REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec.40(C)(2)&(6)(b); RR 18-01
BIR Ruling No. 214-12
BIR Ruling No. 100-17
BIR Ruling No. 075-18
BIR Ruling No. 1422-2018
S40M- 194-2022
MAY 0 7 2022

SYCIP GORRES VELAYO & CO.
6760 Ayala Avenue, 1226
Makati City

Attention: **Atty. Lucil Q. Vicerra**
Tax Division

Gentlemen:

This refers to your letter dated August 14, 2018 requesting on behalf of your client, Ajinomoto Philippines Flavor Food Inc. ("APF" for brevity) for confirmation of your opinion that the merger between APF, as the surviving corporation, and Ajinomoto Philippines Global Food Inc. ("APG" for brevity), as the absorbed 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. APF, with Tax Identification No. (TIN) , is a domestic corporation duly registered with the Securities and Exchange Commission ("SEC") with principal office at KM 35 Mc Arthur Hi-way, Tabang, Guiguinto, Bulacan. At present APF has an authorized capital stock of Pesos divided into common shares with a par value of r share. Out of the authorized capital stock, shares have been subscribed and fully paid. The total capital stock issued and outstanding amounts to Pesos

2. APG, with TIN was likewise a duly registered domestic corporation prior to the subject merger and had its principal office at MEPZ-II, Brgy. Basak, Lapu-lapu City, Cebu. It has an authorized capital stock of ! Pesos), divided into) shares with a par value of ! per share. The total capital stock issued and outstanding amounts to Pesos (, wholly owned by Ajinomoto Philippines Corporation ("APC" for brevity).

3. APF and APG (collectively referred to as "constituent corporations") deemed it advisable, expedient, and their best interest to merge into a single corporation pursuant to Title IX of the Corporation Code of the Philippines, with APF as the surviving corporation, for the following business purposes:

a. The Merger will lead to an integration of administrative facilities of the Constituent Corporations resulting in economies of scale and the efficiency of operations;
b. The consolidation of the assets of the Constituent Corporations will allow the procurement of financing and credit facilities under more favorable terms; and
c. The Merger will make possible the more productive use of the properties of the Constituent Corporations.

4. The Articles of Merger and the Plan of Merger were authorized, approved, and confirmed by a majority of the Board of Directors of both APF and APG at their respective meeting both held on June 05, 2017.

5. The Articles of Merger and the Plan of Merger were authorized, approved, and confirmed by the stockholders of APF and APG representing at least 2/3 of the outstanding capital stock at their respective special stockholders' meeting both held on June 05, 2017.

6. On December 05, 2017, the SEC approved the Plan and Agreement of Merger and issued the Certificate of Filing of the Articles and Plan of Merger. Under the approved Plan of Merger, the merger shall become effective the 1st calendar of the succeeding month on which and at the time the SEC shall have issued the (1) Certificate of Filing of the Articles and Plan of Merger; and (2) Certificate of Filing of Amended By-laws. Accordingly, pursuant to the approved Plan of Merger, the merger took effect on January 1, 2018 ("Effective Date of Merger").

7. Pursuant to the Plan of Merger, APF will issue a total of Thirty-Five Thousand Four Hundred Twenty-Five (35,425) common shares to APG's majority stockholder, APC with the other stockholders as mere nominees, in exchange for the APG's net asset value using the ratio of one (1) APF common share for every 4.2342 APG common shares (the "Exchange Ratio"), the other APG shareholders are mere nominees.
8. The authorized capital stock and issued and outstanding capital stock of the constituent corporations, as set forth in the Articles of Merger and the Plan and Agreement of Merger, are as follows:

APF (Prior to the Effective Date of Merger)

Type of Share	Authorized Capital Stock (PhP)	Issued and Outstanding Shares	Par value	No. of Shares	Amount (PhP)
Common					

APG (Prior to the Effective Date of Merger)

