REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

DOMINIUM REALTY & CONSTRUCTION CORPORATION,
Respondent.

CTA EB NO. 1713
(CTA Case No. 8887)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, *and*
Manahan, *JJ.*

Promulgated:

NOV 13 2018
1:58 p.m.

x--x

DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner[1] Commissioner of Internal Revenue (CIR) to seek nullification of the Decision[2] dated April 6, 2017 (assailed Decision), the dispositive portion thereof reads:

> "**WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. Accordingly, the assessments issued by respondent against petitioner for taxable year 2010 covering

[1] Respondent in CTA Case No. 8887.
[2] Rollo, CTA EB Case No.1713, pp.12-39.

deficiency Income Tax in the amount of ₱86,102,942.64, VAT in the amount of ₱39,836,303.87 and DST in the amount of ₱5,669,034.20, are **CANCELLED AND WITHDRAWN.**

SO ORDERED."

and the Resolution[3] dated April 17, 2017 (assailed Resolution) of the same Second Division of the Court (Court in Division) denying the CIR's Motion for Reconsideration, the dispositive portion thereof reads:

"**WHEREFORE,** premises considered, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

The facts as stated in the assailed Decision[4] are as follows:

"Petitioner[5] is a domestic corporation duly organized and existing under and by virtue of Philippine laws, with business address at Allied Bank Centre, Ayala Avenue, Makati City. It is registered with the Bureau of Internal Revenue (BIR) with Certificate of Registration No. 9RC0000063594 dated January 3, 1996 issued by Revenue Region No. 8 – Makati City.

Petitioner's primary purpose is to purchase, hold, convey, sell, lease, rent, mortgage, encumber or otherwise, deal in such real and personal property in any part of the Philippines or elsewhere, and to engage in the business of construction, building and infrastructure works, land development, subdivisions and such other related purposes as may be convenient or necessary for the transaction of the lawful business of the corporation.

Respondent is the duly appointed Commissioner of the BIR who has the power to decide disputed assessments, refund of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof,

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[3] Rollo, pp. 41-44.
[4] Citations omitted.
[5] Respondent Dominium Realty & Construction Corporation ("Dominium Realty") in this case.

administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Quezon City.

Petitioner, together with Fortune Tobacco Corporation (FTC), Parity Packaging Corporation (PPC), Northern Tobacco Redrying Co., Inc. (NTRCI) and Orecla Realty, Inc. (ORI), transferred several parcels of land in favor of Fortune Landequities and Resources, Inc. (FLRI) in exchange for the latter's shares of stocks.

For its part, petitioner executed a Deed of Transfer dated February 25, 2010, in favor of FLRI, transferring its title and ownership over its four (4) parcels of land located in Marikina City, in exchange for FLRI's shares of stock.

On the same date, petitioner together with four (4) other corporations, namely, FTC, Phillip Morris Philippines Manufacturing, Inc. (PMPMI), PPC and NTRCI entered into a Deed of Transfer exchanging their assets and liabilities for the shares of stock of PMFTC Inc.[6]

On April 12, 2011, petitioner filed its Annual Income Tax Return for the taxable year 2010.

On June 24, 2011, petitioner received Letter of Authority (LOA) No. 047-2011-00000131 with SN: eLA201000051516 dated June 16, 2011, authorizing Revenue Officers Diannah-Lynn Karim and Marilan Dela Cruz, to conduct an examination on the books of accounts and other accounting records of all its internal revenue taxes for taxable year 2010.

On September 28, 2012, petitioner received the Preliminary Assessment Notice (PAN) dated September 17, 2012, with Details of Discrepancies, assessing it for alleged income tax, VAT and DST. On October 24, 2012, petitioner filed its Reply to the PAN dated October 3, 2012 with the Office of Regional Director Nestor Valeroso through the Assessment Division, Revenue Region No. 8 – Makati City.

