October 1, 2018

BIR RULING NO. 1217-18

Section 40 (C) (2) of the Tax Code of 1997, as amended

C & J Farm & Development Corporation
Barangay Tulos, Rosario
Batangas

Attention: *AAA*

Gentlemen :

This refers to your letter dated July 2, 2014 requesting exemption from applicable taxes on the transfer of real properties to C & J Farm & Development Corporation in exchange for the latter's shares of stock pursuant to Section 40 (C) (2) of the 1997 Tax Code, as amended.

It is represented that C & J Farm & Development Corporation is a corporation duly organized and existing under Philippine laws, with principal office address at Barangay Tulos, Rosario, Batangas. The Company has an authorized capital stock consisting of _____ Pesos (PhP_____) divided into Ten Thousand (10,000) shares with a par value of _____ Pesos (P_____) per share.

It is further represented that the following individuals own unregistered parcels of land, to wit:

Owner	Tax Declaration No.	Area (sq. m.)
BBB	ARP-19-0048-00321	22,826
	ARP-19-0048-00325	39,500
	ARP-19-0048-00322	100,302
	ARP-19-0048-00319	175,368
CCC	ARP-19-0048-00323	63,476
DDD	ARP-19-0048-00324	11,965

that DDD died intestate on October 27, 2003, survived by his heirs namely, EEE

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(widow), FFF (widower of GGG), HHH (widower of III), JJJ married to KKK, LLL married to MMM, NNN married to OOO, and PPP married to QQQ (hereinafter collectively referred to as Heirs of DDD); and that on October 25, 2013, BBB also died intestate leaving the four (4) unregistered parcels of land to his heirs namely, RRR (widow), SSS married to TTT, UUU married to VVV, WWW married to XXX and YYY married to ZZZ (hereinafter collectively referred to as Heirs of BBB).

On May 3, 2014, CCC executed a Deed of Assignment of Rights whereby he conveyed his rights over the lot covered by ARP-19-0048-00323 in favor of C & J Farm & Development Corporation in exchange for the latter's shares of stocks; and that similarly, on May 3, 2014, the Heirs of DDD and the Heirs of BBB separately executed an Extrajudicial Settlement with Assignment of Rights over the inherited properties in favor of C & J Farm & Development Corporation also in exchange for the latter's shares of stocks.

The allocation of shares is as follows:

Transferors	Number of Shares
Heirs of BBB	1,200
CCC	400
Heirs of DDD	60
Total	**1,660**

Based on the Corporate Secretary's Certification dated June 3, 2014 of C & J Farm & Development Corporation, the combined shareholdings of the above transferors constitute seventy percent (70%) of the equity of the company.

In reply, please be informed that Section 40 (C) (2) of the Tax Code of 1997, as amended, provides to wit:

"**SEC. 40.** ***Determination of Amount and Recognition of Gain or Loss.*** —

(C) ***Exchange of Property.*** —

(1) ***General Rule.*** — Except as herein provided, upon the sale or exchange or property, the entire amount of the gain or loss, as the case may be, shall be recognized.

(2) ***Exception.*** — No gain or loss shall be recognized if in pursuance of a plan of merger or consolidation —

(a) A corporation, which is a party to a merger or consolidation, exchanges property solely for stock in a corporation, which is a party to the merger or consolidation; or

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(b) A shareholder exchanges stock in a corporation, which is a party to the merger or consolidation, solely for the stock of another corporation also a party to the merger or consolidation; or

(c) A security holder of a corporation, which is a party to the merger or consolidation, exchanges his securities in such corporation, solely for stock or securities in such corporation, a party to the merger or consolidation.

No gain or loss shall also be recognized if property is transferred to a corporation by a person in exchange for stock or unit of participation in such a corporation of which as a result of such exchange **said person, alone or together with others, not exceeding four (4) persons**, gains control of said corporation: *Provided*, That stocks issued for services shall not be considered as issued in return for property." (Emphasis supplied)

Thus, no gain or loss shall be recognized if the 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, gains control of said corporation. Section 40 (C) (6) (c) of the same Code provides that 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 number of shares subscribed by the transferors. 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 the instant case, while the transferors acquired more than 51% of the outstanding shares of the company, it has been noted that there are more than five (5) transferors involved in the exchange, that is, the five (5) Heirs of BBB, the seven (7) Heirs of DDD, and CCC, or a total of thirteen (13) transferors. Clearly, one of the requirements for the grant of tax exemption under Section 40 (C) (2) of the Tax Code of 1997, as amended, which is, that the number of transferors should not exceed five (5), is wanting in this case.

In view of the foregoing, this Office is of the opinion, as it hereby rules, that the transfers of real properties made by the Heirs of BBB, the Heirs of DDD, and CCC in favor of C & J Farm & Development Corporation in exchange for the latter's shares of stock do not fall within the purview of Section 40 (C) (2) of the 1997 Tax Code, as amended. Accordingly, your request that the aforesaid transfers be exempt from capital gains tax and documentary stamp tax is hereby denied for lack of legal basis.

Very truly yours,

(SGD.) CAESAR R. DULAY

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