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

Sections 28(B)(5)(c), 40(C)(2) & 40(C)(6)(c), Tax Code; Revenue Regulations No. 18-01
BIR Ruling No. 377-19
CT - 370 - 2021
OCT 06 2021

GATMAYTAN YAP PATACSIL GUTIERREZ & PROTACIO
30/F 88 Corporate Center,
Sedeño cor. Valero Streets,
Salcedo Village, Makati City 1227

Attention: **ATTY. ANTHONY MARK A GUTIERREZ**
ATTY. ROXANNE B. TADIQUE
ATTY. JILLIENNE GRACE M. SOTTO
ATTY. KENNETH O. RAYMUNDO

Gentlemen:

This refers to your request on behalf of your client, Sanofi S.A. ("**Sanofi**") for confirmation that the transfer of Eight Million Four Hundred Eleven Thousand Five Hundred Seventy-Five (8,411,575) shares in Sanofi-Aventis Philippines, Inc. ("**SAPI**"), inclusive of twelve (12) nominee shares (the "**SAPI Shares**"), by Sanofi to Sanofi Foreign Participations B.V. ("**SFP BV**") pursuant to the worldwide corporate reorganization of the Sanofi Group is exempt from capital gains tax ("**CGT**").

Background

1. Sanofi (TIN:) is a corporation duly organized and existing under and by virtue of the laws of France with registered office address at 54 rue La Boétie, 75008 Paris. It is the ultimate parent entity of the Sanofi Group, a worldwide enterprise with operations in eighty-nine (89) countries including the Philippines.

2. SFP BV (TIN: is a corporation duly organized and existing under and by virtue of the laws of the Netherlands with registered office address at Prins Bernhardplein 200 1097JB Amsterdam. It is 100% owned by Sanofi.

3. SAPI (TIN:) is a corporation duly organized and existing under and by virtue of the laws of the Philippines with registered office address at 21st, 22nd and 23rd Floors, One World Place Corporate Offices, 32nd Street, Bonifacio Global City, Taguig City, Philippines. The SAPI Shares represent 100% of the issued and outstanding capital stock of SAPI and, based on the records of SAPI, are currently registered in the name of Sanofi Aventis Europe ("**SAE**").

4. In 2018, SAE was dissolved without liquidation of its assets. Sanofi, as sole shareholder of SAE, absorbed all of SAE's assets via a merger-type transfer, which assets included the SAPI Shares (the "**Step 1 Transfer**"). The dissolution without liquidation of SAE was done in accordance with the legal restructuring project being implemented by the Sanofi Group, which entailed the worldwide corporate reorganization of its member companies in order to rationalize and simplify its ownership structure. In addition to SAE, several French subsidiaries were also effectively merged by Sanofi.

5. Currently, the Sanofi Group is implementing the second stage of its legal restructuring project in line with its ultimate goal of consolidating ownership of all French subsidiaries into Sanofi Aventis Participations, a French company, and of all foreign subsidiaries, including SAPI, into SFP BV.

6. On July 16, 2019, in connection with the second stage of the legal restructuring project, Sanofi entered into a global shares transfer agreement (the "**Global Transfer Agreement**") with SFP BV for the transfer of shares issued by various companies with Sanofi Group held by Sanofi, including the ( ) SAPI Shares with a nominal value of One Hundred Pesos (PhP100.00) each, to SFP BV in exchange for) shares of SFP BV with a nominal value of EUR 0.01 each (the "**Step 2 Transfer**").

7. The documentary stamp tax ("**DST**") due on the Step 2 Transfer under Section 175 of the National Internal Revenue Code of 1997, as amended ("**Tax Code**"), was paid on August 5, 2019. The CGT return, wherein Sanofi indicated that it intends to avail of an exemption from CGT, was filed also on August 5, 2019.

In reply, please be informed as follows:

CGT/Income Tax

The application of Section 40(C)(2) of the Tax Code to nonresident foreign corporations is well-settled. Section 40(C)(2) of the Tax Code does not make any qualification or distinction as to its application to a corporation. It provides that –

"SEC. 40. Determination of Amount and Recognition of Gain or Loss. –

xxx xxx xxx

(C) Exchange of Property. –

xxx xxx xxx

(2) Exception. - No gain or loss shall be recognized on a corporation or on its stock or securities if such corporation is a party to a reorganization and exchanges property in pursuance of a plan of reorganization solely for stock or securities in another corporation that is a party to the reorganization... ...

xxx xxx xxx

No gain or loss shall also be recognized if property is transferred to a corporation by a person in exchange for stock or unit of participation in such a corporation of which as a result of such exchange such person, alone or together with others, not exceeding four (4) persons gains control of the said corporation: Provided, that stock issued for services shall not be considered as issued in return for property."

The underlying assumption of tax-free exchange provisions generally is that the new property received is substantially a continuation of the old investment still unliquidated.[1]

Based on the foregoing, and considering that Sanofi continues to own the entire capital stock of SFP BV after the exchange, the transfer of the SAPI Shares from Sanofi to SFP BV qualifies as a tax-free exchange transaction.