On January 8, 2014, petitioner received the Formal Assessment Notice (FAN) dated January 2, 2014, with attached Details of Discrepancies and Assessment Notice Nos. IT-ELA51516-10-14-045, VT-ELA51516-10-14-045, DS-ELA51516-

[6] Formerly known as "Tallyhoe Manufacturing Co. Inc."

10-14-045, assessing it for alleged income tax in the amount of ₱86,102,942.64, Value-Added Tax (VAT) in the amount of ₱39,836,303.87 and Documentary Stamp Tax (DST) in the amount of ₱5,669,034.20.

On February 7, 2014, petitioner filed an administrative protest by way of a request for reconsideration dated February 2, 2014 with the Office of the Regional Director, Revenue Region No. 8 – Makati City.

Due to respondent's inaction, petitioner filed the present Petition for Review on September 4, 2014."

The CIR filed his Answer[7] on November 12, 2014.

The Pre-trial of the case was held on June 11, 2015.[8] During the pre-trial conference, the parties were given a period of fifteen (15) days to file their Joint Stipulations of Facts and Issues.

On June 24, 2015, the parties filed their Joint Stipulations of Facts and Issues.[9] Thereafter, the Court issued the Pre-Trial Order[10] dated June 30, 2015.

As agreed upon by the parties, the issues presented before the Court in Division are as follows:

1. Whether Dominium Realty's transfer of its four parcels of land to FLRI in exchange for the latter's common shares of stock is a tax-free exchange pursuant to the Tax Code.

2. Whether the Deed of Absolute Sale dated February 25, 2010 executed by Dominium Realty and FLRI is subject to Income Tax, VAT and DST for taxable year 2010.

3. Whether Dominium Realty is liable to pay ₱131,608,280.71 for the taxable year 2010 representing alleged deficiency Income Tax, VAT and DST as regards its transaction with FLRI.

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[7] Docket, pp. 165-172.
[8] Ibid. p. 282.
[9] Ibid. pp. 288-293.
[10] Ibid. pp. 295-298.

4. Whether or not the right of the BIR to assess Dominium Realty for alleged deficiency internal revenue taxes had already prescribed.

Trial thereafter ensued wherein both parties presented their respective evidence. On April 15, 2016, the CIR filed his Memorandum,[11] while Dominium Realty filed its Memorandum on May 2, 2016.[12]

In the Resolution[13] dated May 12, 2016, the Court in Division deemed the case submitted for decision.

On April 6, 2017, the Court in Division rendered the assailed Decision. On August 17, 2017, the Court in Division issued the questioned Resolution.

Aggrieved, the CIR filed before the Court *En Banc* this Petition for Review[14] on September 14, 2017.

In the Resolution[15] dated October 9, 2017, Dominium Realty in this case was directed by the Court *En Banc* to file its comment in this case.

On November 9, 2017, Dominium Realty filed its "Comment (To the Petitioner's Petition for Review)".[16]

In the Resolution dated December 5, 2017,[17] the Court gave due course to this Petition for Review. In view thereof, the instant case was deemed submitted for decision.

THE ISSUE

The main issue in this case is whether or not the Court in Division erred in granting Dominium Realty's Petition for Review, thereby cancelling the deficiency Income Tax, VAT and DST assessments issued by the CIR against Dominium Realty for taxable year 2010.

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[11] Ibid., pp. 631-637.
[12] Ibid., pp. 639-666.
[13] Ibid. p. 668.
[14] Rollo CTA EB Case No. 1713, pp. 1-10, with Annexes.
[15] Ibid. pp. 50-51.
[16] Ibid. pp. 52-60.
[17] Ibid pp. 62-63.

