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-338-2021; BIR Ruling No. OT-421-2021; BIR Ruling No. OT-467-2021; BIR Ruling No. OT-038-2023
OT- 037-2024
SEP 04 2024

LEAGOGO LAW OFFICE
Unit 1908, Tower 2 High Street Corporate Plaza
26th Street corner 11th Avenue, BGC, Taguig City

Attention: **Atty. Jose Lis C. Leagogo**
Atty. Pola Lia Celina L. Lamarca

Gentlemen:

This refers to your request, on behalf of your client, Unilever Philippines, Inc. for confirmation on the exemption from payment of taxes on the assignment of Manila Polo Club ("MPC") membership from one officer to another.

Background:

Unilever Philippines, Inc. ("ULP" or the "Company") is a domestic corporation organized primarily to engage in the business of manufacturing, processing, refining, crushing, growing, buying, selling, importing, exporting, and dealing in all kinds of soaps, detergents, washing powders, polishes, cleansing substances, perfumery, toilet requisites, and foods of all kinds.

The Company owns shares from MPC and are recorded as asset in its books as of December 31, 2022. These shares are assigned to certain officers of the Company. Due to MPC's policy and in order to avail of the privileges of the club, a Declaration of Trust dated March 30, 2023 was executed by Kristine A. Go, General Manager of the Company whereby she acknowledged that:

(1) Unilever Philippines, Inc. owns one (1) Proprietary Share of the Manila Polo Club, Inc. as evidenced by Proprietary Membership Certificate No. 6803 formerly assigned to Rohit Jawa;

(2) As provided in the Articles of Incorporation and By-Laws of the Manila Polo Club, Inc., no institutional members are to be admitted as shareholder, thus ULP appointed Kristine A. Go to represent the share actually owned by the former in the MPC;

(3) The registration of the MPC share in the name of Kristine A. Go was necessary to comply with the rules of the MPC that only natural person shall be admitted as a proprietary member;

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(4) That Kristine A. Go do not have any title, right, claim or interest whatsoever over the said MPC share and the certificate that will be issued in replacement of Certificate No. , belongs to Unilever Philippines, Inc.

We reply, as follows:

The transfer of the Share from Rohit Jawa to Kristine A. Go is not subject to CGT.

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 Declaration of Trust which Kristine A. Go executed, she acknowledged that the transfer did not give her any kind of right, claim or interest whatsoever in the MPC share and that she is holding only the legal ownership of the same with the beneficial ownership pertaining to ULP. Here, the trustor is ULP while the trustee is Kristine A. Go.

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 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, ULP purchased the MPC share and gave the legal title thereto to its trustee-appointee, which title entitles the trustee-appointee only to the use and enjoyment of the club's facilities since under the Articles of Incorporation and By-laws of the Club, only natural persons may become registered members. Thus, the transfer of the legal title of the MPC share from Rohit Jawa (old trustee-appointee) to its new trustee-appointee, Kristine A. Go, is not subject to CGT under Section 24(C) of the National Internal Revenue Code (Tax Code) of 1997, as amended, considering that the transfer involves neither monetary consideration nor change in beneficial ownership. *(BIR Ruling No. OT-467-2021 dated December 14, 2021)*

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 delivery, 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 No. 9243, otherwise known as *An Act Rationalizing Further the Structure and Administration of the Documentary Stamp Tax* 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

[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.

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

In view thereof, the herein transfer cannot be subject to DST as there was no transfer or conveyance to Kristine A. Go of the beneficial ownership of or any right, claim or interest over the MPC share or over the assets of ULP. 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 ULP to donate the MPC share in favor of Kristine A. Go. Thus, the transfer of the MPC share 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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