REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Section 24 (C) of National Internal Revenue Code of 1997, as amended;
RR No. 6-2008; RMO No. 15-2003
OT-0297-2020

Date: JUN 0 8 2020

DIOSDADO P. GARCIA
Unit 8, Lot 1 PAGCOR VILLAS,
Seminary Road, Bahay Toro,
Quezon City 1106

Sir:

This refers to your letter dated June 4, 2019 requesting for and on behalf of the other awardees, confirmation that the transfer of shares of stock of Giant Philippines, Inc., received as judgment award from your former employer, **RENATO T. CLAROS** and/or **Prince Transport, Philippines, Inc.** is exempt from the payment of transfer taxes.

As represented, the complainant-employees of Prince Transport Philippines, Inc. filed a case before the Supreme Court for illegal dismissal, unfair labor practice and illegal deductions and praying for the award of premium pay for holiday and rest day, holiday pay, service leave pay, 13th month pay, moral and exemplary damages and attorney's fees against their employer, which was docketed as Prince Transport Philippines, Inc. and Mr. Renato Claros vs. Diosdado Garcia, et. al. with G.R. No. 167291.

On January 12, 2011 the Supreme Court rendered a decision in favor of the 42 employees, which decision became final and executory on April 19, 2011. As further represented, on July 12, 2018, you were able to successfully levy the 5,000 shares of stocks of Giant Philippines, Inc. owned by Renato T. Claros.

You now seek to transfer the ownership of the shares of stock in favor of the awardees but you were informed that transfer taxes must be paid first and a clearance from the Bureau of Internal Revenue must be presented before the ownership of the shares of stock may be transferred. Hence, the request.

In reply thereto, please be informed that the amount received corresponding to the backwages of the 42 employees and the amount representing their unpaid salaries are remuneration for services that are deemed to have been performed by them for RENATO

T. CLAROS and/or Prince Transport, Philippines, Inc. prior to or during the period of their illegal dismissal from the service.

Such being the case, said backwages and the amount representing their unpaid salaries are subject to income tax and consequently, to the withholding tax on wages pursuant to Section 79, Chapter XIII, Title II of the Tax Code as implemented by Revenue Regulations No. 2-98, as amended. (BIR Ruling No. 003-2004 dated January 19, 2004)

On the other hand, the amount awarded corresponding to the separation pay or benefits of the employees is not subject to withholding tax on wages under Section 32 (B) (6) (b) of the 1997 Tax Code, as amended, considering that the separation of the employees is beyond their control.

With respect to the transfer of shares of stocks to the awardees, Sec. 24 of the Tax Code, as amended, provides:

> *"SECTION 24. Income Tax Rates. —*
>
> *xxx xxx xxx*
>
> *"(C)* ***Capital Gains from Sale of Shares of Stock not Traded in the Stock Exchange.*** *— The provisions of Section 39(B) notwithstanding, a final tax at the rates of fifteen percent (15%) is hereby imposed upon the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation, except shares sold, or disposed of through the stock exchange.*

Accordingly, the phrase "other disposition" includes within its purview all kinds of disposition of real property under Section 24 (C) of the Tax Code of 1997, as amended, unless specifically excluded therefrom or subject to another tax treatment pursuant to different provisions of the National Internal Revenue Code of 1997, as amended.

Thus, the transfer the ownership of the shares of stock in favor of the awardees, in the absence of a specific law excluding it from the coverage of Section 24 (C) of the Tax Code of 1997, as amended, is deemed included within the purview of the said provision. Therefore, it shall be subject to fifteen percent (15%) capital gains tax (CGT).

Moreover, the conveyance being a disposition of shares of stock under Section 24 (C) of the Tax Code of 1997, as amended, is likewise subject to the documentary stamp taxes (DST) imposed in Section 188 of the Tax Code of 1997, as amended.

Revenue Memorandum Order (RMO) No. 15-2013 dated May 8, 2003 prescribes the policies, guidelines, and procedures, including the documentary requirements, in the issuance of Certificates Authorizing Registration (CARs) for transactions subject to capital gains tax on the sale, barter, transfer, or assignment of shares of stock not traded in the Stock Exchange. Accordingly, a CAR is necessary before any transfer of shares of stock not traded in the Stock Exchange may be transferred in the books of a corporation.

n.

OT-0297-2020
JUN 08 2020

Hence, in order to transfer ownership of shares of stock not traded in the Stock Exchange, it is necessary to secure a CAR pursuant to the process laid down in RMO No. 15-2003. The receipts of the payment of the tax should also be filed with and recorded by the secretary of the corporation pursuant to Section 11 of RR No. 6-2008.

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,

CAESAR R. DULAY
Commissioner of Internal Revenue

K-1

034313