Republic of the Philippines
Department of Finance
**BUREAU OF INTERNAL REVENUE**
National Office
*Quezon City*

Bringing in Revenues for Nation-building

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| 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- 063-2025 |
| APR 15 2025 |

**ROMULO MABANTA BUENAVENTURA**
**SAYOC & DE LOS ANGELES**
21st Floor, Philamlife Tower
8767 Paseo de Roxas, Makati City

Attention: **Atty. Jayson L. Fernandez**
*Partner*

Gentlemen:

This refers to your request, on behalf of your client, Citibank, N.A.-Philippine Branch (Citibank) for confirmation that the transfer of proprietary shares in Manila Polo Club, Inc. (MPC) by Citibank's former trustee, Nasir I. Khan, to its new trustee, Wilmer John de Castro Bautista, is not subject to capital gains tax (CGT) or income tax (IT) imposed under Section 24(C), donor's tax imposed under Title II, and documentary stamp tax (DST) under Section 175, all of the National Internal Revenue Code (Tax Code) of 1997, as amended.

***Background:***

1. Citibank is the beneficial owner of four (4) proprietary shares in MPC.

2. Under the Articles of Incorporation and By-laws of MPC, institutional members are prohibited from being registered shareholders.

3. In order to comply with the rules of MPC and enable its officers to avail of and use of the various facilities of MPC, Citibank appointed qualified natural person, Nasir I. Khan, to act as trustee and hold legal title to the MPC shares for and on its behalf.

4. Citibank retained, at all times, the beneficial ownership over the MPC shares which are held in trust by its officers, as evidenced by a Declaration of Trust covering MPC Membership Certificate 1 (MPC share) executed on January 26, 2016.

5. Citibank recently appointed Wilmer John de Castro Bautista as the successor trustee to the MPC share to replace Nasir I. Khan, who has since been given a new assignment as evidenced by a Declaration of Trust dated October 31, 2023.

6. Further, a Sworn Certification of Lateral Transfer executed by Mr. Eduardo Miguel del Prado Juliano, the incumbent Country Human Resources Officer of Citibank, confirming the designation of Wilmer John de Castro Bautista as trustee of Citibank with respect to such MPC share.

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7. The transfer of one (1) proprietary share in MPC as described above, being merely a transfer from one nominee or trustee of Citibank to another nominee or trustee of Citibank, is without any consideration.

We reply, as follows:

***The transfer of the Share from Nasir I. Khan to Wilmer John de Castro Bautista 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 Nasir I. Khan executed, he acknowledged that the transfer did not give him 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 Citibank. Here, the trustor is Citibank while the trustee is Nasir I. Khan.

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, it registered the share under the name of respondent Mendoza, Sime Darby's sales manager at that 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, Citibank purchased the MPC share and gave the legal title thereto 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 the Club, only natural persons may become registered members. Thus, the transfer of the legal title of the MPC share from Nasir I. Khan (old trustee-appointee) to Wilmer John de Castro Bautista (new trustee-appointee), is not subject to CGT under Section 24(C) of the 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 the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes*, 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:

> "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. Emiliana Molo-Peckson, et al., G.R. No. [illegible] 9 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 Wilmer John de Castro Bautista of the beneficial ownership of or any right, claim or interest over the MPC share or over the assets of Citibank. 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 Citibank to donate the MPC share in favor of Wilmer John de Castro Bautista. 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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