REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

EO No. 179, Series of 2015; RA No. 11524
BIR Ruling No. 675-17
BIR Ruling No. 824-2018
BIR Ruling No. OT-205-2021
OT-016-2022
JAN 17 2022

Presidential Commission on Good Government
Legal Department
82 Epifanio de los Santos Ave.
Mandaluyong City, 1550

Attention: **Mivez Anne L. Pawid**
Interim Head

Raymond Anthony C. Dilag
Commissioner-in- Charge

Gentlemen:

This refers to your letter dated July 15, 2021 concerning the **Presidential Commission on Good Government**'s (PCGG) endeavor to transfer the San Miguel Corporation's (SMC) shares registered under the name of "PCGG In Trust for CARP", currently under the custody of the Bureau of the Treasury (BTr), to the name of the Republic of the Philippines pursuant to the directives of Executive Order (EO) No. 179, Series of 2015 and Republic Act (RA) No. 11524[1], and your request from BIR Revenue District Office No. 41 – Mandaluyong City for the issuance of a Certificate Authorizing Registration (CAR) exempting such transfer from the payment of taxes.

It is represented that the subject shares originally formed part of the SMC shares registered under the name of the 14 Coconut Industry Investment Fund (CIIF) Holding Companies. The SMC shares were sold by the CIIF Holding Companies to the SMC Group through a Stock Purchase Agreement entered into on March 26, 1986 in the total amount of payable in four (4) installments. An initial was paid by SMC as first installment.

On July 13, 1987, the PCGG, on behalf of the Republic of the Philippines, filed Civil Case No. for reconveyance and recovery of the SMC shares and the coco levy funded companies including the 14 CIIF Companies, the registered owner of the said SMC

[1] Coconut Farmers and Industry Trust Fund Act of 2021

shares. The said civil cases were subdivided into eight (8) coco-levy cases namely Civil Case Nos.

Thereafter, SMC and United Coconut Planters Bank (UCPB)[2]/CIIF entered into a Compromise Agreement and Amicable Settlement wherein the parties agreed among others that only the sale of the shares covered by the first installment shall be recognized as valid and effective. Additionally, the parties will also pay PCGG an arbitration fee of SMC shares to be held in trust for the Comprehensive Agrarian Reform Program (CARP). The incidents regarding the implementation of the compromise were subject for resolutions in the filed Civil Case.

On May 7, 2004, the Sandiganbayan in Civil Case No. issued a partial summary judgement declaring that the SMC shares subject of the stock purchase agreement, being public in character, belong to the government. This decision was then affirmed by the Supreme Court on January 24, 2012 in GR Nos. 177857-58 and 178193[3].

Meanwhile, the SMC shares subject of the letter-request has ballooned to shares. The BTr is currently the custodian of the SMC shares under the name "PCGG In Trust for CARP."

Thus, to comply with GR Nos. 177857-58 and 178193, EO No. 179 was issued to direct the PCGG to reconvey and transfer the title of its SMC shares of stock from "PCGG In Trust for CARP" to the Republic of the Philippines. Moreover, RA No. 11524 likewise directed the reconveyance, delivery and transfer of all coconut levy asset and/or fund, including stock certificates and other evidence of ownership and cash, to the Republic of the Philippines.

In this regard, you request for confirmation that the transfer of the subject shares and its registration in the name of the Republic of the Philippines is exempt from stock transfer tax and other related tax impositions.

In reply, please be informed that this Office had issued a similar pronouncement in ***BIR Ruling No. OT-0205-21*** dated June 15, 2021, and held that the cancellation of the CIIF shares maintained by UCPB and its re-issuance thereof to the Republic of the Philippines pursuant to several Supreme Court decisions is exempt from capital gains tax, donor's tax and documentary stamp tax.

To elaborate the exemption from taxes of the transfer of shares to the Republic of the Philippines, we further discuss as follows:

Capital Gains Tax

Section 27(D)(2) of the National Internal Revenue Code of 1997 (Tax Code), as amended, provides for the taxability of gains derived by a domestic corporation from the sale, exchange or other disposition of shares of stock not traded in the stock exchange, to wit:

"SEC. 27 – Rates of Income Tax on Domestic Corporations. –

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[2] As administrator of the CIIF Holding Companies

[3] Consolidated cases of Confederation of Coconut Farmers Organization of the Philippines, et. al vs. Republic of the Philippines and Urusa vs. Republic of the Philippines

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(D) Rates of Tax on Certain Passive Incomes. –

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(2) Capital Gains from the Sale of Shares of Stock Not Traded in the Stock Exchange – A final tax at the rate of fifteen percent (15%) shall be imposed on net capital gains realized during the taxable year ***from the sale, exchange or other disposition of shares of stock in a domestic corporation except shares sold or disposed of through the stock exchange.*** *" (Emphasis and underscoring ours)*

The above-quoted provision finds no application in this case since it does not involve sale, barter or exchange of shares contemplated under the foregoing provision. The transfer of the subject shares is made pursuant to the Supreme Court decisions in GR Nos. 177857-58 and 178193, EO No 179 and RA No. 11524 which mandates the PCGG to cancel the subject shares of stock and to issue the equivalent number of shares in the name of the Republic of the Philippines. Accordingly, the transfer of the subject SMC shares in favor of the Republic of the Philippines, without any monetary consideration, and made in order to give effect to the mentioned laws, is not subject to capital gains tax.[4]

Moreover, the stock transfer tax provided under Section 127 of the Tax Code, as amended, is not applicable in the foregoing facts since stock transfer tax applies only to sale of shares listed in the stock exchange.

Donor's Tax

Section 98 of the Tax Code, as amended, provides that donor's tax is generally imposed on the transfer by any person, resident or non-resident, of property by gift. The donor's tax applies, whether such transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. 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*).

We note that based on the facts represented, there is no intention to donate on the part of PCGG as the transfer was made in compliance with the above-mentioned laws. The transfer of the legal title to the Republic of the Philippines is only a confirmation of its ownership over the said shares, and there is no donative intent or act of liberality involved on the part of PCGG.[5]

Documentary Stamp Tax

The transfer of the subject shares by PCGG in favor of the Republic of the Philippines is likewise not subject to documentary stamp tax imposed under ***Section 175 of the Tax Code***, as amended, considering that there is no sale, agreement to sell or memorandum of sale, or delivery or transfer contemplated under Section 175 of the Tax Code. However, the notarial

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[4] BIR Ruling No. 675-17 dated December 29, 2017; BIR Ruling No. 824-2018 dated May 17, 2018 and BIR Ruling No. OT-205-21

[5] *Ibid.*

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acknowledgment on the Deed of Compliance is subject to the documentary stamp tax under ***Section 188 of the same Code***.[6]

This will, therefore, serve as authority for the concerned Revenue District Officer to issue the corresponding CAR so that PCGG can transfer the subject shares of stock under the account name "PCGG In Trust for CARP" to the name of the Republic of the Philippines.

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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[6] *Ibid.*