THE ARGUMENTS

The CIR contends that Dominium Realty have recognized gain on exchange of assets in their financial statement as a result of the Deed of Absolute Sale between Dominium Realty and FLRI and the subscription agreement executed by Dominium Realty and Tallyhoe Manufacturing Co. Inc., to be renamed as PMFTC, Inc.; that Dominium Realty has not presented a specific ruling that applies to their transaction, hence the said gain on exchange of assets is subject to Income Tax pursuant to Section 27 of the Tax Code, VAT pursuant to Section 106, and DST pursuant to Sections 196 and 175 of the Tax Code; that since Dominium Realty failed to report their receipt of income in an amount exceeding thirty percent (30%) of that declared per VAT Return, the period of prescription is within ten (10) years after the discovery of the falsity pursuant to Section 222(a) of the Tax Code; and Dominium Realty should have secured first a BIR Ruling confirming that the transaction is a tax-free exchange under Section 40(C)(2) of the Tax Code.

On the other hand, Dominium Realty argues that the CIR's arguments are mere reiterations of his previous submissions that were already addressed by the Court; that Dominium Realty and FLRI executed a Deed of Transfer on the same day when the Deed of Absolute Sale was executed; that Dominium Realty and FLRI resolved to enter into an exchange transaction, hence, they executed the "amendatory Deed of Transfer"; that the subsequent acts of the parties points to the fact that the transaction was not a sale of assets but was a tax-free exchange transaction; and, that Dominium Realty is not obliged to first secure a BIR Ruling confirming that the transaction is a tax-free exchange.

THE RULING OF THE COURT *EN BANC*

Timeliness of the Petition

On April 11, 2017, the CIR received the Decision of the Court in Division. On April 24, 2017, the CIR filed a Motion for Reconsideration[18] of the said Decision. On August 17, 2017, the Court in Division issued the assailed Resolution denying the CIR's motion. Said Resolution was received by the CIR on August 30, 2017.

From receipt of the said Resolution on August 30, 2017, the CIR has until September 14, 2017 within which to file the Petition for Review. On September 14, 2017, the CIR filed by registered mail the instant Petition for Review. Hence, this Petition for Review was timely filed.

[18] Docket, CTA Case No. 8887, pp.706- 708.

The Court shall now proceed to determine the merits of the Petition for Review.

After a careful review of the CIR's arguments and the records of the case, the Court *En Banc* finds no reason to reverse the assailed Decision and assailed Resolution of the Court in Division. The records of the case show that the Court in Division had fully and exhaustively resolved the issues raised in the petition. The Court *En Banc* notes that the arguments presented herein are a mere rehash, in fact, quoted verbatim, of the arguments offered by the CIR in his Answer and Memorandum before the Court in Division. Furthermore, the CIR failed to state any specific error committed by the Court in Division in the assailed Decision and Resolution. Nonetheless, the Court *En Banc* shall pass upon petitioner's arguments.

The assessments on deficiency Income Tax, deficiency VAT and deficiency DST should be cancelled

The CIR insists that the deficiency Income Tax assessment in the amount of ₱86,102,942.64 should be upheld since petitioner recognized a gain on exchange of assets in its 2010 Financial Statements in the amount of ₱183,144,371.00. Consequently, petitioner is also liable to pay deficiency VAT in the amount of ₱39,836,303.87, and deficiency DST in the amount of ₱5,669,034.20.

This argument is without merit. An in depth examination of the transactions involved in this case shows that they cannot be considered sales of assets of the subject corporation but merely stock subscriptions. Hence, no gain was derived from the transactions. This was aptly discussed in the assailed Decision:[19]

> "Section 40(C)(2) of the 1997 NIRC, as amended, provides as follows:
>
> > "**SEC. 40. *Determination of Amount and Recognition of Gain or Loss.* –**
> >
> > xxx xxx xxx
> >
> > (C) *Exchange of Property.* –
> >
> > (1) *General Rule.* - Except as herein provided, upon the sale or exchange of property, the

[19] Decision, pp. 16 -24, Citations omitted.

entire amount of the gain or loss, as the case may be, shall be recognized.

