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

Sec. 40(C)(2) & 40(6)(b); RR 18-01
BIR Ruling Nos. 214-12, 100-2017

S4OM-017-2022
JAN 17 2022

SGV & Co.
6760 Ayala Avenue
Makati City

Attention: **Atty. Fides A. Balili**
Principal, Tax Services

Gentlemen:

This refers to your letter dated March 6, 2016 requesting, on behalf of your clients, Toyota Manila Bay Corporation ("TMBC") and Toyota Cubao Incorporated ("TCI"), for confirmation of your opinion that the statutory merger of TCI, as the absorbed corporation, and TMBC, as the surviving corporation 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 of 1997, as amended ("Tax Code").

TCI is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines on January 19, 1989, with Securities and Exchange Commission (SEC) Registration No. and Tax Identification No. (TIN) having its principal office at 926 Aurora Boulevard, Cubao, Quezon City, Philippines. TCI's primary purpose is to purchase and sell, trade, exchange, or otherwise dispose of, import, export, indent, distribute, market, service, repair and generally to deal in and engage in any commerce relating to automobiles, trucks, tractors and any and all kinds of motor vehicles, and automobile products of every kind and description, motor vehicle parts, accessories, instruments, tools, supplies and equipment, as well as industrial and engineering products; to build, construct, erect, install, buy, lease or otherwise hold or own shops and other buildings, constructions and structures of whatever kind and character necessary, convenient, suitable or necessary thereto; in general, to do and perform any and all acts or work which may be necessary or advisable, related incidentally or directly, with the above business and object of this Corporation.

On the other hand, TMBC is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines on July 15, 1996, with SEC Registration No. and TIN having its principal office at Roxas Boulevard, Corner EDSA Extension, Boulevard 2000, Pasay City, Philippines. TMBC's primary purpose is to purchase and sell, trade, exchange, or otherwise dispose of, import, export, indent, distribute, market, service, repair and generally to deal in and engage in any commerce relating to automobiles, trucks, tractors and any and all kinds of motor vehicles, and automobile products of every kind and description, motor vehicle parts, accessories, instruments, tools, supplies and equipment, as well as industrial and engineering products; to build, construct, erect, install, buy, lease or otherwise hold or own shops and other buildings, constructions and structures of whatever kind and character necessary, convenient, suitable or necessary thereto; in general, to do and perform any and all acts or work which may be necessary or advisable, related incidentally or directly, with the above business and object of this Corporation.

TMBC and TCI deemed it advisable, expedient, and in their best interest to merge into a single corporation, pursuant to Title IX of the Corporation Code of the Philippines, with TMBC as the surviving corporation, in order to bolster their strength in the marketplace by creating

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synergies in their respective target markets and project portfolios; create economies of scale and efficiency of operations, cost savings, efficiency in management reporting of financial information, effectiveness in cash management procedures, and efficiency necessary to carry on the business; as well as to maximize productive use of properties, resources, capabilities, business and operations of the constituent corporations.

The Articles of Merger and Plan of Merger were authorized, approved, ratified, and confirmed by a majority of the Board of Directors of TCI at its regular meeting held on August 26, 2015, and by a majority of the Board of Directors of TMBC at its regular meeting held on August 26, 2015 in their respective principal offices.

The Articles of Merger and Plan of Merger were authorized, approved, ratified, and confirmed by the affirmative vote of the shareholders of TCI ("TCI Shareholders") representing at least 2/3 of the outstanding capital stock of TCI at a special stockholder's meeting held on October 22, 2015, and the affirmative vote of the shareholders of TMBC ("TMBC Shareholders") representing at least 2/3 of the outstanding capital stock of TMBC at a special stockholder's meeting held on October 22, 2015, in their respective principal offices.

The SEC approved the Articles of Merger and the Plan of Merger on March 7, 2016, by virtue of which the SEC issued a Certificate of Filing of Articles of Merger. Under the approved Plan of Merger, the merger shall become effective on July 1, 2015.

Pursuant to the Plan of Merger, TMBC will issue a total of common shares to the shareholders of TCI.

