REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Sec. 40(C)(2) & (6)(b); RR 18-01
BIR Ruling No. S40-0427-2020; BIR Ruling No. S40-0384-2020
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Legaspi Village, Makati City

Attention: **Atty. Ma. Fides L. Andin-Balili**
Senior Tax Counsel
and
Atty. Magilyn T. Loja
Senior Partner

Gentlemen:

This refers to your letter dated March 29, 2019 requesting on behalf of your clients, iPeople, Inc. and AC Education, Inc., for confirmation of your opinion on the tax implications of the statutory merger between iPeople, Inc. and AC Education, Inc.

BACKGROUND

1. iPeople, Inc. ("iPeople") is a corporation duly organized under Philippine laws and registered with the Securities and Exchange Commission ("SEC") on July 27, 1989 as a holding company. It has an authorized capital stock of Two Billion Pesos (PHP2,000,000,000.00) divided into Two Billion (2,000,000,000) common shares, with a par value of One Peso (PHP 1.00) each. Out of this authorized capital stock, Seven Hundred Forty-Eight Million Nine Hundred Thirty-Two Thousand Nine Hundred Forty-Nine Pesos (PHP748,932,949.00), divided into Seven Hundred Forty-Eight Million Nine Hundred Thirty-Two Thousand Nine Hundred Forty-Nine (748,932,949) shares, are issued and outstanding with Two Hundred Seventy-Two (272) shares held in Treasury.

   iPeople's shares are listed on the Philippine Stock Exchange and are traded as Initial Public Offering ("IPO").

   iPeople's primary purpose is to invest in, or otherwise acquire and own, sell, assign, transfer, mortgage, pledge, exchange or otherwise dispose of real and personal property of every kind and description, including shares of stock, subscriptions, bonds, debentures, notes, evidence of indebtedness, and other securities or obligations of any corporation or corporations, association or associations, domestic or foreign, especially those intended for or engaged mainly in the information technology and allied or related business, running, managing or operating schools or educational and training centers or institutions specializing in information technology, electronic commerce, internet service, and various fields of engineering.

   iPeople owns and has investments in various schools, colleges and universities, including:

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(a) Malayan Education System, Inc. (Operating under the name of Mapúa University) (MESI);
(b) Pan Pacific Computer Center, Inc. (PPCC); and
(c) People eServe Corporation (PEC)

2. AC Education, Inc. ("AEI") is a corporation duly organized under Philippine laws and registered with the SEC on October 19, 2012. It has an authorized capital stock of Two Billion One Hundred Fifty Million Pesos (PHP2,150,000,000.00) divided into Two Billion One Hundred Fifty Million (2,150,000,000) common shares, with a par value of One Peso (PHP1.00) each. Out of this authorized capital stock, One Billion Nine Hundred Ninety-Three Million Four Hundred Seventy-Seven Thousand Three Hundred and Thirty-Eight Pesos (PHP1,993,477,338.00) divided into One Billion Nine Hundred Ninety-Three Million Four Hundred Seventy-Seven Thousand Three Hundred and Thirty-Eight (1,993,477,338) shares were subscribed to at a premium and fully paid up.

AEI is organized primarily to invest in schools, colleges and universities and also to provide services oriented towards the promotion of service management, including but not limited to the design, marketing, management, and/or conduct of seminars, convention, courses, conferences, specialty programs, symposia of service management excellence, by itself or in partnership with other entities or institutions except management of funds, securities, portfolios or similar assets managed entity, without operating a school.

AEI also has investments in various schools, colleges and universities, including:

(a) Affordable Private Education Center, Inc. doing business under the name of APEC Schools (APEC);
(b) University of Nueva Caceres (UNC);
(c) The National Teachers College (NTC);
(d) AC College of Enterprise and Technology, Inc. (ACCET); and
(e) LINC Institute, Inc. Doing Business under the Name and Style of "LINC Academy" (LINC)

In addition, AEI has an existing cooperation agreement with Jose Rizal University (JRU) for the implementation of various senior high school and college programs under the Professional Employment Program (PEP).

