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
SEP 13 2021
APR 2

QUIASON MAKALINTAL BAROT TORRES
IBARRA SISON & DAMASO
21st Floor, Robinsons-Equitable Tower
4 ADB Avenue Corner Pedro Poveda Street
1605 Ortigas Center, Pasig City

Attention: **ATTY. BENEDICT R. TUGONON**
and
ATTY. PAULO S. FAUSTINO

Gentlemen:

This refers to your letter dated October 22, 2020 requesting for confirmation that the merger of **Malayan Insurance Company, Inc. ("MICO")**, as the surviving corporation, with **The First Nationwide Assurance Corporation ("FNAC")** and **Bankers Assurance Corporation ("BAC")**, as the absorbed corporations, is a tax-free exchange pursuant to Section 40 (C) (2) of the National Internal Revenue Code (Tax Code) of 1997, as amended.

Background:

MICO, with Securities and Exchange Commission (SEC) Company Registration No. , is a corporation duly organized and existing under the laws of Philippines, with principal office address at 4/F Yuchengco Tower I, No. 500 Quintin Paredes St., Binondo, Manila, Philippines. It is engaged in the business of insurance and reinsurance.

On the other hand, FNAC, with SEC Company Registration No. , is a corporation duly organized and existing under the laws of Philippines, with principal office address at 4/F Yuchengco Tower II, No. 111 LP Leviste St. corner Gallardo St., Belair, Makati City, Philippines; while BAC, with SEC Company Registration No. 10212, is a corporation duly organized and existing under the laws of Philippines, with principal office address at 4/F Yuchengco Tower I, No. 500 Quintin Paredes St., Binondo, Manila, Philippines. Both are also engaged in the business of insurance and reinsurance.

Pursuant to the provisions of Sections 76 to 80 of the Revised Corporation Code of the Philippines, the respective Boards of Directors and corresponding stockholders of MICO, FNAC and BAC deemed it advisable to merge into a single corporation since a merger will: (1) help improve their competitiveness by consolidating capital and revenue and (2) reduce costs through a more efficient and productive use of common resources. Thus, the majority of the members of the respective Board of Directors of MICO, FNAC and BAC, in their respective meetings held on June 27, 2019, wherein a quorum was present and all throughout, have separately and unanimously approved the Plan of Merger. Likewise, the respective stockholders of MICO, FNAC and BAC, each representing at least two-thirds (2/3) of the outstanding capital stock of each of MICO, FNAC and BAC, in their respective meeting all held on June 27, 2019, have separately and unanimously approved the Plan of Merger.

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When the Plan of Merger was approved during the respective stockholders' meeting of MICO, FNAC and BAC, the number of outstanding shares of each of MICO, FNAC and BAC are as follows:

MICO

	No. of Shares	Amount
Authorized Capital Stock	10,000,000 Common Shares 5,000 Preferred Shares	
Subscribed and Outstanding	8,452,925 Common Shares	

FNAC

	No. of Shares	Amount
Authorized Capital Stock	2,500,000 Common Shares	
Subscribed and Outstanding	2,500,000 Common Shares	

BAC

	No. of Shares	Amount
Authorized Capital Stock	40,000,000 Common Shares	
Subscribed and Outstanding	35,000,000 Common Shares	

The assets, liabilities and equity of MICO, FNAC and BAC as of the agreed cut-off date of March 31, 2019 ("Cut-off Date") are summarized as follows:

MICO

	Amount		Amount
Assets		Liabilities	
		Equity	
Total		-	

FNAC

	Amount		Amount
Assets		Liabilities	
		Equity	
Total		-	

BAC

	Amount		Amount
Assets		Liabilities	
		Equity	
Total		-	

On October 30, 2019, the SEC approved the Plan and Articles of Merger. Under the approved Plan and Articles of Merger, the merger shall become effective on the first date of the month immediately following the issuance of the Certificate of Filing of the Articles and Plan of Merger by the SEC ("Effective Date of Merger").

Also, pursuant to the approved the Plan and Articles of Merger, upon the Effective Date of Merger, all the rights, privileges, businesses and assets of each of FNAC and BAC as of the Cut-off Date, including but not limited to real and personal properties, contractual rights, licenses, claims, receivables due on whatever account, subscriptions to shares and other choses

of action, bank deposits, supplies and equipment, shall be deemed conveyed, assigned and transferred to MICO, without need for any further act or deed. Any other assets that may be acquired by each of FNAC and BAC after the Cut-off Date until the Effective Date of Merger shall also be deemed conveyed, assigned and transferred to MICO.

