REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 40(C)(2)&(6)(b) of the Tax Code of 1997, as amended; RR 18-01
BIR Ruling No. 214-12 BIR Ruling No. 100-17 BIR Ruling No. 075-18
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AIA PHILIPPINES LIFE AND GENERAL INSURANCE COMPANY, INC.
16F-18F Philam Life Head Office
Six/NEO[1], 5th Avenue cor., 26th Street
Bonifacio Global City, Taguig 1634, Philippines

Attention: **Ms. Carla J. Domingo**
Corporate Secretary

Gentlemen:

This refers to your letter requesting on behalf of **AIA PHILIPPINES LIFE AND GENERAL INSURANCE COMPANY, INC.**[2] ("AIA PHILIPPINES") and PHILAM EQUITABLE LIFE ASSURANCE COMPANY, INC. ("PELAC") for confirmation of your opinion that the merger between AIA Philippines and PELAC (collectively, the **"Constituent Corporations"**), with AIA Philippines as the surviving corporation, is a tax-free merger in accordance with Section 40(C)(2) and 6(b) of the National Internal Revenue Code (Tax Code) of 1997, as amended.

Background

1. AIA Philippines is a domestic corporation engaged in the life insurance business, with principal office address at 18th Floor, Six/NEO (formerly Net Lima Building), 5th Avenue corner 26th Street, Bonifacio Global City, Taguig. It is registered with the Securities and Exchange Commission ("SEC") under Company Registration No. and with Tax Identification Number ("TIN") As of the date of merger, AIA Philippines has an authorized capital stock of divided into common shares with a par value of per share.

2. PELAC is a domestic corporation and a fully owned subsidiary of AIA Philippines that is likewise engaged in the life insurance business, with principal office address at 17th Floor, Six/Neo Building, 5th Avenue corner 26th Street Bonifacio Global City, Taguig City. It is registered with the SEC under Company Registration No. . and with TIN PELAC has an authorized capital stock of divided into common shares with a par value of per share.

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1 Formerly Net Lima Building
2 Formerly The Philippine American Life and General Insurance (PHILIAMLIFE) Company

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3. On August 26, 2021, the Constituent Corporations executed a Plan and Article of Merger, with AIA Philippines as the surviving corporation, wherein the effective date of the merger is on January 01, 2022 or the first day of the calendar quarter immediately following the date of approval of the Merger by the SEC, whichever is later.

4. On even date, the Articles and Plan of Merger were approved and adopted by at least majority members of the respective Board of Directors, and by the respective stockholders owning at least two-thirds (2/3) of the outstanding capital stock of the Constituent Corporations and none of the stockholders voted against it, for the reason that the merger is for the best interest of both corporations and their respective shareholders in order to engage in business combination which will advance their long-term strategic objectives.

5. Under the approved Plan of Merger, AIA Philippines shall acquire the assets and assume the liabilities of PELAC based on the audited financial statement of PELAC as of July 31, 2021, in exchange for the issuance of AIA Philippines of its common shares at a par value of per share.

6. For the purpose of the Merger, and in order to accommodate the issuance of common shares to the stockholders of PELAC, AIA Philippines will increase its authorized capital stock from Pesos divided into common shares to divided into common shares, both at a par value of

Based on the foregoing representations, you now request confirmation of your opinion that –

1. The merger of AIA Philippines and PELAC is a tax-free merger under Section 40(C)(2) and (6)(b) of the Tax Code of 1997, as amended, such that no gain or loss shall be recognized for income tax purposes;

2. The transfer of assets by PELAC to AIA Philippines pursuant to the merger is not subject to value-added tax (VAT) and any unused input tax of PELAC as of the effective date of the merger is absorbed by AIA Philippines, as the Surviving Corporation;

3. The transfer of assets by the PELAC to AIA Philippines is likewise not subject to donor's tax for lack of donative intent on the part of the PELAC; and

4. The transfer of assets to AIA Philippines is not subject to documentary stamp tax (DST) under Section 199 (m) of the Tax Code of 1997, as amended by Republic Act (RA) No. 9243.

In reply thereto, please be informed, as follows:

1. The foregoing merger of AIA Philippines and PELAC is a merger within the contemplation of Section 40 (C) (2) (a) in relation to 40 (C) (6) (b) of the Tax Code of

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1997, as amended, because AIA Philippines shall acquire/assume all the assets and liabilities of the PELAC and the same is desirable and advantageous to the constituent corporations in order to advance their long-term strategic objectives. Hence, the merger of AIA Philippines and PELAC is being undertaken for a *bona fide* business purpose and not for the purpose of escaping the burden of taxation.

The merger of AIA Philippines and PELAC qualifies for non-recognition of gain or loss for income tax purposes in accordance with Section 40(C)(2) of the Tax Code of 1997, as amended, such that no gain or loss shall be recognized by PELAC as the transferor of all assets and liabilities, to AIA Philippines pursuant to the Plan of Merger.

Accordingly, no gain or loss shall be recognized by AIA Philippines, as the transferee, on its receipt of the assets and liabilities of PELAC pursuant to and as a consequence of the merger.