3. On October 1, 2018, each of the Board of Directors of iPeople and AEI, approved the Articles and Plan of Merger between iPeople and AEI, with iPeople as the Surviving Corporation and AEI as the Absorbed Corporation. These were subsequently ratified by the stockholders of iPeople and AEI on December 12, 2018 and December 5, 2018, respectively, in the special and annual stockholders' meetings of the constituent corporations.

4. iPeople and AEI are merging pursuant to Sections 76 to 80 of the Corporation Code and Section 40(c)(2) of the Tax Code of 1997, as amended, with iPeople as the Surviving Corporation and AEI as the Absorbed Corporation, for the following business reasons:

(i) To enable accelerated growth and provide stronger academic offerings and career prospects for the students of iPeople's and AEI's schools;

(ii) To broaden the suite of program offerings and widen the geographic reach of the iPeople's and AEI's schools; and

(iii) To unlock synergies between iPeople and AEI to be able to deliver quality education, aimed not only at educating the Filipino youth but also at preparing their graduates to become major players in sustainable businesses driven by adaptive technology, by arming them with the values, critical thinking, global mindset and 21st century skills that are necessary to succeed in this rapidly changing world.

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5. Prior to the merger, the outstanding shares of stock in the constituent corporations are in the names of the stockholders of iPeople and AEI.

6. The assets, liabilities and stockholders' equity of the constituent corporations based on the audited financial statements (AFS) of AEI and iPeople as of December 31, 2018 are summarized, as follows:

	iPeople (in Php)	AEI (in Php)
Assets		
Liabilities		
Stockholders' Equity		

7. Pursuant to the merger, all the assets and liabilities of AEI shall be conveyed, assigned, and transferred to iPeople solely in exchange for shares of stock in iPeople.

   Specifically, in exchange for the transfer of the net assets of AEI to iPeople, the latter shall issue to the shareholders of AEI an aggregate of Two Hundred Ninety-Five Million Three Hundred Twenty-Nine Thousand Nine Hundred Seventy-Six (295,329,976) shares out of the unissued portion of its authorized capital stock, with a total par value of Two Hundred Ninety-Five Million Three Hundred Twenty-Nine Thousand Nine Hundred Seventy-Six Pesos (PHP295,329,976.00).

   The difference between (i) the fair value of AEI's net asset, and (ii) the total par value of the iPeople shares to be issued to the AEI's shareholders shall be recorded as additional paid in capital (APIC) in the books of iPeople.

8. Accordingly, the total outstanding capital stock of iPeople after the merger shall be recorded in the name of the stockholders of iPeople.

9. The constituent corporations have filed with the SEC the Articles and Plan of Merger on February 8, 2018, which was approved on April 24, 2019.

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

A. The statutory merger between AEI and iPeople, whereby all the assets and liabilities of AEI will be transferred to iPeople in exchange for shares in iPeople 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 of 1997, as amended. As such, the transaction qualifies as a tax-free exchange and no gain or loss should be recognized by:

   (1) AEI, as the transferor, on the assignment of all its assets and liabilities to iPeople;

   (2) iPeople, as the transferee, on its receipt of the assets and liabilities of AEI; and

   (3) AEI's shareholders, who will surrender their shares in AEI for shares in iPeople;

B. The substituted basis of the shares of stock of iPeople received by AEI shall be determined in accordance with Section 40(C)(5)(a) of the Tax Code of 1997, as amended. Similarly, the substituted basis of the properties received by iPeople from AEI shall be determined in accordance with Section 40(C)(5)(b) of the Tax Code of 1997, as amended;

C. The transfer by AEI of its assets to iPeople, and the surrender of the shares by its shareholders, in exchange for the shares of iPeople 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;

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D. Pursuant to Section 199(m) of the Tax Code of 1997, as amended, the transfer of properties by AEI to iPeople is not subject to documentary stamp tax (DST). The surrender of the shares of stock by the stockholders of AEI in complete cancellation thereof is also not subject to DST. However, the original issuance of iPeople shares to the stockholders of AEI as a consequence of the merger shall be subject to DST in accordance with Section 174 of the same Code;

E. Following Section 4.106-8(b)(3) of Revenue Regulations (RR) No. 16-2005, as amended, the transfer of assets by AEI pursuant to the merger is likewise not subject to 12% value added tax (VAT), and any unused input VAT of AEI as of the effective date of merger will be transferred to and absorbed by iPeople;

