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

Sec. 40 (C)(2)&(6)(b) of Tax Code, as amended
BIR Ruling No. 214-2012; BIR Ruling No. 100-2017; BIR Ruling No. 75-2018
S40M # 343 - 2022
JUN 30 2022

MATA-PEREZ TAMAYO FRANCISCO
Unit 15A Act Tower, 135 H.V. Dela Costa St.
Salcedo Village, Makati City

Attention: **Attys. Euney Marie J. Mata-Perez**
Richelle Dionne R. Patawaran
and
Aziza Hannah A. Bacay

Gentlemen:

This refers to your letter request on behalf of your clients, RFM Corporation (RFM), and its former subsidiaries, Invest Asia Corporation ("IAC"), Interbake Commissary Corporation ("ICC"), and Cabuyao Logistics and Industrial Center, Inc. ("CLIC") for confirmation that the merger of IAC, ICC, and CLIC, as the absorbed corporations, with RFM, as the surviving corporation, qualifies as a tax-free merger under Section 40 (C)(2) and (6)(b) of the National Internal Revenue Code ("Tax Code") of 1997, as amended.

Background:

The parties involved in the above-mentioned merger with its respective principal addresses and Taxpayer Identification No. (TIN), are as follows:

RFM Name	Principal Address	TIN
RFM Corporation	RFM Corporate Center, Pioneer cor. Sheridan Streets, Mandaluyong City	
Invest Asia Corporation	RFM Corporate Center, Pioneer cor. Sheridan Streets, Mandaluyong City	
Interbake Commissary Corporation	RFM Corporate Center, Pioneer cor. Sheridan Streets, Mandaluyong City	
Cabuyao Logistics and Industrial Center, Inc.	RFM Corporate Center, Pioneer cor. Sheridan Streets, Mandaluyong City	

RFM is a publicly-listed company which owned various subsidiaries, namely: IAC, ICC and CLIC. CLIC and ICC were wholly-owned by RFM, while IAC was majority-owned by RFM (95.99%). Hyland Realty Corporation and Foresight Realty Development Corporation each own 2% of IAC.

Through an "upstream merger" between the RFM and its former subsidiaries, the RFM issued shares to itself – as the surviving corporation – in exchange for the assets transferred to it by its former subsidiaries as a result of the merger. With the RFM as the surviving corporation, the subsidiaries ceased to exist and their legal personalities were considered terminated. The merger is seen to be desirable and advantageous to the parties and their respective shareholders for the following business reasons

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1. The integration of the administrative facilities of the four (4) corporations will result in economies of scale and efficiency of operations;
2. The consolidation of assets of the four (4) corporations will allow the procurement of financing and credit facilities under more favorable terms; and
3. The merger will make possible the more productive use of the properties of the constituent corporations.

The RFM issued to itself and to the minority shareholders of IAC a total of common shares, at an issue price of P per share, or a total consideration of P . On June 25, 2018 and September 7, 2018, the Board of Directors and the Stockholders approved the issuance of the above-mentioned number of shares to the stockholders of the absorbed corporations, the allocation of which is as follows:

Name of Stockholders	Nationality	Number of Shares Subscribed	Amount of Shares Subscribed (in PhP)
RFM Corporation (as stockholder of CLIC)	Filipino		
RFM Corporation (as stockholder of ICC)	Filipino		
RFM Corporation (as stockholder of IAC)	Filipino		
Hyland Realty Corporation	Filipino		
Foresight Realty Development Corp.	Filipino		
TOTAL			

The Articles of Merger and Plan of Merger were executed by the constituent corporations on September 11, 2018.

As of June 30, 2018 the constituent corporations had the following assets, liabilities and equity:

RFM	**Assets (in PhP)**	**Liabilities (in PhP)**	**Equity (in PhP)**
RFM Corporation			
Invest Asia Corporation			
Interbake Commissary Corporation			
Cabuyao Logistics and Industrial Center, Inc.			

The details of the constituent corporations' excess and unexpired Minimum Corporate Income Tax (MCIT), unused Creditable Withholding Tax (CWT), and unused input VAT, as of June 30, 2018 are as follows:

RFM	Excess and Unexpired MCIT (in PhP)	Unused CWT (in PhP)	Unused input VAT (in PhP)
RFM Corporation	-		
Invest Asia Corporation	-		
Interbake Commissary Corporation	-		-
Cabuyao Logistics and Industrial Center, Inc.			-

The Securities and Exchange Commission (SEC) issued on January 31, 2019, the Certificate of Filing of the Articles and Plan of Merger.

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

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1. The transfer of properties of IAC, ICC, and CLIC to the RFM qualifies as a tax-free exchange pursuant to Section 40(C)(2) in relation to Section 40 (C)(6)(b) of the Tax Code, as amended. This transfer of properties is pursuant to an upstream merger between the RFM, as the surviving entity, and its subsidiaries. Accordingly, no income tax, value-added tax (VAT), and donor's tax can be due on the transfer.

