REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

National Office Building
Quezon City

Sec. 40(C)(2) of the Tax Code, as amended
BIR Ruling No. S40M-210-2021
S40M-063-2023
JUN 01 2023

ISLA LIPANA & CO.
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1226 Makati City

Attention: **Atty. Roselle Y. Caraig**
Partner, Tax

Gentlemen:

This refers to your letter dated July 12, 2019 requesting on behalf of your client, Mars Philippines, Inc. ("MPI"), for confirmation that the statutory merger of MPI and Wrigley Philippines, Inc. ("WPI"), with MPI as the surviving corporation, qualifies as a tax-free merger under Section 40(C)(2)(a) in relation to Section 40(C)(6)(b) of the National Internal Revenue Code of 1997 (Tax Code), as amended.

Background

MPI is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) on May 9, 1995. It is engaged in the importation and wholesale distribution of confectionary and packaging of confectionary and other human food, pet food and pet care products.

On the other hand, WPI was incorporated and duly registered with the SEC on April 2, 1963. It is engaged in the manufacture, purchase, export, import and sale of chewing gum, confectionary, gum chicle food products and by-products.

Both MPI and WPI are part of the Mars Group of companies. Pursuant to the global integration of the Mars and Wrigley businesses into a single confectionary entity, the respective stockholders and Board of Directors of MPI and WPI (collectively referred to as the "Parties") have deemed it advisable, expedient and in their best interest to merge into a single entity, with

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MPI as the surviving corporation, to increase efficiency of operations; maximize productive use of properties and resources, thereby avoiding unnecessary administrative costs; and to streamline the shareholding structure.

On July 27, 2018 and November 27, 2018, an application for the merger of MPI and WPI, as well as an application for Increase of Authorized Capital Stock of MPI was filed with the SEC. The said applications were approved by the SEC on December 28, 2018.

As stated in Article I, 1.3(c), of the Articles and Plan of Merger and was reiterated in Article II, 2.1 of the said Plan of Merger, WPI has a negative net asset value as of the Cut-Off Date and as for as long as WPI continues to have a negative net asset value, no shares of stock of MPI shall be issued to Mars Netherlands, the beneficial owner of the outstanding shares of stock of WPI, in exchange for such shares of stock as a result of the merger.

In reply, please be informed that Section 40 (C)(1) & (2) of the National Internal Revenue Code of 1997 (Tax Code), as amended, provides, to wit:

> **"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 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, **exchanges property solely for stock in a corporation**, which is a party to the merger or consolidation;" (Emphasis supplied)

From the afore-quoted provision of Section 40(C)(2) of the Tax Code, as amended, it is clear that in order to qualify as an exception to the recognition of the gain or loss upon the sale or exchange of property, a corporation which is a party to a merger exchanges its property solely for stock in another corporation which is also a party to the merger.

As defined, merger pertains to the absorption of one or more corporations by another existing corporation, which retains its identity and takes over the rights, privileges, franchises, properties, claims, liabilities and obligations of the absorbed corporation/s. The absorbing corporation continues its existence while the life or lives of the corporation/s is or are terminated.[1]

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[1] Bank of Commerce v. Radio Philippines Network, Inc., G.R. No. 195615, April 21, 2014, Phil. 491-581

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In the present case, however, there was no exchange of property solely for stock in another corporation. Pursuant to the merger, WPI, as the absorbed corporation, transferred all its assets and liabilities to MPI, as the surviving corporation, without issuance of shares to the absorbed corporation, as stated in Article II, 2.1 of the Plan of Merger duly approved by SEC on December 28, 2018. Although the merger between WPI and MPI is a valid reorganization under the Corporation Code, that alone is not sufficient to afford non-recognition of gain or loss obtained in the transaction. Therefore, the provisions of Section 40(C)(2) of the Tax Code, as amended, is not applicable.

In view of the foregoing, the merger of WPI into MPI does not qualify as a tax-free merger under Section 40(C)(2) of the Tax Code, as amended, and corresponding taxes should be imposed for dissolution and liquidation.

Please be guided accordingly.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

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gps(WPI-MPI)