REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 40(C)(2)&(6)(b), NIRC; RR 18-01
BIR Ruling No. 075-2018
S40- 0301-2020
JUN 08 2020

GOLDEN SQUARE PROPERTIES & DEV. CORP.
72-A Malakas St., Quezon City

Attention: **Felicidad Ng**
President

Gentlemen:

This refers to your letter dated February 3, 2014 requesting confirmation that the merger between PRICEWELL INDUSTRIES, INC. (PRICEWELL), as the absorbed corporation, and GOLDEN SQUARE PROPERTIES & DEV. CORP., (GOLDEN SQUARE) as the surviving corporation, is a tax-free merger pursuant to Section 40(C)(2), in relation to Section 40(C)(6)(b) of the National Internal Revenue Code of 1997, as amended (the "Tax Code").

PRICEWELL is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) under SEC Registration No. [redacted] and Tax Identification Number (TIN) [redacted]. Its primary purpose of incorporation is to manufacture, import, export, buy, sell, deal in goods, wares and merchandise of every class and description, such as doors and other wood products, as well as the by-products thereof.

GOLDEN SQUARE, on the other hand, is also a domestic corporation registered with SEC under SEC Registration No. [redacted] and TIN [redacted] Its primary purpose of incorporation is to engage in buying, selling and developing real estate of all kinds.

Considering that PRICEWELL and GOLDEN SQUARE are related companies, their respective Boards of Directors deem it advisable to merge the companies to the end that greater efficiency and economy in management and operations may be accomplished to the advantage and welfare of these companies and their respective stockholders, pursuant to the provisions of the Corporation Code.

The Articles of Merger and the Plan and Agreement of Merger were authorized, approved, ratified, and confirmed by a majority of the Board of Directors of PRICEWELL at its meeting held on November 23, 2013, and by the majority of the Board of Directors of GOLDEN SQUARE at its meeting held on November 23, 2013.

The Articles of Merger and the Plan and Agreement of Merger were authorized, approved, ratified, and confirmed by the affirmative vote of the shareholders of PRICEWELL ("PRICEWELL Shareholders") representing at least 2/3 of the outstanding capital stock of PRICEWELL at a stockholders' meeting held on November 5, 2012, and the affirmative vote of the shareholders of GOLDEN SQUARE ("GOLDEN SQUARE Shareholders") representing at least 2/3 of the outstanding capital stock of GOLDEN SQUARE at a stockholders' meeting held on November 5, 2012.

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The SEC approved the Articles of Merger and the Plan and Agreement of Merger on November 21, 2013, by virtue of which the SEC issued a Certificate of Filing of Articles and Plan of Merger. Under the approved Plan of Merger, the merger shall become effective on the date of the approval of the SEC. Accordingly, the merger will take effect on November 21, 2013 ("Effective Date of Merger").

Pursuant to the Plan of Merger, GOLDEN SQUARE will issue a total of 146,460 shares to the shareholders of PRICEWELL.

The authorized capital stock and issued and outstanding capital stock of each of PRICEWELL and GOLDEN SQUARE as set forth in their respective Audited Financial Statements filed with the SEC together with the Articles of Merger and the Plan and Agreement of Merger, are as follows:

PRICEWELL (Prior to the Effective Date of Merger)

Type of Share	Authorized Capital Stock	Issued and Outstanding Shares	Par Value	Amount
Common	shares		P	P

GOLDEN SQUARE (Prior to the Effective Date of Merger)

Type of Share	Authorized Capital Stock	Issued and Outstanding Shares	Par Value	Amount
Common	shares		P	P

Beginning on the Effective Date of Merger, the authorized capital stock and issued and outstanding capital stock of GOLDEN SQUARE are as follows:

GOLDEN SQUARE (Beginning the Effective Date of Merger)

Type of Share	Authorized Capital Stock	Issued and Outstanding	Par Value	Amount
Common	shares	shares	P	P

The assets and liabilities of PRICEWELL, per its Statement of Condition as of November 21, 2013, are as follows:

ASSETS		**LIABILITIES**	
	Original/Adjusted Basis		
Cash		**Advances from Stockholders**	

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Property and Equipment			
TOTAL ASSETS	**P.**	**TOTAL LIABILITIES**	**P**

Based on the foregoing representations, you now request for a ruling that the aforesaid merger of PRICEWELL and GOLDEN SQUARE qualifies for non-recognition of gain or loss for income tax purposes in accordance with Sections 40 (C) (2) in relation to 40(C)(6)(b) of the Tax Code and as such, neither PRICEWELL nor GOLDEN SQUARE will be subject to income tax, withholding tax, or capital gains tax on the transfer.

