REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Section 40(C)(2) & (6)(b),
Tax Code of 1997, as amended
BIR Ruling No. 214-12
BIR Ruling No. 075-18
S40M-342-2021
SEP 30 2021

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

Attention: **Lucil O. Vicerra**
Principal, Indirect Tax Services

Gentlemen:

This refers to your letter dated May 29, 2015 requesting for confirmation of your opinion that the merger of Star Recording, Inc. and Star Songs, Inc. (SRI and SSI, respectively, or the "Absorbed Corporations"), and ABS-CBN Film Productions, Inc. ("AFPI" or 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 (Tax Code).

BACKGROUND

AFPI (TIN No.) is a domestic corporation that was duly incorporated with the Securities and Exchange Commission (SEC) on March 25, 2003. Its registered address is at 2nd Floor, Eugenio Lopez Jr. Communications Center, Eugenio Lopez Drive, Quezon City, 1103. Its primary purpose is to produce, manufacture, sell, distribute, lease or otherwise trade in motion pictures or films of every kind and description. It acts as an agent or representative of corporations, firms and individuals in carrying on, conducting or engaging in the business of buying or selling films of any and all kinds for television, theaters and show business. It acts as an agent or representative of any firm or entity, foreign or local, in the distribution, sales, promotion or booking of films of any and all kinds and allied or necessary products.

SRI (TIN No.) is a domestic corporation that was duly incorporated with the SEC on February 2, 1995. Its registered address is also at 2nd Floor, Eugenio Lopez Jr. Communications Center, Eugenio Lopez Drive, Quezon City, 1103. Its primary purpose is to apply, manufacture, produce, distribute, purchase, sell, export, import, lease, license, or otherwise deal in music records, musical compositions and scores of every kind and nature by any method now in use hereafter developed.

SSI (TIN No. is a domestic corporation that was duly incorporated with the SEC on August 7, 1996. Its registered address is also at 2nd Floor, Eugenio Lopez Jr. Communications Center, Eugenio Lopez Drive, Quezon City, 1103. Its primary purpose is to apply, obtain acquire or otherwise dispose of, any and all copyrights on songs, lyrics and musical compositions, whether secured under the copyright law of the Philippines or any foreign country. It also files for or registers both Philippine and International copyrights of the songs, lyrics and musical compositions.

Below is a summary of the capital structures of AFPI, SRI, SSI:

Constitutent Corporations	Number of Shares (common)	Par Value	Authorized Capital Stock	Subscribed Capital	Paid-up Capital
AFPI		1,000			
SRI		100			
SSI		100			

The Respective Board of Directors and stockholders of AFPI, SRI and SSI deemed it advisable to merge into a single corporation to achieve economies of scale and efficiency of management and operations through the integration of their administrative facilities, pursuant to the provisions of Section 40(C)(2) of the Tax Code, as amended, and Sections 76 to 80 of the Corporation Code of the Philippines.

Pursuant to the Plan of Merger, the Surviving Corporation shall increase its authorized capital stock from Fifty Million Pesos (P50,000,000.00), consisting of 50,000 common shares of stock with par value of One Thousand Pesos (P1,000.00) per share, to Three Hundred Fifty Million Pesos (P350,000,000.00), consisting of 350,000 common shares with par value of One Thousand Pesos (P1,000.00) per share, equivalent to an effective increase of Three Hundred Million Pesos (P300,000,000.00) consisting of 300,000 common shares of stock with par value of One thousand Pesos (P1,000.00) per share.

Upon the effective date of the merger, the Surviving Corporation shall hold and enjoy and be vested with the rights, privileges, assets, business, franchise, powers, and other properties of the Absorbed Corporations including, but not limited to, all real and personal properties, contractual rights, licenses, privileges, property rights, claims, bank deposits, stocks, account receivables, credit lines, supplies, equipment and such other assets as they may own as of December 31, 2013 ("Cut-Off Date").

As determined by the respective Boards of Directors, the surviving Corporation shall, in exchange for the Net Asset Value transeferred as of the cut-off date, issue shares of stock to the stockholders of the Absorbed Corporations.

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

1. The statutory merger of the Absorbed Corporations and AFPI qualifies for non-recognition of gain or loss for income tax purposes in accordance with Section 40(C)(2) in relation to Section 40(C)(6)(b) of the Tax Code, and as such, neither the Absorbed Corporations nor AFPI will be subject to income tax, withholding tax, or capital gains tax on the transfer.

