

AN ACT TO AMEND SECTION THIRTY-FIVE OF THE NATIONAL INTERNAL REVENUE CODE, AND FOR OTHER PURPOSE.

REPUBLIC ACT NO. 1921, June 22, 1957

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Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section thirty-five of Commonwealth Act Numbered Four hundred sixty-six is hereby amended to read as follows:

"SEC. 35. Determination of gain or loss from the sale or other disposition of property.—The gain derived or loss sustained from the sale or other disposition of property, real, personal, or mixed, shall be determined in accordance with the following schedule:

"(a) In the case of property acquired before March first, nineteen hundred and thirteen, the fair market price or value of such property as of March first, nineteen hundred and thirteen.

"(b) In the case of property acquired on or after March first, nineteen hundred and thirteen, the cost thereof if such property was acquired by purchase or the fair market price or value as of the date of the acquisition if the same was acquired by gratuitous title.

"(c) Exchange of property—

- 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.

- Exceptions: 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, (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.

- Exchanges not solely in kind:

- If, in connection with an exchange described in the above exceptions, a shareholder or security holder receives not only stock or securities permitted to be received without recognition of gain or loss, but also money and/or other property, the gain, if any, but not the loss, shall be recognized but in an amount not in excess of the sum of the money and the fair market value of such other property received: Provided, That as to the shareholder, if the money and/or other property received has the effect of a distribution of a taxable dividend, there shall be taxed as a dividend to the shareholder an amount of the gain recognized not in excess of his ratable share of the undistributed earnings and profits of the corporation; the remainder, if any, of the gain recognized shall be treated as a capital gain.

- If, in connection with the exchange described in the above exceptions, the transferor corporation receives not only stock permitted to be received without the recognition of gain or loss, but also money and/or other

property, then (1) if the corporation receiving such money and/or other property distributed it in pursuance to the plan of merger or consolidation, no gain to the corporation shall be recognized from the exchange, but (2) if the corporation receiving such other property and/or money does not distribute it in pursuance of the plan of merger or consolidation, the gain, if any, but not the loss, to the corporation shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not distributed.

- If the taxpayer, in connection with the exchanges described in the foregoing exceptions, receives stock or securities which would be permitted to be received without the recognition of gain if it were the sole consideration, and as part of the consideration, another party to the exchange assumes a liability of the taxpayer, or acquires from the taxpayer property subject to a liability, then such assumption or acquisition shall not be treated as money and/or other property, and shall not prevent the exchange from being within the exceptions.

- Basis:

- The basis of the stock or securities received by the transferor corporation or its shareholder or security holder upon the exchange specified in the above exceptions shall be the same as the basis of the property, stock or securities exchanged, decreased by (1) the money received, and (2) the fair market value of the other property received, and increased by (a) the amount treated as dividend of the shareholder, and (b) the amount of any gain that was recognized on the exchange: Provided, That the property received as 'boot' shall have as basis its fair market value: Provided, further, That if corporation or its shareholders or security holders received several kinds of stock or securities, the Collector of Internal Revenue is hereby authorized to issue rules and regulations for the allocation of the basis among the several classes of stock or securities.

- The basis of the property transferred in the hands of the transferee shall be the same as it would be in the hands of the transferor, increased by the amount of the gain recognized to the transferor on the transfer.

- Definitions:

- The term 'securities' means bonds and debentures but not 'notes' of whatever class or duration.

- The term 'merger' or consolidation', when used in this section, shall be understood to mean:

- the ordinary merger or consolidation, or

- the acquisition by one corporation of all or substantially all the properties of another corporation solely for stock: Provided, That for a transaction to be regarded as a merger or consolidation within the purview of this section, it must be undertaken for a bona fide business purpose and not solely for the purpose of escaping the burden of taxation: Provided, further, That in determining whether a bona fide business purpose exists, each and every step of the transaction shall be considered and the whole transaction or series of transactions shall be treated as a single unit: Provided, finally, That in determining whether the property transferred constitutes a substantial portion of the property of the transferor, the term 'property' shall be taken to include the cash assets of the transferor.

- The Collector of Internal Revenue is hereby authorized to issue rules and regulations for the purpose of determining the proper amount of transferred assets which meet the standard of the phrase 'substantially all' and for the proper implementation of this section."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 22, 1957.

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