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
S4D - 0292 - 2020
JUN 02 2020

CARAG ZABALLERO LLAMADO & ABIERA LAW OFFICES
Suite 2602, 26th Floor, The Atlanta Centre
No. 31 Annapolis Street, Greenhills
1500 San Juan, Metro Manila

Attention: **ATTY. OTHELLO C. CARAG**
ATTY. MARIA THERESA C. SAN PABLO-LLAMADO

Gentlemen:

This refers to your letter dated 7 August 2013 requesting for a confirmation of your opinion that the statutory merger of ABS-CBN Film Productions, Inc. (AFPI) with Roadrunner Network, Inc. (RNI), with the former as the surviving corporation, be qualified as a tax free merger under Sections 40(C)(2) and (C)(6)(b) of the National Internal Revenue Code (NIRC) of 1997, as amended.

BACKGROUND

It is represented that AFPI is a corporation duly organized and existing under Philippine laws with principal office address at Sgt. Esguerra Avenue corner Mother Ignacia Street, Quezon City. At the time of the merger, it had an authorized capital stock of [redacted] (₱[redacted]) divided into [redacted] ([redacted]) common shares with a par value of [redacted] ₱[redacted] per share. The amount of capital stock of AFPI which had actually been subscribed and paid-up is [redacted] Pesos (₱[redacted]).

On the other hand, RNI is a corporation duly organized and existing under Philippine laws with principal office address at 282 Roadrunner Building, Tomas Morato Avenue, Quezon City. At the time of the merger, it had an authorized capital stock of [redacted] Pesos (₱[redacted]) divided into [redacted] ([redacted]) common shares with a par value of [redacted] (₱[redacted]) per share. The amount of capital stock of RNI which had actually been subscribed is [redacted] Pesos (₱[redacted]), with shares paid-up amounting to [redacted] Pesos (₱[redacted]).

S40-0292-20
JUN 0 2 2020

Both AFPI and RNI are wholly-owned subsidiaries of ABS-CBN Corporation. Based on the audited financial statements of AFPI as of 31 December 2012, AFPI had total assets of ₱[redacted] total liabilities of ₱[redacted] and total stockholders' equity of ₱[redacted]

On 27 February 2013, the respective Board of Directors and stockholders of AFPI and RNI unanimously approved the merger of the two corporations with RNI as the absorbed corporation and AFPI as the surviving corporation.

RNI and AFPI deemed it in both their interests to merge, with AFPI as the surviving corporation, for the following bona-fide business purposes: (a) to strengthen the capital base of the surviving corporation; (b) to eliminate possible conflicts of interest between the constituent companies since all functions will be directly managed by one body and be guided by a unified corporate objective; and (c) to obtain operating economies and efficiencies.

On 20 June 2013, the Securities and Exchange Commission approved the Plan of Merger and Articles of Merger of AFPI and RNI under the following terms:

1. Upon approval of the merger by the Securities and Exchange Commission (the "Effective Date of Merger"), the separate corporate personality of RNI shall be dissolved and AFPI shall thereupon and thereafter possess all the rights, privileges and immunities and franchises of RNI, and all properties and all receivables due on whatever account, and all and every other interest of or belonging to or due to RNI as of 31 December 2012 shall be taken and deemed to be transferred to, and vested in AFPI without further act or deed, except as may be otherwise provided in the Plan of Merger and/or Articles of Merger;

2. AFPI shall be responsible for all the liabilities and obligations of RNI as of 31 December 2012 in the same manner as if AFPI had itself incurred such liabilities or obligations, and any claim, action or proceeding pending by or against RNI may be prosecuted by or against AFPI;

3. RNI will continue to possess all its rights, privileges, immunities and powers, and will continue to be subject to all its duties and liabilities, existing prior to the merger.

4. The following are the assets owned by RNI as of 31 December 2012 which will be transferred to AFPI, based on their original or adjusted bases:

Roadrunner Network, Inc.