2. The transfer of the assets of the Absorbed Corporations to AFPI pursuant to the merger and the surrender by the Shareholders of their shares in the Absorbed Corporations in exchange for AFPI's shares are not transfers of property for less than an adequate and full consideration, hence, do not give rise to a liability for donor's tax.

3. No documentary stamp tax (DST) shall be due on the transfer of properties by SRI and SSI to AFPI pursuant to Section 199(m) of the 1997 Tax Code, as amended by Republic Act (RA) No. 9243.

4. The original issuance of shares by AFPI to the stockholders of SRI and SSI 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.

5. The transfer of net assets of the Absorbed Corporations to AFPI pursuant to the merger is not subject to value-added tax (VAT) pursuant to Section 4.106-8 (b)(3) of Revenue Regulations (RR) No. 16-2005, otherwise known as the Consolidated Value-Added Tax Regulations of 2005.

6. Any excess and unutilized creditable withholding tax (CWT) of the Absorbed Corporations as of the effective date of merger which form part of the assets to be transferred by SRI and SSI to AFPI as consequence of the merger, may be applied as tax credit by AFPI against its income tax due for the taxable year in which the merger takes effect and in the succeeding taxable years, or may be subject of a claim for refund or issuance of a tax credit certificate.

In reply, please be informed as follows:

1. The foregoing merger of the Absorbed Corporations and AFPI is a merger within the contemplation of Section 40 (C)(2) in relation to Section 40 (C)(6)(b) of the Tax Code because AFPI's acquisition/assumption of all the assets and liabilities of 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 the Absorbed Corporations and AFPI qualifies for non-recognition of gain or loss for income tax purposes in accordance with Section 40(C)(2) of the Tax Code. No gain or loss shall be recognized by SRI and SSI, as the transferors, of all the assets and liabilities, pursuant to the Plan of Merger. Likewise, no gain or loss shall be recognized by AFPI, as the transferee, on its receipt of the asset and liabilities of the Absorbed Corporations pursuant to and as a consequence of the merger.

The basis of the shares of stocks to be received by Shareholders of the Absorbed Corporations 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)

The basis of the property transferred in the hands of the transferee (AFPI) shall be the same as it would be in the hands of the transferors (Absorbed Corporations) increased by the amount of the gain, if any, recognized to the transferors (Absorbed Corporations) on the transfer. (Sec. 40 (C)(5)(b), *supra*)

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 the Absorbed Corporations to AFPI 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.

Accordingly, the allocated shares, liabilities and the substituted basis of the properties transferred by the Absorbed Corporations based on Audited Financial Statement as of December 31, 2013, shall be as follows:

STAR SONGS, INC.

Assets	Amount	Allocated Liabilities	Allocated Shares[1]	Substituted Basis
Cash & cash equivalents				
Trade & other receivables				
Other Current Assets				
Intangible assets				
Deferred tax assets				
Other non-current assets				
TOTAL				

Liabilities	Amount
Trade and other payables	
Total	

STAR RECORDING, INC.

Assets	Amount	Allocated Liabilities	Allocated Shares	Substituted Basis
Cash & cash equivalents				
Trade & other receivables				

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[1] Based on the Certificate of Increase of Authorized Capital Stock, a total of hares shall be issued to Star Songs, Inc., while shares shall be issued to Star Recording, Inc.

Inventories				
Intangible assets				
Other current assets				
Property & equipment				
Deferred tax assets				
Other noncurrent assets				
TOTAL				

Liabilities	Amount
Trade & other payables	
Accrued pension obligation & other employee benefits	
Total	

SUMMARY

Name of Company	Total value of assets transferred	Total number of shares allocated	Substituted Basis
Star Songs, Inc.			
Star Recording, Inc.			
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 any act of liberality (*animus donandi*).

Clearly, there is no intention on the part of the Absorbed Corporations to donate to AFPI their 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 & 4. 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 (R.A.) No. 9243, in relation to Section 40 (C)(2) of the Tax Code. However, DST at the rate of P1.00[2] on each P200.00 par value, or fractional part thereof, shall be imposed on the original issuance of shares by AFPI to the stockholders as a consequence of the merger as provided under Section 174 of the Tax Code.

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[2] Old DST rate is used since the transaction took place prior to the effectivity of Republic Act No. 10963 or the TRAIN Law.

5. The transfer of properties of the Absorbed Corporations to AFPI as a consequence of merger will not be subject to any output tax, pursuant to Section 4.106-8 (b)(3) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007 and as further amended by RR No. 10-2011. 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 AFPI, as the surviving corporation, pursuant to Section 4.106-8 (b)(3) of RR No. 16-2005, as amended.

