REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

National Office Building
Quezon City

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
OT- 087-2023
OCT 09 2023

COCA COLA BEVERAGES PHILIPPINES, INC.
28F Six Neo Building, Bonifacio Global City
Fort Bonifacio, Taguig City 1634

Attention: **Mr. Romano Maglalang**
Senior Tax Manager

Gentlemen:

This refers to your request for confirmation on the exemption from payment of capital gains tax (CGT), donor's tax, and documentary stamp tax (DST) on the transfer of Manila Polo Club (MPC) membership from one officer to another.

Background:

Coca-Cola Beverages Philippines, Inc. ("CCBPI") is engaged in the manufacture, distribution, and sale of alcoholic and non-alcoholic beverages, including juices and water.

CCBPI owns MPC shares and are recorded as asset in its books as of December 31, 2021. As a shareholder and in accordance with MPC's policy to avail of the privileges of the club, individual proprietary share was issued to its former officer, Mr. Juan Carlos Dominguez, with equivalent Proprietary Membership Certificate No. (the "Share") pursuant to a Deed of Trust and Assignment of Stock executed between CCBPI, as assignee, and Mr. Juan Carlos Dominguez, as the assignor.

The aforesaid MPC shares is now being transferred to another officer of CCBPI, Mr. Richard Schlasberg, under a Declaration of Trust dated March 8, 2022.

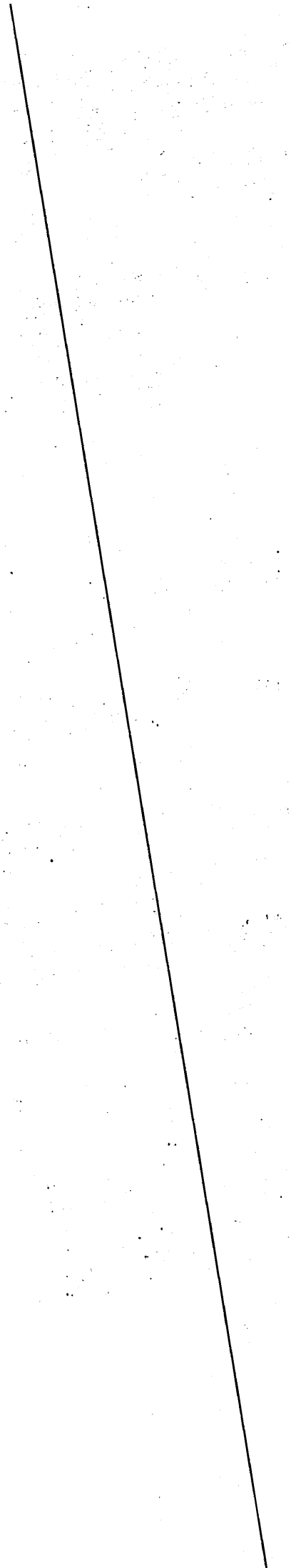
We reply, as follows:

The transfer of the Share from Mr. Juan Carlos Dominguez to Mr. Richard Schlasberg 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 Mr. Richard Schlasberg executed, he acknowledged that the transfer did not give him any kind of right, claim or interest whatsoever in the Share

[1]Resurreccion de Leon, et al. v. Emiliano Molo-Peckson, et al., G.R. No. L-17809, 29 December 1962.



and that he is holding only the legal ownership of the same with the beneficial ownership pertaining to CCBPI. Here, the trustor is CCBPI while the trustee is Mr. Richard Schlasberg.

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, CCBPI purchased the Share and gave the legal title thereto to its trustee-appointee, which title 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 Share from Mr. Juan Carlos Dominguez (old trustee-appointee) to its new trustee-appointee, Mr. Richard Schlasberg, is not subject to CGT under Section 24(C) of the National Internal Revenue Code (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 (RA) No. 9243, otherwise known as *An Act Rationalizing Further the Structure and Administration of the Documentary Stamp Tax*[3] 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

[2] G.R. No. 202247, 19 June 2013.
[3] RR 13-2004.

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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 Mr. Richard Schlasberg of the beneficial ownership of or any right, claim or interest over the Share or over the assets of CCBPI. 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 CCBPI to donate the Share in favor of Mr. Richard Schlasberg. Thus, the transfer of the Share from one officer 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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