(2) *Exception.* - No gain or loss shall be recognized if in pursuance of a plan of merger or consolidation –

(a) A corporation, which is a party to a merger or consolidation, exchanged property solely for stock in a corporation, which is a party to the merger or consolidation; or

(b) A shareholder exchanges stock in a corporation, which is a party to the merger or consolidation, solely for the stock of another corporation also a party to the merger or consolidation; or

(c) A security holder of a corporation, which is a party to the merger or consolidation, exchanges his securities in such a corporation, solely for stock or securities in another corporation, a party to the merger or consolidation.

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 corporation of which as a result of such exchange said person, alone or together with others, not exceeding four (4) persons, gains control of said corporation: Provided, That stocks issued for services shall not be considered as issued in return for property." *(Emphasis supplied)*

The term "control" is defined as "ownership of stocks in a corporation possessing at least fifty-one percent (51%) of the total voting power of all classes of stocks entitled to vote.

From the above provision, the requisites for the non-recognition of gain or loss are: (a) the transferee is a corporation; (b) the transferee exchanges its shares of stock for property/ies of the transferor; (c) the transfer is made by a person, acting alone or together with others, not exceeding four (4) persons; and, (d) as a result of the exchange the transferor, alone or together with others, not exceeding four (4), gains control of the transferee.

After a careful study and analysis of the case, the Court found petitioner's exchange transactions with FLRI and PMFTC Inc. satisfied all of the above requisites.

1.1 Tax-free exchange with FLRI

As can be gleaned from the General Informal Sheet, filed by FLRI with the SEC on June 3, 2010, FLRI is a domestic corporation. Records show that petitioner, together with FTC, PPC, NTRCI, and ORI, transferred several parcels of land in exchange for FLRI's shares of stocks. Petitioner, for its part, transferred its title and ownership over the following four (4) parcels of land, in exchange for shares in FLRI as evidenced by the Deed of Transfer executed by petitioner and FLRI on February 25, 2010:

TCT No.	Area (Sq. M.)	Book Value	Fair Value	Difference Between Book Value and Fair Value
N-30568	17,512	₱325,348.91	₱78,804,000.00	
N-34155	6,491	258,998.84	29,209,500.00	
N-341156	8,047		36,211,500.00	
N-34157	2,519		11,335,500.00	
TOTAL		**₱584,347.75**	**₱ 155,560,500.00**	**₱ 154,976,152.25**

FLRI has an authorized capital stock of ₱96,000,000.00 consisting of 960,000 common shares with a par value of one hundred pesos (₱100.00) per share.

The transferors are the existing shareholders of FLRI prior to the exchange. The capital structure of FLRI prior to the exchange is as follows:

Subscriber	No. of Shares	% of Ownership	Amount Subscribed	Amount Paid
Fortune Tobacco Corporation	83,575	34.8222%	8,357,500	2,089,375
Parity Packaging Corp	7,380	3.0749%	738,000	184,5000
Dominium Realty & Construction Corporation	3,615	1.5062%	361,500	90,375
Northern Tobacco Redrying Co., Inc.	1,430	0.5958%	143,000	35,750
Orecia Realty, Inc.	144,000	59.99989%	14,400,000	3,600,000
Harry C. Tan	1	0.0004%	100	100
Lucio K. Tan	1	0.0004%	100	100
Christopher Nelson	1	0.0004%	100	100
Varinia ELero	1	0.0004%	100	100
Raymond Miranda	1	0.0004%	100	100
Total	**240,005**	**100%**	**₱24,000,500**	**₱ 6,000,500**

The aforesaid capital structure reveals that the transferors are the controlling stockholders of FLRI by owning 99.998% of its total voting stocks.

