July 27, 2018

BIR RULING NO. 1113-18

Section 40 (C) (2) and (6) (c) of the Tax Code of 1997, as amended; BIR Ruling No. 515-12

MPJ & W.A.C.E. Holding Corp.
No. 8 Sta. Candida St. Ramos Compound
Sun Valley, Parañaque City

Attention: *AAA*

Gentlemen :

This refers to your letter dated October 12, 2012, requesting for the issuance of a Certificate of Tax Exemption of transfer of properties as a tax free exchange pursuant to Section 40 (C) of the 1997 Tax Code, as amended, in relation to Revenue Regulations (RR) No. 18-2001, Revenue Memorandum Order (RMO) No. 32-2001 and Legal Memorandum dated April 26, 2010.

Documents submitted show that MPJ & W.A.C.E. HOLDING CORP. is a corporation duly organized and existing under Philippine laws, and duly registered with the Securities and Exchange Commission (SEC) under Company Reg. No. CS201008124; that it has an original authorized capital stock of _____ Pesos (P_____) divided into One Million (1,000,000) shares with a par value of _____ (P_____) per share; that the incorporators of the corporation with their corresponding shares subscribed and paid-up are as follows:

Subscriber	No. of Shares	Amount Subscribed	Amount Paid
AAA	750,000	P_____	P_____
BBB	62,500	_____	_____
CCC	62,500	_____	_____
DDD	62,500	_____	_____
EEE	62,500	_____	_____
Total	1,000,000	P_____0	P_____

that MPJ & W.A.C.E. HOLDING CORP. increased its authorized capital stock from

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_____ Pesos (P_____), divided into One Million (1,000,000) shares with a par value of _____ (P_____) per share, to _____ Pesos (P_____) divided into Twenty Million (20,000,000) shares with a par value of _____ (P_____) per share; and that the net increase in authorized capital stock of P_____ has been actually subscribed by the subscribers; and that the amount of P_____ has been paid in cash via conversion of liabilities into equity and real properties.

AAA is the registered owner of the following properties, to wit:

NATURE OF PROPERTY/IES	TCT NO.	TAX DECLARATION NO.	SUBSTITUTED BASES
Land	139707	E-014-07095	_____
Land	139708	E-014-07094	_____
Improvement		E-014-13051	_____
Land	164209	E-014-11411	_____
Land	010-2010000894	E-014-14273	_____
Land	23087	E-007-03532	_____
Improvement		E-007-03533	_____
Land	164565	E-007-10596	_____
Land	T-746147	11-0016-03950	_____
		TOTAL	**P**_____

On the other hand, EEE is the co-owner of property covered by TCT No. T-746147.

The above-named assignors executed separate Deeds of Exchange dated July 3, 2012 in favor of MPJ & W.A.C.E. HOLDING CORP., whereby they transferred their respective properties in exchange for the latter's 6,144,800 shares of stock, broken down as follows:

NAME OF STOCKHOLDER	NO. OF SHARES TO BE ISSUED
AAA	3,623,380
EEE	2,521,420

that before the transfer of real estate properties, the number of voting shares issued to AAA is 8,171,619 consisting of 750,000 during initial incorporation and in conversion of cash advances and loan into equity in the amount of P_____ and P_____, respectively, at issued price of P_____ per share; that after the transfer of real estate properties amounting to P_____, the total number of his voting shares increased to 11,794,999. Whereas, the number of voting shares issued to EEE is 62,500 during initial

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incorporation and increased to 2,583,920, after the transfer of real property amounting to P_____, at issued price of P_____ per share and that as a result of the transfer, AAA will gain control of MPJ & W.A.C.E. HOLDING CORP. by owning 92.9% of the total voting stocks of the said corporation while EEE will own 5.6% as follows:

Subscriber	No. of Shares	Amount Subscribed	% of Ownership
AAA	11,794,999	P11,794,999	92.9%
BBB	62,500	62,500.00	0.5%
CCC	62,500	62,500.00	0.5%
DDD	62,500	62,500.00	0.5%
EEE	710,925	710,925.00	5.6%
Total	12,693,424	P12,693,424.00	100%

In reply thereto, please be informed that pursuant to Section 40 (C) (2) and (6) (c) of the Tax Code of 1997, as amended, no gain or loss shall be recognized if a property is transferred to a corporation by a person, in exchange for stock in such a corporation of which as a result of such exchange, said person, alone or together with others, not exceeding four persons, gain control of said corporation. The term *"control"* shall mean ownership of stocks in a corporation possessing at least 51% of the total voting power of all classes of stocks entitled to vote. Control is determined by the amount of stocks received *i.e.*, total subscribed by the transferor. In determining the 51% stock ownership, only those persons who transferred property for stocks in the same transaction may be counted up to a maximum of five. In short, combining all the shares to be received by the transferors, the same should total to at least 51% of the voting power of all classes of stocks of transferee corporation entitled to vote. (BIR Ruling No. 515-12 dated August 3, 2012)

Applying the afore-quoted provision it is clear that with the exchange of the properties of AAA alone, he already gains control of MPJ & W.A.C.E. HOLDING CORP., as he acquires 92.9% of the outstanding capital stocks. Hence, no gain or loss shall be recognized with respect to the transfer of properties by AAA in exchange for shares of stock of the transferee corporation. There is no need to combine the shares of AAA with that of the other transferor to determine the 51% stock ownership because, as aforestated, his shares alone are more than 51% of the total outstanding capital of stocks of MPJ & W.A.C.E. HOLDING CORP.