F. The excess and unutilized creditable withholding taxes (CWT) of AEI as of the effective date of the merger shall be transferred to and vested in iPeople. This may be applied as a tax credit by iPeople against its income tax liabilities for 2019 and succeeding years or may be the subject of a claim for refund or issuance of a tax credit certificate (TCC);

G. Any excess MCIT of AEI as of the effective date of merger shall be transferred to and vested in iPeople. Pursuant to Section 27(E)(2) of the Tax Code of 1997, as amended, this may be carried forward and credited by iPeople against its normal income tax liability for the three immediately succeeding taxable years reckoned from the date of payment of the MCIT by AEI; and

H. Any excess and unexpired net operating loss carry-over (NOLCO) of AEI shall not form part of its assets to be transferred to iPeople pursuant to the merger.

In reply thereto, please be informed, as follows:

1. The foregoing merger of AEI and iPeople is a merger within the contemplation of Section 40 (C) (2) (a) in relation to 40 (C) (6) (b) of the Tax Code of 1997, as amended, because iPeople shall acquire/assume all the assets and liabilities of AEI to enable accelerated growth and provide stronger academic offerings and career prospects for the students of iPeople's and AEI's schools; to broaden the suite of program offerings and widen the geographic reach of the iPeople's and AEI's schools; and to unlock synergies between iPeople and AEI to be able to deliver quality education, aimed not only at educating the Filipino youth but also at preparing their graduates to become major players in sustainable businesses driven by adaptive technology, by arming them with the values, critical thinking, global mindset and 21st century skills that are necessary to succeed in this rapidly changing world. Hence, the merger of AEI and iPeople is being undertaken for a *bona fide* business purpose and not for the purpose of escaping the burden of taxation.

The merger of AEI and iPeople 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, that no gain or loss shall be recognized by AEI, as the transferor of all assets and liabilities, to iPeople pursuant to the Plan of Merger.

Accordingly, no gain or loss shall be recognized by iPeople, as the transferee, on its receipt of the assets and liabilities of AEI 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 AEI 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*)

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The basis of the properties transferred in the hands of the transferee (iPeople) listed in Annex "A" hereof, shall be the same as it would be in the hands of the transferor (AEI) increased by the amount of the gain, if any, recognized to the transferor (AEI) 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 AEI to iPeople 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 AEI to iPeople, based on AEI's audited financial statements as of December 31, 2018 shall be as follows:

	Amount (in Php)	**Allocated Liabilities**	**Allocated Shares**	**Substituted Basis (in Php)**
Cash and Cash Equivalents				
Accounts and other Receivables				
Other current assets				
Investments in subsidiaries				
Property and equipment				
TOTAL				

Liabilities	**Amount (in Php)**
Accounts and other payables	
Unearned revenues	
Pension liabilities	
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 any of the parties to the merger – AEI to donate to iPeople its assets since the transaction is purely for legitimate business purpose. Thus, the aforesaid merger will not be subject to gift tax since there is no intention to donate, and the transaction is a *bonafide* merger effected solely for business reasons.

3. 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, as amended. *(BIR Ruling No. S40-0427-2020 dated July 30, 2020)*

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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 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."

However, a DST at the rate of P2.00 on each P200 par value, or fractional part thereof, shall be imposed on the original issuance of shares by iPeople to the stockholders of AEI as a consequence of the merger as provided under Section 174 of the Tax Code, as amended.

4. The transfer of properties of AEI to iPeople as a consequence of the merger shall not be subject to any output tax, pursuant to Section 4.109-1(B)(1)(x) of Revenue Regulations (RR) No. 13-2018, since the said transfer is considered a VAT-exempt transaction under Section 34 of Republic Act (RA) No. 10963. The conveyance of properties to effectuate a merger is not made in the course of business but by operation of law pursuant to the merger. Thus, any unused input tax as of the effective date of merger will be absorbed by iPeople, as the surviving corporation pursuant to Section 4.106-8(b)(3) of RR No. 16-2005, as amended by RRs No. 4-2007 and 10-2011.