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

TCI (Prior to the Effective Date of Merger)

Type of Share	Authorized	Issued and outstanding	Par value	No. of shares	Amount
Common	shares	shares			PHP

TMBC (Prior to the Effective Date of Merger)

Type of Share	Authorized	Issued and outstanding	Par value	No. of shares	Amount
Common	shares	shares			PHP

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

TMBC (Beginning the Effective Date of Merger)

Type of Share	Authorized	Issued and outstanding	Par value	No. of shares	Amount
Common	shares	shares			PHP

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Per representations and documents submitted, the assets and liabilities of TCI, per its Audited Financial Statements as of 30 June 2015, and Joint Application and Joint Certification with the Bureau of Internal Revenue dated September 5, 2016:

	Amount
ASSETS	
Current assets	
Cash and cash equivalents	
Receivables	
Inventories	
Due from related parties	
Other current assets	
Total current assets	
Non-current assets	
Available-for-sale financial assets	
Investments	
Property and equipment - net	
Land (TCT Nos. 13077 & 13258)	
Buildings and improvements	
Machinery and equipment	
Furniture and fixtures	
Transportation equipment	
Deferred tax assets	
Refundable assets	
Total non-current assets	
TOTAL ASSETS	
LIABILITIES	
Current liabilities	
Accounts payable	
Notes payable	
Total current liabilities	
Non-current liabilities	
Net pension liability	
Advances from related parties	
Total non-current liabilities	
TOTAL LIABILITIES	

Based on the foregoing representations, you now request for a ruling that:

A. The statutory merger between TMBC and TCI, whereby all the assets and liabilities of TCI will be transferred in exchange for shares in TMBC is a merger within the contemplation of Section 40 (C)(2)(a) and (b) in relation to Section 40(C)(6)(b) of the Tax Code, as amended. As such, the transaction qualifies as a tax-free exchange and no gain or loss should be recognized by:

(1) TCI as the transferor, for the assignment of all its assets and liabilities to TMBC,

(2) TMBC as the transferee, on its receipt of the assets and liabilities from TCI, and

(3) TCI's shareholders, who will exchange, in complete redemption, their shares in TCI for shares in TMBC;

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B. The transfer of assets by TCI to TMBC is not motivated by donative intent, but is effected solely for legitimate business purposes. The transaction is therefore not a donation subject to donor's tax;

C. Pursuant to Section 199(m) of the Tax Code, the transfer of properties by TCI to TMBC is not subject to documentary stamp tax (DST). The surrender of the shares of stock by the stockholders of TCI in complete redemption and cancellation thereof is also not subject to DST. However, the original issuance of TMBC shares to the stockholders of TCI as a consequence of the merger shall be subject to DST in accordance with Section 174 of the Tax Code;

D. Following Section 4.106-8(b)(3) of Revenue Regulations (RR) No. 16-2005, as amended, the transfer of assets by TCI pursuant to the merger is likewise not subject to 12% Value Added Tax (VAT). Meanwhile, any unused input VAT of TCI as of the effective date of merger will be absorbed by TMBC;

E. The excess and unutilized creditable withholding taxes (CWT) of TCI form part of the assets to be transferred to TMBC. This may be applied as a tax credit by TMBC against its income tax due for the taxable year 2016 or may be the subject of a claim for refund or issuance of a tax credit certificate (TCC); and

F. Any excess Minimum Corporate Income Tax (MCIT) of TCI as of the effective date of merger will be transferred and vested in TMBC. Pursuant to Section 27(E)(2) of the Tax Code, this may be carried forward and credited by TMBC against its normal income tax liability for the three immediately succeeding taxable years reckoned from the date of payment of the MCIT by TCI.

In reply thereto, please be informed as follows:

A. The foregoing merger of TCI and TMBC 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 TMBC shall acquire/assume all the assets and liabilities of TCI and the same is advisable, expedient and in the best interest of the merging corporations and their respective stockholders, since the merging corporations are both engaged in the business of car dealership. Hence, the merger of TCI and TMBC is being undertaken for a *bona fide* business purpose and not for the purpose of escaping the burden of taxation.

The merger of TCI and TMBC qualifies for non-recognition of gain or loss for income tax purposes in accordance with Section 40(C)(2) of the Tax Code, where no gain or loss shall be recognized by TCI, as the transferor of all assets and liabilities, to TMBC pursuant to the Plan of Merger.

Accordingly, no gain or loss shall be recognized by TMBC, as the transferee, on its receipt of the asset and liabilities of TCI pursuant to and as a consequence of the merger.

