REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Sections 24 (C) and 175 of the Tax Code of 1997, as amended; RR No. 13-2004
BIR Ruling No. OT-0653-2020
OT- 042-2022
JAN 24 2022

COCA-COLA FEMSA PHILIPPINES, INC.
27F Net Lima Building, 5th Ave. cor. 26th St.
Bonifacio Global City, Taguig City 1634

Attention: ROMANO MAGLALANG
Tax Manager

Gentlemen:

This refers to your request on behalf of Coca-Cola Femsa Philippines, Inc.[1] ("CCFPI"), for confirmation on the exemption from payment of taxes on its transfer of Manila Polo Club ("MPC") membership from one officer to another.

Background:

It is represented that CCFPI, with Taxpayer's Identification Number (TIN) , is a domestic corporation engaged in the manufacture, distribution and sale of non-alcoholic beverages, including juices and water.

CCFPI owns shares in MPC and are recorded as assets in its books. In accordance with MPC's policy to avail of the privileges of the club, individual proprietary shares were issued to its formers officers as evidenced by the following Trust Agreements and Proprietary Membership Certificates:

Name of Members	Trust Agreements	Membership Nos.	Certificate Nos.
Washington Fabricio Ponce Garcia	Declaration of Trust (July 21, 2016)		
Sunil Gupta	Deed of Trust and Assignment of Stock (November 8, 2013)		
Javier Sanchez Carranza	Deed of Trust and Assignment of Stock (September 19, 2013)		
Carlos Alfredo Gonzales	Declaration of Trust (June 9, 2017)		

Changes in ownership structure of CCFPI resulted to appointment of new set of officers. Consequently, the above-mentioned memberships of MPC will now be transferred to the new set of officers as follows:

[1] Formerly: Coca-Cola Bottlers Philippines, Inc.

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Former Officers	Certificate Nos.	New Set of Officers	Trust Agreements
Washington Fabricio Ponce Garcia		Efren Andrew Fernandez (Human Resource Director)	Declaration of Trust (May 8, 2019)
Sunil Gupta		Jawahar Solai Kuppuswamy (Finance Director)	Declaration of Trust (May 8, 2019)
Javier Sanchez Carranza		Juan Lorenzo Tañada (Public and Corporate Affairs Director)	Declaration of Trust (May 8, 2019)
Carlos Alfredo Gonzalez		Gareth Paul McGeown (Integration Program Leader)	Declaration of Trust (December 4, 2018)

In view of the forgoing, you now request confirmation on the following:

1. The transfer of the proprietary membership certificate representing one (1) share of MPC beneficially owned by CCFPI is not subject to capital gains tax (CGT) because it does not involve any monetary consideration and is merely a transfer of legal title to the proprietary share from one nominee of the corporation to another nominee;

2. There being no donative intent under the above-described circumstances, the transfer is not subject to donor's tax; and

3. The transfer is not subject to the documentary stamp tax (DST) imposed under Section 176 of the National Internal Revenue Code of 1997, as amended, but only to the DST imposed under Section 188 of the same Code.

In reply, please be informed as follows:

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.[2]

A trust is a legal relationship between one person having an equitable ownership of property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter. What distinguishes a trust from other relations is the separation of the legal title and equitable ownership of the property. In a trust relation, legal title is vested in the fiduciary while equitable ownership is vested in a *cestui que trust.*[3]

A trust arises in favor of one who pays the purchase money of property in the name of another, because of the presumption that he who pays for a thing intends a beneficial interest therein for himself.[4] The principle of a resulting trust is based on the equitable doctrine that valuable consideration, and not legal title, determines the equitable title or interest and are presumed always to have been contemplated by the parties. They arise from the nature or circumstances of the consideration involved in a transaction whereby one person thereby becomes invested with legal title but is obligated in equity to hold his legal title for the benefit of another.[5]

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[2] Resurreccion De Leon, et al. v. Emiliano Molo-Peckson, et al., GR No. L-17809, December 29, 1962.
[3] Soledad Caezo substituted by William Caezo and Victoriano Caezo v. Concepcion Rojas, GR No. 148788, November 23, 2007.
[4] Marsh Thomson v. Court of Appeals and the American Chamber of Commerce of the Philippines, Inc., GR No. 116631, October 28, 1998.
[5] Spouses Trinidad v. Imson, GR No. 197728, September 16, 2015.

