July 19, 2018

BIR RULING NO. 1092-18

Section 127, NIRC, as amended; RR No. 16-2012

San Miguel Food and Beverage, Inc.
23F The MJT Corporate Condominium, ADB Avenue
Ortigas Center, Pasig City, Metro Manila

San Miguel Corporation
No. 40 San Miguel Avenue
Mandaluyong City, Metro Manila

Attention: *AAA*

BBB

Gentlemen :

This refers to your request for a ruling that Revenue Regulations (RR) No. 16-2012 will not apply to the sale of shares of San Miguel Food and Beverage, Inc. **("SMFB")** through the Philippine Stock Exchange **("PSE")** during the Minimum Public Ownership **("MPO")** Exemption Period inasmuch as SMFB has been granted exemption from the MPO Rule by the PSE and the Securities and Exchange Commission **("SEC")**.

It is represented that San Miguel Group is having an internal restructuring to consolidate its food and beverage businesses under SMFB. The implementation and completion of the subject restructuring transaction consists of two (2) inter-related components, namely: (i) the consolidation of all the food and beverage business operations of the San Miguel Group under one publicly-listed holding company (*i.e.*, SMFB), and (ii) the public offering and sale of a meaningful percentage of the outstanding shares of the capital stock of SMFB to both domestic and foreign investors (the **"Transaction"**).

The consolidation of the businesses referred to above will be implemented through a sequential series of transactions commencing with the transfer by San Miguel Corporation **("SMC")** of all its 7,859,319,270 common shares in San Miguel Brewery, Inc. **("SMB")** and 216,972,000 common shares in Ginebra San Miguel, Inc. [formerly,

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La Tondeña Distillers, Inc.] **("GSMI")** (collectively, the **"Exchange Shares"**) to SMFB; in consideration for the Exchange Shares, SMFB will issue 4,242,549,130 new common shares (the **"New Shares"**) to SMC (hereinafter referred to as the **"Share Swap"**). The New Shares will be issued out of the increase in the authorized capital stock of SMFB from Php_____ to Php_____ (the **"Capital Increase"**).

Upon completion of the Share Swap and prior to the public offering of the shares of stock of SMFB, the percentage ownership of SMC out of the total outstanding common stock of SMFB shall increase *from* 85.37% [1] *to* 95.87%. Consequently, the total number of shares owned by the public in SMFB will result to less than the 10% MPO required under the Rule on Minimum Public Ownership (the **"MPO Rule"**) of the PSE. The drop in the percentage of shares in SMFB owned by the public is only a temporary and inevitable consequence of the series of transactions considering that a necessary component of the Transaction is the public offering of common shares of SMFB, potentially covering a combination of the common shares owned by SMC and the common shares out of the unissued capital stock of SMFB, equivalent to approximately 15% of the total outstanding common shares of SMFB after the completion of the Share Swap (the **"Offer"**). Given various market, regulatory and logistical considerations, it is anticipated that the Offer will be completed at least four (4) months after the approval of the Capital Increase and completion of the Share Swap. The completion of the Offer, an essential component of the Transaction, will restore the public sharp ownership in SMFB conformably with the mandatory requirements of the MPO Rule. After the completion of the Offer, SMC shall continue to own at least 51% of the total outstanding voting stock of SMFB.

Considering that the ultimate objective of the Transaction will necessarily involve the completion of its two components (namely, the Share Swap and the Offer), SMFB and SMC filed with the PSE a request for the PSE not to implement a trading suspension on the SMFB shares when SMFB's public float temporarily falls below the 10% threshold as a result of the Share Swap (which is the first part of the Transaction) since the Offer (being the second and essential component of the Transaction) will restore the public ownership level to the required MPO percentage. The PSE, in its Letter-Reply, granted SMFB an exemption from compliance with the MPO Rule considering that the temporary non-compliance by SMFB with the MPO Rule is the result of an ongoing restructuring plan and SMFB has a defined program to comply with the MPO Rule within a fixed period of not more than six months (the **"MPO Exemption of SMFB"**).

Cognizant of the commitment of SMFB to remain compliant with the MPO Rule, the PSE, in its Letter-Reply, declared that it will not suspend the trading of the SMFB shares during the period commencing from the implementation of the Share Swap until the completion of the follow-on Offer (the **"MPO Exemption Period"**), on the following conditions, namely: (i) the prior approval of the SEC, on the basis of Securities Regulation Code **("SRC")** Rule 39.1.1.3.1, shall first be obtained by the PSE (the **"SEC Approval"**), and (ii) the issuance by the BIR of a ruling/opinion confirming that the Transaction and all trades of the SMFB shares through the PSE during the MPO

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Exemption Period are not subject to the provisions of RR No. 16-2012 and, as such, the stock transaction tax under the Tax Code shall be imposed on all such trades.

By way of compliance with the relevant provisions of SRC Rule 39.1.1.3.1, [2] in connection with the power of the SEC to regulate and supervise self-regulatory organizations such as the PSE under Section 39 of the Republic Act No. 8799 (The Securities Regulation Code), the MPO Exemption of SMFB granted by the PSE was presented to the SEC for approval (the **"PSE Request"**).

