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
APR 10C-2013
3-2-2013

SGV & Co.
6760 Ayala Avenue
Makati City

Attention: **Atty. Veronica A. Santos**
Tax Division

Gentlemen:

This refers to your letter dated April 23, 2013requesting on behalf of your clients, Allied Banking Corporation ("ABC") and Philippine National Bank for confirmation of your opinion that the statutory merger of ABC, as the absorbed corporation, and PNB, as the surviving corporation is a tax-free transfer/exchange pursuant to Section 40(C)(2) in relation to Section 40(C)(6)(b) of the National Internal Revenue Code of 1997, as amended (the "Tax Code").

ABC is a publicly listed universal bank incorporated under the laws of the Philippines on April 11, 1977 with Securities and Exchange Commission (SEC) Company Registration No. andTIN 000- -000 having its principal office at Allied Bank Center, 6754 Ayala Avenue, Makati City; and that ABC and its subsidiaries are engaged in all aspects of banking, insurance, financing, and leasing to personal, commercial, corporate, and institutional clients through a network of local and international branches and offices.

PNB, on the other hand, was established in the Philippines in 1916 and started commercial operations that same year; that it is registered with the SEC with Company Registration No. - with TIN 000- having its principal office at PNB Financial Center, President Diosdado Macapagal Boulevard, Pasay City; that on May 27, 1996, the SEC approved its application to extend its corporate term for another 50 years; that it provides a full range of banking and other financial services to corporate, middle-market, and retail customers, the National Government, Local Government Units, government-owned and controlled corporations and government agencies; and that PNB has local and international branches and offices; that its subsidiaries are engaged in a number of diversified financial and related businesses such as remittance, non-life insurance, merchant banking, leasing, stock brokerage, and foreign exchange trading and related services.

ABC and PNB deemed it advisable, expedient, and in their best interest to merge into a single corporation, pursuant to Title IX of the Corporation Code of the Philippines, with PNB as the surviving corporation, in order to streamline the shareholding structure, increase the efficiency of operations, maximize productive use of properties and resources and thereby avoid unnecessary administrative costs.

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The Articles of Merger and the Plan and Agreement of Merger were authorized, approved, ratified, and confirmed by a majority of the Board of Directors of ABC at its special meeting held on December 16, 2011, and by the majority of the Board of Directors of PNB at its special meeting held on December 16, 2011.

The Articles of Merger and the Plan and Agreement of Merger were authorized, approved, ratified, and confirmed by the affirmative vote of the shareholders of ABC ("ABC Shareholders") representing at least 2/3 of the outstanding capital stock of ABC at a special stockholders' meeting held on March 6, 2012, and the affirmative vote of the shareholders of PNB ("PNB Shareholders") representing at least 2/3 of the outstanding capital stock of PNB at a special stockholders' meeting held on March 6, 2012.

The Bangko Sentral ng Pilipinas approved the Articles of Merger and the Plan and Agreement of Merger of ABC and PNB, with PNB as the surviving entity, pursuant to Monetary Board Resolution No. 1270, dated August 2, 2012.

The Philippine Deposit Insurance Corporation approved the Articles of Merger and the Plan and Agreement of Merger of ABC and PNB, with PNB as the surviving entity, on July 25, 2012.

The SEC approved the Articles of Merger and the Plan and Agreement of Merger on January 17, 2013, by virtue of which the SEC issued a Certificate of Filing of Articles of Merger. Under the approved Plan of Merger, the merger shall become effective on the first day of the month following the issuance of said certificate or at such later date as may be agreed upon by ABC and PNB. Accordingly, pursuant to the agreement between ABC and PNB, the merger will take effect on February 9, 2013 (Effective Date of Merger").

Pursuant to the Plan of Merger, PNB will issue a total of 423,962,500 common shares to the shareholders of ABC.

The authorized capital stock and issued and outstanding capital stock of each of ABC and PNB as set forth in their respective Audited Financial Statements filed with the SEC together with the Articles of Merger and the Plan and Agreement of Merger, are as follows:

ABC (Prior to the Effective Date of Merger)

Type of Share	Authorized	Issued and Outstanding	Par Value	No. of Shares	Amount
Preferred	50,000 shares	50,000 shares	P1,000	50,000	P50,000,000.00
Common	11,450,000 shares	3,252,495 shares	P1,000	3,252,495	P3,252,495,000.00

PNB (Prior to the Effective Date of Merger)

Type of Share	Authorized	Issued and Outstanding	Par Value	No. of Shares	Amount
Preferred	195,175,444 shares	0	P40	195,175,444	0
Common	1,054,824,557 shares	662,245,916 shares	P40	662,245,916	P26,489,836,640

