REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Section 127(A), NIRC	Revenue Regulations Nos. 6-2008 & 16-2012	#307-2016

Person to Contact: Chief, Law Division
Tel Nos. 926-5536/927-09-63

Date: June 28, 2016

SAN MIGUEL CORPORATION
No. 40 San Miguel Avenue
Mandaluyong City

Attention: **Ferdinand K. Constantino**
Chief Finance Officer

Gentlemen:

This refers to your undated letter requesting confirmation that the trading of listed preferred shares of stocks with the Philippine Stock Exchange (PSE) is subject to the stock transaction tax under Section 127(A) of the 1997 Tax Code, as amended.

It is represented that San Miguel Corporation (SMC) as one of the country's largest business conglomerates, continues to grow and diversify and such growth and diversification accounted for, in 2015, approximately 5.1% of the gross domestic product of the country; that in order to sustain and continue its growth strategy, SMC has tapped various funding resources from the local loan market and the international capital market; that with the availability of such funding sources, SMC is issuing Peso-denominated preferred shares by its major subsidiaries, initially SMC Global Power Holdings Corp. (the holding company for the Power Business) and San Miguel Holdings Corp. (holding company for the Infrastructure Business), collectively referred hereafter as "Subsidiaries"; and that by way of compliance with existing and applicable statutes and regulations, the preferred shares will be structured to be non-voting, cumulative, non-participating, non-convertible to common shares and redeemable at the option of the issuer.

It is further represented that the Philippine Stock Exchange (PSE), in its letter to SMC, advised that, while the PSE's Listing Rules do not expressly provide a specific requirement that only companies with listed common shares can list preferred shares, the listing and availability for public ownership of common shares is a key characteristic of publicly held companies because ownership of such shares gives the public the right to participate in the election of members of the Company's Board of

0.42485

Directors, as well as participate in the Company's major corporate decisions through the exercise of voting rights; and that in the same letter, PSE confirmed that for purposes of determining the minimum public ownership (MPO) requirement, only the company's listed common shares are considered.

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

1. that for as long as the preferred shares of stocks are listed, the trading thereof through the Local Stock Exchange will be subject to the stock transaction tax of ½% of 1% of the gross selling price, or gross value in money of the shares of stocks sold, as provided under Section 127(A) of the 1997 Tax Code, as amended; and

2. that the provisions of Revenue Regulations (RR) No. 16-2012 is limited to the sale and transfer of the listed common shares of publicly-listed companies through the Local Stock Exchange.

In reply, please be informed that the sale or trading of listed shares of stocks through the Local Stock Exchange is subject to the stock transaction tax of ½% of 1% of the gross selling price, or gross value in money of the shares of stocks sold pursuant to Section 127(A) of the 1997 Tax Code, as amended. The aforesaid Section states:

> *"SECTION 127. Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange or through Initial Public Offering. -*
>
> *"(A) Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange. - There shall be levied, assessed and collected on every sale, barter, exchange or other disposition of shares of stock listed and traded through the local stock exchange other than the sale by a dealer in securities, a tax at the rate of one-half of one percent (1/2 of 1%) of the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed which shall be paid by the seller or transferor.*

042485

The above provision is being implemented by RR No. 06-2008 (*Consolidated Regulations Prescribing the Rules on the Taxation of Sale, Barter, Exchange or Other Disposition of Shares of Stock Held as Capital Assets*) dated April 22, 2008, relevant portions of which state:

> "***SECTION 5. Sale, Barter or Exchange of Shares of Stock Listed and Traded Through the Local Stock Exchange.*** — *There shall be levied, assessed and collected on every sale, barter, exchange or other disposition of Shares of Stock Listed and Traded through the Local Stock Exchange other than the sale by a dealer of securities, under the following rules:*
>
> *(a)* ***Tax Rate.*** — *A stock transaction tax at the rate of one-half of one percent (1/2 of 1%) based on the amount determined in subsection (b) hereunder.*
>
> *(b)* ***Tax Base.*** — *Gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed which shall be assumed and paid by the seller or transferor through the remittance of the stock transaction tax by the seller or transferor's broker."*

Thus, based on the foregoing provisions, the sale, barter or exchange of shares of stock listed and traded through the local stock exchange shall be subject to ½ of 1% based on the gross selling price or gross value in money of the shares of stock sold. Accordingly, we hereby confirm your opinion that since the preferred shares of stocks are listed, the sale, barter or exchange thereof through the Local Stock Exchange is subject to the stock transaction tax of ½% of 1% of the gross selling price, or gross value in money of the shares of stocks sold in accordance with Section 127(A) of the 1997 Tax Code, as amended.

As regards the second issue, it is noted that under RR No. 16-2012 (*Tax Treatment of Sales, Barters, Exchanges or Other Dispositions of Shares of Publicly-listed Companies Whose Ownership Levels Fall Below the Mandatory Minimum Public Ownership (MPO) Level, Monitoring of these Companies and their Stock Transactions, and Amending Revenue Regulations No. 60-08 for the Purpose*), a publicly-listed company is required, at all times, to maintain a minimum percentage of listed securities held by the public (or "public float") of ten percent (10%) of its issued and outstanding shares, exclusive of any treasury shares, or at such percentage as may be prescribed by the Securities and Exchange Commission (SEC) or PSE. As opined by the PSE, however, only the company's listed common shares are considered in the determination of the MPO requirement because ownership of such shares gives the public the right to participate in the election of members of the

Company's Board of Directors, as well as participate in the Company's major corporate decisions through the exercise of voting rights. Pertinent portion of the PSE letter is quoted below for reference:

> *"As our team advised in various discussions and correspondences with the Company's (SMC) representatives, while the Exchange's Listing Rules do not expressly provide a specific requirement that only companies with listed common shares can list preferred shares, the listing and availability for public ownership of common shares is a key characteristic of publicly held companies because ownership of such shares gives the public the right to participate in the election of members of the Company's Board of Directors, as well as participate in the Company's major corporate decisions through the exercise of voting rights. Thus, for purposes of compliance with the Exchange's MPO requirement, only the listed company's common shares are considered."*

Thus, while a publicly-listed company is required to maintain MPO under RR No. 16-2012, such requirement shall only apply to the company's listed common shares. Accordingly, we hereby confirm your opinion that the applicability of the provisions of RR No. 16-2012 is limited only to the sale and transfer of the listed common shares of publicly-listed companies through the Local Stock Exchange. In this case, considering that the shares are structured to be non-voting, cumulative, non-participating, non-convertible to common shares, the MPO requirement is inapplicable and the same does not fall within the purview of RR 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 as null and void.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

042485
JUN 27 2016

K-1-JHB