Accordingly, the transfer of EEE shall be treated as a separate transfer subject to capital gains tax under Section 24 (D) of the Tax Code of 1997, as amended and documentary stamp tax under Section 175 of the same Code.

Pursuant to Section 199 (m) of the Tax Code of 1997, as amended by Republic Act (RA) No. 9243, which took effect on March 20, 2004, transfer of property pursuant to Section 40 (C) (2) of the 1997 Tax Code, as amended, is now exempt from the payment

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of documentary stamp tax (DST). Accordingly, the transfer by AAA of his real properties to MPJ & W.A.C.E. HOLDING CORP. is not subject to DST under Section 175 of the Tax Code of 1997, as amended.

However, the shares to be issued by MPJ & W.A.C.E. HOLDING CORP. are original issues subject to the documentary stamp tax imposed by Section 174 of the Tax Code of 1997, as amended, which shall attach upon acceptance by the corporation of the stockholder's subscription regardless of the actual delivery of the certificates of stock.

Moreover, the transfer of real properties (TCT Nos. 139707, 139708, 164209, 010-2010000894 and 164565) of AAA, doing business under the name of Aeropac Equipment Rental, Sales & Services, to MPJ & W.A.C.E. HOLDING CORP. is subject to VAT based on the zonal value thereof as determined by the Commissioner or the fair market value as shown in the schedule of values of the Provincial and City Assessors, whichever is higher. Revenue Regulations No. 10-2011 provides that: "the exchange of goods or properties including the real estate properties used in business or held for sale or for lease by the transferor, for shares of stocks, whether resulting in corporate control or not, is subject to VAT."

It should be emphasized, however, that Section 40 (C) (2) and (6) (c) of the Tax Code of 1997, as amended, merely defers recognition of the gain or loss from such transaction, for in determining the gain or loss from a subsequent transaction of the property or of the stocks involved in the exchange, the original or historical cost of the property or stocks is considered. Thus, if MPJ & W.A.C.E. HOLDING CORP. later sells or exchanges the real properties it acquired in the exchange, it shall be subject to income tax on the gains it derived from such sale or exchange, taking into consideration that the cost basis of the shares shall be the same as the original acquisition cost or adjusted cost basis to the transferors of the properties exchanged therefor; and that the cost basis to the transferee of the properties exchanged for stocks shall be the same as it would be in the hands of the transferors. [Sec. 40 (C) (5) (a) and (b) of the 1997 Tax Code]

In this regard, the Certificate Authorizing Registration/Tax Clearance (CAR/TCL) for the real properties or share of stock/unit of participation/interest involved in the exchange shall be issued by the Revenue District Officer (RDO)/Authorized Internal Revenue Officer (AIRO) on the basis of this ruling to the effect that the transaction qualifies as a tax-free exchange under Section 40 (C) (2) of the National Internal Revenue Code of 1997 (Tax Code of 1997), specifying, among others that the transaction involved is a tax-free exchange under Section 40 (C) (2) of the Tax Code of 1997; the date of exchange; and the substituted basis of the properties.

Upon issuance of this letter of exemption, and upon issuance of CAR, following information is required to be annotated on the reverse side of the Transfer Certificate of Title by the Register of Deeds having jurisdiction over the properties:

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NATURE OF PROPERTY/IES	TCT NO.	TAX DECLARATION NO.	SUBSTITUTED BASES
Land	139707	E-014-07095	_____
Land	139708	E-014-07094	_____
Improvement		E-014-13051	_____
Land	164209	E-014-11411	_____
Land	010-2010000894	E-014-14273	_____
Land	23087	E-007-03532	_____
Improvement		E-007-03533	_____
Land	164565	E-007-10596	_____
Land	T-746147	11-0016-03950	_____
TOTAL			**P**_____

The substituted bases of the shares of stock received by the transferors in exchange for property shall be as follows:

NAME OF TRANSFERORS	NATURE OF PROPERTY/IES	ALLOCATION OF SHARES	SUBSTITUTED BASES
AAA	Land	334,306	_____
AAA	Land	277,620	_____
AAA	Improvement	261,783	_____
AAA	Land	678,302	_____
AAA	Land	1,143,424	_____
AAA	Land	835,281	_____
AAA	Improvement	241,640	_____
AAA	Land	1,075,594	_____
AAA	Land	648,425	_____
EEE		648,425	_____
TOTAL		**6,144,800**	**P**_____

In addition to the foregoing requirements, the assignors and MPJ & W.A.C.E. HOLDING CORP. 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 persons 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 property are subsequently transferred to another transferee.

It is required that within ninety (90) days from receipt of this ruling, the parties to

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the transaction must submit to the Law and Legislative Division, Bureau of Internal Revenue, a certified true copy of the TCT that bears the annotation of substituted basis of the real properties transferred/received in connection with this transaction, in respect of the transferred real properties.

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 as null and void.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

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