

**[ BIR REVENUE MEMORANDUM ORDER NO. 26-92,  
May 28, 1992 ]**

**PRESCRIBING THE REQUIREMENTS AND CONDITIONS  
PRECEDENT TO THE NON-RECOGNITION OF GAIN IN  
TRANSACTIONS INVOLVING TRANSFER OF PROPERTIES IN  
EXCHANGE FOR SHARES OF STOCK UNDER SECTION 34(C) (2)  
OF THE TAX CODE, AND THE PROCEDURE TO BE OBSERVED IN  
MONITORING COMPLIANCE WITH SAID CONDITIONS**

In order to facilitate the determination of whether transfer of properties by individual or corporation in exchange for shares of stock of another corporation falls under Section 34(c) (2) of the National Internal Revenue Code, the following requirements must be met, and the conditions complied with by both transferor and transferee corporation.

The procedures outlined hereunder shall be observed in the monitoring and investigation of tax-free exchange to ascertain compliance with the conditions set forth in the adjudication letter/ruling issued by this Office, and in the consequent assessment of tax liabilities if any, due upon subsequent disposition of the properties involved in the exchange.

**I**

**Documentation Requirements**

*A. BIR Adjudication letter/ruling*

Any written request to be filed with the Legislative, Ruling and Research Division for a BIR Ruling on the tax consequence of the transfer/exchange of properties described hereunder must be accompanied by the following documents.

1) In the case of Merger or Consolidation -

- (a) Plan of Corporate Merger or Consolidation;
- (b) 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;
- (c) Articles of Incorporation duly registered with SEC of the merging or consolidating corporations; and
- (d) Other pertinent documents.

2) In the case of transfer of property to a controlled corporation.

- (a) Deed of Transfer/Assignment/Exchange;
- (b) Articles of Incorporation duly registered with SEC of a corporate transferor and transferee corporation;
- (c) Copy of the corresponding Transfer Certificate of Titles;
- (d) Copy of the corresponding Tax Declaration;
- (e) Certification as to the original or historical cost of acquisition/adjusted cost basis of the properties transferred;
- (f) Certification of the fair market value or zonal value of the property involved in the exchange;
- (g) Certification by the corporate secretary of the transferee corporation of its authorized capitalization and the par value of the shares of stock;
- (h) Certification of percentage of ownership of the shares of stock by the transferor as a result of the transaction; and
- (i) Other pertinent documents.

B. Records to be kept and information to be filed

In order that the parties to the exchange can avail of the non-recognition of gains under Section 34(c) (2) of the Tax Code, the following requirements must be complied with:

1) In the case of Merger or Consolidation

(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 the 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 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.

- (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, 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 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) 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 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 a subsequent disposition of such stock or securities and other property received from the exchange.

In addition to the foregoing requirements, permanent records in substantial form must be kept by the corporation participating in the merger showing the information listed above in order to facilitate the determination of gain or loss from a subsequent disposition of the stock received as a consequence of the merger.

In a merger or consolidation, one (1) of the corporations would necessarily be dissolved so that, under Section 235 of the Tax Code, it should be subjected to an investigation for all tax purposes. Proof should be submitted by any of the two (2) entities to the Legislative, Ruling and Research Division that there was such an investigation conducted or is being conducted by the BIR.

2) In the case of transfer of property to a controlled corporation. -

(a) The transferor/s must file with his/their income tax return for the taxable year in which the exchange was consummated, a complete statement of all facts pertinent to the exchange, including:

- (1) A Sworn Statement as to how the property was acquired;