REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

National Office Building
Quezon City

Sec. 27(A) & (D)(2), 98, 176 & 188, Tax Code, as amended
BIR Ruling No. OT-421-21
OT-445-2022
DEC 29 2022

Picazo Buyco Tan Fider & Santos Law Offices
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Attention: **Atty. Cynthia L. De La Paz**
Atty. Hillary Faye A. Mercado

Gentlemen:

This refers to your request on behalf of your client, **AIG Philippines Insurance, Inc.** ("**AIG Philippines**" or the "**Company**") for a confirmatory ruling that the transfer by AIG Philippines of legal title over its proprietary share in Manila Polo Club Inc. ("MPC" or the "Club"), from its current trustee to its new trustee, is not subject to capital gains tax (CGT) and documentary stamp tax (DST).

Background

1. AIG Philippines is a domestic corporation authorized to engage in the business of non-life insurance in the Philippines.

2. AIG Philippines is the beneficial owner of a proprietary share in MPC (the "MPC Share"). While a proprietary share in MPC may be owned by a corporate entity, the policy of MPC is that admission to Club membership and enjoyment of its facilities is limited only to natural persons. Since only natural persons can enjoy the facilities of the Club, AIG Philippines, as a matter of course, assigns its proprietary share in MPC to its current President & CEO (the "officer") for the sole purpose that he or she may enjoy the facilities and amenities of MPC while employed by the Company. Beneficial ownership over the MPC Share, however, remains with AIG Philippines. The Company maintains beneficial ownership over the MPC Share, the same being recorded in its books as part of its assets as of December 31, 2021.

3. AIG Philippines's MPC Share is covered by Proprietary Membership Certificate No. 6807 which is presently in the name of Mr. Mark Randall Lwin ("Mr. Lwin") who previously served as the Company's President & CEO. On August 31, 2020, Mr. Lwin resigned and in his place Mr. Gary Wong ("Mr. Wong") was appointed as AIG Philippines's President & CEO on March 15, 2021 (effective March 17, 2021).

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4. AIG Philippines now seeks to transfer Proprietary Membership Certificate No. 6807 from the name of Mr. Lwin to the name of Mr. Wong. A Deed of Assignment and Declaration of Trust was executed by and between the Company and Mr. Wong to evidence Mr. Wong's holding of legal title over the MPC Share and to confirm his status as the new trustee in respect of the MPC Share.

5. In particular, the Deed of Assignment and Declaration of Trust confirms that:

   a. Mr. Wong is substituted as trustee of AIG Philippines (the principal) in respect of the MPC Share;

   b. Only legal ownership over the MPC Share is transferred to him while the beneficial ownership of the MPC Share remains with AIG Philippines;

   c. He does not have any other title, right, claim or interest whatsoever over the MPC Share, as the transfer of legal title is for the sole purpose of complying with the rules of MPC that only a natural person shall be admitted as a proprietary member of the Club and to make him qualified to use or avail of the facilities of the Club while he is an officer of the Company;

   d. Upon the occurrence of any event which will cause him to cease from being the company officer designated to hold the MPC Share and enjoy the benefits and privileges thereof, the Board of Directors of AIG Philippines may designate another company officer it deems qualified to be the holder of legal title over the MPC Share; and

   e. No consideration is/will be paid for the transfer to Mr. Wong of the legal title over the MPC Share.

<u>Discussion/Ruling</u>

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.

[1] Resurreccion de Leon, et al. v. Emiliano Molo-Peckson, et al., G.R. No. L-17809, December 29, 1962.

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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, AIG Philippines, the purchaser of the MPC share, intends to give its legal title to its Trustee-appointee, which entitles the Trustee-appointee (Mr. Wong) 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. Accordingly, the transfer of the legal title of the MPC Share from the former Trustee-appointee (Mr. Lwin) to the new Trustee-appointee (Mr. Wong), 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 AIG Philippines 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.

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

[2] G.R. No. 202247, June 19, 2013.

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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. <u>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.</u> 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 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 the Club to effect the transfer of the MPC share in the name of the Transferee-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
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