REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

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

OT-044-2023
MAY 09 2023

REYES TACANDONG & CO.
BDO Towers Valero
8741 Paseo de Roxas
Makati City 1226 Philippines

Attention: **ATTY. ROMMEL T. GEOCANIGA**
Principal, Tax Services

Gentlemen:

This refers to your request, on behalf of your client, **PROCTER & GAMBLE PHILIPPINES, INC.** (the "P&G"), for confirmation that the transfer of club membership shares of the Manila Polo Club, Inc. (MPCI) are not subject to capital gains tax (CGT), donor's tax and documentary stamp tax (DST).

Background:

P&G is a stock corporation duly organized under the laws of the Republic of the Philippines. P&G owns club membership shares in MPCI. To avail the privileges of the club, individual proprietary shares were issued to its employees as evidenced by the following Trust Agreements and Proprietary Membership Certificates:

Name of Members	Trust Agreement	Certificate Nos.
Luis Antonio Yanga	Declaration of Trust and Certificate of Lateral Transfer (July 13, 2016)	
Jocelyn Anne J. Gregorio-Reyes	Declaration of Trust and Certificate of Lateral Transfer (November 16, 2017)	
Ilustre M. Estrada	Declaration of Trust and Certificate of Lateral Transfer (October 11, 2016)	
Shankar Viswanathan	Declaration of Trust (February 9, 2015) and	

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	Certificate of Lateral Transfer (February 9, 2015)	
Bryan Wong	Declaration of Trust (November 25, 2013) and Certificate of Lateral Transfer (August 13, 2013)	
Rebecca Hochstetler	Declaration of Trust and Certificate of Lateral Transfer (August 26, 2015)	
Irma Aure	Declaration of Trust and Certificate of Lateral Transfer (August 13, 2013)	
Mary Ann Cruz	Declaration of Trust and Certificate of Lateral Transfer (January 24, 2018)	

Once the employees end their employment in P&G, the abovementioned club shares will be transferred to a new set of employees as follows:

Former Nominees	**New Nominees**	**Certificate Nos.**	**Trust Agreement**
Luis Antonio Yanga	Carmelita Manuel		Declaration of Trust (July 18, 2022) and Certificate of Lateral Transfer (June 13, 2022)
Jocelyn Anne J. Gregorio-Reyes	Vincent Emmanuel Dizon		Declaration of Trust (May 23, 2022) and Certificate of Lateral Transfer (June 13, 2022)
Ilustre M. Estrada	Erica Francine Cabayan		Declaration of Trust (May 23, 2022) and Certificate of

			Lateral Transfer (June 13, 2022)
Shankar Viswanathan	Natalie Diane Lim		Declaration of Trust (June 3, 2022) and Certificate of Lateral Transfer (January 3, 2020)
Bryan Wong	Rafael Arturo Fajardo		Declaration of Trust (February 1, 2021) and Certificate of Lateral Transfer (May 5, 2021)
Rebecca Hochstetler	Ferdinand Roxas		Declaration of Trust and Certificate of Lateral Transfer (August 16, 2019)
Irma Aure	Jennifer P. Sy		Declaration of Trust (July 18, 2021) and Certificate of Lateral Transfer (July 29, 2021)
Mary Ann Cruz	Love Joyce De Guzman		Declaration of Trust (September 7, 2021) and Certificate of Lateral Transfer (September 2, 2022)

In reply, please be informed as follows:

The transfer of MPCI Share from P&G to the employees are not subject to CGT and DST.

Upon execution of the Declaration of Trust, a trust relationship was created between P&G and the transferee employees.

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*[1].

[1] *Soledad Caezo substituted by William Caezo and Victoriano Caezo v. Concepcion Rojas*, G.R. No. 148788, November 23, 2007

In relation thereto, 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]. In the Declaration of Trust which the employees executed, they acknowledged that the transfers did not give them any kind of right, claim or interest whatsoever in the MPCI Share and that they are holding only the legal ownership of the same with the beneficial ownership pertaining to P&G. Here, the trustor and the *cestui que trust* is P&G while the fiduciary, also known as the trustee, are the assignee-employees.

In the case of *Sime Darby Pilipinas, Inc. v. Mendoza,*[3] 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, P&G purchased the MPCI Shares and intends to give legal title thereto to its trustee-appointees, which entitles the trustee-appointees only to the use and enjoyment of the club's facilities since, under the Articles of Incorporation and By-laws of MPCI, only natural persons may become registered members.

The transfer of the legal title of the MPCI Shares from the old trustee-appointees to its new trustee-appointees is not subject to CGT considering that the transfer involves neither monetary consideration nor changes in beneficial ownership.

The intention of P&G in giving legal title of the MPCI Shares to the old trustee-appointees is to make them extensions of P&G's ownership over the same. Practically speaking, being a juridical entity, P&G cannot directly enjoy the privileges that come with owning the MPCI Share, hence, must assign someone to use the club facilities on its behalf.

Since the beneficial ownership over the MPCI Shares remains with P&G, there is no actual transfer of ownership of the said share as between P&G and its trustees and/or from such trustees to the next trustees, and therefore, no gain or profit shall be recognized.

Therefore, considering that there is no actual transfer of ownership and no monetary consideration, and consequently no gain or profit involved in the transfer which is merely by virtue of an assignment as evidenced by the Declarations of Trust, this Office confirms that the transfer is not subject to CGT.

The Transfer is not subject to DST

Likewise, 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.

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

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

The herein transfer comply with the afore-cited rules. First, there is no actual or constructive transfer of the beneficial ownership of the shares. Only the legal title was transferred when P&G changed its appointees from the old trustee-appointees to the new trustee-appointees. Second, the execution of and by the express provisions of the Declaration of Trust, the intention of the parties was clearly for the old trustee-appointees and new trustee-appointees to hold the shares in trust for P&G.

In view thereof, since there will be no transfer or conveyance of the MPCI Shares from the old trustee-appointees to the new trustee-appointees, the same 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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