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

Quezon City

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| Section 40(C)(2) & (6)(b), Tax Code of 1997, as amended |
| BIR Ruling No. 214-12<br>BIR Ruling No. 075-18 |
| S40-0330-2020 |
| JUN 16 2020 |

**STEPAN PHILIPPINES QUATERNARIES, INC.**
Cocochem Agro-Industrial Park,
San Antonio, San Pascual
Batangas

Attention: **MR. VOLTAIRE B. ORPILLA**
*Regional Finance Director*

**Gentlemen:**

This refers to your letters dated November 24, 2016 and February 9, 2018 requesting for a ruling that the proposed corporate restructuring of Stepan Philippines, Inc. ("SPI") and Stepan Philippines Quaternaries, Inc. ("SPQI") in which SPQI acquired substantially all the assets of SPI, qualifies as a tax-free merger under Section 40(C)(2) in relation to Section 40(C)(6)(b), both of the National Internal Revenue Code (NIRC) of 1997, as amended.

It is represented that SPQI is a corporation duly organized and existing under Philippine laws, with Tax Identification Number ("TIN") [redacted]; that it has an authorized capital stock of [redacted] Pesos (PhP [redacted]) divided into [redacted] ([redacted]) common shares of stock, with a par value of [redacted] Pesos (PhP [redacted]) per share; that the amount of capital stock of SPQI which has actually been subscribed and paid is [redacted] Pesos (PhP [redacted]); and that SPQI is a wholly-owned subsidiary of SPI. It is also represented that SPI is a corporation duly organized under Philippine laws; that it has an authorized capital stock of [redacted] Pesos (PhP [redacted]) divided into [redacted] ([redacted]) common shares of stock, with a par value of [redacted] (PhP [redacted]) per share; and that all of SPI's authorized capital stock are fully-subscribed and paid. Both SPQI and SPI were registered with the Philippine Economic Zone Authority ("PEZA") as Ecozone Export Enterprise and were both located in Cocochem Agro-Industrial Park, San Antonio, San Pascual, Batangas.

To permit a more productive use of the properties and facilities of SPI and SPQI, and further considering that SPQI is a wholly-owned subsidiary of SPI, the board of directors of both companies have determined that a corporate reorganization of both companies, in which SPQI will acquire substantially all the assets of SPI, will be mutually beneficial to both companies and will result to several advantages from their combined operations, such as effective and optimum utilization of their resources, properties and facilities and rationalization of their respective structures.

It also appears that the corporate reorganization of the two (2) corporations was pursued under the following terms and conditions:

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1. Under the terms of the *Deed of Assignment* dated 30 September 2015, SPQI agreed to acquire substantially all the assets of SPI. In exchange thereto, SPQI shall issue shares of stock in favor of SPI based on the appraised value of the net assets to be transferred; and

2. Pursuant to the *Addendum to the Deed of Assignment* dated 04 November 2015, SPI transferred and conveyed the following assets, which constitute more than eighty percent (80%) of the assets of SPI, in favor of SPQI:

| **Asset Type** | **Net Book Value** |
|---|---|
| Cash | PhP [redacted] |
| Inventories | [redacted] |
| Prepaid expenses and other current assets | [redacted] |
| Property, plant and equipment – net | [redacted] |
| **TOTAL NET BOOK VALUE** | [redacted] |

3. In exchange for the assets transferred by SPI to SPQI (the "**Transferred Assets**"), SPQI issued [redacted] ([redacted]) shares in favor of SPI, with an aggregate par value of [redacted] Pesos (PhP [redacted]). The excess of the book value of the Transferred Assets over the aggregate par value of the SPQI shares issued was booked as additional paid-in capital of SPI in SPQI.

You now request for confirmation of your opinion that:

1. The transfer and conveyance by SPI of substantially all of its assets to SPQI in exchange solely for shares of stock of SPQI, the same being undertaken for *bona fide* purposes and not solely for the purpose of escaping the burden of taxation, is a "merger" within the purview of Section 40(C)(2) in relation to Section 40(C)(6)(b) of the NIRC, as amended. Thus, for income tax purposes, no gain or loss shall be recognized by SPI from the transfer of its respective assets to SPQI.

The basis of the SPI assets received by SPQI shall be the same as the basis of such assets in the hands of SPI.

2. The issuance of SPQI shares of stock to SPI in exchange of the assets transferred to SPQI shall be subject to the documentary stamp tax pursuant to Section 175 of the Tax Code, as amended, based on the par value of the shares of stock issued.