6. The excess and unutilized CWT of the Absorbed Corporations, as of the effective date of the merger, which form part of the assets to be transferred by the Absorbed Corporations to AFPI as a consequence of the merger, may be applied as a tax credit by AFPI against its income tax due for the taxable year 2014, the effective date of the merger being June 30, 2014, and in the succeeding taxable years, or may be the subject of a claim for refund or issuance of a tax credit certificate (TCC).

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

8. The unrestricted 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.

9. Any excess and unexpired MCIT of the absorbed corporations as of the Effective Date of the Merger shall be carried forward and credited against the normal income tax of the surviving corporation for the three (3) immediately succeeding taxable years pursuant to Section 27(E)(2) of the Tax Code. Since the excess and unexpired MCIT of TCI is among the rights, privileges, property and/or interest of the absorbed corporations, the excess and unexpired MCIT of the latter shall be transferred and vested in AFPI on the Effective Date of the Merger. Thus, SRI and SSI's excess and unexpired MCIT shall be carried forward and credited against the normal corporate income tax of AFPI subject to the three-year-carry-forward period reckoned from the date of payment of SRI and SSI of their MCIT.

In order that the above-described reorganization can be considered as merger under Section 40 (C) (2) and (6) (b) of the Tax Code, 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:

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(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 the cost or other basis of all properties, 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 or 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; and

(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, who is a 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 the stock or securities and other property or money received from the exchange, including any liability assumed upon the exchange, and any liability 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 exchange.

C. Permanent 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 liability assumed on the exchange, or any liability to which any of the properties received were subject), in order to facilitate the determination of gain or loss from a subsequent disposition of such stock or 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 stamped 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 SSI, SRI and AFPI shall record in their respective books of accounts the mandatory accounting entries stated in Annex "A" hereof, pursuant to Revenue Memorandum Order 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 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 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, 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 ascertained 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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PROFORMA ENTRIES - MERGER

Annex "A"

<table>
<tr><th>Particulars</th><th>Individual Shareholders' Book
(The entry/ies shall be per individual shareholder of the absorbed corporation)</th><th>Transferee's Book</th></tr>
<tr><td>Journal Entry to Record the Tax Free Exchange</td><td>Investment in (<u>name of transferee</u>) xxx.xx
Investment in (<u>name of dissolving corporation</u>) xxx.xx
Dividend Income (net of FWT on dividend) xxx.xx

To record the Tax-Free Exchange (TFE) of investment in (<u>share type</u>) shares of (<u>name issuing corporation/s</u>) with aggregate fair market value of P_______ in exchange for (<u>type and no. of share</u>) of (<u>name of transferee</u>) with par value of P_____ per share</td><td>Investment in (<u>issuing corp. for shares of stock</u>) xxx.xx
PPE - Land & Improvement (for real props) xxx.xx
Others Assets (as applicable) xxx.xx
Liabilities xxx.xx
Capital Stock xxx.xx
Additional Paid-In Capital xxx.xx

To record the Tax-Free Exchange (TFE) of real properties, investment in (<u>share type</u>) shares of (<u>name issuing corp/s</u>), and other assets with aggregate fair market value of P_______ including liabilities assumed resulting from merger, in exchange for (<u>type and no. of share</u>) of (<u>name of transferee</u>) with par value of P_____ per share</td></tr>
<tr><td>Balance Sheet Notes Entry</td><td>Investment includes (<u>no. and type of share/s</u>) with par value of P_______ in (<u>name of transferee</u>) resulting from the Tax-Free Exchange of investment in (<u>no. and type of share/s</u>) of (<u>issuing corporation/s</u>) covered by Stock Certificate No/s. _________ which were acquired for the total cost of (<u>substituted basis</u>) and which have fair market value as of the date of exchange amounting to P_________</td><td>Real properties, investment in (no. and type of share/s) of (<u>issuing corporation/s</u>) and other assets were acquired through merger as evidenced by Plan of Merger and Articles of Merger, including the increase of the Authorized Capital Stock of (name of transferee), approved by the Securities and Exchange Commission on (<u>date</u>). The total acquisition cost/substituted cost to (<u>name of transferee</u>) of the investment/s amounts to (<u>FMV at the time of exchange</u>). The real properties, investment/s and other assets were previously covered by Transfer Certificate of Title and Stock Certificate No/s. _______ issued by (<u>issuing corporation/s</u>) and are now presently covered by Stock Certificate No/s. _______ constituting (no. and type of share/s) [total] shares in the name of (<u>name of transferee</u>)</td></tr>
<tr><td>Proforma Entries to Record Subsequent Sale/Transfer</td><td>Cash or Accounts receivables xxx.xx
Investment in (<u>name of transferee</u>) xxx.xx
Gain on Sale of Investment xxx.xx

