REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

National Office Building
Quezon City

Secs. 24 (C); 98; 175 of the Tax Code of 1997, as amended; RR No. 13-2004
BIR Ruling No. OT-0653-2020; BIR Ruling No. OT-467-2021
OT- 013 - 2023
MAR 09 2023

ROMULO MABANTA BUENAVENTURA
SAYOC & DE LOS ANGELES
21st Floor, Philamlife Tower
8767 Paseo de Roxas, Makati City

Attention: **Atty. Jayson L. Fernandez**
Partner

Gentlemen:

This refers to your request on behalf of your client, **Citibank, N.A. – Philippine Branch (Citibank)**, for confirmation that the transfer of proprietary shares in Manila Polo Club, Inc. by Citibank's former trustees, Billie Adelman, Manu Shinghal and Anthony Michael Thomas, to its new trustees, Fernando De Faria Castro Fleury, Erwin Wiriadi and Asim Munir, is not subject to capital gains tax (CGT) or income tax (IT) imposed under Section 24(C), donor's tax imposed under Title II, and documentary stamp tax (DST) under Section 175, all of the National Internal Revenue Code (Tax Code) of 1997, as amended.

Background:

1. Citibank is the beneficial owner of three (3) proprietary shares in Manila Polo Club, Inc. (MPC).

2. Under the Articles of Incorporation and By-laws of MPC, institutional members are prohibited from being registered shareholders.

3. In order to comply with the rules of MPC and enable its officers to avail of and use of the various facilities of MPC, Citibank appointed qualified natural persons, Billie Adelman and Manu Shinghal, to act as trustees and hold legal title to the MPC shares for and on its behalf.

4. MPC Proprietary Membership Certificate (Proprietary Certificate) No. was issued in the name of Billie Adelman on January 22, 2009, MPC Proprietary Membership Certificate No. was issued in the name of Manu Shinghal on September 29, 2011 and MPC Proprietary Membership Certificate No. was issued in the name of Anthony Michael Thomas on September 27, 2012.

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5. Citibank retained, at all times, the beneficial ownership over the MPC shares which are held in trust by its officers, as evidenced by a Declaration of Trust dated November 20, 2008, wherein Billie Adelman acknowledged that Citibank is the beneficial owner of the Proprietary Certificate and he is merely holding the legal title thereto to make him qualified to avail of the use of the various facilities of the MPC. Declaration of Trust dated July 11, 2011 was likewise executed by Manu Shinghal acknowledging that Citibank has purchased a Proprietary Certificate of MPC and he will hold the legal title over the same to make him qualified to avail of the use of the various facilities of the MPC. Lastly, Declaration of Trust dated July 16, 2012 was executed by Anthony Michael Thomas acknowledging that Citibank has purchased a Proprietary Certificate of MPC and he will hold the legal title over the same to make him qualified to avail of the use of the various facilities of the MPC.

6. Citibank appointed James Francis McCue and Erwin Wiriadi as the successor trustees to the MPC shares to replace Billie Adelman and Manu Shinghal, who have since been given new assignments. However, Mr. James Francis McCue already retired from the company before the transfer of MPC shares. In his stead, Citibank has designated Mr. Fernando De Faria Castro Fleury to be the successor trustee of the MPC share.

7. The transfer of the three (3) proprietary shares in MPC as described above, being merely a transfer from one nominee or trustee of Citibank to another nominee or trustee of Citibank, is without any consideration.

We reply, as follows:

The transfer of MPC Share from Messrs. Billie Adelman, Manu Shinghal and Anthony Michael Thomas to Messrs. Fernando De Faria Castro Fleury, Erwin Wiriadi and Asim Munir is not subject to CGT and DST.

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 Declarations of Trust which Messrs. Billie Adelman, Manu Shinghal and Anthony Michael Thomas executed, they acknowledged that the trust did not give them any kind of right, claim or interest whatsoever in the MPC Share and that they are holding only the legal ownership of the same with the beneficial ownership pertaining to Citibank. Here, the trustor is Citibank while the trustees are the assignees, Messrs. Billie Adelman, Manu Shinghal and Anthony Michael Thomas.

Moreover, 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

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[1]Resurreccion de Leon, et al. v. Emiliano Molo-Peckson, et al., G.R. No. L-17809, 29 December 1962.
[2] G.R. No. 202247, 19 June 2013.

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, Citibank purchased the MPC Shares and assigned the legal title thereto to its trustees-appointees, which title entitle the trustees-appointees 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 Shares from Messrs. Billie Adelman, Manu Shinghal and Anthony Michael Thomas (old trustees-appointees) to Messrs. Fernando De Faria Castro Fleury, Erwin Wiriadi and Asim Munir (new trustees-appointees), is not subject to CGT under Section 24(C) of the Tax Code of 1997, as amended and IT considering that the transfer involves neither monetary consideration nor change in beneficial ownership.

The Transfer is not subject to DST

The transfer is not subject to DST under Section 175 of the Tax Code of 1997, as amended. The rule 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 deliver, assignment or indorsement of such shares in favor of another.

Revenue Regulations (RR) No. 13-2004 dated December 23, 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*[3] 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 of RR No. 13-2004 provides, to wit:

> "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 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. However, if by the transfer of certificates of stock from a resigned trustee to a newly appointed trustee such certificate of stock remains 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.** 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

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[3] RR 13-2004.

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beneficial owner of the stock; and the transfer is in trust." (Emphasis and underscoring supplied)

In view thereof, the herein transfers cannot be subject to DST as there are no transfer or conveyance to Messrs. Fernando De Faria Castro Fleury, Erwin Wiriadi and Asim Munir of the beneficial ownership of or any right, claim or interest over the MPC Shares or over the assets 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.

The Transfer is not subject to Donor's Tax

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.

Clearly, there is no intention on the part of Citibank to donate the share in favor of Messrs. Fernando De Faria Castro Fleury, Erwin Wiriadi and Asim Munir. Thus, the transfer of the MPC Shares from one nominee to another shall not be subject to donor's tax under Section 98 of the Tax Code of 1997, as amended.

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,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
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