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-045-2022
OT- 090 - 2023
NOV 08 2023

ZUELLIG PHARMA CORPORATION
Km. 14 West Service Road
Superhighway cor. Edison Avenue
Sun Valley, Parañaque City

Attention: **Mr. Nilo P. Badiola**
Chief Finance Officer

Gentlemen:

This refers to your request for confirmation on the exemption from payment of taxes on the transfer of Manila Polo Club ("MPC") membership from one of its officers to another officer.

Background:

Zuellig Pharma Corporation (the "Company") is incorporated in the Philippines and is primarily involved in the wholesale distribution of pharmaceutical products nationwide.

The Company owns shares of MPC which are recorded as assets in its books as of December 31, 2021 and up to the present. Due to MPC's policy and to avail of privileges in the club, one (1) proprietary share was issued to and presently registered in the name of its former officer, Mr. Raymund T. Azurin, as evidenced by Properietary Membership Certificate No. 7198 (the "Share"). The aforesaid share will be transferred to a new nominee/assignee, Ms. Marie Jannette A. Jakosalem[1].

A replacement proprietary membership certificate, however, has not yet been issued to Ms. Marie Jannette A. Jakosalem until a ruling from the Bureau of Internal Revenue is issued in her favor. Hence, this request

We reply, as follows:

The transfer of the Share from Mr. Raymund T. Azurin to Ms. Marie Jannette A. Jakosalem 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[2].

In the Declaration of Trust which Ms. Marie Jannette A. Jakosalem executed, she acknowledged that the transfer did not give her any kind of right, claim or interest whatsoever

[1] Pursuant to Zuellig Pharma Corporation's Secretary's Certificate with Circular Resolution No.1 dated July 22, 2022
[2] Resurreccion de Leon, et al. v. Emiliano Molo-Peckson, et al., G.R. No. L-17809, 29 December 1962.

OT- 090 - 2023
NOV 08 2023

in the Share and that she is holding only the legal ownership of the same with the beneficial ownership pertaining to the Company. Here, the trustor is the Company while the trustee is Ms. Marie Jannette A. Jakosalem.

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, the Company 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. Eugene S. Acevedo (old trustee-appointee) to its new trustee-appointee, Ms. Marie Jannette A. Jakosalem, 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 deliver, 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*[4] 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. <u>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.**</u> 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

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

ET-090-2023
NOV 08 2023

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 Ms. Marie Jannette A. Jakosalem of the beneficial ownership of or any right, claim or interest over the Share or over the assets of the Company. 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 the Company to donate the Share in favor of Ms. Marie Jannette A. Jakosalem. Thus, the transfer of the 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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