3. The transfer of property (whether real or personal property) from SPI to SPQI shall not be subject to documentary stamp tax considering that Section 199(m) of the Tax Code, as amended, specifically exempts from documentary stamp tax transfers of property pursuant to Section 40(C)(2) of the same Code.

4. The transfer of assets by SPI to SPQI as a consequence of the merger shall not be subject to value-added tax ("VAT") pursuant to Section 4.106-8 (b)(3) of Revenue Regulations No. 16-2005, as amended by Revenue Regulations No. 04-2007 and Revenue Memorandum Ruling No. 01-02.

In reply thereto, please be informed as follows:

1. The foregoing transfer of substantially all the assets of SPI to SPQI is a merger within the purview of Sections 40(C)(2) in relation to Section 40(C)(6)(b) of the NIRC, as amended, because SPQI will acquire such assets and accompanying liabilities of SPI and said merger was undertaken for a *bona fide* business purpose.

Accordingly, your opinion that no gain or loss shall be recognized both to the transferor and the transferee corporation on the transfer by SPI of substantially all of its assets and accompanying liabilities to SPQI pursuant to a merger under Sections 40 paragraphs (C)(2) and (C)(6)(b) of the NIRC, as amended, is hereby confirmed.

The basis of the shares of stocks to be received by SPI 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 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. (Section 40(C)(5)(a) of the NIRC, as amended)

On the other hand, the basis of the assets to be received by SPQI, listed as Annex "A" hereof, shall be the same as it would be in the hands of the transferor, SPI. The substituted bases of the properties transferred by the SPI to SPQI 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.

Thus, the substituted basis of the assets received by SPQI from SPI shall be:

| Assets | Amount | Allocated Liabilities[1] | Allocated Shares | Substituted Basis |
|---|---|---|---|---|
| Cash | [redacted] | | [redacted] | [redacted] |
| Inventories | [redacted] | 0 | [redacted] | [redacted] |
| Prepaid Expenses and other current assets | [redacted] | 0 | [redacted] | [redacted] |
| Property, plant and equipment | [redacted] | 0 | [redacted] | [redacted] |
| TOTAL | [redacted] | 0 | [redacted] | [redacted] |

The liabilities of SPI, the transferor, as of August 31, 2015, are as follows:

| | |
|---|---|
| **Current Liabilities** | |
| Accounts payable and accrued expenses | P [redacted] |
| Due to related parties | [redacted] |
| **Non-current Liabilities** | |
| Due to related parties-net of current portion | [redacted] |
| Accrued retirement benefits | [redacted] |
| **Total Liabilities** | P [redacted] |

2. The issuance of [redacted] ([redacted]) shares by SPQI to SPI pursuant to the merger shall be subject to DST on original issuance of shares of stock under Section 174 of the NIRC. No DST shall be due on the surrender by SPI stockholders of their shares for cancellation.

[1] Per Deed of Assignment dated September 30, 2015, no liabilities are assumed by SPQI

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3. No DST shall be imposed on the transfer of assets to, and absorption thereof by, SPQI as a result of the merger under Section 199 (m) of the NIRC, as amended, which provides:

> "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 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."

4. Section 105 of the NIRC, as amended, identifies the persons who are subject to VAT, as follows:

> "SEC. 105. *Persons Liable.* – Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code."

On the other hand, Section 4.106-8 (b) (3) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007, specifically excludes mergers or consolidations from being subject to output tax. Thus,

> "SEC. 4.106-8. *Change or Cessation of Status as VAT-registered Person.*
>
> xxx xxx xxx
>
> (b) *Not subject to output tax.*
>
> The VAT shall not apply to goods or properties existing as of the occurrence of the following:
> (1) ...
> (2) ...
> (3) Merger or consolidation of corporations. The unused input tax of the dissolved corporation, as of the date of the merger or consolidation, shall be absorbed by the surviving or new corporation."

The transfer of the tangible assets of SPI, which are not primarily held for sale or lease, to SPQI is not subject to VAT pursuant to Section 4.106-8(b)(3) of RR No. 16-2005, as amended by RR No. 4-2007, and will not result to any output tax.

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;

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(2) A complete statement of the cost or other basis of all properties, 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 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. Permanent 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 liability assumed on the exchange, or any liability to which any of the properties received were subject), in order to facilitate the determination of gain or loss from a subsequent disposition of such stock or securities and other property received from the exchange. (par. 9803-8, Prentice Hall 1963, ed., p. 9611)

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 both SPI and SPQI shall record in their respective books of accounts the mandatory accounting entries stated in Annex "B" 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 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 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 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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