Moreover, upon the Effective Date of Merger, MICO shall be responsible and liable for all the liabilities and obligations of each of FNAC and BAC as of the Cut-off Date, in the same manner as if MICO had itself incurred such liabilities or obligations; and any pending claim, action or proceeding by or against each of FNAC and BAC may be prosecuted by or against MICO. Any other liabilities and obligations that may be incurred by each of FNAC and BAC after the Cut-off Date until the Effective Date of Merger shall also be assumed by MICO. All the rights of the creditors of MICO, FNAC and BAC shall not be impaired by the merger.

Furthermore, upon the Effective Date of Merger, the shares of each of FNAC and BAC then outstanding in the hands of its respective stockholders shall be exchanged solely for shares in MICO on the basis of the net book value of the assets of FNAC and BAC as of the Cut-off Date, as follows:

	Net Asset Value
FNAC	
BAC	

Based on the above net book values, and given the net book value of MICO of P , 1 MICO share shall be issued in exchange for every 4 FNAC shares, and 1 MICO share shall be issued in exchange for every 48 BAC shares. Consequently, and eliminating fractional shares, MICO shall issue a total of 1,338,419 common shares as follows:

a. 611,859 MICO common shares to the stockholders of FNAC, and
b. 726,560 MICO common shares to the stockholders of BAC.

Of the above-said shares, 1,061,331 common shares, which are to be issued to MICO in exchange for its shares in FNAC and BAC, shall be held in treasury. The shares to be issued shall be taken from the unissued shares of capital stock of MICO.

In view of the foregoing, you now request for confirmation of the following:

1. the merger of MICO, as the surviving corporation, with FNAC and BAC, as the absorbed corporations, qualifies as a tax-free exchange pursuant to Section 40 (C) (2) in relation to Section 40(C)(6)(b) of the Tax Code of 1997, as amended;

2. the basis of the assets and liabilities of FNAC and BAC in the hands of MICO shall be the same as it would be in the hands of FNAC and BAC;

3. the resulting ownership by MICO of the properties of FNAC and BAC is not subject to income tax, capital gains tax (CGT), or donor's tax;

4. the exchange by the shareholders of FNAC and BAC of their shares of stock for MICO shares and the transfer of assets of FNAC and BAC to MICO pursuant to the merger will not be subject to any output value-added tax (VAT);

5. the unused input VAT of FNAC and BAC shall be absorbed and can be utilized by MICO; and

6. the exchange by the shareholders of FNAC and BAC of their shares of stock for MICO shares is not subject to documentary stamp tax (DST); however,

the issuance by MICO of its shares of stock to the stockholders of FNAC and BAC pursuant to the merger shall be subject to DST under Section 174 of the Tax Code of 1997, as amended.

In reply thereto, please be informed as follows:

1. The merger of MICO with FNAC and BAC is a merger within the contemplation of Section 40 (C) (2), in relation to Section 40 (C) (6) (b) of the Tax Code of 1997, as amended, because MICO shall acquire/assume all the assets and liabilities of FNAC and BAC and the same is necessary and advisable since it will help improve their competitiveness by consolidating capital and revenue and reduce costs through a more efficient and productive use of common resources. Hence, said merger is being undertaken for a bona fide business purpose and not for the purpose of escaping the burden of taxation.

The merger of MICO with FNAC and BAC 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, and that no gain or loss shall be recognized by FNAC and BAC, as the transferors of all assets and liabilities, to MICO pursuant to the Articles and Plan of Merger.

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

The basis of the shares of stocks to be received by shareholders of the FNAC and BAC 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 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.[1]

The basis of the property transferred in the hands of the transferee (MICO) shall be the same as it would be in the hands of the transferors (FNAC and BAC) increased by the amount of the gain, if any, recognized to the transferor 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 FNAC and BAC to MICO 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 FNAC and BAC based on their respective Audited Financial Statements as of March 31, 2019 shall be as follows:

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

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FNAC

Assets	Amount	Allocated Liabilities	Allocated Shares	Substituted Basis
Cash and cash equivalents				
Short-term investments				
Insurance receivables				
Financial assets:	-	-	-	-
Financial assets at fair value through profit and loss (FVTPL)				
Financial assets at fair value through other comprehensive income (FVOCI)				
Investment asset at amortized cost				
Loans and receivables				
Accrued Income				
Deferred acquisition costs - net				
Reinsurance assets				
Property and equipment				
Deferred tax assets				
Other assets				
Total				

Liabilities	Amount
Insurance contract liabilities	
Insurance payables	
Accounts payable, accrued expenses and other liabilities	
Deferred reinsurance commission	
Net pension obligation	
Income tax payable	
Total	

