REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Section 40(C)(2) and (6)(b) of the National Internal Revenue Code of 1997, as amended.
BIR Ruling No. 075-2018
S4CM-371-2021
OCT 06

NORTHERN CEMENT CORPORATION
3rd Floor, 155 EDSA Building, 155 EDSA
Wack-wack, Mandaluyong City

Attention: **RODELIA S. SARROSA**

Gentlemen:

This refers to your request for confirmation that the merger between Northern Cement Corporation ("NCC"), the surviving corporation, and San Miguel Northern Cement, Inc. ("SMNCI"), the absorbed corporation, qualifies as a tax-free exchange pursuant to Section 40(C)(2) in relation to Section 40(C)(6)(b) of the National Internal Revenue Code (Tax Code) of 1997, as amended.

BACKGROUND

NCC, with Tax Identification Number ("TIN") is a corporation duly organized and existing under Philippine laws, which is primarily engaged in manufacturing, developing, processing, exploiting, buying and selling cement and/or other products derived therefrom, allied thereto, or necessary therefor, among others. Its registered office address is at 3rd Floor 155 EDSA Building, 155 EDSA, Barangay Wack Wack, Mandaluyong City.

NCC is owned by holding companies incorporated in the Philippines, namely, Lucky Star Holdings, Inc. ("LSHI") and San Miguel Equity Investments Inc. ("SMEII"). LSHI owns series 2 non-voting preferred shares, comprising 65% of the total outstanding capital stock of NCC. On the other hand, SMEII owns the entire 100% outstanding voting common stock of NCC, which comprises 35% of the total outstanding capital stock of NCC. As of December 31, 2020, the total authorized capital stock of NCC is Php divided into: (a) 104,500,000 voting common shares with par value of Php10.00 per share, (b) series 1 non-voting preferred shares with par value of Php20.00, and (c) series 2 non-voting preferred shares with par value of Php10.00 per share; of which voting common shares are owned by SMEII, while series 2 non-voting preferred shares are owned by LSHI.

SMNCI, with is a corporation duly organized and existing under Philippine laws, which is established primarily to engage in the business of manufacturing, developing, processing, exploiting, importing, exporting, buying, selling or otherwise dealing in such goods as cement and other goods of similar nature. Its registered office address is at 3rd Floor, 155 EDSA Building, 155 EDSA Brgy. Wack Wack, Mandaluyong City. SMNCI is a wholly-owned subsidiary of SMEII.

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In order to simplify the operations, improve administrative efficiency, increase financial strength, eliminate duplication of functions and maintenance costs, and attain greater efficiency and economy in the management of the businesses for the mutual advantage of NCC and SMNCI, at least a majority of the members of the respective Boards of Directors and stockholders holding at least two-thirds (2/3) of the outstanding capital stock of NCC and SMNCI approved on March 3, 2021 the merger of NCC and SMNCI, with NCC as the surviving corporation, subject to the following terms and conditions as provided in the Plan of Merger entered into between NCC and SMNCI, dated March 3, 2021, as set forth below.

1. SMNCI shall be merged into NCC in accordance with Title IX of the Revised Corporation Code of the Philippines (the "Revised Corporation Code") and the terms and conditions set forth in the Plan of Merger ("Merger").

2. The Merger shall be effective on the first date of the month immediately succeeding the month when the Securities and Exchange Commission ("SEC") issued a certificate approving the Articles and Plan of Merger.

3. NCC shall be the surviving corporation and the separate corporate existence of SMNCI shall cease.

4. NCC, as the surviving corporation, shall continue to possess all the rights, privileges, immunities and powers, and shall be subject to all the duties and liabilities of a corporation organized under the Revised Corporation Code.

5. NCC, as the surviving corporation, shall thereupon and thereafter, possess all the rights, privileges, immunities and franchises of SMNCI; and all the properties, real and personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to SMNCI, shall be taken and deemed to be transferred to and vested in NCC as the surviving corporation, without further act or deed.

