REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Secs. 2 and 58(B) of the Tax Code of 1997, as amended
OT- 303-2022
JUN 22 2022

FRANCISCO G. TAGAO LAW OFFICE
Lot 23, Block 56 Francisco Reyes St.
BF Homes Parañaque Subdivision
Parañaque City

Attention: **Atty. Francisco G. Tagao**

Gentlemen:

This refers to your request on behalf of your clients Ayala Greenfield Development Corporation ("Ayala Greenfield"), OLC Development Corporation, Fidelity Investment Corporation, Centennial Land Development Corporation, Gentle Wind Land Development Corporation, Central Estate Management, Inc., and Greenfield Property Dev. & Holdings, Inc. for a confirmatory ruling that there is no need for the issuance of a separate Certificate Authorizing Registration (CAR) on the transfer of the club share which is appurtenant to the sale of lot or appurtenant to the lot purchased.

It is represented that Ayala Greenfield acquired certain tracts of land in Calamba City, Laguna, which were developed for residential purposes ("the Subdivision"). Ayala Greenfield and other individuals formed Ayala Greenfield Golf and Leisure Club, Inc. ("the Club"), a non-profit golf and leisure club, to meet the sporting and leisure requirements of prospective buyers of the developed lots. Its primordial purpose is to operate its leisure and sporting facilities for the benefit of the Club members.

Pursuant to its Articles of Incorporation, the Club has an authorized capital stock of common shares consisting of Class A shares, which shall also be the Founders' Shares, and Class B shares. All shares are without par value. The initial issue price of the shares is P per share.

In order to attract prospective buyers of the lot and establish their own residence within the Subdivision, Ayala Greenfield subscribed to Class A shares and Class B shares ("the club share") to ensure that for every lot sold, there is a club share appurtenant thereto. The scheme was designed to pursue a valid business purpose of increasing the marketability of the lot without additional cost to the prospective buyers. Ayala Greenfield intends to sell its lot with an appurtenant club share to the prospective buyers for the quoted price of the lot, without any additional or separate consideration for the corresponding club share.

To document the sale, Ayala Greenfield and the buyer of the lot will execute a contract to sell and subsequently a deed of absolute sale upon full payment of the purchase price of the lot. After the execution of the deed of absolute sale, a supplement to the deed of absolute sale will be executed by the same parties wherein the terms and conditions for the transfer of the club share appurtenant to the lot purchased which include among other things:

a. In consideration for the purchase by the buyer of the lot in the subdivision, Ayala Greenfield conveys to the buyer one ordinary club share without the payment to Ayala Greenfield of any additional monetary consideration; and

b. The share is appurtenant to the lot purchased, and this shall not be sold, conveyed, or disposed of separately by the buyer from the lot purchased, except in case of an involuntary transfer. The restriction on the disposition of the lot shall constitute a lien in both the share and the lot. By the execution of the supplement to the deed of absolute sale, the buyer authorizes Ayala Greenfield as its attorney-in-fact, to cause the annotation of the foregoing restriction on the certificate covering the share and the Transfer Certificate of Title covering the lot.

It is worth noting that starting December 2020, the contract to sell of the lot includes a statement that the club share is appurtenant to the lot and the terms of the supplement to the deed of absolute sale are already incorporated in the comprehensive deed of absolute sale.

In reply, please be informed that Section 2 of the National Internal Revenue Code (Tax Code) of 1997, as amended, states that:

> *"SEC. 2. Powers and Duties of the Bureau of Internal Revenue. — The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws."*

In relation thereto, Section 58(E) of the Tax Code of 1997, as amended, textually provides that:

> *"SEC. 58. Returns and Payment of Taxes Withheld at Source. —*
>
> *xxx xxx xxx*
>
> *(E) Registration with Register of Deeds. — No registration of any document transferring real property shall be effected by the Register of Deeds unless the Commissioner or his duly representative has certified that such transfer has been reported, and the capital gains or creditable withholding tax, if any, has been paid xxx"*

Taking the provision together, the prime concern of the Bureau of Internal Revenue (BIR) is to collect taxes. In so far as registration of document transferring real property is concerned, a Certificate Authorizing Registration (CAR) is issued by the BIR only to certify

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that taxes (capital gains tax, documentary stamp tax, creditable withholding tax and certification fees) applicable to the transfer of registrable property have been paid. It must be emphasized that the CAR is nothing more but a certification that applicable taxes on the transaction have been paid.

In Philippine contract law, one species of an indivisible object is a divisible thing which the parties treated as indivisible.[1] Article 1225 of the Civil Code provides:

> *"Art. 1225. For the purpose of the preceding articles, obligations to give definite things xxx shall be deemed to be indivisible.*
>
> *xxx xxx xxx*
>
> *However, even though the object or service may be physically divisible, an obligation is indivisible if so provided by law or intended by the parties."*

Ayala Greenfield intends to sell the lots in the subdivision with the club share as an appurtenant thereof, the parties likewise agreed that insofar as the club share is concerned, no further consideration is required for its acquisition. While the lot and the club share are, by their nature, separable, the parties, however, intended to treat them as indivisible.

From the foregoing, considering the indivisibility and non-transferability[2] of the club share apart from the lot, that is, the membership to the club is part of the consideration in and appurtenant to the purchase of lot in Ayala Greenfield, a separate CAR to effect the transfer of the club share is, *pro hac vice*, therefore unnecessary.

This ruling is being issued on the basis of the foregoing facts as 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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[1] Capalla vs. COMELEC, G.R. No. 201112, October 23, 2012
[2] Pursuant to Section 89 of the Revised Corporation Code which provides, *viz*: SEC. 89. *Non-transferability of Membership.* – Membership in a nonstock corporation and all rights arising therefrom are personal and non-transferable, unless the articles of incorporation or the bylaws otherwise provide