The basis of shares of stocks received by TCI 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 Tax Code of 1997, as amended)

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The basis of the properties and investments transferred in the hands of the transferee (TMBC) shall be the same as it would be in the hands of the transferor (TCI) increased by the amount of the gain, if any, recognized to the transferor (TCI) on the transfer. (Section 40(C)(5)(b), *supra*)

Finally, 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. (Section 40(C)(4)(b), *supra*)

The substituted bases of the properties transferred by TCI to TMBC per the submitted Annex, 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 shall be as follows:

	Original / adjusted basis (PHP)	Allocated Liabilities	Allocated Shares	Substituted Basis
ASSETS				
Current assets				
Cash and cash equivalents				
Receivables				
Inventories				
Due from related parties				
Other current assets				
Total current assets				
Non-current assets				
Available-for-sale financial assets				
Investments				
Property and equipment - net				
Land (TCT Nos. 13077 & 13258)				
Buildings and improvements				
Machinery and equipment				
Furniture and fixtures				
Transportation equipment				
Deferred tax assets				
Refundable assets				
Total non-current assets				
TOTAL ASSETS				

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)*.

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Clearly, there is no intention on the part of any of the parties to the merger – TCI to donate to TMBC its assets – since the transaction is purely for legitimate business purposes. Thus, the aforesaid merger will not be subject to gift 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.

However, DST at the rate of P1.00 on each P200.00 par value, or a fractional part thereof, shall be imposed on the original issuance of shares by TMBC to the stockholders of TCI as a consequence of the merger as provided under Section 174 of the Tax Code, as amended.

D. No VAT shall be due on the transfer made pursuant to the Plan of Merger following Section 4.106-8(b)(3) of RR No. 16-2005, as amended. In *BIR Ruling No. 214-2012*, BIR itself ruled that:

> "For value added tax ('VAT') purposes, the transfer of goods or properties of MCC to GRC, which are originally intended for sale or for use in the course of business existing as of the effective date of merger will not be subject to any output tax, pursuant to Section 4.106-8(b)(3) of Revenue Regulation No. 16-2005, as amended by Revenue Regulation No.4-2007, as further amended by Revenue Regulation No. 10-2011. Thus, any unused input tax as of the effective date of merger will be absorbed by GRC, as the surviving corporation pursuant to Section 4.106-8(b)(3) of Revenue Regulation No. 16-2005."

Based on the foregoing, the unused input tax belonging to TCI as of the Effective Date of Merger would be absorbed by TMBC, which it may use against any output VAT due for taxable year 2016 and in succeeding taxable years.

E. Following BIR Ruling No. 100-2017, dated March 02, 2017, the excess and unutilized creditable withholding taxes (CWT) of the absorbed corporation, TCI as of the Effective Date of Merger, which form part of the assets to be transferred by the absorbed corporation TCI to the surviving corporation TMBC as a consequence of the merger, may be applied as a tax credit by TMBC against its income tax due for taxable year 2016 and in succeeding taxable years, or may be subject of a claim for refund or issuance of a TCC.

F. Any excess and unexpired MCIT of the absorbed corporation, TCI, as of the Effective Date of the Merger shall be carried forward and credited against the normal income tax of the surviving corporation, TMBC, for the three (3) immediately succeeding taxable years pursuant to Section 27(E)(2) of the 1997 Tax Code. Since the excess and unexpired MCIT of TCI is among the rights, privileges, property and/or interest of TCI, the excess and unexpired MCIT of the latter shall be transferred and vested in TMBC on the Effective Date of the Merger. Thus, TCI's excess and unexpired MCIT shall be carried forward and credited against the normal corporate income tax of TMBC subject to the three-year-carry-forward period reckoned from the date of payment of TCI of its MCIT.

G. It is to be emphasized, however, that the net loss carry-over (NOLCO) under Section 34(D)(3) of the Tax Code, as amended, and as implemented by Revenue Regulations No. 14-2001, of the absorbed corporation is not one of the assets of the latter that can be

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transferred and absorbed by the surviving corporation, TMBC, as this privilege or deduction can be availed of merely by the absorbed corporation. Accordingly, the tax-free merger between TCI and TMBC does not cover any NOLCO of the former as part of the assets that can be transferred and absorbed by the latter corporation.

H. The retained earnings of TCI, the absorbed corporation, are subject to the final withholding tax on dividends constructively received by its individual shareholders and non-resident foreign corporate shareholders pursuant to Sections 24(B)(2), 25(A)(2) and 28(B)(5)(b) of the Tax Code of 1997, as amended.

However, in order that the above-described reorganization can be considered as merger 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 thereto, or pursuant to the plan;

(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.

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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 or 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.

Finally, 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 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 to 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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