6. NCC, as the surviving corporation, shall be responsible for all the liabilities and obligations of SMNCI in the same manner as if NCC has itself incurred such liabilities or obligations; and any pending claim, action or proceeding brought by or against SMNCI may be prosecuted by or against NCC as the surviving corporation. The rights of creditors or any lien upon the property of SMNCI shall not be impaired by the Merger, provided that NCC, as the surviving corporation shall have the right to exercise all defenses, rights, privileges, set-offs and counterclaims of every kind and nature which SMNCI may have, or which NCC may invoke under existing laws.

7. The AFS of SMNCI as of December 31, 2020 shall be the basis of the transfer of the assets and liabilities of SMNCI to NCC pursuant to the Merger.

8. As a result of the Merger, a total of common shares of NCC from the increase in its authorized capital stock shall be issued to the stockholders of SMNCI.

On April 27, 2021, the application for: (1) the increase in capital stock of NCC from Php) divided into (a) 104,500,000 common shares with a par value of Php10.00 per share, (b) series 1 preferred shares with par value of Php20.00, and (c) series 2 preferred shares with par value of Php10.00 to Php divided into (i) 631,500,000 common shares with par value of Php10.00, (ii) 0 series 1 preferred shares with par value of Php20.00, and (iii) series 2 preferred shares with par value of Php10.00, and (2) the Articles and Plan of Merger between NCC and SMNCI, were filed with SEC.

Thereafter, the SEC approved the applications for the increase in capital stock and the Merger, with the Certificate of Approval of Increase of Capital Stock, Certificate of Filing of

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Amended Articles of Incorporation, and Certificate of Filing of the Articles and Plan of Merger, all issued by the SEC on June 14, 2021. Pursuant to the provisions of the Plan of Merger, the effective date of the Merger is on July 01, 2021 (the "Effective Date").

Based on the foregoing representations, you now request for confirmation that the merger between NCC, the surviving corporation, and SMNCI, the absorbed corporation, qualifies as a tax-free exchange pursuant to Section 40(C)(2) in relation to Section 40(C)(6)(b) of the Tax Code of 1997, as amended.

In reply thereto, please be informed as follows:

1. The merger of NCC and SMNCI is a merger within the contemplation of Section 40(C)(2), in relation to Section 40(C)(6)(b) of the Tax Code of 1997, as amended, because NCC shall acquire/assume all the assets and liabilities of SMNCI and the same is necessary in order to simplify the operations, improve administrative efficiency, increase financial strength, eliminate duplication of functions and maintenance costs, and attain greater efficiency and economy in the management of the businesses for the mutual advantage of NCC and SMNCI. Hence, the merger of NCC and SMNCI is being undertaken for a bona fide business purpose and not for the purpose of escaping the burden of taxation.

The merger of NCC and SMNCI 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, and that no gain or loss shall be recognized by SMNCI, as the transferor, of all its assets and liabilities to NCC pursuant to the Articles and Plan of Merger.

Accordingly, no gain or loss shall be recognized by NCC, as the transferee, on its receipt of the assets and liabilities of SMNCI pursuant to and as a consequence of the merger.

The basis of the shares of stocks to be received by shareholders of SMNCI upon the exchange shall be the same as the basis of the properties, stocks or securities they exchanged, decreased by (1) the money they received, and (2) the fair market value of the other property/ies they 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[1].

The basis of the property transferred in the hands of the transferee (NCC) shall be the same as it would be in the hands of the transferor (SMNCI) increased by the amount of the gain, if any, recognized to the transferor on the transfer[2].

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[3].

The substituted basis of the properties transferred by SMNCI to NCC should strictly 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 the substituted basis of the properties transferred by SMNCI based on its AFS as of December 31, 2020 shall be as follows:

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[1] Sec. 40 (C)(5)(a) of the Tax Code of 1997, as amended.
[2] Sec. 40 (C)(5)(b), supra
[3] Sec. 40 (C)(4)(b), supra

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Assets	Amount	Allocated Liabilities	Allocated Shares	Substituted Basis
Cash and Cash Equivalents				
Receivables				
Other Current Assets				
Property, Plant and Equipment				
Other noncurrent Assets				
Total				

Liabilities	Amount
Accounts Payable and Other Current Liabilities	
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 SMNCI to donate to NCC its assets since the transaction is purely for a legitimate business purpose. Thus, the merger will not be subject to donor's tax since there is no intention to donate, and the transaction is a *bona fide* merger effected solely for business reasons.

