REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Secs. 24 (C); 98; 175; RR 13-2004
BIR Ruling No. OT-0653-2020
OT- 212-2022 MAY 05 2022

SALVADOR LLANILLO BERNARDO
ATTORNEYS-AT-LAW
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Ayala Triangle, Ayala Avenue, Makati City

Attention: **Attys. Maria Rosario L. Bernardo**
and
Rachelle Anne D. Gutierrez

Gentlemen:

This refers to your letter dated January 10, 2020 requesting for confirmation that the transfer of a Membership Share in Manila Polo Club from its old trustee to its new trustee is exempt from capital gains tax (CGT) and documentary stamp tax (DST).

Background:

Nestlé Philippines, Inc. (the "Company") is a domestic corporation registered with the Securities and Exchange Commission and engaged in business in the Philippines. The Company is the beneficial owner of a Membership Share with Manila Polo Club (MPC) evidenced by Proprietary Membership Certificates No and (the "Membership Shares"), and which are registered in the name of whoever is serving as the Company's officers.

At present, the Membership Shares of the Company in MPC are placed under the name of the following persons:

Membership Certificate No.	Old Trustee/Transferor	Position
	Luca Fichera	SCM Director
	Paul Rodriguez	Sales Director

Subsequently, the Company appointed Mr. Anderson Martins as its new SCM Director and Mr. Arsalan Khan as its new Sales Director. In view thereof, the Company seeks to appoint Mr. Martins and Mr. Khan as the new trustees of its Membership Shares in MPC and to place the respective Membership Shares, of Mr. Fichera and Mr. Rodriguez, in the name of the new trustees.

We reply, as follows:

The transfer of MPC Shares from Luca Fichera and Paul Rodriguez to Mr. Anderson Martins and Mr. Arsalan Khan is not subject to CGT and DST.

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Upon execution of unilateral Declarations of Trust by Mr. Anderson Martins and Mr. Arsalan Khan, a trust relationship was created between the Company, Luca Fichera and Paul Rodriguez, and Mr. Anderson Martins and Mr. Arsalan Khan.

A trust is a legal relationship between one person having an equitable ownership of property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter. What distinguishes a trust from other relations is the separation of the legal title and equitable ownership of the property. In a trust relation, legal title is vested in the fiduciary while equitable ownership is vested in a *cestui que trust*[1].

In relation thereto, 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 unilateral Declarations of Trust which Mr. Anderson Martins and Mr. Arsalan Khan executed, they acknowledged that they are merely appointed to represent the Membership Share actually owned by the Company; that the registration of the Membership Shares in their names was necessary to comply with the rules of the MPC that only natural persons shall be admitted as a proprietary member; that they have no title, right, claim or interest whatsoever over the said Membership Shares; that the certificates to be issued in replacement of Certificates No. 7065 and 7075 still belong to the Company; and that in the event that they will cease from being the Company officers, the management of the Company may designate any other Company officers it seems qualified to be the new holder of the Membership Share. Hence, the transfers do not give Luca Fichera and Paul Rodriguez nor Mr. Anderson Martins and Mr. Arsalan Khan any kind of right, claim or interest whatsoever in the Membership Shares and that trustees of the Company are merely holding the legal ownership of the same with the beneficial ownership pertaining to the Company. Here, the trustor and the *cestui que trust* is the Company while the fiduciary, also known as the trustees, are the declarants/appointees, Mr. Anderson Martins and Mr. Arsalan Khan.

A trust arises in favor of one who pays the purchase money of property in the name of another, because of the presumption that he who pays for a thing intends a beneficial interest therein for himself.[3] The principle of a resulting trust is based on the equitable doctrine that valuable consideration, and not legal title, determines the equitable title or interest and are presumed always to have been contemplated by the parties. They arise from the nature or circumstances of the consideration involved in a transaction whereby one person thereby becomes invested with legal title but is obligated in equity to hold his legal title for the benefit of another.[4]

In the case of *Sime Darby Pilipinas, Inc. v. Mendoza*[5], 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.

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[1] Soledad Caezo substituted by William Caezo and VictorianoCaezo v. Concepcion Rojas, G.R. No. 148788, 23 November 2007.
[2] Resurreccion de Leon, et al. v. Emiliano Molo-Peckson, et al., G.R. No. L-17809, 29 December 1962.
[3] Marsh Thomson v. Court of Appeals and the American Chamber of Commerce of the Philippines, Inc., G.R. No. 116631, 28 October 1998.
[4] Spouses Trinidad v. Imson, G.R. No. 197728, 16 September 2015.
[5] G.R. No. 202247, 19 June 2013.