Type of Share	Authorized Capital Stock (PhP)	Issued and Outstanding Shares	Par value	No. of Shares	Amount (PhP)
Common					

Beginning on the Effective Date of Merger or January 1, 2018, the authorized capital stock and issued and outstanding capital stock of APF are as follows:

Type of Share	Authorized Capital Stock (PhP)	Issued and Outstanding Shares (PhP)	Par value	No. of Shares	Amount (PhP)
Common	15,000,000.00	150,000.00	100.00	150,000	

9. Per representations and documents submitted, the assets and liabilities of APG, per its Audited Financial Statement as of March 31, 2017, are as follows:

Description	Cost Basis
Current Assets	
Cash	
Trade and other receivables	
Spare parts and supplies	
Other current assets	
Total Current Assets	
Noncurrent Assets	
Property and equipment	
Deferred input VAT	
Deferred tax assets	
Refundable deposits	
Total Noncurrent Assets	
TOTAL ASSETS	

Description	Cost Basis
Current Liabilities	
Trade and other payables	
Income tax payable	
Noncurrent liabilities	
Accrued retirement cost	
Total Liabilities	
Equity	
Capital stock	
Retained earnings	
Re-measurement gain on defined benefit plan	
Total Equity	
Total Liabilities And Equity	

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

1. The merger between APF and APG qualifies as a tax-free merger within the contemplation of Section 40 (C) (2)(a) and (6)(b) of the Tax Code, as amended. As such, no gain or loss shall be recognized in the transfer of assets, properties and

rights by APG to APF pursuant to the merger. Consequently, the same shall not be subject to income tax, capital gains tax, and/or withholding tax.

2. The merger shall not be subject to donor's tax since there is no intention to donate on the part of any of the parties pursuant to Section 98 of the Tax Code, as amended, and in accordance with Article 725 of the New Civil Code ("NCC").

3. No documentary stamp tax ("DST") shall be due on the transfer of properties by APG to APF pursuant to Section 199 (m) of the Tax Code, as amended.

4. The original issuance of shares by APF to the shareholders of APG, in proportion to their current respective shareholdings, shall be subject to the DST at the rate of P1.00 per P200, or fractional part thereof, of the par value of such shares of stock pursuant to Section 174 of the Tax Code, as amended.

5. The transfer of net assets from APG to APF shall not be subject to Value-Added Tax ("VAT") pursuant to Section 105 of the Tax Code, as amended, and as provided under Section 4.106-8 (b)(3) of Revenue Regulation (RR) No. 16-2005, as amended by RR Nos. 4-2007 and 10-2011.

6. The excess and unutilized creditable withholding taxes ("CWT") of APG, as of the effective date of the merger which form part of the assets to be transferred to APF as a consequence of the merger, may be applied as a tax credit by APF against its income tax due for the taxable year in which the merger takes effect and in the succeeding taxable years or may be the subject of a claim for refund pursuant to Section 4.106-8(b) (3) of RR No. 4-2007.

In reply thereto, please be informed, as follows:

1. The foregoing merger of APF and APG is a merger within the contemplation of Section 40 (C) (2) (a) in relation to 40 (C) (6) (b) of the Tax Code, as amended, because APF acquires and assumes all the assets and liabilities of the former and the same is advisable, expedient and in the best interest of APF and APG and their respective stockholders, since the merging corporations are both engaged in the manufacturing, importing, exporting, buying, selling, or otherwise dealing in soy sauce, food and food products, of every kind and description, preserved or otherwise, and all food preparations and other food seasonings, edible goods of every nature, and any and all equipment, materials, supplies used or employed in or related to the manufacture, of such finished products. Hence, the merger is being undertaken for bona fide purposes and not for purposes of escaping the burden of taxation.

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

Accordingly, no gain or loss shall be recognized by APF, as the transferee, on its receipt of the asset and liabilities of APG pursuant to and as a consequence of the merger.