In response to the PSE Request, the SEC issued a letter-advice approving the MPO Exemption of SMFB granted by the PSE, the relevant portions of which state, as follows:

> "This refers to your letter dated 01 June 2018 requesting the Commission's approval pursuant to SRC Rule 39.1.1.3.1 of the grant to San Miguel Food and Beverage, Inc. ("FB") of temporary exemption from compliance with the 10% MPO requirement through the suspension of the enforcement of the PSE MPO Rules during the period commencing from the implementation of the Share Swap transaction between FB and San Miguel Corporation until the completion of the follow-on offer for reasons stated therein.
>
> xxx xxx xxx
>
> Please be informed that the Commission En Banc in its meeting held on 21 June 2018 resolved to approve your request on the basis that it is consistent with public interest and aimed to protect the investors. Among others, the Commission found important the non-suspension of the trading of the FB shares considering the huge amount of shareholdings in the hands of public investors that will be prejudiced.
>
> Likewise, the Commission also recognized that the suspension of the enforcement of the MPO Rules is expressly provided in under Section 3[A] of the PSE rules and in the SRC IRR (SRC Rule 39.1.1.3.1) that the Exchange — an SRO, has the authority to suspend the enforcement of its rules subject to prior approval of the Commission.
>
> xxx xxx xxx"

In view of the issuance of the SEC Approval, the next step is for SMFB and SMC to secure the BIR Ruling in order to fully comply with all the conditions set by the PSE in connection with the MPO Exemption of SMFB.

In reply, please be informed that RR No. 16-2012 was issued by the BIR to "prescribe the tax treatment of sales, barters, exchanges or other dispositions of shares of stock of publicly-listed companies that meet or do not meet the minimum percentage of listed securities held by the public (or the "public float") of ten percent (10%) issued and outstanding shares, exclusive of any treasury shares or the minimum public ownership as required by the SEC or PSE, whichever is higher." [3] Accordingly, Section 2 (B) of RR No. 16-2012 provides for the prescribed tax that shall be levied, assessed and collected on

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sale, barter, exchange or disposition of shares of such companies which is "non-compliant with the MPO." [4]

Take note that the determination of an MPO of a publicly listed company is lodged with the PSE and SEC. Concomitant to this power and authority is the power and authority of PSE and SEC to temporarily exempt a publicly listed company from complying with the MPO requirement for valid and justifiable reasons. That power and authority is pursuant to Section 3 (A) of the PSE Rules and SRC IRR (SRC Rule 39.1.1.3.1).

The records will bear out that both the PSE and SEC have properly exercised such power and authority when it granted, via separate letters dated 30 May 2018 and 22 June 2018, the request of SMFB to temporarily exempt it from the MPO requirements for the reasons therein stated. Thus, with the grant by both the PSE and SEC of the request of SMFB for temporary exemption from MPO requirement pursuant to existing laws and rules, and taking into account that SMFB's non-compliance with the MPO requirement is an unintended result of an on-going restructuring plan and that the same is only temporary, we take the view that RR No. 16-2012 shall not apply to any sale of SMFB shares through the PSE during the exemption. This is because during that period, SMFB, for all legal intents and purposes, cannot be considered as "non-compliant with the MPO Rule."

Foregoing considered, we hereby confirm your opinion that the execution of the Transaction (involving the Share Swap and the follow-on Offer of SMFB shares) and all trades of SMFB shares through the PSE during the MPO exemption period are not subject to the provisions of RR No. 16-2012, and that the stock transaction tax at the rate six-tenths of one percent (6/10 of 1%) under Section 127 of the 1997 Tax Code, as amended by Republic Act No. 10963 ("TRAIN Law"), shall be imposed on all trades through the PSE of SMFB shares during the same period.

It should be made clear, however, that the non-application, or exemption from the provisions, of RR No. 16-2012, as herein provided, shall begin to run from the issuance of this confirmatory-Ruling and shall end on or before 31 December 2018, subject to compliance with the conditions that may be imposed by PSE and SEC. This is consistent with the SMFB's representation that it has a defined program to comply with the MPO Rule within a fixed period of not more than six months. Thereafter, and if SMFB is still non-compliant with the MPO requirement, then, all trades of its shares made through the PSE shall be subject to the provisions of RR No. 16-2012.

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,

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(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. As of March 31, 2018.
2. SRC Rule 39.1.1.3.1 provides, in part, that a Self-Regulatory Organization ("SRO"), "shall not suspend, alter or modify the enforcement of rules, guidelines, policies earlier approved by the Commission without the prior approval of the latter."
3. Section 1 (a), RR No. 16-2012.
4. "SECTION 2. Tax Treatment of Sales, Barters, Exchanges or Other Dispositions of Shares of Stock of a Publicly-listed Company that is Non-Compliant with the MPO. — A) x x x
   Transactions after December 31, 2012. — There shall be levied, assessed and collected on every sale, barter, exchange or other disposition of shares of stock of a publicly-listed company which is non-compliant with the MPO, a final tax at either five percent (5%) or ten percent (10%) on the net capital gains imposed under Sections 24 (C), 25 (A) (3), 25 (B), 27 (D) (2), 28 (A) (7) (c), and 28 (B) (5) (c) of the NIRC, as amended."
   Under the TRAIN Law, the Capital Gains Tax rate has been changed to a single rate of fifteen percent (15%).

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