REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

National Office Building
Quezon City

Section 24(C) and Section 98(A) of the National Internal Revenue Code of 1997, as amended.
OT- 004-2024
JAN 18 2024

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Gentlemen:

This refers to your request for clarification on whether the change in the registered owner of one (1) proprietary membership in the Manila Polo Club from the name of one spouse to the other, as a consequence of the dissolution of their absolute community regime pursuant to a court-approved settlement of properties is not subject to Capital Gains Tax (CGT), Documentary Stamp Tax (DST), and Donor's Tax.

The antecedent background are as follows:

1. On July 1, 1989, Jaime Antonio L. Araneta and Ma. Carmen Imaculada A. Concepcion were married in the City of Manila.

2. Since the spouses did not execute a marriage settlement before or at the time of their marriage, their property regime is governed by the system of absolute community of property.

3. On May 28, 2019, Ma. Carmen filed an action for Declaration of Nullity of Marriage docketed as Civil Case No.   which is currently pending before Branch 140 of the Regional Trial Court of Makati.

4. On September 5, 2019, the spouses voluntarily executed a Memorandum of Agreement to abandon their property regime of absolute community and instead adopt the system of complete separation of properties.

5. One of their community properties is a proprietary membership in the Manila Polo Club, which the spouses acquired on May 5, 1997 and accordingly registered in the name of Jaime Antonio L. Araneta.

6. In the Memorandum of Agreement to dissolve their absolute community property regime, the spouses mutually agreed to distribute the Manila Polo Club share between themselves in the following manner:

a. Jaime Antonio shall cede and transfer his share of the Manila Polo Club to Ma. Carmen for and in the amount of Pesos (P) net of expenses and taxes, due at the time of the signing of the agreement. The Manila Polo Club share of stock shall be surrendered to Ma. Carmen by Jaime Antonio, simultaneous with the signing of their Agreement, duly endorsed by Jaime Antonio. All documentary requirements required by the club to effect the stipulation shall be signed by Jaime Antonio upon presentation. (Memorandum of Agreement, par. 3)

7. On December 6, 2019, the Regional Trial Court of Makati – Branch 140, rendered a Partial Judgment approving the Memorandum of Agreement executed by the spouses and enjoined the parties to faithfully comply with the terms and conditions thereof with honesty and good faith.

8. In order to implement the change of registration of the Manila Polo Club share from Jaime Antonio to Ma. Carmen pursuant to the Memorandum of Agreement, the Manila Polo Club is requiring the presentation of a Certificate Authorizing Registration issued by the Bureau of Internal Revenue.

In reply, please be informed as follows:

Capital Gains Tax

Section 24 (C) of the National Internal Revenue Code ("Tax code") of 1997, as amended, provides:

> "*(C) Capital Gains from Sales of Shares of Stock not Traded in the Stock Exchange. – The provisions of Section 39(B) notwithstanding, a final tax at the rate 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.*"

A perusal of par. 3 of the said Memorandum of Agreement, as approved by the Regional Trial Court City of Makati – Branch 140 on December 6, 2019, indicates that Jaime Antonio has ceded and transferred his share of the Manila Polo Club to Ma. Carmen <u>for and in the amount of</u> <u>Pesos (P</u>) upon the signing of the agreement.

It appears from the basic interpretation of paragraph 3 of the said memorandum that the foregoing transfer of share of Manila Polo Club was made pursuant to a sale of shares of stock. Therefore, applying the above cited tax provision, the sale of the Manila Polo Club share for and in the amount of P shall be subject to a final withholding tax rate of fifteen percent (15%) CGT imposed under Sec. 24 (C) of the Tax Code of 1997, as amended.

On the other hand, the transfer of share is not subject to Donor's Tax imposed under Section 98(A) of the Tax Code of 1997, as amended, there being no donative intent on the part of the transferor.

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Finally, considering that the said transfer of share was made in exchange for a consideration, the same is likewise subject to the proper DST under Section 175 of the Tax Code of 1997, as amended.

This ruling is being issued on the basis of the foregoing facts as presented. 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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