5. Any excess and unutilized creditable withholding taxes (CWT), which form part of the assets to be transferred by AEI as of the effective date of the merger, shall be transferred to and vested in iPeople, as the surviving corporation, and such excess CWT may be utilized by the latter against its income tax liabilities for 2019 and succeeding years or may be the subject of a claim for refund or issuance of a tax credit certificate (TCC). *(BIR Ruling No. 100-2017 dated March 2, 2017)*

6. The excess and unexpired Minimum Corporate Income Tax (MCIT) of the absorbed corporation, AEI, as of the effective date of the merger, shall be carried forward and credited against the normal income tax due of the surviving corporation, iPeople, for the three (3) immediately succeeding taxable years pursuant to Section 27 (E) (2) of the Tax Code of 1997, as amended. Since the excess and unexpired MCIT of AEI, is among the rights, privileges, property and/or interest of AEI, the excess and unexpired MCIT of the latter shall be transferred to and vested in iPeople on the effective date of the merger. Thus, AEI's excess and unexpired MCIT shall be carried forward and credited against the normal corporate income tax of iPeople subject to the three-year-carry-forward period reckoned from the date of payment of AEI of its MCIT.

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7. 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 AEI, if any, is not one of their assets that can be transferred and absorbed by the surviving corporation, iPeople, as this privilege or deduction can be availed of by AEI only. Accordingly, the tax-free merger between AEI and iPeople does not cover the NOLCO of the former.

8. The retained earnings of the absorbed corporation, if any, shall be 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 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

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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 the absorbed/dissolving corporation and the surviving/transferee corporation shall record in their respective books of accounts the mandatory accounting entries stated in Annex "B" hereof, pursuant to Revenue Memorandum Order (RMO) No. 17-2016.

The parties shall cause to annotate at the back of the Transfer Certificates of Title and Certificates of Stock, the date the merger was executed, the original/historical/adjusted costs 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 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 Legal and Legislative Division, Bureau of Internal Revenue, proof of annotation of the original/historical/adjusted bases of the properties and/or real properties involved in the transfer and 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

by: 042348

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Annex "A"

LIST OF PROPERTY/IES TRANSFERRED

(Pursuant to Section 40(C)(2) and 6(c) of the Tax Code of 1997,
Revenue Regulations No. 18-2001 dated November 13, 2001,
and Revenue Memorandum Order No. 32-2001 dated November 28, 2001)

Name of Transferee: **iPEOPLE, INC.**

No.	Name of Issuing Corporation	Stock Certificate No.	Number of Shares	Valuation (Par Value) (in Php)
1	Affordable Private Education Center, Inc. (APEC)		1	1
2			1	1
3			1	1
4			1	1
5			1	1
6			10,332,110	10,332,110
7			92,930,000	92,930,000
8			341,219,535	341,219,535
9			1	1
10			2	2
11			123,600,000	123,600,000
12			82,400,000	82,400,000
13			26,991,000	26,991,000
14			15,705,460	15,705,460
15			35,123,200	35,123,200
16			14,988,960	14,988,960
17			31,408,960	31,408,960
18	AC College of Enterprise and Technology (ACCET)		1	1
19			1	1
20			1	1
21			1	1
22			1	1
23		(partial payment, no stock certificate issued yet)	219,999,995	219,999,995
24	LINC Institute, Inc. (LINC)		1	1
25			1	1
26			1	1
27			1	1
28			1	1
29		(partial payment, no stock certificate issued yet)	4,999,995	4,999,995
30	University of Nueva Caceres (UNC)		1	100.00
31			1	100.00

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32			1	100.00
33			1	100.00
34			1	100.00
35			5,528	552,800.00
36			75	7,500.00
37			50	5,000.00
38			1	100.00
39			1	100.00
40			761	76,100.00
41			5	500.00
42			12	1,200.00
43	National Teachers College		1	100.00
44			1	100.00
45			1	100.00
46			1	100.00
47			1	100.00
48			172	17,200.00
49			5	500.00
50			30,313	30,313,000.00
51			960	960,000.00
52			3,024	3,024,000.00
53			1	
	TOTAL			**1,034,658,233**