On the other hand, the basis of the shares of stocks to be received by APG stockholders 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. *(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, APF, shall be the same as it would be in the hands of the transferor, APG, increased by the amount of the gain, if any, recognized to the transferor, APG, 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 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. *(Sec. 40 (C) (4) (b), supra).*

Thus, the allocated shares, allocated liability and the substituted basis of the assets transferred by APG to APF based on APG's audited financial statements as of March 31, 2017, are as follows:

	Amount (in Php)	Allocated Liabilities	Allocated Shares	Substituted Basis (in Php)
Cash	10,162,101.00		7,310	
Trade and Other Receivables	9,009,917.00	1,987,573	6,481	
Spare parts and supplies	6,347,261.00	1,400,196	4,566	
Other current assets	412,994.00	91,106	297	
Property and equipment	21,762,243.00	4,800,716	15,655	
Deferred input VAT	580,685.00	128,098	418	
Deferred tax assets	602,900.00	132,999	434	
Refundable deposits	366,766.00	80,908	264	
TOTAL ASSETS	**49,244,867.00**	**8,621,596.00**	**35,425**	

Liabilities	Amount
Trade and other payables	
Income tax payable	
Accrued retirement cost	
TOTAL LIABILITIES	

On the other hand, the bases of the APF shares to be received by the stockholders of APG pursuant to the merger shall be the same as the basis of the assets to be transferred therefore, decreased by the cash and the amount of liabilities to which the aforesaid properties are subject.

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 to donate 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 bona fide 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, as amended by Republic Act (RA) No. 9243, in relation to Section 40 (C)(2) of the Tax Code, as amended. *(BIR Ruling No. 100-2017 dated March 2, 2017)*

In the case of *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6477 dated April 20, 2003*, the Court stated that all 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 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. In 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."

4. DST at the rate of P1.00[1] for every P200 par value, or fractional part thereof, shall be imposed on the original issuance of shares by APF to the stockholders of APG, as a consequence of the merger as provided under Section 174 of the Tax Code, as amended.

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[1] Now P2.00 for every P200 par value, or fractional part thereof under Section 51 of R.A. No. 10963, amending Section 174 of R.A. No. 8424.

5. The transfer of assets pursuant to the merger is not subject to VAT pursuant to Section 4.106-8 (b) (3) of RR No. 16-2005, as amended by RR No. 4-2007, the said transfer being considered a transaction "not subject to output tax" under Section 105 of the Tax Code, as amended, which identifies the persons liable for VAT, to wit:

> "SEC. 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 value-added tax (VAT) imposed in Sections 106 to 108 of this Code."

On the other hand, Section 4.106-8 (b) (3) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007, specifically excludes mergers from being subject to output tax, to wit:

> "SEC. 4.106-8. Change or Cessation of Status as VAT-registered Person. —
>
> (a) xxx xxx xxx
>
> **(b) Not subject to output tax.**
>
> The VAT shall not apply to goods or properties existing as of the occurrence of the following:
>
> (1) xxx xxx xxx
>
> (2) xxx xxx 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."

6. Any excess and unutilized creditable withholding taxes, which form part of the assets to be transferred by APG as of effective date of merger, January 1, 2018, shall be transferred to and vested in APF, as surviving corporation, and such excess CWT may be utilized by the latter. *(BIR Ruling No. 100-2017 dated March 2, 2017)*

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

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

9. The retained earnings of APG 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, as amended. *(BIR Ruling No. 1422-18 dated December 7, 2018)*

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 on the official records of the corporation. Each 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;

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Sec. 40(C)(2)(a) & (6)(b)
Ajinomoto Philippines Flavor Food Inc.
and Ajinomoto Philippines Global Food Inc.
MERGER
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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 persons shall include as a note to their respective audited financial statements 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.

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.

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:

MARISSA O. CABREROS
Deputy Commissioner
Legal Group
Officer-in-Charge

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