After the completion of the exchange, the capital structure of FLRI is as follows:

Subscriber	No. of Shares	% of Ownership	Amount Subscribed
Fortune Tobacco Corporation	334,295	34.8224%	33,429,500
Parity Packaging Corp	29,522	3.0752%	2,952,200
Northern Tobacco Redrying Co., Inc.	5,722	0.5960%	572,200
Dominium Realty & Construction Corporation	14,459	1.5062%	1,445,900
Orecia Realty, Inc.	575,997	59.9997%	57,599,700
Harry Tan	1	0.0001%	100
Lucio Tan	1	0.0001%	100
Chris Nelson	1	0.0001%	100
VariniaElero	1	0.0001%	100
R. Miranda	1	0.0001%	100
Total	**960,000**	**100%**	**₱ 96,000,000**

It can be gleaned from the above tables that petitioner's number of shares increased from 3,615 to 14,459, which resulted in an increase of 10,844 common shares. These 10,844 shares are evidenced by the Subscription Agreement between petitioner and FLRI. Also presented is the Share Certificate from FLRI, which was signed on June 10, 2010, certifying that petitioner is the owner of 14,459 shares.

The result of the transfer of assets in exchange for new additional shares and payment of unpaid original subscriptions of stock is that the transferors continue to collectively control FLRI by owning 99.9995% of its total voting stocks.

1.2 Tax-free exchange with PMFTC Inc.

xxx xxx xxx

Petitioner, together with four (4) other corporations, namely, FTC, PMPMI, PPC and NTRCI exchanged assets and liabilities for the shares of stock of PMFTC, Inc. which resulted to gaining control of the latter.

As indicated in the Deed of Transfer entered into by petitioner and PMFTC Inc. and in the Application and Joint Certification or BIR Form No. 1927 filed for the subject transactions, petitioner's contributions to the exchange consisted of the following:

Transferor/ Registered Owner	**Nature**	**Tax Declaration No.**	**Original/ Adjusted Basis**	**Higher of Zonal Value or Assessed Value in case of Land; Higher of Assessed Value or FMV in case of improvements**	**Transfer Value (value of Transferee -shares received in the exchange)**
1) Real Property					
Dominium Realty & Construction Corp. Building		E-0018-108012/E-00180126612/E-0018-125813	₱1,699,406.09	₱29,958,000.00	₱237,000.00

Transferor/ Registered Owner	**Nature**	**Investee Company**	**Original/ Adjusted Basis**	**Transfer Value [value of Transferee-shares received in the exchange]**
2) Shares of Stock				
Dominium Realty & Construction Corp.	Common Shares	Fortune Landequities and Resources, Inc.	₱564,347.75	₱1,238,000.00
3) Others				

Transferor/ Registered Owner	**Nature**	**Investee Company**	**Original/ Adjusted Basis**	**Transfer Value [value of Transferee-shares received in the exchange**
Dominium Realty & Construction Corp.	Prepaid Expenses	₱444,934.75		₱4,000.00

With the transfer, petitioner's original subscription of 370 shares with par value of ₱370,000.00 increased to 1,480 shares with par value of ₱1,480,00.00. Petitioner presented the Share Certificate from PMFTC, Inc., signed February 25, 2010, certifying that petitioner is the owner of 1,480 Class "A" common shares.

Prior to the transfer, petitioner together with the other four (4) transferors are the controlling stockholders of PMFTC Inc. by owning 99.995% of the voting stocks of PMFTC Inc.:

Subscriber	**No. of Voting Shares**	**% of Ownership in Voting Shares**	**Amount Subscribed**	**Amount Paid**
Fortune Tobacco Corporation	123,977	49.5936%	₱ 123,977,000.00	₱30,994,250.00

