



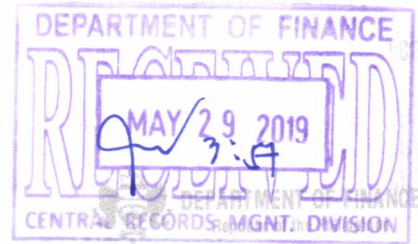
Republic of the Philippines  
**DEPARTMENT OF FINANCE**

Roxas Boulevard Corner Pablo Ocampo, Sr. Street  
Manila 1004

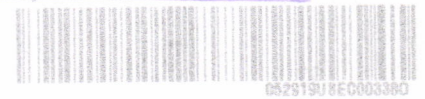


WAD  
05-30-19

MAY 29 2019



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DOF Opinion No. 006.2019

**SUBJECT: Request for Review of Bureau of Internal Revenue Ruling  
No. ITAD 108-18**

Dear **Atty. Buan**:

This refers to the subject letter dated 12 December 2018 (“Request for Review”) which you filed with this Department on behalf of Universal International Music B.V. (“UIM”), to request the review of Bureau of Internal Revenue (“BIR”) Ruling No. ITAD 108-18 dated 23 October 2018, which ruled that donor’s tax is due on the transfer of MCA Music, Inc. (“MCA”) Shares from Universal Music International Holding B.V. (“UMIH”) to UIM pursuant to the merger of UMIH to UIM.

UIM is a non-resident foreign corporation duly organized and existing under the laws of the Netherlands. UIM is not registered in the Philippines as a corporation or as a partnership. UIM is also not licensed to do business in the Philippines.

On the other hand, MCA is a corporation duly organized and existing under the laws of the Philippines. MCA is engaged in the business of leasing, development, origination, licensing, importation, marketing, rental, distribution and sale on a wholesale basis of records, cassette tapes, compact disks and other related activities.

UMIH is a Dutch corporation which is the principal stockholder of MCA. UMIH is not licensed to do business in the Philippines.

A total of 59,995 common shares of stock of MCA in the total amount of P11,999,000.00 at par value of P200.00 per share is registered under the name of UMIH ("MCA Shares").

As of 1 April 2004, UMIH is solely owned by Polygram BV ("Polygram"). On 29 December 2015, UIM and Polygram entered into a Deed of Merger in which UIM became the "Acquiring Company" and Polygram became the "Company Ceasing to Exist." Polygram ceased to exist and UIM acquired all its assets, which includes all its shares in UMIH, and liabilities under a universal title of succession.

On 30 December 2015, UIM and UMIH entered into a Deed of Merger in which UIM became the "Acquiring Company" and UMIH became the "Company Ceasing to Exist." UIM, as the Acquiring Company, acquired all the assets and obligations of UMIH under a universal title of succession. UMIH, as the Company Ceasing to Exist, shall cease to legally exist as a consequence of the merger. In view of this merger, UIM has acquired ownership of the MCA Shares of UMIH.

Commissioner of Internal Revenue ("CIR") Caesar R. Dulay issued BIR Ruling No. ITAD 108-18 which ruled that the transfer of MCA Shares from UMIH to UIM in view of the said merger was not subject to capital gains tax. The BIR also properly stated that the said transfer is subject to documentary stamp tax. However, the BIR further ruled that the transfer is subject to donor's tax since such transfer without compensation is considered a donation.

On 19 December 2018, the Request for Review dated *12 December 2018* was received by the Department of Finance ("DOF"). It is assailed that the said transfer should not be subject to donor's tax on the basis of the absence of the intent to do an act of liberality (*animus donandi*).

It is your position, as stated in your Request for Review, that donor's tax should not be imposed arguing that:

"The merger between UIM and UMIH was done for legitimate business purposes and there was no donative intent whatsoever when the MCA Shares were transferred by UMIH to UIM. The said merger was made in order to simplify the organizational structure of the Universal Music Group, save costs and to integrate the activities of the merging companies. Considering the legitimate business purpose of the merger between UIM and UMIH and the total absence of donative intent, it was



therefore an error for the BIR to require the payment of the Donor's Tax."

*We agree with UIM.*

After reviewing the facts and the laws presented, we *agree* with UIM that the subject transfer of the MCA Shares from UMIH to UIM pursuant to their merger is not subject to donor's tax since it lacks the essential requisites for a valid donation.

In order that a donation be valid, the following elements must be present: (a) **the essential reduction of the patrimony of the donor**; (b) **the increase in the patrimony of the donee**; (c) **the intent to do an act of liberality or *animus donandi***;<sup>1</sup> (d) the donation must be contained in a public document; and e) that the acceptance thereof be made in the same deed or in a separate public instrument; if acceptance is made in a separate instrument, the donor must be notified thereof in an authentic form, to be noted in both instruments.<sup>2</sup>

In the case at bar, *animus donandi* or the intent to do an act of liberality is wanting in the transfer of the MCA Shares from UMIH to UIM. The transfer was done for a *bona fide* business purpose, which is to simplify the corporate structure of the group and to save costs by way of integrating the activities, including the net assets, of the merging companies to one entity. In one similar case, no donor's tax was imposed on the transfer of shares from a subsidiary to its sole shareholder/parent considering that the same was made primarily for business purposes and that the transfer was made within one group of companies.<sup>3</sup> Also, in another BIR Ruling wherein RP-Netherlands tax treaty was applied vis-à-vis a merger of two companies, the transfer of shares was not subject to donor's tax. In said ruling, the BIR held that the said transaction is exempt from capital gains tax because gains that may be derived from therein sale of shares should be taxable only in the Netherlands pursuant to Article 13 of the RP-Netherlands Tax Treaty. However, DST was held to be due on the transfer in accordance with Section 176 of the Tax Code of 1997.<sup>4</sup>

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<sup>1</sup> Emphasis supplied.

<sup>2</sup> *Missionary Sisters of Our Lady of Fatima v. Alzona*, G.R. No. 224307, 6 August 2018; Letters (d) and (e) particularly apply to donation of immovable property.

<sup>3</sup> BIR Ruling [DA-(C-066) 228-09] dated 15 May 2009.

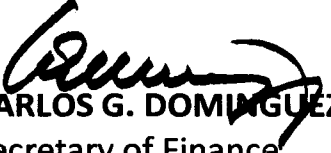
<sup>4</sup> ITAD Ruling No. 157-02 dated 13 September 2002.



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 as null and void.

Thank you.

Sincerely yours,

  
**CARLOS G. DOMINGUEZ**  
Secretary of Finance  
MAY 27 2019

**CC Commissioner Caesar R. Dulay**  
Bureau of Internal Revenue