Accordingly, no gain or loss shall be recognized on the transfer of the SAPI Shares by Sanofi to SFP BV in exchange for the shares of stock of the latter.

However, it is to be emphasized that Sections 40(C)(2) and 40(C)(6)(c) of the Tax Code merely defers recognition of the gain or loss from such transaction, for in determining the gain or loss from a subsequent transaction of the properties or of the stocks involved in the exchange, the original or historical cost of the properties or stocks is considered. Thus, if the transferor later sells or exchanges the shares of stock it acquired in the exchange, it shall be subject to income tax on gains derived from such sale or exchange, taking into consideration that the cost basis of the shares shall be the same as the original acquisition cost or adjusted cost basis to the transferor of the property exchanged therefore; and that the cost basis to the transferee of the property exchanged or stocks shall be the same as it would be in the hands of the transferor.[2]

Donor's Tax

Well-settled in our jurisprudence is the fact that the essential elements of a valid donation are: (1) the donor must have the capacity to make the donation; (2) the intent to do an act of liberality (*animus donandi*); (3) actual or constructive delivery of the gift; and (4) acceptance or consent to the donation.

Applied in this case, it is clear that the element of intention to donate is absent since the transaction is purely for a legitimate business purpose of corporate restructuring.

Under the Section 29 of the Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion Law (**"TRAIN Law"**), amending Section 100 of the Tax Code, as of 1 January 2018, a sale, exchange or other transfer of property made in the ordinary course of business (i.e. a transaction that is *bona fide*, at arm's length and free from any donative intent) is considered as made for an adequate and full consideration in money or money's worth, and, therefore, not subject to donor's tax.

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[1] BIR Ruling No. 024-05 dated 23 December 2005.

[2] Section 40(C)(5), Tax Code.

Considering that the transaction is for a legitimate business purpose and made in the ordinary course of business, the same is not subject to donor's tax.

Cost Basis

Section 40(C)(5)(a) and (b) of the Tax Code states:

"SEC. 40. Determination of Amount and Recognition of Gain or Loss. –

xxx xxx xxx

(C) Exchange of Property. –

xxx xxx xxx

(5) Basis. –

(a) The basis of the stock or securities received by the transferor upon the exchange specified in the above exception shall be the same as the basis of the property, stock or securities exchanged, decreased by (1) the money received, and (2) the fair market value of the other property received, and increased by (a) the amount treated as dividend of the shareholder and (b) the amount of any gain that was recognized on the exchange: Provided, That the property received as 'boot' shall have as basis its fair market value: Provided, further, That if as part of the consideration to the transferor, the transferee of the property assumes a liability of the transferor or acquires from the latter property subject to a liability, such assumption or acquisition (in the amount of the liability) shall, for purposes of this paragraph, be treated as money received by the transferor on the exchange: Provided, finally, That if the transferor receives several kinds of stock or securities, the Commissioner is hereby authorized to allocate the basis among the several classes of stocks or securities.

(b) The basis of the property transferred in the hands of the transferee shall be the same as it would be in the hands of the transferor increased by the amount of the gain recognized to the transferor on the transfer."

Indubitably, the basis of the SFP BV shares received by Sanofi upon exchange shall be the same as the basis of the SAPI Shares exchanged; and the basis of the SAPI Shares transferred shall be the same as it would be in the hands of Sanofi.

Strict compliance of requirements to avail non-recognition of gains provided for in Sections 40(C)(2) and 40(C)(6)(c) of the Tax Code

In order that the parties to the exchange can avail of the non-recognition of gains provided for in Sections 40(C)(2) and 40(C)(6)(c) of the Tax Code, they should comply with the requirements hereunder mentioned.

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The parties shall, pursuant to Section 58(E) of the Tax Code and Revenue Regulations No. 18-01,[3] cause the corporate secretary to annotate at the back of the relevant certificates of stock the date the related deed of assignment was executed, the original or historical cost of acquisition of the shares of stock involved, and the fact that no gain or loss was recognized as a result of such exchange; provided, however, that any violation of the corporate secretary of this condition shall be penalized under Section 269 of the Tax Code.

It is further required that the certificate of shares of stock that bears the annotation of substituted bases of the shares of stock transferred/received in connection with this transaction, as duly certified by the corporate secretary, should be submitted to the Law and Legislative Division, Bureau of Internal Revenue, 7/F National Office Building, Diliman, Quezon City within ninety (90) days from the date of the receipt of this Certification, by any of the parties to the exchange transaction. Otherwise, this ruling shall be void and without effect, and the Chief, Law and Legislative Division shall refer the docket of the case to the Prosecution Division for appropriate action.

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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[3] Guidelines on the Monitoring of the Basis of Property Transferred and Shares Received, Pursuant to a Tax-Free Exchange of Property for Shares under Section 40(C)(2) of the National Internal Revenue Code of 1997, Prescribing the Penalties for Failure to Comply with such Guidelines, and Authorizing the Imposition of Fees for the Monitoring Thereof, 13 November 2021.