REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

Secs. 24(C), 175 & 176, Tax Code, as amended
BIR Ruling No. OT-090-2023
OT- 040-2024
SEP 11 2024

SAN MIGUEL CORPORATION
40 San Miguel Avenue
Mandaluyong City 1550 Metro Manila

Attention: **Atty. Rogelio G. Lui**
AVP & Tax Services Manager

Gentlemen:

This refers to your request for confirmation that the transfer of Manila Polo Club (MPC) share owned by San Miguel Corporation (SMC) from a former trustee to a new trustee is not subject to the payment of taxes, and a Certificate Authorizing Registration is not necessary to effect the said transfer.

Background

1. As represented, SMC is a domestic corporation engaged in various businesses including beverage, food, packaging, energy, fuel and oil, infrastructure, cement, and real estate property management and development.

2. SMC is the beneficial owner of a membership share with MPC evidenced by Proprietary Membership Certificate No. (the "Membership Share") which is registered in the name of *Mr. Frank Fodstad* (Mr. Fodstad), who had previously served as SMC's consultant and, accordingly, its trustee for the Membership Share.

3. At present, Mr. Fodstad is no longer connected with SMC as his engagement as consultant ended in 2016. Pursuant to the Declaration of Trust executed by Mr. Fodstad, SMC seeks to designate *Mr. Jacob Paolo L. Ang* (Mr. Ang) as the new trustee for its Membership Share in MPC and to place the Membership Share in the name of Mr. Ang. In line with impending transfer of share, Mr. Ang executed a Declaration of Trust on November 20, 2023 acknowledging that SMC is the true and actual owner of the MPC share, and that Mr. Ang does not have any title, claim or interest whatsoever over said MPC share.

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Discussion/Ruling

The transfer of MPC shares from the Transferor to the Transferee is not subject to capital gains tax (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 the declarant/appointee executed, he acknowledged that the transfer did not give them any kind of right, claim, or interest whatsoever in the MPC share and that he is holding only the legal ownership of the same with the beneficial ownership pertaining to the Company. Here, the Trustor is the Company while the Trustee is the declarant/appointee.

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, SMC, the purchaser of the MPC share, intends to give its legal title to its Trustee-appointee, which 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 MPC only natural persons may become registered members. Thus, the transfer of the legal title of the MPC shares from the former Trustee-appointee to the new Trustee-appointee is not subject to CGT under Section 24 (C) of the National Internal Revenue Code of 1997 (Tax Code), as amended, considering that the transfer involves neither monetary consideration nor change in beneficial ownership.

The transfer is not subject to donor's tax.

Well-settled in our jurisprudence is the fact that 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*).[3]

Clearly, there is no intention on the part of SMC to donate to the new Trustee-appointee the MPC share since the transaction is purely for a legitimate business purpose. Thus, the transfer will not be subject to donor's tax since there is no intention to donate, and the transaction is a *bona fide* transaction effected solely for business reasons.

The transfer is not subject to documentary stamp tax (DST).

The transfer is not subject to DST under Section 175 of the Tax Code, as amended. The rule in this jurisdiction is that the assignment of shares of stock of a domestic

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[1] Resurreccion de Leon, et al. v. Emiliano Molo-Peckson, et al., G.R. No. L-17809, December 29, 1962.
[2] G.R. No. 202247, June 19, 2013.
[3] Heirs of Florencio v. Heirs of De Leon, 469 Phil. 459, 474 (2004).

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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 No. 13-2004, implementing the provisions of Republic Act No. 9243, otherwise known as "An Act Rationalizing the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as amended, and for Other Purposes" qualified the above 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 thereof provides:

> "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 remain 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. xxx" (Underscoring supplied.)

THEREFORE, the herein transfer cannot be subject to DST as there is no transfer or conveyance to the new trustee of the beneficial ownership of any right, claim or interest over the MPC share or over the asset 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.

However, the notarial acknowledgment to the Deed of Declaration of Trust is subject to DST imposed under Section 188 of the Tax Code, as amended.

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