REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Sections 24 (C) and 175 of the NIRC of 1997, as amended; RR No. 13-2004
BIR Ruling No. OT-0653-2020; BIR Ruling No. OT-042-2022
OT- 094 - 2023
NOV 09 2023

ATTY. JOHN R. SADULLO
2nd Floor, DMCI Plaza, 2281 Don Chino
Roces Avenue Extension, Makati City

Dear Sir:

This refers to your request on behalf of Semirara Mining and Power Corporation (SMPC) for a ruling on the tax implication of transfer of one (1) Proprietary Share in Manila Polo Club (MPC) from Mr. Victor A. Consunji (Original Trustee) to Ms. Luz Consuelo A. Consunji (New Trustee).

Background:

It is represented that SMPC is a domestic corporation duly registered with the Securities and Exchange Commission; on August 17, 2011, SMPC purchased one (1) share in MPC with Proprietary Membership Certificate No. that the said purchase was paid in full by SMPC, but following MPC's policy that certificate of shares must be registered in the name of an individual in order to avail of the privileges of the club, the individual proprietary shares were issued to its Original Trustee, Mr. Victor A. Consunji; and that on June 16, 2022, a new Declaration of Trust was executed in order to transfer SMPC's proprietary share in MPC from the Original Trustee to the New Trustee due to the former's death.

You now request confirmation on the following:

1. The transaction is not subject to income tax and capital gains tax (CGT); and
2. The transaction is not an assignment or transfer with donative intent, hence, not subject to donor's tax.

In reply, please be informed as follows:

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 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

[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.*

only limited to time use and enjoyment of the club's facilities and privileges while employed with the company.

In this case, the above-mentioned MPC share covered by Proprietary Membership Certificate No. was placed by SMPC under the name of its officer as trustees, and the latter's titles was only limited to the use and enjoyment of the club's facilities and privileges while employed with the company. Likewise, the Declaration of Trusts executed by its new officer provides that they do not have any title, right, claim or interest whatsoever in the MPC shares and that they are holding only the legal ownership of the same with the beneficial ownership pertaining to SMPC.

Thus, the transfer of the legal title of the MPC shares from its former trustee to the new officer as the new trustee, is not subject to income tax and 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. Since the former officer only possessed legal title over the MPC shares, the transfer between them will be limited only to the transfer of the legal title.

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 any of the parties to donate the said MPC shared since the transaction is purely for a legitimate business purpose. Thus, the transaction 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.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed 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
027151

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