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
OT-082-2023
AUG 14 2023

AYALA CORPORATION
33F Tower One, Ayala Triangle
Ayala Avenue
Makati City 1226

Attention: **Atty. Mildo C. Sison**
Tax Counsel

Gentlemen:

This refers to your request on behalf of **Ayala Corporation** ("AC" or the "Company") for confirmation that the transfer of its Manila Polo Club ("MPC" or the "Club") membership from one corporate officer to another is not subject to capital gains tax (CGT).

Background

1. AC is a publicly listed domestic holding company. It owns, among others, a proprietary share issued by MPC (MPC Share) and the said MPC Share is recorded as an asset in AC's books as of date.

2. While the Company retains beneficial ownership over the said MPC Share, the MPC Proprietary Membership Certificate is issued in the name of the Company's key officer to enable that key officer to avail of the Club's membership privileges.

3. MPC Proprietary Membership Certificate No. 6559 (MPC Certificate) was issued in the name of AC's Managing Director, *John Philip S. Orbeta.* However, because of MPC's rules requiring the transfer of the Membership Certificate before a different key officer of AC may avail of the Club's membership privileges, the MPC Certificate is now being transferred to *Paolo Maximo F. Borromeo,* another Managing Director of AC.

4. Notwithstanding the intended transfer of the Membership Certificate, AC continues to retain beneficial ownership over the MPC share while Messrs. Orbeta and Borromeo are mere nominees or trustees of the Company for purposes of enabling the named individuals to enjoy the Club's membership privileges.

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Discussion/Ruling

The transfer of MPC share from the Transferor to the Transferee is not subject to capital gains tax (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, AC, 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 thereof. 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*).

Clearly, there is no intention on the part of AC 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.

[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

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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 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 Further the Structure and Administration of the Documentary Stamp Tax" 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.)

Therefore, the herein transfer cannot be subject to DST as there is no transfer or conveyance to the new Trustee-appointee of the beneficial ownership of any right, claim or interest over the MPC share or over the asset of MPC. There being no new conveyance to speak of in this case, there is no new exercise of a privilege upon which DST may be imposed. However, the notarial acknowledgment to the Deed of Declaration of Trust is subject to DST imposed under Section 185 of the Tax Code, as amended.

It is, however, understood that this Ruling shall not serve as authority to the Corporate Secretary of AC to effect the transfer of the MPC share in the name of the new Trustee-appointee without the necessary Tax Clearance (TCL) and/or Certificate

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Authorizing Registration (CAR) issued by this Bureau. In this regard, this Ruling shall be presented to the Revenue District Office (RDO) concerned in order for the latter to issue the TCL/CAR as prescribed in Revenue Memorandum Circular (RMC) No. 37-2012.

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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