To record subsequent sale/transfer of investment acquired thru Tax-Free Exchange

Current xxx.xx
Tax Payable xxx.xx

Provision for Tax as follows
<table>
<tr><th colspan="2">Tax Type</th><th>Tax Rate*</th><th>Multiply By</th><th>Amount</th></tr>
<tr><td>1)</td><td>Net Capital Gains Tax</td><td>5% on P100,000 and 10% on excess</td><td>Gains realized on TFE</td><td></td></tr>
<tr><td>OR</td><td>Stock Transaction Tax</td><td>1/2 of 1%</td><td>FMV of inv's at the time of TFE</td><td>xxx.xx</td></tr>
<tr><td>2)</td><td>Net Capital Gains Tax</td><td>15%</td><td>Gains realized on subsequent sale of investment/s</td><td></td></tr>
<tr><td>OR</td><td>Stock Transaction Tax</td><td>6/10 of 1%</td><td>Selling Price of investment at the time of subsequent sale</td><td>xxx.xx</td></tr>
<tr><td colspan="2">Total Tax Payable</td><td></td><td></td><td>xxx.xx</td></tr>
</table>

* If subsequent sale/s of investment/s was/were made before January 1, 2018 the tax rates used in the computation of Net Capital Gains Tax and Stock Transaction Tax at the time of tax-free exchange shall apply

* Computation of Gain Realised on Subsequent Sale of Investment
Selling Price xxx.xx
Less: Cost (Substituted Basis) xxx.xx
Net Capital Gain on sale of unlisted shares xxx.xx

* Per RMO 17-2016, the substituted basis of the stock or securities received by the transferor on a tax-free exchange shall be as follows: (1) The original basis of the property, stock or securities to be transferred (2) Less: (a) money received, if any, and (b) the fair market value of the other property received, if any (3) Plus (a) the amount treated as dividend of the shareholder, if any, and (b) the amount of any gain that was recognized on the exchange, if any</td><td>Cash or Accounts receivables xxx.xx
Investment in (<u>name of issuing corporation</u>) / <u>PPE - Land & Improvement / Other Assets</u> xxx.xx
Gain on Sale of Investment xxx.xx

To record subsequent sale/transfer of real properties, investment/s and/or other assets acquired thru Tax-Free

Current xxx.xx
Tax Payable xxx.xx

Provision for tax as follows
<table>
<tr><th colspan="2">Tax Type</th><th>Tax Rate*</th><th>Multiply By</th><th>Amount</th></tr>
<tr><td>1)</td><td>Net Capital Gains Tax</td><td>15%</td><td>Gains realized on subsequent sale of investment/s</td><td></td></tr>
<tr><td>OR</td><td>Stock Transaction Tax</td><td>6/10 of 1%</td><td>Selling Price of investment at the time of subsequent sale</td><td>xxx.xx</td></tr>
<tr><td colspan="2">Total Tax Payable</td><td></td><td></td><td>xxx.xx</td></tr>
</table>

<table>
<tr><th colspan="2">Tax Type</th><th>Rate</th><th>Multiply By</th><th>Amount</th></tr>
<tr><td>1)</td><td>Withholding Tax-ONETT</td><td>1.5% to 6% per RR No. 6-2001</td><td>Fair Market Value (FMV) of the property/ies at the time of subsequent sale/transfer</td><td>xxx.xx</td></tr>
<tr><td>2)</td><td>Documentary Stamp Tax (DST)</td><td>1.5% for every P1,000 and fractional part thereof</td><td></td><td>xxx.xx</td></tr>
<tr><td>3)</td><td>Value-Added Tax (VAT)</td><td>12%</td><td></td><td>xxx.xx</td></tr>
<tr><td colspan="3">Total Tax Payable</td><td></td><td>xxx.xx</td></tr>
</table>

*Gain on sale of property/ies is subject to Normal Corporate Income Tax (NCIT)

*FMV at the time of subsequent sale/transfer refers to the selling price, zonal value or the value reflected in the tax declaration, whichever is highest</td></tr>
</table>