REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

National Office Building
Quezon City

Secs. 24(C), 175 & 176, Tax Code, as amended
BIR Ruling No. OT-014-2023 BIR Ruling No. OT-0421-21
OT- 038-2024
SEP 04 2024

INSULAR LIFE ASSURANCE COMPANY, LTD.
Insular Life Corporate Centre, Insular Life Drive
Filinvest Corporate City, Alabang 1781
Muntinlupa City

Attention: **Atty. Allan D. Arante**
Assistant Vice-President and Head of Finance Reporting Team

Gentlemen:

This refers to your request on behalf of **Insular Life Assurance Company, Ltd.** (the "**Company**") for confirmation that the transfer of its membership share in the Manila Polo Club, Inc. ("MPC") from the former trustee to the new trustee is not subject to capital gains tax (CGT) and documentary stamp tax (DST).

Background

1. The Company is a non-stock mutual life insurance company registered with the Philippine Securities and Exchange Commission and primarily engaged in the life insurance business.

2. It is the beneficial owner of a member share in the MPC, represented by Proprietary Membership Certificate No. 7014 and is registered in the name of whoever is serving as the Company's officers.

3. At present, the member share of the Company in MPC is placed under the name of *Ms. Mona Lisa B. Dela Cruz* ("Ms. Dela Cruz"), the President and Chief Operating Officer of the Company.

4. Following the retirement of Ms. Dela Cruz in 2021, the Company has appointed *Mr. Raoul E. Littaua* ("Mr. Littaua"), the new President and CEO of the Company, as the new trustee of the member share in MPC and seek to place the respective member share in the name of the new trustee.

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Discussion/Ruling

The transfer of MPC share from the Transferor to the Transferee is not subject to CGT.

A declaration of trust has been defined as an act by which a person acknowledges that the property, title to which he holds, is held by him for the use of another.[1]

In the Declaration of Trust which the declarant/appointee executed, he acknowledged that the transfer did not give him any kind of right, claim, or interest whatsoever in the MPC share and that he is holding only the legal ownership of the same with the beneficial ownership pertaining to the Company. Here, the Trustor is the Company while the Trustee is the declarant/appointee.

In the case of *Sime Darby Pilipinas, Inc. v. Mendoza*[2], Sime Darby acquired a Class "A" club share in Alabang Country Club ("ACC") in 1987, but being a corporation which was expressly disallowed by ACC's By-Laws to acquire and register the club share under its name, registered the share under the name of respondent Mendoza, Sime Darby's sales manager at the time. The Supreme Court held that a trust arrangement existed between Sime Darby and Mendoza and while the share was bought by Sime Darby and placed under the name of Mendoza, the latter's title was only limited to the use and enjoyment of the club's facilities and privileges while employed with the company.

In the instant case, INSULAR LIFE ASSURANCE COMPANY, LTD., the purchaser of the MPC share, intends to give the legal title to its Trustee-appointee, which entitles the Trustee-appointee only to the use and enjoyment of the club's facilities since under the Articles of Incorporation and By-laws of MPC only natural persons may become registered members. Thus, the transfer of the legal title of the MPC share from the former Trustee-appointee to the new Trustee-appointee is not subject to CGT under Section 24 (C) of the National Internal Revenue Code of 1997 (Tax Code), as amended, considering that the transfer involves neither monetary consideration nor change in beneficial ownership.

The Transfer is not subject to donor's tax.

Well-settled in our jurisprudence is the fact that the essential elements of a valid donation are: (1) the reduction of the patrimony of the donor; (2) the increase in the patrimony of the donee; and (3) the intent to do an act of liberality (*animus donandi*).[3]

Clearly, there is no intention on the part of INSULAR LIFE ASSURANCE COMPANY, LTD. to donate to the new Trustee-appointee the MPC share since the transaction is purely for a legitimate business purpose. Thus, the transfer will not be subject to donor's tax since there is no intention to donate, and the transaction is a *bona fide* transaction effected solely for business reasons.

The Transfer is not subject to DST.

The transfer is not subject to DST under Section 175 of the Tax Code, as amended. The rule in this jurisdiction is that the assignment of shares of stock of a domestic corporation is

[1] Resurreccion de Leon, et al. v. Emiliano Molo-Peckson, et al., G.R. No. L-17809, December 29, 1962.
[2] G.R. No. 202247, June 19, 2013.
[3] Heirs of Florencio v. Heirs of De Leon, 469 Phil. 459, 474 (2004).

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subject to DST upon execution of the deed transferring ownership or rights thereto, or upon delivery, assignment or indorsement of such shares in favor of another.

Revenue Regulations (RR) No. 13-2004, implementing the provisions of Republic Act (RA) No. 9243, otherwise known as "An Act Rationalizing the Provisions on Documentary Stamp Tax of the National Internal Revenue Code of 1997, as amended, and for Other Purposes" qualified this rule by stating that for a sale or exchange to be taxable, there must be an actual or constructive transfer of beneficial ownership of the shares of stock from one person to another. Section 4 thereof provides:

> "For a sale or exchange to be taxable, there must be an actual or constructive transfer of beneficial ownership of the shares of stock from one person to another. Such transfer may be manifested by the clear exercise of attributes of ownership over such stocks by the transferee, or by an actual entry of a change in the name appearing in the certificate of stock or in the Stock and Transfer Book of the issuing corporation or by any entry indicating transfer of beneficial ownership in any form of registry including those of a duly authorized scripless registry, such as those maintained for or by the Philippine Stock Exchange. However, if by the transfer of certificates of stock from a resigned trustee to a newly appointed trustee such certificate of stock remain in the name of the *cestui que trust* or the resigned trustee so that the new trustee is constituted as mere depository of the stock, such transfer is not taxable. Provided, however, that transfer of shares to "nominees" to qualify them to sit in the board or to qualify them to perform any act in relation to the corporation shall not be subject to the DST provided herein only upon proof of a duly executed Nominee Agreement showing the purpose of the transfer; that the transfer is without consideration other than the undertaking of the nominee to only represent the beneficial owner of the stock; and the transfer is in trust." (Emphasis and underscoring supplied.)

As applied in this case, even if there is a transfer of the certificate of share from Ms. Dela Cruz to Ms. Littaua, the beneficial ownership of the share remains with the Company. Hence, such transfer is not subject to DST.

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 null and void.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

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