Philip Moris Philippines	124,988	49.9980%	124,988,000.00	31,247,000.00
Parity Packaging Corporation	535	0.2140%	535,000.00	133,750.00
Dominium Realty & Construction Corporation	370	0.1480%	370,000.00	92,500.00
Northern Tobacco Redrying Co., Inc.	105	0.0420%	105,000.00	26,250
Lucio Tan	1	0.0004%	1,000.00	1,000.00
Carmen Tax	1	0.0004%	1,000.00	1,000.00
Harry Tan	1	0.0004%	1,000.00	1,000.00
Lucio K. Tan	1	0.0004%	1,000.00	1,000.00
Michael Tan	1	0.0004%	1,000.00	1,000.00
Chris Nelson	1	0.0004%	1,000.00	1,000.00
Douglas Worth	1	0.0004%	1,000.00	1,000.00
Mitchell Gault	1	0.0004%	1,000.00	1,000.00
Raymond Miranda	1	0.0004%	1,000.00	1,000.00
Varinia Elero	1	0.00045	1,000.00	1,000.00
Vincent Nguyen	1	0.0004%	1,000.00	1,000.00
Total	**249,986**	**100.0000%**	**₱249,986,000.00**	**₱62,504,750.00**

After the transfer, the transferor continued to collectively control PMFTC Inc. by owning 99.9988% of its total voting stock as shown below:

Subscriber	**No. of Voting Shares**	**% of Ownership in Voting Shares**	**Amount Subscribed and Paid**
Fortune Tobacco Corporation	495,854	49.5954%	P 495,854,000.00
Philip Morris Philippines	499,895	49.9995%	499,895,000.00
Parity Packaging Corporation	2,140	0.2140%	2,140,000.00
Dominium Realty & Construction Corporation	1,480	0.1480%	1,480,000.00
Northern Tobacco Redrying Co., Inc.	420	0.420%	420,000.00
Lucio Tan	1	0.0001%	1,000.00
Carmen Tan	1	0.00015	1,000.00
Harry Tan	1	0.0001%	1,000.00
Luicio K. Tan	1	0.0001%	1,000.00
Michael Tan	1	0.0001%	1,000.00
Chris Nelson	1	0.0001%	1,000.00
Douglas Worth	1	0.00015	1,000.00
Mitchell Gault	1	0.0001%	1,000.00
Raymond Miranda	1	0.0001%	1,000.00
Varinia Elero	1	0.0001%	1,000.00
Vincent Nguyen	1	0.0001%	1,000.00
Total	**999,800**	**100.0000%**	**₱ 999,800,000.00**

In fine, petitioner was able to sufficiently prove that the subject exchange transactions are tax-free pursuant to Section 40 (C)(2) of the NIRC of 1997, as amended.

Moreover, as correctly pointed out by petitioner, the subject transactions are in the nature of stock subscription and not sales of assets. *xxx*

In the instant case, petitioner entered into an exchange transaction with FLRI, whose shares of stocks were, thereafter, assigned to PMFTC Inc. Thus, there was no sale since petitioner's assets were only transformed into another form of asset. The assets merely changed from land, building, etc. to one of an intangible asset – shares of stock. Since the subject transactions do not constitute sales, it necessarily follows that the same are not subject to income tax.

As stated in the Details of Discrepancies, the basis of respondent in assessing petitioner was derived from the latter's own declaration contained in the Audited Financial Statements recognizing "Gain on Exchange of Assets" as part of its "Accumulated Profit" account. Petitioner reported "Gain on the Exchange of Assets" not to recognize income but only to present the fair value of its assets as of a certain period in accordance with the Philippine Accounting Standards (PAS) 16. This was disclosed in Notes 7 and 12 to the AFS, where for purposes of booking up the shares of stock received on account of the transfer of assets, such shares were valued at fair market value of the assets (land, building) given up. What was compared for purposes of determining the "gain" was the historical cost of the assets (land, building) given up as against the fair market value of the same. This is mere appraisal increase in the recorded value of the asset given up in the exchange and not actual income, as when the shares of stocks received in the exchange have higher value than that of the asset given up.

Even assuming that the subject transactions are taxable, petitioner even suffered loss if the appraised value of the assets given were compared against the par value of the shares of stocks acquired.

The assessed "Gain on Exchange of Assets" is merely a theoretical gain considering that petitioner did not actually or constructively receive said gain. Though reflected in petitioner's books as gain, it is, however, an unrealized gain for purposes of computing the income tax. In order that the same may be subjected to income tax, such income must be realized or received during the taxable year.