In reply thereto, please be informed as follows:

A. The foregoing merger of PRICEWELL and GOLDEN SQUARE is a merger within the contemplation of Section 40 (C) (2) (a), in relation to Section 40 (C) (6) (b) of the Tax Code, because GOLDEN SQUARE shall acquire/assume all the assets and liabilities of PRICEWELL, the same being undertaken for a *bona fide* business purpose and not for the purpose of escaping the burden of taxation.

Accordingly, no gain or loss shall be recognized by GOLDEN SQUARE, as the transferee, on its receipt of the asset and liabilities of PRICEWELL pursuant to and as a consequence of the merger. The substituted bases of the properties transferred by PRICEWELL to GOLDEN SQUARE shall be as follows:

The basis of the shares of stocks to be received by PRICEWELL Shareholders 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. (Sec. 40 (C) (5) (a) of the Tax Code of 1997, as amended)

The basis of the property transferred in the hands of the transferee (GOLDEN SQUARE) shall be the same as it would be in the hands of the transferor (PRICEWELL) increased by the amount of the gain, if any, recognized to the transferor (PRICEWELL) on the transfer. (Sec. 40 (C) (5) (b), *supra*)

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. (Sec. 40 (C) (4) (b), *supra*)

The substituted bases of the properties transferred by PRICEWELL to GOLDEN SQUARE 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 allocated shares and the substituted basis of the properties transferred by PRICEWELL shall be as follows:

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ASSETS	AMOUNT	ALLOCATED LIABILITIES	ALLOCATED SHARES	SUBSTITUTED BASIS
Cash	[redacted]		[redacted]	[redacted]
Property and Equipment	[redacted]	[redacted]	[redacted]	[redacted]
TOTAL	P[redacted]	P[redacted]	[redacted]	[redacted]

B. 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 an act of liberality *(animus donandi)*. Clearly, there is no intention on the part of any of the parties to the merger-PRICEWELL to donate to GOLDEN SQUARE its assets since the transaction is purely for legitimate business purpose. Thus, the aforesaid merger will not be subject to donor's tax since there is no intention to donate, and the transaction is a bona fide merger effected solely for business reasons.

C. 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 No. 9243, in relation to Section 40 (C) (2) of the Tax Code, as amended.

The surrender of shares of stock held by PRICEWELL Shareholders in exchange for the shares of stock of GOLDEN SQUARE as a result of the merger is not a transaction separate and distinct from the merger, but a mere continuation of the initial transaction which was previously consummated, and for which the required DST will be paid. Hence, the surrender by the PRICEWELL Shareholders of their PRICEWELL Shares, pursuant to the merger, is not subject to DST.

DST at the rate of P[redacted][1] on each P[redacted] par value, or fractional part thereof, shall be imposed on the original issuance of shares by GOLDEN SQUARE to the stockholders of PRICEWELL in accordance with Section 174 of the Tax Code, as amended.

However, in order that the above merger can be considered as falling under Section 40 (C) (2) and (6) (b) of the Tax Code of 1997, the parties to the merger should comply with the following requirements set forth under Revenue Regulations 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;

[1] Old DST rate was used since the transaction took place prior to the effectivity of RA 10963 or TRAIN Law.

2. A complete statement of all cost or other basis of all property, including all stocks or securities, transferred incident to the plan;

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 of 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;

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, 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 stock or securities and other property or money received from the exchange, including any liabilities assumed upon the exchange, and any liabilities 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 the 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 tax-free exchange 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 persons shall include as a note to their respective audited financial statements for the taxable year in which the exchange occurred a statement to the effect that they hold such assets/shares acquired in a tax-free exchange and the year in which such exchange 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 of accounts the mandatory accounting entries stated in Annex "A" hereof, pursuant to Revenue Memorandum Order No. 17-2016.

The parties shall, cause to annotate at the back of the Transfer Certificates of Title and Certificates of Stock, the date the deed of exchange was executed, the original or historical cost

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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 exchange; provided however, that any violation by the Corporate Secretary of this condition shall be penalized under Section 275 of the same Code. It is further 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 transferee corporation.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will 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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