On the other hand, the bases of the shares of stocks to be received by the shareholders of PELAC upon the exchange shall be the same as the bases of the properties, stocks or securities exchanged, decreased by (1) the money received, and (2) the fair market value of the other 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. (*Sec. 40 (C) (5) (a) of the Tax Code of 1997, as amended*)

The basis of the properties transferred in the hands of the transferee (AIA Philippines) shall be the same as it would be in the hands of the transferor increased by the amount of the gain, if any, recognized to the transferor on the transfer. (*Sec. 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 properties transferred pursuant to such exchange, then such excess shall be considered as a gain, on the part of the transferor, from the sale or exchange of a capital asset or of property which is not a capital asset, as the case may be. (Sec. 40 (C) (4) (b), *supra*)

The substituted basis of the properties transferred by PELAC to AIA Philippines shall 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 liabilities, and the substituted basis of the assets transferred by PELAC to AIA Philippines, based on PELAC's audited financial statements as of July 31, 2021 shall be as follows:

	Amount (in Php)	**Allocated Liabilities**	**Allocated Shares**	**Substituted Basis (in Php)**
Cash and cash equivalents				
Insurance receivables				

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Available-for-sale financial assets				
Loans and receivables				
Accrued income				
Other assets, net				
TOTAL				

Liabilities	**Amount (in Php)**
Insurance contract liabilities, net	
Premium deposit fund	
Policyholder's dividends	
Insurance payables	
Account payable and accrued expenses	
TOTAL	

2. Section 105 of the Tax Code of 1997, as amended, identifies the persons liable for the VAT. Thus,

> *"SECTION 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.*
>
> *xxx."*

However, Section 4.106-8(b)(3) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007[3], specifically excludes mergers from being subject to output tax. Hence,

> *"**SECTION 4.106-8**. Change or Cessation of Status as VAT-registered Person. –*
>
> *xxx*
>
> *(b) **Not subject to output tax**.*

[3] now exempted from VAT under Section 34 of RA No. 10963, amending Section 109 of RA Nos. 8424 and 9337

The VAT shall not apply to goods or properties existing as of the occurrence of the following:

(1) *xxx*

(2) *xxx*

(3) Merger or consolidation of corporations. The unused input tax of the dissolved corporation, as of the date of merger or consolidation, shall be absorbed by the surviving or new corporation." (Underscoring supplied)

Thus, the above-mentioned transaction shall not be subject to VAT, and any unused input VAT of PELAC as of the effective date of merger will be transferred to and absorbed by AIA Philippines pursuant to Section 4.106-8(b)(3) of RR No. 16-2005, as amended, the said transfer being considered a transaction "not subject to output tax" under the said Section.

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 PELAC to donate to AIA Philippines their assets since the transaction is purely for legitimate business purpose. Thus, the aforesaid merger will not be subject to donor's tax since there is no intention to donate, and the transaction is a *bonafide* merger effected solely for business reasons.

4. No DST is due on the transfer of assets made pursuant to the Plan of Merger under Section 199 (m) of the Tax Code of 1997, as amended by Republic Act No. 9243, in relation to Section 40 (C) (2) of the Tax Code of 1997, as amended. *(BIR Ruling No. 100-2017 dated March 2, 2017)*

In the case of *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue* (C.T.A. Case No. 6477 dated April 20, 2003), the Court stated that all the integral parts of the merger including the surrender of shares in exchange for shares, should be treated as a single and continuing transaction subject only to one DST. The Court held, as follows:

> *"As earlier stated, DST is in the nature of an excise tax because it is really imposed on the privilege to enter into a transaction. Its imposition, therefore, should be only once. And in a statutory merger, there is only one transaction, i.e., the issuance by the surviving corporation of its own shares of stock to the stockholders of the absorbed corporation in exchange for the shares surrendered by the shareholders of the absorbed corporation. All other transactions which are an integral and inherent part of the merger, such as the absorption of real property, should no longer be subject to another round of DST. In other words, all the integral parts of the merger (e.g., surrender of shares in exchange for shares, transfer of assets, assumption of liabilities, etc.) should be treated as a single and*

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continuing transaction subject only to one DST. The transfer of real property is not a transaction separate and distinct from the merger but an integral part or a mere continuation of the initial transaction which was previously consummated."

On the other hand, DST at the rate of [4] on each par value, or fractional part thereof, shall be imposed on the original issuance of shares by AIA Philippines to the stockholders of PELAC as a consequence of the merger as provided under Section 174 of the Tax Code, as amended.

5. Any excess and unutilized creditable withholding taxes (CWT), which form part of the assets to be transferred by PELAC as of the effective date of the merger, shall be transferred to and vested in AIA Philippines, as the surviving corporation, and such excess CWT may be utilized by the latter or claimed for refund or issuance of Tax Credit Certificate (TCC). *(BIR Ruling No. 100-2017 dated March 2, 2017)*

6. It is to be emphasized, however, that the net operating loss carry-over (NOLCO) under Section 34(D) (3) of the Tax Code of 1997, as amended, and as implemented by RR No. 14-2001, of PELAC, if any, is not one of their assets that can be transferred and absorbed by the Surviving Corporation, AIA Philippines, as this privilege or deduction can be availed of by PELAC only. Accordingly, the tax-free merger between AIA Philippines and PELAC does not cover the NOLCO of the former.

7. The retained earnings of PELAC, if any, are subject to the ten percent (10%) final withholding tax on dividends constructively received by its individual shareholders pursuant to Section 24 (B) (2) of the Tax Code of 1997, as amended. *(BIR Ruling No. 1422-18 dated December 7, 2018)*

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, 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;

   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

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[4] *New DST rate under RA No. 10963*

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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 merger occurred a copy of the request for ruling filed with, and the corresponding ruling issued by, the Bureau of Internal Revenue, both duly stamp-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 AIA Philippines and PELAC shall record in their respective books of accounts 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 of the properties transferred, 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

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merger; provided however, that any violation by the Register of Deeds or by the Corporate Secretary of this condition shall be penalized under Sections 269 or 275, as the case may be, of the Tax Code of 1997, as amended.

Finally, the parties are required to submit to the Law and Legislative Division, Bureau of Internal Revenue, proof of annotation of the substituted basis of the shares of stock and/or real properties involved in the transfer within ninety (90) days from receipt of this ruling. Violation of this requirement is subject to the penalties provided in Section 275 of the Tax Code of 1997, as amended.

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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