2. The excess and unexpired MCIT, unused CWT, and unused input VAT of the absorbed companies will be transferred to the surviving RFM.

In reply thereto, please be informed as follows:

1. The foregoing merger of IAC, ICC, CLIC and RFM is a merger within the contemplation of Section 40 (C)(2)(a) in relation to Section 40(C)(6)(b) of the Tax Code of 1997, as amended, for the following business reasons: (1) the integration of the administrative facilities of the four (4) corporations will result in economies of scale and efficiency of operations; (2) the consolidation of assets of the four (4) corporations will allow the procurement of financing and credit facilities under more favorable terms; and (3) the merger will make possible the more productive use of the properties of the constituent corporations. Hence, the merger of IAC, ICC, CLIC and RFM is being undertaken for a *bona fide* business purpose and not for the purpose of escaping the burden of taxation.

The merger of IAC, ICC, CLIC and RFM 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, that no gain or loss shall be recognized by IAC, ICC, and CLIC, as transferors of all assets and liabilities, to RFM pursuant to the Articles and Plan of Merger.

Accordingly, no gain or loss shall be recognized by RFM, as the transferee, on its receipt of the assets and liabilities of IAC, ICC, and CLIC 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 IAC, ICC, and CLIC 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 (RFM) shall be the same as it would be in the hands of the transferors (IAC, ICC, and CLIC) increased by the amount of the gain, if any, recognized to the transferors (IAC, ICC, and CLIC) 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 IAC, ICC, and CLIC to RFM 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 IAC, ICC, and CLIC to RFM, based on IAC, ICC, and CLIC's audited financial statements as of June 30, 2018 shall be as follows:

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INVEST ASIA CORPORATION

	Amount (in Php)	Allocated Liabilities	Allocated Shares	Substituted Basis (in Php)
Cash and Cash Equivalent				
Receivables				
Other current assets				
Investment Properties				
Held-to-maturity investment				
Other non-current assets				
TOTAL				

Liability	Amount (in Php)
Accounts payable and other liabilities	
Due to a related party	
Security deposits	
Deferred income tax liability	
TOTAL	

CABUYAO LOGISTICS and INDUSTRIAL CENTER, INC.

	Amount (in Php)	Allocated Liabilities	Allocated Shares	Substituted Basis (in Php)
Cash in Bank				
Other current assets				
Property, plant and equipment (at cost)				
Property, plant and equipment (at appraised value)				
TOTAL				

Liability	Amount (in Php)
Accrued Expenses and Other Current Liabilities	
Advances from Parent Company	
Deferred income tax liability	
TOTAL	

INTERBAKE COMMISSARY CORPORATION

	Amount (in Php)	Allocated Liabilities	Allocated Shares	Substituted Basis (in Php)
Cash on hand and in banks				
Receivables				

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Inventories				
Other current assets				
Property and equipment				
Deferred tax asset				
Other non-current assets				
TOTAL				

Liability	Amount (in Php)
Accounts payable and accrued liabilities	
Dividends payable	
Retirement benefit liability	
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 an act of liberality *(animus donandi)*.

Clearly, there is no intention on the part of any of the parties to the merger – IAC, ICC, and CLIC to donate to RFM 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.

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 of 1997, as amended, in relation to Section 40 (C) (2) of the same Code, as amended. *(BIR Ruling No. S40-0427-2020 dated July 30, 2020)*

However, a DST at the rate of P2.00 on each P200 par value, or fractional part thereof, shall be imposed on the original issuance of shares by RFM to the stockholders of IAC, ICC, and CLIC as a consequence of the merger as provided under Section 174 of the Tax Code of 1997, as amended.

4. The transfer of properties of IAC, ICC, and CLIC to RFM as a consequence of the merger shall 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, as further amended by RR No. 10-2011, and last amended by RR No. 4-2021. 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 RFM, as the surviving corporation pursuant to Section 4.106-8(b)(3) of RR No. 16-2005, as amended by RRs No. 4-2007; 10-2011 and 4-2021.

5. Any excess and unutilized creditable withholding taxes (CWT), if any, which form part of the assets to be transferred by IAC, ICC, and CLIC as of the effective date of the merger shall be transferred to and vested in RFM, as the surviving corporation, and such excess CWT may be utilized by the latter against its income tax liabilities for 2019 and succeeding years or may be the subject of a claim for refund or issuance of a tax credit certificate (TCC). *(BIR Ruling No. 100-2017 dated March 2, 2017)*

6. The excess and unexpired Minimum Corporate Income Tax (MCIT) of the absorbed corporations, IAC, ICC, and CLIC, if any, as of the effective date of the merger shall be carried forward and credited against the normal income tax due of the surviving corporation, RFM, 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 IAC, ICC, and CLIC, is among the rights, privileges, property and/or interest of IAC, ICC, and CLIC, the excess and unexpired MCIT of the latter absorbed corporations shall be transferred to and vested in RFM on the effective date of the

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merger. Thus, IAC, ICC, and CLIC's excess and unexpired MCIT shall be carried forward and credited against the normal corporate income tax of RFM subject to the three-year-carry-forward period reckoned from the date of payment of IAC, ICC, and CLIC of its MCIT.

