REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 63 of NIRC; Arts. 1448 & 1453 of the Civil Code	OT-316	-2022

JUN 28 2022

Person to Contact: Chief, Law Division
Tel Nos. 926-5536/927-0963

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Attention: **Attys. Jayson L. Fernandez**
and
Michael P. Garcia

Gentlemen:

This refers to your request stating that your client, Philam Tower Realty Corporation (PTRC), is a corporation organized and existing under the laws of the Philippines duly registered with the Securities and Exchange Commission (SEC) under SEC Registration No. with TIN ; that on the other hand, Social Security System (SSS) is a government owned-and-controlled corporation created under Republic Act (RA) No. 1161, otherwise known as the "Social Security Act"; that Philam Properties Corporation (PPC) is a corporation organized and existing under the laws of the Philippines with SEC Registration No. with TIN ; that on May 8,1996, a Memorandum of Agreement (MOA) was executed by and between The Philamlife American Life Insurance Company, PPC and PERF Realty Corporation, whereby the parties agreed to finance the cost of construction and "condominiumization" of various office floors and parking spaces of the Philamlife Tower, and to contribute their proportionate share in the construction cost of the common areas of the Philamlife Tower; that in connection with the Philamlife Tower MOA, various floors and parking spaces in the Philamlife Tower were assigned to the parties in proportion to their respective contributions to the cost of construction and condominiumization of the Philamlife Tower; that among the floors and/or units of Philamlife Tower that were assigned to PPC were condominium unit located at the 33rd and 34th Floors, namely condominium unit numbers 33-A, 33-B, 33-C, 33-D, 34-A and 34-B (the Club Floors) which are currently occupied by a business club known as the "Tower Club"; that subsequently, the SSS agreed to provide additional funding to the Philamlife Tower Project as a co-developer; that in a MOA dated September 9,1997 executed by and between the SSS, The Philippine American Life and General Insurance Company, PPC and PERF Realty Corporation, PPC agreed to assign to SSS its undivided interests, rights and obligations to the Club Floors; that after the completion of the construction of the Philamlife Tower, the Club Floors were registered in the name of PTRC as trustee for PPC and SSS; that accordingly, the Condominium Certificates of Title corresponding to the Club Floors expressly indicate that the Club Floors are held in trust by PTRC for the benefit of SSS and PPC, respectively, in the following manner:

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1. As trustee of SSS:

Condominium Unit No.	Condominium Building	CCTC No.
33-C	Philamlife Tower	
33-D	Philamlife Tower	
34-A	Philamlife Tower	

2. As trustee of PPC

Condominium Unit No.	Condominium Building	CCTC No.
33-A	Philamlife Tower	
33-B	Philamlife Tower	
34-B	Philamlife Tower	

that in addition, the existence of the trust arrangements mentioned have been duly acknowledged by PTRC in separate Declarations of Trust both dated May 13, 2011; that SSS and PPC have terminated their respective trust relationships with PTRC; and that as a consequence of the termination, PTRC, through the corresponding Deeds of Transfer and without receiving any consideration whatsoever, will transfer legal title to SSS and PPC, respectively, who are the beneficial owners of the Club Floors.

Based on the foregoing representations, you now request confirmation of your opinion that the transfer of legal title to the Club Floors to the beneficial owners as a consequence of the termination of the trust relationships of PTRC with SSS and PPC, respectively, shall not be subject to:

1. Income tax (including CWT) or documentary stamp tax (DST) since there is no actual transfer of beneficial ownership of the Club Floors and PTRC will not receive any consideration under the foregoing transactions;

2. Value-added tax (VAT) since the Club Floors are not held by PTRC primarily for sale to customers or for lease in the ordinary course of its business as the Club Floors are merely held in trust for SSS and PPC, respectively; and

3. Donor's tax since the Club Floors are being transferred by PTRC without any donative intent on its part but solely as a necessary consequence of the termination of the trust relationship of PTRC with SSS and PPC, respectively.

In reply thereto, please take note at the outset that this request for confirmation is only on the tax consequence of the transfer by the trustee, PTRC of the Club Floors to the trustors, SSS and PPC, as a result of the termination of the trust relationship. This does not pertain to the tax consequence, if any, of the assignment by PPC to SSS of its undivided interests, rights and obligations to the Club Floors pursuant to MOA dated September 9, 1997. To begin with, Article 1448 of the Civil Code provides that there is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. The former is a trustee, while the latter is the beneficiary. However, if the person to whom the title is conveyed is a child, legitimate or illegitimate, of the one paying the price of the sale, no trust is implied by law, it being disputably presumed that there is a gift in favor of the child.

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Moreover, Article 1453 of the Civil Code provides that when the property is conveyed to a person in reliance upon his declared intention to hold it for, or transfer it to another or the grantor, there is an implied trust in favor of the person whose benefit is contemplated.

Corollarily, Section 63 of the Tax Code of 1997 provides that –

> "Sec.63 Revocable Trusts.- Where at any time the power to revest in the grantor title to any part of the corpus of the trust is vested (1) in the grantor either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, or (2) in any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, the income of such part of the trust shall be included in computing the taxable income of the grantor."

In the instant case, an implied trust is deemed created by law. This is so because PTRC, as the registered owner of the Club Floors, has legal ownership of the Club Floors. However, the said Club Floors were bought and/or financed by SSS and PPC and that PTRC merely holds the Club Floors in trust for SSS and PPC. It is to be noted that in a revocable trust, the trustor retains the right to control the disposition of the property, including the right to cause the reversion of the legal ownership of the property itself. *(BIR Ruling Nos. 013-05 dated August 16 2005; 129-93 dated April 5, 1993; 128-93 dated April 5, 1993; 096-93 dated March 10, 1993; and 086-92 dated March 19, 1992)* Thus the return or transfer of legal ownership of the property to the trustor of a revocable trust is mere confirmation of the title of the trustor as the ultimate and real owner-beneficiary of the property and does not involve an actual transfer of the beneficial ownership of the property since the trustor remains the beneficial owner of the property held in trust before and after the return or transfer of legal ownership of the property. (*BIR Ruling No. 031-99 dated March 19, 1999*)

Accordingly, this Office hereby confirms your opinion that –

1. The transfer or reversion of the Club Floors, subject matter of the trust arrangement, by PTRC, as the Trustee, to SSS and PPC, as the Trustors, is not subject to income tax and consequently to withholding tax and the corresponding documentary stamp tax.

2. The properties subject matter of the trust arrangement between PTRC, SSS and PPC are not held primarily for sale to customers or for lease in the ordinary course of trustee's business, since the trustee merely holds or manages the said properties for the benefit of the trustor-beneficiary. Consequently, the transfer or return by the trustee to the trustor-beneficiary of the properties held in trust is not subject to the 12% VAT.

3. Finally, the transfer or return by the trustee to the trustor-beneficiary of the properties which are founded solely on the termination of the trust agreement is not subject to donor's tax. *(BIR Ruling No. DA-411-04 dated July 29, 2004)*

It should be emphasized, however, that the above-stated opinion does not pertain to the tax consequence of the assignment by PPC to SSS of its undivided interest, rights

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and obligations to the Club Floors pursuant to the MOA dated September 9, 1997, which assignment may also be subject to the payment of appropriate taxes (Income Tax, VAT and DST), unless the same had already been paid and settled.

This ruling is being issued on the basis of the foregoing facts are 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,

CAESAR R. DULAY
Commissioner of Internal Revenue
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