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
S[illegible]-226-2021
JUL 16 2021

Zambrano Gruba Caganda and Advincula
27/F 88 Corporate Center, 141 Sedeño Street
Salcedo Village, Makati City 1227

Attention: **Atty. Juan Miguel C. Dela Fuente**
Partner

Gentlemen:

This refers to your letter dated December 29, 2020 requesting for confirmation of your opinion that the merger among Puregold Price Club, Inc.(PPCI), herein referred to as the "Surviving Corporation", and Daily Commodities, Inc., First Lane Super Traders Co., Inc., and Goldtempo Company Incorporated., hereinafter referred to as the "Absorbed Corporations" is a tax-free merger in accordance with Section 40(C)(2) and 6(b) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Background

1. **PUREGOLD PRICE CLUB, INC.** ("**PPCI**) with Tax Identification Number (TIN) is a domestic corporation duly registered with the Securities and Exchange Commission ("**SEC**") under Registration No. with principal place of business at No. 900 Romualdez St., Paco, Manila, primarily engage in the business of wholesale/retail of general merchandise, with an authorized capital stock of **THREE BILLION (PhP3,000,000,000.00)**, Philippine currency, divided into **THREE BILLION (3,000,000,000)** shares with a par value of **ONE PESO (PhP1.00)** per share; of which amount, **TWO BILLION SEVEN HUNDRED EIGHTY FIVE MILLION THREE HUNDRED SIXTY TWO THOUSAND EIGHT HUNDRED SEVENTY SEVEN (2,785,362,877)** shares with total par value of **TWO BILLION SEVEN HUNDRED EIGHTY FIVE MILLION THREE HUNDRED SIXTY TWO THOUSAND EIGHT HUNDRED SEVENTY SEVEN PESOS (PhP2,785,362,877.00)** were subscribed and fully paid up at the time of merger herein contemplated.

2. **DAILY COMMODITIES, INC.**, with TIN , was a domestic corporation duly registered with the SEC under Registration No. , with principal place of business at Corner Zulueta and Melencio St., Cabanatuan City, primarily engage in the business of supermarket and buying, selling, distributing, marketing at wholesale and retail, with an authorized capital stock of **FIVE MILLION PESOS (PhP5,000,000.00)**, Philippine currency, divided into **FIFTY THOUSAND (50,000)** shares with a par value of **ONE HUNDRED PESOS (PhP100.00)** per share; fully subscribed and paid up.

3. **FIRST LANE SUPER TRADERS CO., INC.**, with TIN 000 was a domestic corporation duly registered with the SEC under Registration No. with principal place of business at Corner Zulueta and Melencio St., Cabanatuan City, primarily engage in the business of buying, selling, distributing, marketing at wholesale and retail, with an authorized capital stock of **TEN MILLION PESOS (PhP10,000,000.00)**, Philippine currency, divided into **ONE HUNDRED THOUSAND (100,000)** shares with a par value of **ONE HUNDRED PESOS (PhP100.00)** per share; fully subscribed and paid up

4. **GOLDTEMPO COMPANY INCOPORATED,** with TIN 000 was a domestic corporation duly registered with the SEC under Registration No. with principal place of business at No. 900 Romualdez St., Paco, Manila, primarily engage in purchasing, importing, selling and distributing all kinds of goods, groceries, commodities, wares and merchandise, with an authorized capital stock of **TWO HUNDRED FIFTY MILLION PESOS (PhP250,000,000.00)**, Philippine currency, divided into **TWO HUNDRED FIFTY MILLION (250,000,000)** shares with a par value of **ONE PESO (PhP1.00)** per share; fully subscribed and paid up.

5. On April 27, 2017, PPCI and the Absorbed Corporations entered into a Plan of Merger, with PPCI as the surviving corporation, wherein the effective date of the merger is the approval of the SEC.

6. The stockholders of the said corporations approved such merger, for the following business purposes:

    a) integration of administrative functions thereby eliminating the duplication of functions;
    b) greater efficiency and economy in the management of their operations;
    c) make possible the more productive use of their combined resources;
    d) consolidation of assets that will allow the procurement of financing and credit facilities under more favorable terms; and
    e) streamline and simplify operations with its existing clientele.

7. On November 22, 2017, SEC approved the Plan of Merger and the Articles of Merger of the constituent corporations and issued the Certificate of Filing of the Plan and Articles of Merger on the same date.

8. Under the said approved Plan of Merger, the Absorbed Corporations shall exchange all its assets, net of liabilities and obligations for such number of common shares of the Surviving Corporation (PPCI), of which the stockholders of the constituent corporations resolved to issue a total of 14,551,209 shares in favor of the stockholders of the Absorbed Corporations, thereby amending the total number of issued shares to all PPCI stockholders from 2,785,362,877 common shares to 2,799,914,086 common shares at a par value of P1.00 each share.