7. It is to be emphasized, however, that the net operating loss carry-over (NOLCO) under Section 34(D)(3) of the Tax Code of 1997, as amended, and as implemented by RR No. 14-2001, of IAC, ICC, and CLIC, if any, is not one of the assets that can be transferred and absorbed by the surviving corporation, RFM, as this privilege or deduction can be availed of by IAC, ICC, and CLIC only. Accordingly, the tax-free merger between IAC, ICC, CLIC and RFM does not cover the NOLCO of the absorbed corporations.

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

   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.

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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/dissolving corporation and the surviving/transferee corporation 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.

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/historical/adjusted costs 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 Tax Code of 1997, as amended. 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, proof of annotation of the original historical/adjusted bases of the properties and/or real properties involved in the transfer and 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 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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gpsIAC, ICC, CLIC-RFM merger

PROFORMA ENTRIES ERGER

Annex "A"

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Particulars	Individual Shareholders' Book (The entry/ies shall be per ir ivid ial shareholder of the absorbed corporation)	Transferee' s Book
Journal Entry to Record the Tax-Free Exchange	Investment in (name of tr sfe e) xxx xx Investment in (name di olving corporation) xxx xx Dividend Income (net of F VT on dividend) xxx xx To record the Tax-Free Ex har e (TFE) of investment in (share type) shares of (nar is ing corporation/s) with aggregate fair market valu of I ______ in exchange for (type and no. of share) of (am of transferee) with par value of P_____ per shar	Investment in (issuing corp. for shares of stock) 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 (share type) shares of (name issuing corp/s), and other assets with aggregate fair market value of P_______, including liabilities assumed resulting from merger, in exchange for (type and no. of share) of (name of transferee) with par value of P_____ per share
Balance Sheet Notes Entry	Investment includes (a d type of share s) with par value of P_______ in am of transferee) resulting from the Tax-Free Ex an e of investment in (no. and type of share s) of (is ing orporation s) covered by Stock Certificate No/s. __ ___________ which were acquired for the tal ost of (substituted basis) and which have fair n rke value as of the date of exchange amounting P _________	Real properties, investment in (no. and type of share/s) of (issuing corporation/s) 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 (date). The total acquisition cost/substituted cost to (name of transferee) of the investment/s amounts to (FMV at the time of exchange). The real properties, investment/s and other assets were previously covered by Transfer Certificate of Title and Stock Certificate No/s. _______ issued by (issuing corporation/s) and are now presently covered by Stock Certificate No/s. _______ constituting (no. and type of share/s) [total] shares in the name of (name of transferee).
Proforma Entries to Record Subsequent Sale Transfer	Cash or Accounts receival es xxx xx Investment in (name tr sferee) xxx xx Gain on Sale of Inves er xxx xx To record subsequent sale tr sfer of investment acquired thru Tax-Free Exchange Current xxx xx Tax Payable xxx xx Provision for Tax as follo	Cash or Accounts receivables xxx xx Investment in (name of issuing corporation) / PPE - Land & Improvement / Other Assets 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

Individual Shareholders' Book

Tax Type		Tax Rate*	Multiply By	Amount
1)	Net Capital Gains Ta	n P100,000 and % on excess	Gains realized on TFE	
OR	Stock Transaction Ta	1/2 of 1%	FMV of inv s at the time of TFE	xxx xx
2)	Net Capital Gains Ta	15%	Gains realized on subsequent sale of investment s	
OR	Stock Transaction Ta	10 of 1%	Selling Price of investment at the time of subsequent sale	xxx xx
	Total Tax Payable			xxx,xx

- If subsequent sale s of nts was were made befor January 1, 2018 the tax rates used in th com tation of Net Capital Gains Tax and Stock Transaction Tax at the ax-free exchange shall apply

* Computation of Gain Real ubsequent Sale of Investm en
  Selling Price xxx xx
  Less Cost (Substitute as xxx xx
  Net Capital Gain on s sted shares xxx,xx

* Per RMO 17-2016 the sub asis of the stock or securit es received by the transf tax-free exchange shall be as follows (1) The orig of the property, stock or securities to be transferred (2) L money received if any, and (b) the fair market value of th property received if any, (3)Plus (a) the amount treated as f the shareholder if any and (b) the amount of any gai recognized on the exchai if any

Transferee's Book

Tax Type		Tax Rate*	Multiply By	Amount
1)	Net Capital Gains Tax	15%	Gains realized on subsequent sale of investment s	
OR	Stock Transaction Tax	6 10 of 1%	Selling Price of investment at the time of subsequent sale	xxx xx
	Total Tax Payable			xxx,xx

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

*Gain on sale of properties 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