June 15, 2021

BIR RULING NO. OT-205-21

COCOFED vs. Aquino, et al., G.R. No. 217965; *COCOFED, et al. vs. Republic*, G.R. Nos. 177857-58 & 178193; *Ursua vs. Republic*, G.R. No. 178193; BIR Ruling No. 675-2017; BIR Ruling No. 824-2018

United Coconut Planters Bank (UCPB)
UCPB Corporate Offices
7907 Makati Avenue, Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated April 19, 2021 requesting for legal opinion on the tax implications of the cancellation of 1,699,749,538 shares of investment of Coconut Industry Investment Fund (CIIF) Trust Fund No. 81-586 maintained in UCPB Trust Banking, and the issuance of new shares of equivalent number in the name of the Republic of the Philippines. The issuance of said shares is to give effect to and implement the Supreme Court's decisions in *Confederation of Coconut Farmers Organization of the Philippines vs. Aquino, et al.*, [1] *COCOFED, et al. vs. Republic of the Philippines* [2] and *Danilo S. Ursua vs. Republic of the Philippines*. [3]

It is represented that the 1,699,749,538 shares were registered in the name of the following CIIF Companies:

Name of Corporation	Number of Shares
1. Cagayan de Oro Oil Mills	141,644,027
2. Granexport Manufacturing Corp.	200,749,829
3. San Pablo Mfg. Corp.	113,769,408
4. Legaspi Oil Mills	141,145,323

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5. Southern Luzon Coco Oil Mills	46,357,929
6. UCPB-CIIF Finance & Dev. Corp.	8,750,000
7. United Coconut Planters Life Ass.	255,823,689
8. United Coconut Chemicals, Inc.	681,985,073
9. Iligan Bay Express Corporation	9,526,260
10. Ten Trading Companies [4]	99,998,000
Total	**1,699,749,538**

The above shares of stock held by UCPB Trust Banking Group are part of the entrusted portion of CIIF coco levy fund to UCPB. Pursuant to ***Executive Order No. 179***, the said shares of stock were deemed part of the Coco Levy Assets subject for reconveyance and sequestration by the Presidential Commission on Good Government (PCGG).

On September 25, 2017, the Board of Directors of UCPB received a letter from Secretary Carlos G. Dominguez of the Department of Finance wherein it instructed the members of the Board to take appropriate action to implement the decision of the Supreme Court in ***Confederation of Coconut Farmers Organization of the Philippines vs. Aquino, et al.*** The Court in said case ruled in this wise:

> *"In accordance with the foregoing, it is hereby reiterated that the coconut levy funds are to be deposited in the Special Accounts in the General Fund and are to be appropriated only for the benefit of the coconut farmers and for the development of the coconut industry."*

It is further represented that the issuance of the subject shares in the name of the Republic of the Philippines shall result in the re-issuance of Manila Refining Corporation shares held by its owners San Pablo Manufacturing Corporation, United Coconut Chemicals, Inc., and United Coconut Planters International, Inc. (dissolved) to the Republic of the Philippines.

In this regard, you now request confirmation that the cancellation of 1,699,749,538 UCPB shares issued to the CIIF Corporations, and the issuance of new shares of equivalent number in the name of the Republic of the Philippines, pursuant to the decisions of the Supreme Court in the above cases, is not subject to capital gains tax, donor's tax and documentary stamp tax.

We rule as follows:

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Capital Gains Tax

Section 27 (D) (2) of the National Internal Revenue Code of 1997 (Tax Code), as amended, provides for the taxability of gains derived by a domestic corporation from the sale, exchange or other disposition of shares of stock not traded in the stock exchange, to wit:

> *"SEC. 27. Rates of Income Tax on Domestic Corporations. —*
>
> xxx xxx xxx
>
> *(D) Rates of Tax on Certain Passive Incomes. —*
>
> xxx xxx xxx
>
> *(2) Capital Gains from the Sale of Shares of Stock Not Traded in the Stock Exchange — A final tax at the rate of fifteen percent (15%) shall be imposed on net capital gains realized during the taxable year from the sale, exchange or other disposition of shares of stock in a domestic corporation except shares sold or disposed of through the stock exchange." (Underscoring ours)*

The above-quoted provision finds no application in this case since it does not involve sale, barter or exchange of shares contemplated under the foregoing provision. The transfer of the subject shares is made pursuant to the Supreme Court's decisions in G.R. Nos. 217965, 177857-58 and 178193 mandating the UCPB to cancel the subject shares of stock and to issue the equivalent number of shares in the name of the Republic of the Philippines. Accordingly, the transfer of the subject UCPB shares in favor of the Republic of the Philippines, without any monetary consideration, and made in order to give effect to the Supreme Court's decisions, is not subject to capital gains tax. [5]

Donor's Tax

Section 98 of the Tax Code, as amended, provides that a donor's tax is generally imposed on the transfer by any person, resident or non-resident, of property by gift. The donor's tax applies whether such transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. 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*).

We note that based on the facts represented, there is no intention to donate on the part of UCPB or the CIIF Companies as the transfer was made in compliance with the above-mentioned Supreme Court's decisions. The transfer of the legal title to the Republic of

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the Philippines is only a confirmation of its ownership over the said shares, and there is no donative intent or act of liberality involved on the part of UCPB or the CIIF Companies. [6]

Documentary Stamp Tax

The transfer of the subject shares by UCPB and the CIIF Companies in favor of the Republic of the Philippines is likewise not subject to documentary stamp tax imposed under Section 175 of the Tax Code, as amended, considering that there is no sale, agreement to sell or memorandum of sale, or delivery or transfer contemplated under Section 175 of the Tax Code. However, the notarial acknowledgment on the Deed of Compliance is subject to the documentary stamp tax under Section 188 of the same Code. [7]

This will, therefore, serve as authority for the concerned Revenue District Officer to issue the corresponding Certificate Authorizing Registration (CAR) so that UCPB can transfer the subject shares of stock in the name of the Republic of the Philippines.

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,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. G.R. No. 217965, August 8, 2017.
2. G.R. Nos. 177857-58, January 24, 2012.
3. G.R. No. 178193, January 24, 2012.
4. Mt. Boribing Agricultural Commodities, Inc.; Maopay Agricultural Commodities, Inc.; Malipayon Agricultural Commodities, Inc.; Lamitan Peak Agricultural Commodities, Inc.; Mactan Agricultural Commodities, Inc.; Lamon Bay Agricultural Commodities, Inc.; Mt. Tuayan Agricultural Commodities, Inc.; Mt. Mandalangan Agricultural Commodities, Inc.; Sharp Peak Agricultural Commodities, Inc.; Mt. Bulusan Agricultural Commodities, Inc.
5. BIR Ruling No. 675-17 dated December 29, 2017 and BIR Ruling No. 824-2018 dated May 7, 2018.
6. *Ibid.*
7. *Ibid.*

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