REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

August 3, 2012

REVENUE MEMORANDUM CIRCULAR NO. 40-2012

SUBJECT : Prescribing a Period of Prescription for Rulings under Section 40(C)(2) of the National Internal Revenue Code of 1997, as amended.

TO : All Revenue Officials, Employees and Others Concerned

BACKGROUND

Section 40(C) of the National Internal Revenue Code of 1997 (NIRC), as amended, provides:

> "(C) Exchange of Property. —
>
> (1) General Rule. — Except as herein provided, upon the sale or exchange of 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
>
> (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 another 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."

Numerous rulings have been issued confirming the tax-deferred exchange of properties for stocks based on the aforementioned provision. It has been observed, however, that despite the issuance of these rulings, some of the subject exchange transactions are not immediately enforced or executed. As a result, the Bureau has been constantly receiving requests for processing of such exchange transactions despite the lapse of a reasonable amount of time from the issuance of the rulings. This Circular is being issued to impose a period of prescription for rulings under Section 40(C)(2) of the NIRC, as amended, in order to remedy the situation.

VALIDITY OF RULING

Rulings issued under Section 40(C)(2) of the NIRC, as amended, shall be valid only for ninety (90) days counted from the date of receipt of the ruling by any of the parties to the exchange transaction. The properties and shares of stocks involved in the transfer should be conveyed to the transferee/s and transferor/s, respectively, within this period. Pursuant to Revenue Regulations No. 18-2001 and Revenue Memorandum Order No. 32-01, a photocopy of the Transfer Certificate of Title (TCT)/Condominium Certificate of Title (CCT)/Share of Stock that bears the annotation of substituted basis of the real property/shares of stock transferred/received in connection with the transaction, as duly certified by the Register of Deeds/Corporate Secretary, should be submitted to the Law of Division, Bureau of Internal Revenue, 7/F National Office Building, Diliman, Quezon City, also within ninety (90) days from the date of the receipt of the ruling or certification, by any of the parties to the exchange transaction. Otherwise, the ruling shall be void and without effect, and the Chief, Law Division shall refer the docket of the case to the Prosecution Division for appropriate action.

Any violation of this Circular by any of the parties to the exchange transaction or by any public officer or employee shall be subject to the appropriate penalties provided under Sections 269 and 275 of the NIRC, as amended, as implemented by Revenue Regulations No. 18-2001 and Revenue Memorandum Order No. 32-01.

Unless an extension of the period is granted by the Commissioner in meritorious cases, Revenue District Offices are hereby directed not to honor such rulings beyond ninety (90) days counted from the date of receipt of the ruling by any of the parties to the exchange.

All concerned revenue officials and employees are hereby enjoined to give this Circular as wide a publicity as possible.

(Original Signed)
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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