In the case of *Sime Darby Pilipinas, Inc. v. Mendoza,*[6] 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 this case, the above-mentioned MPC shares covered by Proprietary Membership Certificate Nos. and were placed by CCFPI under the name of its former officers as trustees, and the latter's titles were only limited to the use and enjoyment of the club's facilities and privileges while employed with the company. Likewise, the Declaration of Trusts executed by its new set of officers provide that they do not have any title, right, claim or interest whatsoever in the MPC shares and that they are holding only the legal ownership of the same with the beneficial ownership pertaining to CCFPI.

Thus, the transfer of the legal title of the MPC shares from its former trustees to the new set of officers as the new trustees, is not subject to CGT considering that the transfer involves neither monetary consideration nor change in beneficial ownership. Since the former officers only possessed legal title over the MPC shares, the transfer between them and the new set of officers will be limited only to the transfer of the legal title.

The intention of CCFPI in giving legal title of the MPC shares to the new set of officers is to make them an extension of CCFPI's ownership over the same. Practically speaking, being a juridical entity, CCFPI cannot directly enjoy the privileges that come with owning the MPC shares, hence, must assign someone to use the club facilities on its behalf.

Therefore, since the beneficial ownership over the MPC shares remains with CCFPI, there is no actual transfer of ownership of the MPC shares as between CCFPI and its trustees and/or from such trustees to the next trustees, the same is not subject to CGT.

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*).

Clearly, there is no intention on the part of any of the parties to donate the said MPC shared since the transaction is purely for a legitimate business purpose. Thus, the transaction 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.

Documentary stamp tax (DST)

The transfer is likewise not subject to the DST imposed under Section 175 of the National Internal Revenue Code of 1997, as amended. While 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[7] dated December 23, 2004, implementing the provisions of Republic Act (RA) No. 9243, otherwise known as *"An Act*

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[6] GR No. 202247, June 19, 2013.

[7] Implementing the Provisions of Republic Act No. 9243, An Act Rationalizing the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes

Rationalizing Further the Structure and Administration of the Documentary Stamp Tax" qualifies 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 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. 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 this case, there is no actual or constructive transfer of the beneficial ownership of the MPC shares. Only the legal titles were transferred when CCFPI changed its assignees from its former officers to the new set of officers. Also, the execution of and by the express provisions of the Declaration of Trusts executed by its new set of officers, the intention was clearly for them to hold the MPC shares in trust for CCFPI.

Moreover, in the case of *Commissioner of Internal Revenue v. First Express Pawnshop, Inc.*,[8] the Supreme Court explained that Sections 175 and 176 of the National Internal Revenue Code of 1997, as amended, on DST contemplates the execution of a subscription agreement in order for a taxpayer to be liable to pay the DST. The Supreme Court ruled, thus:

> *"As pointed out by the CTA, Sections 175 and 176 of the Tax Code contemplate a subscription agreement in order for a taxpayer to be liable to pay the DST. A subscription contract is defined as any contract for the acquisition of unissued stocks in an existing corporation or a corporation still to be formed. A stock subscription is a contract by which the subscriber agrees to take a certain number of shares of the capital stock of a corporation, paying for the same or expressly or impliedly promising to pay for the same."*

Therefore, a mere transfer of a share from one trustee to another, without change in the beneficial ownership of the share is not the taxable transaction being contemplated under the provisions of the National Internal Revenue Code of 1997, as amended, on DST.

In view thereof, the herein transfer is not subject to DST as there is no transfer or conveyance to Efren Andrew Fernandez, Jawahar Solai Kuppuswamy, Juan Lorenzo Tañada, and Gareth Paul McGeown, of the beneficial ownership of or any right, claim or interest over the MPC shares or over the assets of CCFPI. There being no new conveyance to speak of in this case, there is no new exercise of a privilege upon which DST may be

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[8] GR Nos. 172045-46, June 16, 2009.

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imposed. However, the notarial acknowledgement to the Declaration of Trusts executed by the new set of officers shall be subject to the DST of P30.00 under Section 188 of the National Internal Revenue 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,

CAESAR R. DULAY
Commissioner of Internal Revenue

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