Nature	Amount
Cash	₱[redacted]
Trade and other receivables	[redacted]
Finance lease receivable	[redacted]
Other current assets	[redacted]
Noncurrent portion of finance lease receivable	[redacted]
Deferred tax assets	[redacted]

JV

S40-0202-2020
JUN 02 2020

Other noncurrent assets

TOTAL ₱

5. The following are the liabilities of RNI as of 31 December 2012 which AFPI, as the surviving corporation, will absorb, based on their original or adjusted basis, as the case may be:

Roadrunner Network, Inc.

Nature	**Amount**
Trade and other payables	₱
TOTAL	₱

6. Upon approval of the merger by the Securities and Exchange Commission, all the outstanding shares of stock of RNI shall be deemed cancelled by reason of the merger.

7. AFPI shall issue to ABS-CBN Corporation, ( ) common shares with a par value of (₱) per share for the net assets of RNI as of 31 December 2012; and the excess of the net assets of RNI over the total par value of the issued shares of AFPI shall be treated as additional paid-in capital in the books of AFPI, as the surviving corporation.

Based on the foregoing, you are now requesting for confirmation of the following:

1. The merger of AFPI with RNI, with AFPI as the surviving corporation, is a statutory and tax-free merger within the purview of Sections 40(C)(2) and (C)(6)(b) of the NIRC of 1997, as amended. This is in consideration of the fact that upon the effective date of the merger, AFPI will acquire all the assets and assume all the liabilities of RNI, in exchange for the issuance for the issuance of AFPI shares; and that the transaction is being undertaken for *bona fide* business purposes. Thus, no gain or loss shall be recognized on the transfer of assets and liabilities of RNI to AFPI for income tax purposes;

2. The basis of the assets to be received by AFPI shall be the same as it would be in the hands of RNI, the absorbed corporation;

3. The merger is not subject to donor's tax since there is no intent on any of the parties to donate. Furthermore, the transaction is effected purely for *bona fide* business purposes;

4. The transfer of the tangible assets of RNI, which are not primarily held for sale or lease, will not be subject to value added tax (VAT) and any unused input tax of RNI as of the date of the effectivity of the merger shall be absorbed by AFPI pursuant to Section 4.106-8(b)(3) of Revenue Regulations No. 16-2005, otherwise known as the "Consolidated Value-Added Tax Regulations of 2005, Implementing Republic Act No. 9337";

5. The excess minimum corporate income tax ("MCIT") and income tax credits of RNI are among its rights, privileges, property and/or interest. Any excess MCIT and income

S40-0292-20..
JUN 02 2023

tax credits of RNI shall be transferred to and vested in AFPI, as the surviving corporation, on the effective date of the merger pursuant to Section 80 of the Corporation Code.

Consequently, any excess MCIT of RNI, the absorbed corporation, shall be carried forward and credited against the normal income tax due of AFPI, the surviving corporation, for the three immediately succeeding taxable years pursuant to Section 27(E)(2) of the NIRC of 1997, as amended.

Further, any income tax credits of RNI will be transferred to AFPI and may be used by the latter against its income tax liability.

6. Since RNI had no shares of stock or real property in its name to transfer to AFPI pursuant to the Plan of Merger, neither party shall be liable for DST on transfers or exchanges of shares of stock and real property, under Sections 175 and 196 of the NIRC of 1997, as amended, respectively. Moreover, no DST shall be imposed on the transfer of assets to, and absorption thereof by, AFPI as a result of the merger under Section 199 (m) of the NIRC of 1997, as amended.

In reply thereto, please be informed as follows:

1. The foregoing merger of AFPI and RNI, with the former as the surviving corporation, is a merger within the purview of Sections 40(C)(2) and (C)(6)(b) of the NIRC of 1997, as amended, because AFPI will acquire all the assets and liabilities of RNI and said merger was undertaken for a *bona fide* business purpose.