> Clearly, petitioner's transfer of assets in exchange for shares in FLRI and PMFTC Inc. qualifies as tax-free exchanges and need not require prior BIR ruling in order that the same may be exempted from income tax. Accordingly, respondent's deficiency income tax assessment on the alleged "Gain on Exchange of Assets" of ₱183,144,371.00 should be cancelled."

In the computation of deficiency income tax liability of Dominium Realty for taxable year 2010, the CIR disallowed Dominium Realty's tax credits amounting to ₱392,227.78 on the basis that the same were carried-over and credited against the taxes due for the succeeding year pursuant to Section 76 of the NIRC of 1997, as amended.

The Court *En Banc* agrees with the finding of the Court in Division that it is improper for the CIR to deduct the amount of ₱392,227.78 because any tax benefit derived by petitioner from the carry-over thereof may be claimed in the succeeding year 2011. Hence, the deficiency Income Tax assessments should be cancelled.

Anent the deficiency VAT assessment in the amount of ₱39,836,303.87, the Court *En Banc* finds the same improper because the transfers of properties in exchange for controlling shares in FLRI and PMFTC, Inc. do not constitute sales transactions but merely stock subscriptions. As previously stated, the subject transactions do not constitute sales. Hence, the deficiency VAT assessment should likewise be cancelled.

As regards the deficiency DST in the amount of ₱5,669,034.20, Dominium Realty was assessed for the said tax liability because it did not present a specific BIR ruling as to the non-taxability of its exchange transactions with FLRI and PMFTC, Inc.

The Court *En Banc* agrees with the finding of the Court in Division that the deficiency DST assessment on Dominium Realty should be cancelled. The need to secure a prior BIR ruling is not a requirement to avail the tax exemption. As correctly stated in the assailed Decision:[20]

> 'Section 199 of the NIRC of 1997, as amended by Section 9 of Republic Act No. 9243, explicitly exempts from DST transfers of properties by virtue of tax-free exchanges under Section 40(C)(2) of the NIRC of 1997, as amended, to wit:

[20] Decision, pp. 26-27, Citations omitted.

"SEC. 199. Documents and Papers Not Subject to Stamp Tax.- The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:

xxx xxx xxx

(m) Transfer of property pursuant to Section 40(C)(2) of the National Internal Revenue Code of 1997, as amended.'

The exemption on transfer of property pursuant to Section 40(C)(2) referred to above pertains to the DST due on the deed transferring the property.

On the other hand, the original issuance of shares of stocks in exchange of the said property is subject to the DST pursuant to Section 174 of the NIRC of 1997, as amended. However, it is the transferee corporations, i.e., FLRI and PMFTC Inc., which are liable to pay the DST, and not the transferor-petitioner. For easy reference, Section 174 is quoted herein below:

'SEC. 174. Stamp Tax on Original Issue of Shares of Stock. – On every original issue, whether on organization, reorganization or for any lawful purpose, of shares of stock by an association, company or corporation, there shall be collected a documentary stamp tax of One peso (₱1.00) on each Two hundred pesos (₱200), or fractional part thereof, of the par value, of such shares of stock: *Provided*, That in the case of the original issue of shares of stock without par value, the amount of the documentary stamp tax herein prescribed shall be based upon the actual consideration for issuance of such shares of stock: *Provided, further,* That in the case of stock dividends, on the actual value represented by each share.'

Lastly, the Court En Banc finds unnecessary to discuss the issue of prescription considering that based on the above finding, Dominium Realty is exempt from paying income tax, VAT, and DST.

There being no new matters or issues raised in the Petition for Review before this Court and there being no reversible error committed by the Court in Division, this Court finds no cogent reason to disturb the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The assailed Decision dated April 6, 2017 and the assailed Resolution dated August 17, 2017 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice