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

Section 40(C)(2) and (6)(b) of the National Internal Revenue Code of 1997, as amended.
BIR Ruling No. 075-2018
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BDO CAPITAL & INVESTMENT CORPORATION
20th Floor, South Tower BDO Corporate Center,
7899 Makati Avenue, Makati City

Attention: **EDUARDO V. FRANCISCO**
President

Gentlemen:

This refers to your letter dated March 24, 2017, requesting confirmation of your opinion that the statutory merger among **BDO Capital & Investment Corporation ("BDO Capital")**, as the surviving corporation, with **BDO Elite Savings Bank, Inc. ("BDO Elite")** and **Banco De Oro Savings Bank, Inc. ("Banco De Oro Savings")**, as the absorbed 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 (NIRC) of 1997, as amended.

Background:

BDO Capital, with Taxpayer's Identification Number (TIN) [redacted] and Securities and Exchange Commission (SEC) Company Registration No. [redacted], is a corporation duly organized and existing under the laws of the Philippines having its principal place of business at the 20th Floor, South Tower, BDO Corporate Center, 7899 Makati Avenue, Makati City. It is authorized to engage in and conduct business as a full-service investment house.

On the other hand, BDO Elite, with TIN [redacted] and SEC Company Registration No. [redacted], is a banking corporation duly organized and existing under the laws of the Philippines having its principal place of business at the 14th Floor, Net Cube Center, 30th St. cor. 3rd Ave., Crescent Park, West Bonifacio Global City, Taguig City; while Banco De Oro Savings, with TIN [redacted] and SEC Company Registration No. [redacted], is a banking corporation duly organized and existing under the laws of the Philippines having its principal place of business at the 16th Floor, North Tower, BDO Corporate Center, 7899 Makati Avenue, Makati City. Both are authorized to carry on and engage in the business of savings and mortgage bank.

BDO Capital, BDO Elite, and Banco De Oro Savings deemed it necessary and advisable to merge the corporations into one, with BDO Capital as the surviving corporation, in order that greater efficiency and economy in the management and operations of the corporations may be achieved to their and their stockholders' advantage and welfare, considering that the corporations all own, hold, and manage various assets for the same beneficial owner. Thus, the majority of the Board of Directors of BDO Capital, BDO Elite, and Banco De Oro Savings in their respective meetings held on June 27, 2015 approved the Plan of Merger. The stockholders of BDO Capital, BDO Elite, and Banco De Oro Savings representing at least 2/3 of their

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outstanding capital stocks in their respective meetings held on July 22, 2015, also approved the said Plan of Merger.

On August 10, 2016, the SEC approved the Plan and Articles of Merger. Under the approved Plan and Articles of Merger, the merger shall become effective on the date when the Certificate of Merger shall have been issued and released by the SEC.

Also, pursuant to the Plan of Merger, BDO Capital will issue a total of shares to the shareholders of BDO Elite, and a total of shares to the shareholders of Banco De Oro Savings.

The authorized capital stock issued and outstanding capital stock of each of BDO Capital, BDO Elite, and Banco De Oro Savings 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:

BDO Capital

Type of Share	Authorized	Issued and Outstanding	Par Value	No. of Shares	Amount
Common					
Preferred	-	-	-	-	-

BDO Elite

Type of Share	Authorized	Issued and Outstanding	Par Value	No. of Shares	Amount
Common					
Preferred		-		-	-

Banco De Oro Savings

Type of Share	Authorized	Issued and Outstanding	Par Value	No. of Shares	Amount
Common					
Preferred	-	-	-	-	-

Beginning on the effective date of the merger and upon approval of its increase of authorized capital stock, the authorized capital stock and issued and outstanding capital stock of BDO Capital are as follows:

BDO Capital

Type of Share	Authorized	Issued and Outstanding	Par Value	No. of Shares	Amount
Common					
Preferred	-	-	-	-	-

Based on the foregoing representations, you now request for confirmation of the following:

1. The statutory merger of BDO Capital, BDO Elite, and Banco De Oro Savings qualifies for non-recognition of gain or loss for income tax

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purposes in accordance with Sections 40(C)(2) in relation to 40(C)(6)(b) of the NIRC of 1997, as amended. Therefore, no gain or loss shall be recognized by BDO Capital, BDO Elite, and Banco De Oro Savings on the transfer of all assets and assumption of liabilities pursuant to the Articles and Plan of Merger, and BDO Capital, BDO Elite, and Banco De Oro Savings will not be subject to income tax, withholding tax, or capital gains tax on the transfer.

2. The surrender by BDO Elite shareholders of their BDO Elite shares and the surrender by Banco De Oro Savings shareholders of their Banco De Oro Savings shares for cancellation pursuant to the merger is not subject to documentary stamp tax (DST).

   On the other hand, DST at the rate of P on each P par value, or fractional part thereof, shall be imposed on the original issuance of BDO Capital shares in favor of the shareholders of BDO Elite and Banco De Oro Savings as a consequence of the merger.

3. The transfer of assets by BDO Elite and Banco De Oro Savings to BDO Capital is not subject to donor's tax since there is no intention to donate on the part of BDO Elite and Banco De Oro Savings and that the merger was undertaken purely for legitimate business purposes.

4. The transfer of assets by BDO Elite and Banco De Oro Savings to BDO Capital pursuant to the merger is not subject to value-added tax (VAT).

5. Since the legal and beneficial ownership of excess creditable withholding taxes (CWT) were effectively transferred from BDO Elite and Banco De Oro Savings to BDO Capital as a consequence of the merger, BDO Capital as the surviving corporation is now entitled to exercise all the attributes of ownership over them. Hence, BDO Capital is entitled to carry forward and apply these excess creditable withholding taxes as credit against its Minimum Corporate Income Tax (MCIT) or regular corporate income tax liabilities.

6. Any excess MCIT of Banco De Oro Savings and BDO Elite shall be transferred and vested in BDO Capital on the effective date of merger and BDO Capital may carry forward and credit the excess MCIT of Banco De Oro Savings and BDO Elite against its regular corporate income tax liabilities for the three immediately succeeding taxable years reckoned from the date of payment of the MCIT by Banco De Oro Savings and BDO Elite pursuant to Section 27(E)(2) of the NIRC of 1997, as amended.

7. The accumulated unutilized Net Operating Loss Carry Over ("NOLCO") of Banco De Oro Savings and BDO Elite as the absorbed corporations are preserved, transferred to and vested in BDO Capital, as the surviving corporation, and may be carried over and claimed by BDO Capital as a deduction from its gross income pursuant to Section 34(D)(3) of the NIRC of 1997, as amended.

In reply thereto, please be informed as follows:

1. The merger of BDO Capital, BDO Elite, and Banco De Oro Savings is a merger within the contemplation of Section 40(C)(2), in relation to Section 40(C)(6)(b) of the NIRC of 1997, as amended, because BDO Capital shall acquire/assume all the assets and liabilities of BDO Elite and Banco De Oro Savings and the same is necessary and advisable and is to the advantage and welfare of the merging corporations and their respective stockholders since the corporations own, hold, and manage various assets for the same beneficial owner. Hence, the

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merger of BDO Capital, BDO Elite, and Banco De Oro Savings is being undertaken for a bona fide business purpose and not for the purpose of escaping the burden of taxation.

The merger of BDO Capital, BDO Elite, and Banco De Oro Savings qualifies for non-recognition of gain or loss for income tax purposes in accordance with Section 40(C)(2) of the NIRC of 1997, as amended, and that no gain or loss shall be recognized by BDO Elite and Banco De Oro Savings, as the transferors of all assets and liabilities, to BDO Capital pursuant to the Articles and Plan of Merger.

Accordingly, no gain or loss shall be recognized by BDO Capital, as the transferee, on its receipt of the assets and liabilities of BDO Elite and Banco De Oro Savings pursuant to and as a consequence of the merger.

The basis of the shares of stocks to be received by shareholders of BDO Elite and Banco De Oro Savings upon the exchange shall be the same as the basis of the properties, stocks or securities they exchanged, decreased by (1) the money they received, and (2) the fair market value of the other property/ies they 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 (BDO Capital) shall be the same as it would be in the hands of the transferors (BDO Elite and Banco De Oro Savings) increased by the amount of the gain, if any, recognized to the transferors 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 basis of the properties transferred by BDO Elite and Banco De Oro Savings to BDO Capital should strictly comply with the rule that cash and other cash items will be excluded from the computation of the adjusted basis 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 BDO Elite shall be as follows:

Assets	Amount	Allocated Liabilities	Allocated Shares	Substituted Basis
Due from other banks				
Financial Assets at Fair Value through profit or loss				
Available-for-sale Investments - net				
Receivables				
Other Resources				
Total				

[1] Sec. 40 (C)(5)(a) of the NIRC of 1997, as amended.
[2] Sec. 40 (C)(5)(b), supra
[3] Sec. 40 (C)(4)(b), supra

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Liabilities	Amount
Accrued Taxes and Other Expenses	
Due to Treasurer of the Philippines	
Total	

Whereas, the allocated shares and the substituted basis of the properties transferred by Banco De Oro Savings shall be as follows:

Assets	Amount	Allocated Liabilities	Allocated Shares	Substituted Basis
Due from Banko Sentral ng Pilipinas				
Due from other banks				
Financial Assets at Fair Value through profit or loss				
Available-for-sale Financial Assets				
Receivables				
Other Resources				
Total				

Liabilities	Amount
Accrued Expenses and Other Liabilities	

2. No DST is due on the surrender by BDO Elite shareholders of their BDO Elite shares and the surrender by Banco De Oro Savings shareholders of their Banco De Oro Savings shares for cancellation pursuant to the merger under Section 199 (m) of the NIRC of 1997, as amended by Republic Act (RA) No. 9243, in relation to Section 40 (C) (2) of the NIRC of 1997, as amended.

On the other hand, pursuant to Section 174 of the NIRC of 1997, as amended, DST at the rate of P   on each P   par value, or fractional part thereof, shall be imposed on the original issuance of shares by BDO Capital in favor of the shareholders of BDO Elite and Banco De Oro Savings as a consequence of the merger.

3. 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 - BDO Elite and Banco De Oro Savings to donate to BDO Capital their assets since the transaction is purely for a legitimate business purpose. Thus, the merger will not be subject to donor's tax since

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

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there is no intention to donate, and the transaction is a *bona fide* merger effected solely for business reasons.

4. The transfer of assets/properties of BDO Elite and Banco De Oro Savings to BDO Capital as a consequence of the merger is not subject to VAT pursuant to Section 105 of the NIRC of 1997, as amended. The transfer of assets/properties to effectuate a merger is not made in the course of business but by operation of law pursuant to the merger.

Furthermore, the assets/properties transferred by BDO Elite and Banco De Oro Savings to BDO Capital are mainly financial assets. These do not include goods or properties that are used in business, that are held for sale or for lease by the transferors, that are originally intended for sale or for use in the course of business, nor that are of any character or nature subject to VAT.

5. The excess and unutilized CWT of the absorbed corporations, BDO Elite and Banco De Oro Savings, as of the effective date of the merger, which form part of the assets to be transferred by the absorbed corporations to BDO Capital as a consequence of the merger, may be applied as a tax credit by BDO Capital against its income tax due for the taxable year 2016, the effective date of the merger being August 10, 2016, 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 absorbed corporations, BDO Elite and Banco De Oro Savings, as of the effective date of the merger shall be carried forward and credited against the regular corporate income tax due of the surviving corporation, BDO Capital, for the three (3) immediately succeeding taxable years pursuant to Section 27(E)(2) of the NIRC of 1997, as amended. Since the excess and unexpired MCIT of BDO Elite and Banco De Oro Savings are among the rights, privileges, property and/or interest of BDO Elite and Banco De Oro Savings, their excess and unexpired MCIT shall be transferred to and vested in BDO Capital on the effective date of the merger. Thus, BDO Elite and Banco De Oro Savings' excess and unexpired MCIT shall be carried forward and credited against the regular corporate income tax of BDO Capital subject to the three-year-carry-forward period reckoned from the date of payment of BDO Elite and Banco De Oro Savings of their MCIT.

7. It is to be emphasized, however, that the NOLCO under Section 34(D)(3) of the NIRC of 1997, as amended, and as implemented by Revenue Regulations (RR) No. 14-2001, of the absorbed corporations, BDO Elite and Banco De Oro Savings, if any, is not one of their assets that can be transferred and absorbed by the surviving corporation, BDO Capital, as this privilege or deduction can be availed of merely by the absorbed corporations. Accordingly, the tax-free merger does not cover the NOLCO of BDO Elite and Banco De Oro Savings that can be transferred and absorbed by BDO Capital.

However, in order that the above-described reorganization can be considered as merger under Section 40(C)(2) and (6)(b) of the NIRC of 1997, as amended, 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 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/s 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

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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 NIRC of 1997, as amended.

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 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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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

Individual Shareholder's Book

Investment in (transferee's name)	xxx.xx	
Investment in (name of dissolving corp.)		xxx.xx
Dividend Income (net of FWT on dividend)		xxx.xx

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 share) of (name of transferee) with par value of P______ per share.

Transferee/Surviving Corporation's Book

Investment in (issuing corp., for shares of stock)	xxx.xx	
PPE - Land & Improvement (for real props.)	xxx.xx	
Other Assets (as applicable)	xxx.xx	
Liabilities		xxx.xx
Capital Stock		xxx.xx
Additional Paid-In Capital		xxx.xx

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 share) of (name of transferee) with par value of P______ per share.

Balance Sheet Notes Entry

Individual Shareholder's Book

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______.

Transferee/Surviving Corporation's Book

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, investment/s, 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

Individual Shareholder's Book

Cash or Accounts Receivables	xxx.xx	
Investment in (name of transferee)		xxx.xx
Gain on Sale of Investment		xxx.xx

To record subsequent sale / transfer of investment acquired thru tax-free exchange

Current	xxx.xx	
Tax Payable		xxx.xx

Provision for Tax as follows:

	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, the tax rates used in the computation of Net Capital Gains Tax and Stock Transaction Tax at the time 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

Cash or Accounts Receivables	xxx.xx	
Investment in (name of issuing corp.) / PPE - Land & Improvement / Other Assets		xxx.xx
Gain on Sale of Property/ies*		xxx.xx

To record subsequent sale/transfer of investment/s acquired thru tax-free exchange

Current	xxx.xx	
Tax Payable		xxx.xx

Provision for Tax as follows:

	Tax Type	Tax Rate*	Multiply by	Amount
1)	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

	Tax Type	Tax Rate	Multiply by	Amount
1)	Withholding Tax - ONETT	1.5% to 6% per RR No. 6-2001	Fair Market Value (FMV) of the property/ies at the time of subsequent sale / transfer	xxx.xx
2)	Documentary Stamp Tax (DST)	1.5% for every P1,000 and fractional part thereof)		xxx.xx
3)	Value-Added Tax (VAT)	12%		xxx.xx

* Gain on sale of property/ies is subject to Normal Corporate Income Tax (NCIT)

* FMV at the time of subsequent sale / transfer refers to the selling price, zonal value or the value reflected in the tax declaration, whichever is highest.