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

1. The merger of PPCI and the Absorbed Corporations is a tax-free merger under Section 40(C)(2) and (6)(b) of the NIRC, such that no gain or loss shall be recognized for income tax purposes;
2. The transfer of assets by the Absorbed Corporations to PPCI pursuant to the merger is not subject to value-added tax (VAT) and any unused input tax of the Absorbed Corporations as of the effective date of the merger is absorbed by PPCI, as the Surviving Corporation;
3. The transfer of assets by the Absorbed Corporations to PPCI is likewise not subject to donor's tax for lack of donative intent on the part of the Absorbed Corporations;
4. The transfer of assets to PPCI is not subject to documentary stamp tax (DST) under Section 199 (m) of the NIRC, as amended by Republic Act (RA) No. 9243;
5. Any excess creditable withholding tax (CWT) of the Absorbed Corporations is transferred to and vested in PPCI, as the Surviving Corporation, and such excess CWT may be utilized by the latter; and
6. The original issuance of PPCI shares to the stockholders of the Absorbed Corporations is subject to DST at the rate of One Peso (P1.00[1]) on each Two Hundred Pesos (200.00), or fractional part thereof.

In reply thereto, please be informed, as follows:

1. The foregoing merger of PPCI and the Absorbed Corporations 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 PPCI shall acquire/assume all the assets and liabilities of the Absorbed Corporations and the same will result in economies of scale and efficiency of operations of the merging corporations, allow the procurement of financing and credit facilities under more favorable terms, and make possible the more productive use of the properties of the constituent corporations, albeit, to the best interest of their respective stockholders. Hence, the merger of PPCI and the Absorbed Corporations is being undertaken for a *bona fide* business purpose and not for the purpose of escaping the burden of taxation.

The merger of PPCI and the Absorbed Corporations 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

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recognized by the Absorbed Corporations, as the transferor of all assets and liabilities, to PPCI pursuant to the Plan of Merger.

Accordingly, no gain or loss shall be recognized by PPCI, as the transferee, on its receipt of the assets and liabilities of the Absorbed Corporations 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 the Absorbed Corporations 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 (PPCI) 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 the Absorbed Corporations to PPCI 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.

The substituted basis of the properties transferred by the Absorbed Corporations to PPCI 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 the Absorbed Corporations to PPCI, based on the Absorbed Corporations' audited financial statements as of December 31, 2016 shall be as follows:

	Amount (in Php)	**Allocated Liabilities**	**Allocated Shares**	**Substituted Basis (in Php)**
Cash and Cash-in-Bank				
Receivables				
Merchandise Inventories				
Prepaid Expenses and other current assets				
Property and equipment				

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Intangible Assets				[illegible]
Deferred tax assets				
Other non-current assets				
TOTAL				

Liabilities	**Amount (in Php)**
Accounts payable and accrued expenses	
Income tax payable	
Deposit for future stock subscription	
Other current liabilities	
Non-current accrued rent	
TOTAL	

2. Section 105 of the Tax Code of 1997, as amended, identifies the persons liable for the Value-Added-Tax. 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[2], 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.**
>
> 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."

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Thus, the above-mentioned transaction shall not be subject to VAT, and any unused input VAT of the Absorbed Corporations as of the effective date of merger will be transferred to and absorbed by PPCI 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 any of the parties to the merger to donate to PPCI 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.

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, as amended by Republic Act 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* (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."

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

6. DST at the rate of P1.00[3] on each P200 par value, or fractional part thereof, shall be imposed on the original issuance of shares by PPCI to the stockholders of the Absorbed Corporations as a consequence of the merger as provided under Section 174 of the Tax Code, as amended.

7. 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 Revenue Regulations No. 14-2001, of the Absorbed Corporations, if any, is not one of their assets that can be transferred and absorbed by the Surviving Corporation, PPCI, as this privilege or deduction can be availed of by the Absorbed Corporations only. Accordingly, the tax-free merger between the Absorbed Corporations and PPCI does not cover the NOLCO of the former.

8. The excess and unexpired minimum corporate income tax (MCIT) of the Absorbed Corporations, as of the effective date of the merger, if any, shall be carried forward and credited against the normal income tax due of PPCI for the three (3) immediately succeeding taxable years pursuant to Section 27(E)(2) of the Tax Code, as amended; and

9. The retained earnings of the Absorbed Corporations 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. *(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 Revenue Regulations 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;

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[3] [illegible]

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 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 Corporation and the Surviving Corporations 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, 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 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.

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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