry-over (NOLCO), under Section 34 (D)(3) of the Tax Code, and as implemented by RR No. 14-2001, of the Tax Code, of the Constituent Corporations, if any, is not one of the assets of the latter that can be transferred to the surviving corporation, CEI, as this privilege or deduction can be availed of by the Constituent Corporations only. Accordingly, the tax-free merger between the Constituent Corporations and CEI does not cover the NOLCO of the former.

8. The retained earnings of the absorbed corporations are subject to the ten percent (10%) final withholding tax on dividends constructively received by its individual shareholders and non-resident foreign corporate shareholders pursuant to Sections 24 (B) (2), 25 (A) (2), and 28 (B) (5) (b) of the Tax Code.

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, 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:

   (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 the cost or other basis of all properties, including all stocks or securities, transferred incident to the plan;

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[13] Old DST rate is used since the merger took place prior to the effectivity of RA No. 10963 or TRAIN Law.

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(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 or 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: and

(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, who is a 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 the stock or securities and other property or money received from the exchange, including any liability assumed upon the exchange, and any liability 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 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 stamped 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 the mandatory accounting entries stated in **Annex "A"** hereof, pursuant to Revenue Memorandum Order (RMO) No. 17-2016.

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.

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 ascertained 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 | Investment in (transferee's name) xxx xx<br>Investment in (name of dissolving corp.) xxx xx<br>Dividend Income (net of FWT on dividend) xxx xx<br><br>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 shares of (name of transferee) with par value of P______ per share | Investment in (issuing corp.) for shares of stock xxx xx<br>PPE - Land & Improvement (for real props.) xxx xx<br>Other Assets (as applicable) xxx xx<br>Liabilities xxx xx<br>Capital Stock xxx xx<br>Additional Paid-In Capital xxx xx<br><br>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 shares) 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 the exchange). The real properties, investments, 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<br>Investment in (name of transferee) xxx xx<br>Gain on Sale of Investment xxx xx<br><br>To record subsequent sale/transfer of investment acquired thru tax-free exchange<br><br>Current<br>Tax Payable xxx xx<br><br>Provision for Tax as follows: | Cash/Accounts Receivable xxx xx<br>Investment in (name of issuing corp.) xxx xx<br>PPE - Land & Improvement/Other Assets xxx xx<br>Gain on Sale of Property/Asset xxx xx<br><br>To record subsequent sale/transfer of investment/s acquired thru tax-free exchange<br><br>[illegible] xxx xx<br>[illegible] Payable xxx xx<br><br>Provision for Tax as follows |

Individual Shareholder's Book:

| | 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 [illegible] used in the computation of Net Capital Gains Tax and Stock Transaction Tax [illegible] 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:

| | Tax Type | Tax Rate* | Multiply by | Amount |
|---|---|---|---|---|
| | Net Capital Gains Tax | 15% | Gains realized on subsequent sale of investment/s | xxx xx |
| OR | Stock Transaction Tax | [illegible] | Selling price of investment at the time of subsequent sale | |
| | Total Tax Payable | | | xxx xx |

| | Tax Type | Tax Rate | Multiply by | Amount |
|---|---|---|---|---|
| | [illegible] Withholding Tax - NETT | [illegible] per RR [illegible] | Fair Market Value (FMV) of the [illegible] at the time of subsequent [illegible] transfer | xxx xx |
| | Documentary Stamp Tax (DST) | [illegible] | | xxx xx |
| 3) | Value Added Tax (VAT) | [illegible] | | xxx xx |

- [illegible] sale of property [illegible] Normal Corporate Income Tax (NCIT)
- FMV at the time of subsequent sale/transfer refers to the selling price, zonal value or the amount reflected in the [illegible] declaration, whichever is highest

[illegible]