3. The transfer of assets/properties of SMNCI to NCC as a consequence of the merger is exempt from value-added tax (VAT) pursuant to Section 109 (X) of the Tax Code of 1997, as amended. The transfer of assets/properties to effectuate a merger is not made in the course of business but by operation of law pursuant to the merger.

4. No documentary stamp tax (DST) is due on the transfer of assets made pursuant to the merger under Section 199 (m) of the Tax Code of 1997, as amended by Republic Act (RA) No. 9243, in relation to Section 40 (C) (2) of the Tax Code of 1997, as amended. Consequently, no DST is due on the surrender by SMNCI shareholders of their SMNCI shares for cancellation.

On the other hand, pursuant to Section 174 of the Tax Code of 1997, as amended, 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 NCC in favor of the shareholders of SMNCI as a consequence of the merger.

5. The excess and unutilized creditable withholding tax (CWT) of the absorbed corporation, SMNCI, as of the effective date of the merger, which forms part of the assets to be transferred by the absorbed corporation to NCC as a consequence of the merger, may be applied as a tax credit by NCC against its income tax due or may be the subject of a claim for refund or issuance of a tax credit certificate (TCC).

6. Since the excess and unexpired minimum corporate income tax (MCIT) of SMNCI are among the rights, privileges, property and/or interest of SMNCI, the excess and unexpired MCIT shall be transferred to and vested in NCC on the effective date of the merger and shall

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be carried forward and credited against its regular corporate income tax due for the three (3) immediately succeeding taxable years pursuant to Section 27(E)(2) of the Tax 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 of 1997, 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 corporation, 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.

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

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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 tax-free exchange 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 exchange occurred a statement to the effect that they hold such assets/shares acquired in a tax-free exchange and the year in which such exchange 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 the mandatory accounting entries stated in **Annex "A"** hereof, pursuant to Revenue Memorandum Order (RMO) No. 17-2016.

Furthermore, the parties shall cause to annotate at the back of the Transfer Certificates of Title (TCT) 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 Register of Deeds or by the Corporate Secretary of this condition shall be penalized under Section 269 or 275, as the case maybe, of the Tax Code of 1997, as amended.

Finally, it is 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 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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PROFORMA ENTRIES - MERGER Annex "A"

Particulars	Individual Shareholders' Book (The entry/ies shall be per individual shareholder of the absorbed corporation)	Transferee' s Book

Journal Entry to Record the Tax-Free Exchange	Investment in (name of transferee) xxx.xx
	  Investment in (name of dissolving corporation) xxx.xx
	  Dividend Income (net of FWT on dividend) xxx.xx
	
	To record the Tax-Free Exchange (TFE) of investment in (share type) shares of (name issuing corporation/s) with aggregate fair market value of P_______ in exchange for (type and no. of share) of (name of transferee) with par value of P_____ per share.
		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 (no. and type of share/s) with par value of P_______in (name of transferee) resulting from the Tax-Free Exchange of investment in (no. and type of share/s) of (issuing corporation/s) covered by Stock Certificate No/s. _______________ which were acquired for the total cost of (substituted basis) and which have fair market value as of the date of exchange amounting to 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 receivables xxx.xx
	  Investment in (name of transferee) 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: (see tables below)
		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: (see tables below)

Individual Shareholders' Book — Provision for Tax as follows:

	Tax Type	Tax Rate*	Multiply By	Amount
1)	Net Capital Gains Tax	5% on P100,000 and 10% on excess	Gains realized on TFE	
OR	Stock Transaction Tax	1/2 of 1%	FMV of inv/s at the time of TFE	xxx.xx
2)	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

- 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.

Transferee's Book — Provision for tax as follows:

	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 property/ies 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 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.