Beginning on the Effective Date of Merger, the authorized capital stock and issued and outstanding capital stock of PNB are as follows:

PNB (Beginning the Effective Date of Merger)

Type of Share	Authorized	Issued and Outstanding	Par Value	No. of Shares	Amount
Preferred	0	0	0	0	0
Common	1,250,000,001 shares	1,086,208,416 shares	P40	1,086,208,416	P43,448,336,640

Per representations and documents submitted, the assets and liabilities of ABC, per its Statement of Condition as of February 8, 2013 (Effective Date of Merger), are as follows:

ASSETS		**LIABILITIES**		
	Original/Adjusted Bases			**Substituted Basis**
Cash and Other Cash Items		**Deposits**		
Due From Bangko Sentral ng Pilipinas		Demand		
Due from Other Banks		Savings		
Interbank Loans Receivable & Securities		Time		
Financial Assets at Fair Value through Profit or Loss		**Derivative Liability**		
Available for Sale Investments		**Bills Payable**		
Debt Securities		**Marginal Deposit**		
Equity Securities		**Cashiers,Managers & Gift Check**		
Investment in Non-Marketable Securities		**Accrued Taxes,Fringe Ben & Other Taxes & Licences**		
Investment Securities		**Income Tax Payable**		
Held To Maturity Investment		**Unsecured Subordinated Debt**		
Loans and Receivables		**Other Liabilities**		
Receivables from Customer		Domestic Bills Payable		
Credit Card Receivables		Accounts		

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		Payable		
Sales Contract Receivable-ROPA		Outstanding Acceptances		
Sales Contract Receivable-Heritage Park Investment		Cash Letter Credit		
Other Receivables		Withholding Taxes Payable		
Investment in Subsidiaries		Due to PDIC		
Property and Equipment		Payment Order Payable		
Bank Premises Land		Due to the Treasurer of the Philippines		
Bank Premises Bldg		Other Credits		
Furniture,Fixtures & Equipment		SSS,MDCare, EC,Pagibig Fund		
Investment Property		Overages		
ROPA-Land		Deposit for keys on Safety Deposit		
ROPA-Bldg.		Sundry Credits		
ROPA-Guam Land		Due to BSP		
ROPA-Guam Bldg.		Other Miscellaneous Liabilities		
Deferred Tax Asset				
Other Assets				
Investment in Heritage Park				
Creditable Withholding Tax				
Prepaid Expenses				
Bond Sinking Fund				
Stationery and Supplies Unissued				
Returned Checks and Other Cash				
Security Deposit				
Documentary Stamps				
Other Investment				
Deferred Charges				
Chattel Mortgage Properties				

15.

Miscellaneous Assets					
TOTAL ASSETS			**TOTAL LIABILITIES**		

Based on the foregoing representations, you now request for a ruling that:

1. The statutory merger of ABC and PNB qualifies for non-recognition of gain or loss for income tax purposes in accordance with Sections 40 (C) (2) in relation to 40(C)(6)(b) of the Tax Code and as such, neither ABC nor PNB will be subject to income tax, withholding tax, or capital gains tax on the transfer.
2. The cost basis of PNB in the assets of ABC is the same as the cost basis of ABC in those assets.
3. The ABC Shareholders do not recognize gain or loss upon the surrender of their ABC Shares in exchange for newly issued PNB Shares; their cost basis in the PNB Shares is the same as their cost basis in the ABC Shares.
4. The transfer of the assets of ABC to PNB pursuant to the merger and the surrender by the ABC Shareholders of their ABC Shares in exchange for PNB Shares are not transfers of property for less than an adequate and full consideration and hence do not give rise to a liability for donor's tax.
5. The surrender by the ABC Shareholders of their ABC Shares pursuant to the merger is not subject to DST.
6. The issuance of new shares by PNB to the ABC Shareholders is subject to DST at the rate of P1.00 on each P200.00 par value, or fractional part thereof.
7. The transfer of assets of ABC to PNB pursuant to the merger is not subject to the gross receipts tax.
8. Any unutilized creditable withholding tax (CWT) of ABC as of the Effective Date of Merger is among the rights, privileges, immunities, franchises, property, receivables, and interest of ABC transferred to PNB by operation of law pursuant to the merger, and may be applied as credit by PNB against its income tax due for the taxable year 2013, and in the succeeding taxable years, or may be subject of a claim for refund or issuance of tax credit certificate. Beginning the Effective Date of Merger, any withholding tax certificate issued by a payor of income in the name of ABC may be applied by PNB against its income tax due for the taxable year 2013, and in its succeeding taxable years, or may be subject of a claim for refund or issuance of a tax credit certificate.
9. Any unexpired minimum corporate income tax (MCIT) of ABC as of the Effective Date of Merger is among the rights, privileges, immunities, franchises, property, receivables, and interest of ABC transferred to PNB by operation of law pursuant to the merger, and carried forward and credited against the regular corporate income tax liability of PNB subject to the three-year-carry-forward period reckoned from the date of payment of ABC of the MCIT.
10. Any Net Operating Loss Carry Over (NOLCO) balance of ABC as of the Effective Date of Merger, will be among the rights, privileges, immunities, franchises, property, receivables, and interest of ABC transferred to PNB by operation of law pursuant to the merger as long as there is no effective change in ownership (i.e., not less than 75% in nominal value of outstanding issued shares is held by or on behalf of the same persons or not less than 75% of the paid-up capital of the corporation is held by or on behalf of the same persons).

