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

Section 40 (C) (2) of Tax Code of 1997
BIR Ruling No. S40M-210-21
S40M-064-2023

JUN 06 2023

RAMON F. GARCIA & COMPANY, CPAs
30 Floor Burgandy Corporate Tower,
Sen. Gil Puyat Ave., Makati City, 1200

Attention: **LILIBETH I. SAMONTE**
Partner

Gentlemen:

This refers to your request on behalf of your client, MCC Labels (Manila) Philippines, Inc., for a ruling that the merger between MCC Labels (Manila) Philippines, Inc. and Pemara Labels (Philippines), Inc. qualifies as a tax-free merger in accordance with Revenue Regulations No. 18-2001 and Revenue Memorandum Order No. 32-2001 pursuant to Section 40 (c) (2) (a) and 40 (c) (6) (b) of the National Internal Revenue Code of 1997 (Tax Code), as amended.

It is represented that MCC Labels (Manila) Philippines, Inc. and Pemara Labels (Philippines), Inc. are corporations duly organized and existing under and by virtue of the Republic of the Philippines; that on June 28, 2019, it was agreed that the operations of MCC Labels (Manila) Philippines, Inc. shall be merged with the operations of Pemara Labels (Philippines), Inc. with the former being the surviving and the latter being the absorbed; that pursuant to the plan of merger, no shares shall be issued by MCC Labels (Manila) Philippines, Inc. to the stockholders of Pemara Labels (Philippines), Inc.[1]; and that the merger is desirable and advantageous to both corporations and their common shareholders. Hence this request.

In reply, please be informed that Section 40 (C) (1) & (2) of the 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.*

[1] *Item No. 5 Plan of Merger*

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(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.[2]

In the present case, however, there was no exchange of property solely for stock in another corporation. Pursuant to the merger, Pemara Labels (Philippines), Inc., as the absorbed corporation, transferred all the respective rights, businesses, assets and other properties including, but not limited to, all real and personal properties, contractual rights, licenses, privileges, property rights, claims, bank deposits, stocks, accounts receivables, credit lines, supplies, equipment, motor vehicles and such other assets as shown in the audited balance sheets of Pemara Labels (Philippines), Inc. as of June 30, 2019 to MCC Labels (Manila) Philippines, Inc., as the surviving corporation, without any issuance of shares of stocks in favor of the stockholders of Pemara Labels (Philippines), Inc. Although the merger between MCC Labels (Manila) Philippines, Inc. and Pemara Labels (Philippines), Inc. 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 Pemara Labels (Philippines), Inc. into MCC Labels (Manila) Philippines, Inc. 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.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
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[2] *Bank of Commerce v. Radio Philippines Network, Inc., G.R. No. 195615, April 21, 2014, Phil. 491-581.*