May 3, 2021

BIR RULING NO. OT-150-21

Secs. 85 (B) & 97 of the NIRC of 1997, as amended; BIR Ruling No. 020-11; BIR Ruling No. 010-2003

Isidro Malapote & Associates Law Offices
Unit 2106 PhilAXA Life Centre
1286 Sen. Gil Puyat Avenue
San Antonio, Makati City

Attention: *AAA*

Madam :

This refers to your letter dated January 21, 2021 requesting, on behalf of your client BBB, clarification relative to a Joint "Or" Bank Account with Survivor Agreement at the United Coconut Planters Bank (UCPB) particularly on the following:

1. Whether the Bank is bound to honor the Survivorship Agreement, as stated in the signed Account Information Card issued by UCPB; and

2. Whether BBB is entitled to transact with the Joint "or" Account; or just half of the deposited amount.

It is represented that BBB and CCC had Joint Bank Account with Survivor Agreement with UCPB. The Survivorship Agreement specifically states that:

> *"x x x . . . all moneys, which may hereafter deposited by us, or either of us, . . . shall be received and withheld by the Bank with the understanding and upon the condition that money so deposited, . . . shall be the property of all/both of us as joint owners, and shall be payable and collectible by either of us during our lifetime, and upon the death of any of us, shall be payable to the surviving accountholders.*
>
> *"This Joint Account Agreement with the right of survivorship shall be binding on each and all of us, our heirs, executors, administrators and assigns. . . No change or modification of this agreement shall be effective unless done in writing and signed by*

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all of us and by the bank."

On April 20, 2014, CCC died.

On May 29, 2014, Revenue District Officer (RDO) Rosemarie V. Ramos-Ragasa of Revenue District Office No. 40-Cubao issued a Tax Clearance pertaining to the subject Joint "Or" Account.

Hence, this request for clarification.

Prefatorily, it is worth noting that the prevailing provisions of the National Internal Revenue Code (Tax Code) of 1997, as amended during the death of the decedent applies to this peculiar situation.

Thus, please be informed that Section 97 of the Tax Code of 1997, as amended, provides that:

"Section 97. Payment of Tax Antecedent to the Transfer of Shares, Bonds or Rights. —

xxx xxx xxx

If a bank has knowledge of the death of a person, who maintained a bank deposit account alone, or jointly with another, it shall not allow any withdrawal from the said deposit account, unless the Commissioner has certified that the taxes imposed thereon by this Title have been paid: Provided, however, That the administrator of the estate or any one (1) of the heirs of the decedent may, upon authorization by the Commissioner, withdraw an amount not exceeding Twenty thousand pesos (P20,000) without the said certification. For this purpose, all withdrawal slips shall contain a statement to the effect that all of the joint depositors are still living at the time of withdrawal by any one of the joint depositors and such statement shall be under oath by the said depositors."

A joint account is one that is held jointly by two or more natural persons, or by two or more juridical persons or entities. Under such setup, the depositors are joint owners or co-owners of the said account, and their share in the deposits shall be presumed equal unless the contrary is provided. [1] The nature of joint accounts is governed by the rule on co-ownership embodied in Article 485 of the Civil Code, to wit:

"Art. 485. The share of the co-owners, in the benefits as well as in the charges, shall be proportional to their respective interests. Any stipulation in a contract to the contrary shall be void.

The portions belonging to the co-owners in the co-ownership shall be presumed equal, unless the contrary is proved."

In the Survivorship Agreement, the joint depositors cannot withdraw any portion of

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the said deposit account without the consent of the other. However, upon death of any of them, the whole amount of the funds shall belong to the surviving co-depositors, and may forthwith be withdrawn by the latter. The said provision contained in the agreement is valid and binding between the joint depositors but it has an effect of a gift or donation *mortis causa* made by the deceased co-depositor during his lifetime but effective upon death because the acquisition by the survivor of the share of the decedent in the joint account is considered to be acquired by bequest and hence subject to estate tax under Section 84 of the Tax Code of 1997, as amended. [2]

The transfer therefore of the share of the decedent co-depositor to the surviving co-depositor upon death of the former pursuant to their Survivorship Agreement is deemed by law, a transfer made in contemplation of death as provided under Section 85 (B) of the Tax Code of 1997, as amended, *viz.*:

> *"Section 85. Gross Estate. — The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated: Provided, however, That in the case of nonresident decedent who at the time of his death was not a citizen of the Philippines, only that part of the entire gross estate which is situated in the Philippines shall be included in his taxable estate.*
>
> xxx xxx xxx
>
> *(B) Transfer in Contemplation of Death. — To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after death, or of which he has at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from the property, or (2) the right either alone or in conjunction with any person, to designate the person who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth."*

In view of the foregoing, the funds in the joint deposit account cannot be withdrawn by the surviving co-depositors unless the Commissioner has certified that the taxes imposed thereon by Title III of the Tax Code of 1997, as amended have been paid; Provided, however, That the administrator of the estate or any one (1) of the heirs of the deceased co-depositor may, upon the authorization by the Commissioner, withdraw an amount not exceeding Twenty thousand Pesos (P20,000) without the said certification. [3]

Insofar as to whether or not the UCPB is bound to honor the Survivorship Agreement, the Bureau inhibits to take cognizance of the matter as it is beyond its jurisdiction.

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This ruling is being issued on the basis of the facts and documents as represented and submitted. However, if upon investigation, the BIR ascertains that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. *In the Matter of the Intestate Estate of Reynaldo Guzman Rodriguez vs. Rolando C. Rodriguez, et al.*, G.R. No. 230404 dated January 31, 2018.
2. BIR Ruling No. 010-2003 dated September 8, 2003.
3. *Ibid.*

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