

## ADVISORY ON TAX-FREE EXCHANGES OF PROPERTIES

	<u>PAGE NOS.</u>
<b>BIR REVENUE MEMORANDUM CIRCULAR NO. 19-2022</b>	<b>5</b>
<b>Clarifying Section 8 of RR No. 5-2021 on the Tax-Free Exchanges of Properties Under Section 40(C)(2) of the 1997 NIRC, as amended</b>	

20/F Chatham House  
Valero cor. Rufino Sts.



Salcedo Village  
Makati Zip Code



[www.bdblaw.com.ph](http://www.bdblaw.com.ph)  
[info@bdblaw.com.ph](mailto:info@bdblaw.com.ph)



T: (632) 403-2001  
F: (632) 403-2001 loc. 130



*Copyright © 2022 by Du-Baladad and Associates (BDB Law). All rights reserved. No part of this issue covered by this copyright may be produced and/or used in any form or by any means – graphic, electronic and mechanical without the written permission of the publisher.*

MEMBER FIRM OF

**wts global**

**BUREAU OF INTERNAL REVENUE**  
**REVENUE MEMORANDUM CIRCULAR**  
**NO. 19-2022**

**ADVISORY**

**Clarification on Section 8 of RR No. 5-2021 on the  
Tax-Free Exchanges of Properties Under Section 40(C)(2) of the 1997 NIRC, as amended**

*Coverage*

The following transactions are covered by the Tax-Free Exchanges of Properties Under Section 40(C)(2) of the 1997 NIRC, as amended:

- Reorganization; and
- Transfer to a controlled corporation.

*Determination of Substituted Basis*

Properties	Substituted Basis
Stocks or Securities	<p>Original basis of the property, stock, or securities to be transferred</p> <ul style="list-style-type: none"><li>- Money received, if any, and FMV of property received</li><li>+ Amount treated as dividend of the shareholder, if any, and the amount of gain recognized on the exchange</li></ul> <p>Provided that:</p> <ul style="list-style-type: none"><li>➤ Property received as "boot" shall have as basis its FMV. "Boot" refers to the money received and other property received in excess of the stock or securities received by the transferor on a tax-free exchange.</li><li>➤ If as part of the consideration, the transferee of the property assumes a liability of the transferor or acquires the property subject to a liability, the amount of the liability assumed shall be treated as money received by the transferor.</li><li>➤ If the transferor receives several kinds of stock or securities, the Commissioner is authorized to allocate the basis among the several classes of stocks or securities.</li></ul>

Properties	Substituted Basis
Property in the Hands of the Transferee	Original basis in the hands of the transferor + Amount of gain recognized to the transferor on the transfer

The original basis of the property to be transferred shall be the:

- a. Cost of the property, if acquired by purchase on or after March 1, 1913;
- b. FMV at the moment of death of the decedent, if acquired by inheritance;
- c. Basis in the hands of the donor or the last preceding owner by whom the property was not acquired by gift, if the property was acquired by donation. However, if the basis is greater than the FMV at the time of donation, the basis for purposes of determining the loss shall be such FMV; or
- d. Amount paid by the transferee of the property, if the property was acquired for less than an adequate consideration in money or money's worth.

If the acquisition cost of the property is increased by the amount of improvements that materially add to the value or appreciable prolongs the life less accumulated depreciation, the original basis shall be the adjusted basis of (a) to (d) above.

If the property was acquired in a previous tax-free exchange, the original basis shall be the substituted basis.

### *Basis for Determining Gain or Loss on the Subsequent Sale or Disposition of Properties*

The substituted basis shall be the basis for determining gain or loss on a subsequent sale or disposition of properties subject of the tax-free exchange transaction.

### *Monitoring of the Substituted Basis of Properties*

Parties to the tax-free exchange/reorganization should comply with the requirements under RR No. 18-2021:

Relevant Party	Requirement
Each corporation which is a party to the organization	File, as part of its return for the taxable year in which the reorganization occurred, a complete statement of all facts pertinent to the non-recognition of gain or loss
Every taxpayer, other than a corporation, party to a reorganization, who received stock or securities and/or property or money upon a tax-free exchange	Incorporate in the ITR for the taxable year in which the reorganization takes place a complete statement of all facts pertinent to the non-recognition of gain or loss
The parties to the exchange transaction	<p>Include as a note to the AFS for the taxable year in which the exchange occurred a statement to the effect that:</p> <ul style="list-style-type: none"> <li>➤ They hold such assets/shares acquired in a tax-free exchange; and</li> <li>➤ The year in which such exchange occurred.</li> </ul> <p>The note shall appear in the AFS in the taxable years until the subject properties are subsequently transferred to another transferee.</p>
The parties to the exchange transaction	<p>Annotate at the back of the TCT, CCT, and Certificates of Stock the:</p> <ul style="list-style-type: none"> <li>➤ Date the deed of exchange was executed;</li> <li>➤ Original or historical cost of acquisition of the properties or shares of stock transferred; and</li> <li>➤ Fact that no gain or loss was recognized as a result of the exchange.</li> </ul>
Any party to the exchange transaction	A duly certified photocopy of the annotated TCT/CCT/Certificate of Stock submitted to the RDO which issued the CAR within 90 days from receipt of the CAR

Relevant Party	Requirement
Shareholders of the absorbed/transferor corporation	Mandatory accounting entries pursuant to RMO No. 17-2016

### *Tax Treatment of Exchanges of Properties Made Pursuant to Section 40(C)(2) of the 1997 NIRC, as amended*

The transfer of properties in exchange for shares of stocks shall be exempt from the following taxes:

- Capital Gains Tax
- Creditable Withholding Tax
- Income Tax
- Donor's Tax
- Value-Added Tax
- Documentary Stamp Tax on conveyances of real properties and shares of stocks

However, the original issuance of shares in exchange for the properties transferred shall be subject to DST under Section 174 of the 1997 NIRC, as amended.

### *Application of Existing Revenue Issuances*

The following revenue issuance shall continue to apply on tax-free exchanges:

- RR No. 18-2001
- RMR No. 1-2001
- RMR No. 1-2002
- RMR No. 2-2002
- RMO No. 32-2001
- RMO No. 17-2016

### *Conduct of Post-Transaction Audit*

If after audit by the concerned RDO and the transaction was found to be not entitled to the tax deferment treatment, the transaction shall be subject to the applicable taxes plus interest, penalty and surcharge. However, the result of the audit shall not invalidate the CAR previously issued.

## *Option to Request for Legal Opinion/Ruling to Clarify Legal Issues that may Affect the Transaction*

The taxpayer is not precluded from requesting a ruling/legal opinion with the Law and Legislative Division to clarify legal issue/s that may affect the transaction.

The LLD shall evaluate whether or not the request involves question/s of law that would merit the issuance of a ruling. Otherwise, it shall endorse the request to the concerned RDO for appropriate action

*Source:  
Revenue Memorandum Circular No. 19-2022*