BAC

Assets	Amount	Allocated Liabilities	Allocated Shares	Substituted Basis
Cash and cash equivalents				
Insurance receivables				
Financial assets:				
Financial assets at fair value through profit and loss (FVTPL)				
Financial assets at fair value through other comprehensive income (FVOCI)				
Investment asset at amortized cost				
Loans and receivables - net				
Accrued Income				
Deferred acquisition costs				
Reinsurance assets				
Property and equipment				
Deferred tax assets				
Other assets				
Total				

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Liabilities	Amount
Insurance contract liabilities	
Insurance payables	
Accounts payable, accrued expenses and other liabilities	
Deferred reinsurance commission	
Net pension obligation	
Income tax payable	
Total	

2. 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 FNAC and BAC to donate to MICO their assets since the transaction is purely for a legitimate business purpose. Thus, the merger will not be subject to donor's tax since there is no intention to donate, and the transaction is a *bona fide* merger effected solely for business reasons.

3. The transfer of assets/properties of FNAC and BAC to MICO as a consequence of the merger is not subject to VAT pursuant to Section 105 of the Tax Code 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 FNAC and BAC to MICO 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.

4. The excess and unutilized creditable withholding taxes (CWT) of FNAC and BAC as of the effective date of the merger, which form part of the assets to be transferred by FNAC and BAC to MICO as a consequence of the merger, may be applied as a tax credit by MICO against its income tax due for the taxable year 2019, the effective date of the merger being November 01, 2019, and in the succeeding taxable years, or may be the subject of a claim for refund or issuance of a tax credit certificate (TCC).

5. No DST is due on the surrender by the shareholders of FNAC and BAC of their shares in FNAC and BAC for cancellation pursuant to the merger under Section 199 (m) of the Tax Code of 1997, as amended by Republic Act (RA) No. 9243, in relation to Section 40 (C) (2) of the Tax Code of 1997, as amended.

On the other hand, pursuant to Section 174 of the Tax Code of 1997, as amended, DST at the rate of P2.00 on each P200.00, or fractional part thereof, shall be imposed on the original issuance of shares by MICO in favor of the shareholders of FNAC and BAC as a consequence of the merger.

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 FNAC and BAC, if any, is not one of their assets that can be transferred and absorbed by the surviving corporation, MICO, as this privilege or deduction can be availed of merely by FNAC and BAC. Accordingly, the tax-free merger does not cover the NOLCO of FNAC and BAC that can be transferred and absorbed by MICO.

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 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 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 parties shall include as a note to their respective audited financial statements

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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 absorbed/dissolving corporation/s, its shareholders 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/or 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 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 Tax Code 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"

<table>
<tr><th>Particulars</th><th>Individual Shareholder's Book
(The entry/ies shall be per individual shareholder of the absorbed corporation)</th><th>Transferee/Surviving Corporation's Book</th></tr>
<tr><td>Journal Entry to Record the Tax Free Exchange</td><td>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.</td><td>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.</td></tr>
<tr><td>Balance Sheet Notes Entry</td><td>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_____.</td><td>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).</td></tr>
<tr><td>Proforma Entries to Record Subsequent Sale/Transfer</td><td>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:

<table>
<tr><th colspan="2">Tax Type</th><th>Tax Rate*</th><th>Multiply by</th><th>Amount</th></tr>
<tr><td>1)</td><td>Net Capital Gains Tax</td><td>5% on P100,000 and 10% on excess</td><td>Gains realized on tax-free exchange</td><td rowspan="2">xxx.xx</td></tr>
<tr><td>OR</td><td>Stock Transaction Tax</td><td>1/2 of 1%</td><td>FMV of investment/s at the time of the tax-free exchange</td></tr>
<tr><td>2)</td><td>Net Capital Gains Tax</td><td>15%</td><td>Gains realized on subsequent sale of investment/s</td><td rowspan="2">xxx.xx</td></tr>
<tr><td>OR</td><td>Stock Transaction Tax</td><td>6/10 of 1%</td><td>Selling price of investment at the time of subsequent sale</td></tr>
<tr><td colspan="4">Total Tax Payable</td><td>xxx.xx</td></tr>
</table>

* 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</td><td>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:

<table>
<tr><th colspan="2">Tax Type</th><th>Tax Rate*</th><th>Multiply by</th><th>Amount</th></tr>
<tr><td>1)</td><td>Net Capital Gains Tax</td><td>15%</td><td>Gains realized on subsequent sale of investment/s</td><td rowspan="2">xxx.xx</td></tr>
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<tr><td colspan="4">Total Tax Payable</td><td>xxx.xx</td></tr>
</table>

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

* 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</td></tr>
</table>