Accordingly, your opinion that no gain or loss shall be recognized both to the transferor and the transferee corporation on the transfer by RNI of all of its assets and liabilities to AFPI pursuant to a merger under Sections 40 paragraphs (C)(2) and (C)(6)(b) of the NIRC of 1997, as amended, is hereby also confirmed.

2. The basis of the assets to be received by AFPI shall be the same as it would be in the hands of the absorbed corporation, RNI. The substituted bases of the properties transferred by the Absorbed Corporation 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.

Thus, the substituted basis of the assets received by AFPI from RNI shall be:

Assets	**Amount**	**Allocated Liabilities**	**Allocated Shares**	**Substituted Basis**
Cash				
Trade & other receivables				
Finance lease receivable				
Other current assets				

S40 - 0292 - 2020
JUN 02 2020

Non-current portion of finance lease receivable				
Deferred tax assets				
Other non-current assets				
TOTAL				

Liabilities	**Amount**
Trade and other payables	
Total	

3. The issuance of) common shares with a par value of (₱) per share by AFPI to ABS-CBN Corporation pursuant to the merger shall be subject to DST on original issuance of shares of stock under Section 174 of the NIRC of 1997. No DST shall be due on the surrender by RNI stockholders of their shares for cancellation.

4. Well-settled 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 done, and (3) the intent to do an act of liberality (*animus donandi*).

The abovementioned merger between AFPI and RNI is not subject to the gift tax, since there is no intention to donate on the part of either or both parties and the transaction is a *bona fide* merger effected for purely business reasons.

5. Section 105 of the NIRC of 1997, as amended, identifies the persons who are subject to VAT, as follows:

> "SEC. 105. *Persons Liable.* – Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code."

On the other hand, Section 4.106-8 (b) (3) of Revenue Regulations No. 16-2005 specifically excludes mergers or consolidations from being subject to output tax. Thus,

> "SEC. 4.106-8. *Change or Cessation of Status as VAT-registered Person.*
>
> xxx xxx xxx
>
> (b) *Not subject to output tax.*
>
> The VAT shall not apply to goods or properties existing as of the occurrence of the following:
>
> (1) …
>
> (2) …
>
> (3) Merger or consolidation of corporations. The unused input tax of the dissolved corporation, as of the date of the merger or consolidation, shall be absorbed by the surviving or new corporation."

S40-0292-2020
JUN 02 2020

The transfer of the tangible assets of RNI, which are not primarily held for sale or lease, to AFPI is not subject to VAT pursuant to Section 4.106-8(b)(3) of Revenue Regulations No. 16-2005.

6. Since the excess and unexpired MCIT of RNI is among the rights, privileges, property and/or interest of RNI, the excess and unexpired MCIT of RNI shall be transferred to and vested in AFPI on the effective date of merger. Thus, any excess MCIT of RNI shall be carried forward and credited against the normal income tax liability of AFPI for three immediately succeeding taxable years pursuant to Section 27(E)(2) of the NIRC of 1997, as amended.

Finally, since the income tax credits of RNI will also form part of the assets transferred to and vested in AFPI on the effective date of the merger, AFPI may apply said income tax credits against its normal income tax liability.

7. Since RNI had no shares of stock or real property in its name to transfer to AFPI pursuant to the Plan of Merger, neither party shall be liable for DST on transfers or exchanges of shares of stock and real property, under Section 175 and 196 of the NIRC of 1997, as amended, respectively. Furthermore, no DST shall be imposed on the transfer of assets to, and absorption thereof by, AFPI as a result of the merger under Section 199 (m) of the NIRC of 1997, as amended, which provides:

> "SEC. 199. *Documents and Papers Not Subject to Stamp Tax.* – The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from documentary stamp tax:
>
> xxx xxx xxx
>
> (m) Transfer of property pursuant to Section 40(c)(2) of the National Internal Revenue Code of 1997, as amended."

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:

(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;

SHP-0292-2020
JUN 0 2 2020

(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. (par. 9803-8, Prentice Hall 1963, ed., p. 9611)

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.

S40-0202-2020
JUN 0 2 2020

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 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 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 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

033736

K-1