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-0653-2020
OT- 444 - 2022
DEC 29 2022

Nisce Mamuric Guinto Rivera and Alcantara Law Office
8th Floor 139 Corporate Center, 139 Valero Street
Salcedo Village, Makati City 1227

Attention: **Atty. Francisco J. Rivera**
Authorized Representative

Gentlemen:

This refers to your request for confirmatory ruling that the transfer of Manila Polo Club ("MPC") shares, owned by **FPG INSURANCE CO., INC.**, formerly Federal Phoenix Assurance Co., Inc., ("FPG") from the former company President to the new company President is not subject to capital gains tax (CGT) and donor's tax.

Background

1. FPG, with Taxpayer Identification No. 000-455-062-000 is a corporation duly organized and registered under the laws of the Philippines, with office address at 6th Floor, Zuellig Building, Makati Ave. Corner Paseo de Roxas, Makati City.

2. FPG purchased and owns one (1) share in MPC Inc. and recorded the acquisition in its books and its Audited Financial Statements as of December 31, 2020 as part of FPG's Investments in Financial Assets.

3. MPC's policy, particularly Article Seventh of its Articles of Incorporation provides that "only natural persons shall be admitted as proprietary members." MPC's By-laws and House Rules and Regulations defines a Proprietary Member as a "holder of proprietary membership certificate in his/her own name registered as such in the Membership Book of the Club." In compliance with this policy, corporations and institutions who own MPC shares adopt the standard practice of assigning their MPC shares to natural persons.

4. Consistent with FPG's prevailing practice, FPG placed its MPC share in the name of its former President, MR. CARLOS F. UY, JR. ("Mr. Uy"). Accordingly, MPC issued in favor of Mr. Uy Proprietary Certificate No. 3614.

OT- 444-2022
DEC 29 2022

5. On June 2, 2007, Mr. Uy executed a Declaration of Trust expressly acknowledging that he held the MPC share in trust for FPG.

6. Due to the death of Mr. Uy, FPG is now designating its current President, MS. PIO DE RODA-REYES ("Ms. Reyes"), as its new trustee over the MPC share.

7. On July 1, 2021, FPG executed a Deed of Assignment transferring the MPC share to Ms. Reyes without any consideration.

8. Also on July 1, 2021, FPG and Ms. Reyes executed a Declaration of Trust which states that the MPC share shall be held by Ms. Reyes for the benefit of, and in trust for FPG and FPG shall continue to be the true and beneficial owner of the MPC share.

9. The documentary stamp taxes were paid and affixed to the Deed of Assignment and Declaration of Trust.

Discussion/Ruling

The transfer of MPC shares 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 them 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.

---

[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.

OT- 444-2022
DEC 29 2022

In the instant case, FPG, the purchaser of the MPC share, intends to give its legal title to its Trustee-appointee, which entitles the Trustee-appointee (Mr. Uy) 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 (Mr. Uy) to the new Trustee-appointee (Ms. Reyes), 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 FPG 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.

It is, however, understood that this Ruling shall not serve as authority to the Corporate Secretary of MPC 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 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

K-1-MCUS

000954