In reply thereto, please be informed as follows:

1. The foregoing merger of ABC and PNB is a merger within the contemplation of Section 40 (C) (2) (a) in relation to 40 (C) (6) (b) of the Tax Code because PNB shall acquire/assume all the assets and liabilities of ABC and the same is advisable, expedient and

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in the best interest of the merging corporations and their respective stockholders, since the merging corporations are both engaged in all aspects of banking. Hence, the merger of ABC and PNB is being undertaken for a *bona fide* business purpose and not for the purpose of escaping the burden of taxation.

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

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

2&3. The basis of the shares of stocks to be received by ABC Shareholders 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 property transferred in the hands of the transferee (PNB) shall be the same as it would be in the hands of the transferor (ABC) increased by the amount of the gain, if any, recognized to the transferor (ABC) 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*)

The substituted bases of the properties transferred by ABC to PNB per the submitted Annex, should strictly comply with the rule that cash and other cash items will be excluded from the computation of the adjusted bases 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.

4. 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-ABC to donate to PNB 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.

5. No DST is due on the transfer 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.

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."

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

7. The transfer of properties of ABC to PNB as a consequence of merger is not subject to gross receipts tax (GRT) pursuant to Section 121 of the Tax Code, as amended by Republic Act No. 9337. The transfer of properties to effectuate a merger is not made in the course of business or related to banking activities but by operation of law pursuant to the merger. The GRT being imposed under Section 121 of the Tax Code refers to gains derived by banks on interest, commissions and discounts from lending activities as well as income from financial leasing, royalties and trading gains.

8. The excess and unutilized creditable withholding taxes (CWT) of the absorbed corporation, ABC, amounting to P282,535,958.73 (note 12of Audited Financial Statement page 61) as of the effective date of the merger, which form part of the assets to be transferred by the absorbed corporation to PNB as a consequence of the merger, may be applied as a tax credit by PNB against its income tax due for the taxable year 2013, the effective date of the merger being February 9, 2013, and in the succeeding taxable years, or may be the subject of a claim for refund or issuance of a tax credit certificate (TCC);

9. The excess and unexpired Minimum Corporate Income Tax (MCIT) of the absorbed corporation, ABC, as of the effective date of the merger amounting to P74,165,159.56 (note 25 of Audited Financial Statement page 82) as of year 2012 shall be carried forward and credited against the normal income tax due of the surviving corporation, PNB, for the three (3) immediately succeeding taxable years pursuant to Section 27 (E) (2) of the 1997 Tax Code. Since the excess and unexpired MCIT of ABC, is among the rights, privileges, property and/or interest of ABC, the excess and unexpired MCIT of the latter shall be transferred to and vested in PNB on the effective date of the merger. Thus, ABC's excess and unexpired MCIT shall be carried forward and credited against the normal corporate income tax of PNB subject to the three-year-carry-forward period reckoned from the date of payment of ABC of its MCIT.

10. 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 corporation, ABC, if any, is not one of the assets of the latter that can be transferred and absorbed by the surviving corporation, PNB, as this

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privilege or deduction can be availed of merely by the absorbed corporation. Accordingly, the tax-free merger between ABC and PNB does not cover the NOLCO (note 25 of Audited Financial Statement page 82) of the former that can be transferred and absorbed by the latter corporation.

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 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;

   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 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.

The parties shall cause to annotate, at the back of the Transfer Certificates of Title and Certificates of Stock, the date the deed of exchange 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 exchange; 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 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 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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gps(allied-pnb merger)