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-0653-2020 BIR Ruling No. OT-0421-21 BIR Ruling No. 39-97
OT-066-2023
JUN 06 2023

CHEVRON PHILIPPINES INC.
6/F 6750 Ayala Avenue
1226 Makati City

Attention: **Atty. Ruth S. Loyola**
Tax Manager

Atty. Fahkriemar H. Limpasan
Tax Officer

Gentlemen:

This refers to your request for confirmatory ruling that the changes in the names of CPI's respresentatives in Manila Polo Club Inc. ("MPCI") shares owned by **Chevron Philippines Inc. ("CPI")** are not subject to capital gains tax (CGT), donor's tax, and documentary stampt tax (DST).

Background

CPI is a domestic corporation that owns shares in MPCI covered by Proprietary Membership Certificate Nos. and which have been recorded as assets in CPI's books as of December 31, 2021.

Under MPCI's Articles of Incorporation only natural persons shall be admitted as proprietary members. Though only natural persons are admitted as proprietary members, the proprietary membership certificate itself may be owned by a corporate entity. Admission to membership and enjoyment of the facilities of the Club is limited to natural persons but the proprietary membership certeficate may be owned by a juridical person such as a corporation. MPCI's By-laws and House Rules and Regulations defines a Proprietary Member as a "holder of proprietary membership certificate in his/her own name registered as such in the Membership Book of the Club." In compliance with this policy, corporations and institutions who own MPCI shares adopt the standard practice of assigning their MPCI shares to natural persons.

Discussion/Ruling

The transfer of MPCI shares from the Transferor to the Transferees 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 Declarations of Trust which the declarants/appointees executed, they acknowledged that the transfer did not give them any kind of right, claim, or interest whatsoever in the MPCI shares and that they are holding only the legal ownership of the same with the beneficial ownership pertaining to the Company. Here, the Trustor is the Company while the Trustees are the declarants/appointees.

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, CPI, the purchaser of the MPCI shares, intends to give the legal title to its Trustee-appointees, which entitles the Trustee-appointees (Mr. Billy Liu and Mr. Ethan Michael Flowers) 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. Thus, the transfer of the legal title of the MPCI shares from the former Trustee-appointees (Mr. Yi Lu Zhang and Mr. Hafiz A. Nasar) to the new Trustee-appointees, 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*).

Clearly, there is no intention on the part of CPI to donate to the new Trustee-appointees the MPCI shares since the transaction is purely for a legitimate business purpose.

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[1] Resurrección 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.

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 (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 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, 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 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." (Emphasis and underscoring supplied.)

Therefore, the herein transfer cannot be subject to DST as there is no transfer or conveyance to the new Trustee-appointees of the beneficial ownership of any right, claim or interest over the MPCI shares or over the asset of MPCI. 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 185 of the Tax Code, as amended.

It is, however, understood that this Ruling shall not serve as authority to the Corporate Secretary of CPI to effect the transfer of the MPCI shares in the name of the new Trustee-appointees without the necessary Tax Clearance (TCL) and/or Certificate Authorizing Registration (CAR) issued by this Bureau. In this regard, this Ruling shall be presented to the Revenue District Office (RDO) concerned in order for the latter to issue the TCL/CAR as prescribed in Revenue Memorandum Circular (RMC) No. 37-2012.

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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