In the instant case, the Company purchased the Membership Shares and intends to give legal title thereto to its trustees-appointees, which title entitle the trustees-appointees only to the use and enjoyment of the club's facilities since, under the Articles of Incorporation and By-laws of MPC, only natural persons may become registered members.

The transfer of the legal title of the Membership Shares from Luca Fichera and Paul Rodriguez (old trustees-appointees) to its new trustees-appointees, Mr. Anderson Martins and Mr. Arsalan Khan, is not subject to CGT considering that the transfer involves neither monetary consideration nor change in beneficial ownership.

Section 24(C) of the National Internal Revenue Code (Tax Code) of 1997, as amended, provides that CGT is imposed upon the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation, except shares sold, or disposed of through the Stock Exchange. In other words, CGT is imposed on the gain or profit from the sale of capital assets.[6]

In this case, the Membership Shares will be transferred from Luca Fichera's and Paul Rodriguez's names, as the former trustees, to Mr. Anderson Martins and Mr. Arsalan Khan, who will be the Company's new trustees-appointees. Since Luca Fichera and Paul Rodriguez only possessed legal title over the Membership Shares, the transfer of the subject shares in favor of Mr. Anderson Martins and Mr. Arsalan Khan will be limited only to the transfer of the legal title.

The intention of the Company in giving legal title of the Membership Shares to Mr. Anderson Martins and Mr. Arsalan Khan is to make them an extension of the Company's ownership over the same. Practically speaking, being a juridical entity, the Company cannot directly enjoy the privileges that come with owning the Membership Share, hence, must assign someone to use the club facilities on its behalf.

Since the beneficial ownership over the Membership Share remains with the Company, there is no actual transfer of ownership of the said share as between the Company and its trustees and/or from old trustees to the new trustees, and therefore, no gain or profit shall be recognized.

Therefore, considering that there is no actual transfer of ownership and no monetary consideration, and consequently no gain or profit involved in the transfer which is merely by virtue of an assignment as evidenced by the Declarations of Trust, this Office confirms that the transfer is not subject to CGT.

The Transfer is not subject to DST

Likewise, 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*[7] qualified this rule by stating that for

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[6] Salud v. Commissioner of Internal Revenue, C.T.A. EB CASE NO. 412. 30 April 2009.
[7] RR 13-2004.

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 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)

The herein transfer comply with the afore-cited rules. First, there is no actual or constructive transfer of the beneficial ownership of the shares. Only the legal title was transferred when the Company changed its appointees from Luca Fichera and Paul Rodriguez to Mr. Anderson Martins and Mr. Arsalan Khan. Second, the execution of and by the express provisions of the Declarations of Trust, the intention of the parties was clearly for Luca Fichera and Paul Rodriguez and now Mr. Anderson Martins and Mr. Arsalan Khan to hold the shares in trust for the Company.

Furthermore, in the case of *Commissioner of Internal Revenue v. First Express Pawnshop, Inc.*[8], the Supreme Court explained that Section 175 and 176 of the Tax Code of 1997, as amended, on DST contemplates the execution of a subscription agreement in order for a taxpayer to be liable to pay the DST. The Supreme Court ruled, thus:

> "As pointed out by the CTA, Sections 175 and 176 of the Tax Code contemplate a subscription agreement in order for a taxpayer to be liable to pay the DST. A subscription contract is defined as any contract for the acquisition of unissued stocks in an existing corporation or a corporation still to be formed. A stock subscription is a contract by which the subscriber agrees to take a certain number of shares of the capital stock of a corporation, paying for the same or expressly or impliedly promising to pay for the same."

A mere transfer of a share from one trustee to another, without change in the beneficial ownership of the share is, therefore, not the taxable transaction being contemplated under the Tax Code provisions on DST. That the transfer from Luca Fichera and Paul Rodriguez to Mr. Anderson Martins and Mr. Arsalan Khan is without a subscription agreement or any kind of consideration is indicative of the real intention of the parties that there would be no transfer of beneficial ownership of the Membership Share. The same remains with the Company.

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[8] G.R. Nos. 172045-46, 16 June 2009.

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Transfer of Club Shares from one Assignee to Another
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In view thereof, the herein transfer cannot be subject to DST as there are no transfer or conveyance from Luca Fichera and Paul Rodriguez to Mr. Anderson Martins and Mr. Arsalan Khan of the beneficial ownership of or any right, claim or interest over the Membership Shares or over the assets of MPC. 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. Consequently, since there will be no transfer or conveyance of the Membership Shares from Luca Fichera and Paul Rodriguez to Mr. Anderson Martins and Mr. Arsalan Khan, the same 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,

CAESAR R. DULAY
Commissioner of Internal Revenue

By:

MARISSA O. CABREROS
Deputy Commissioner
Legal Group
Officer-in-Charge

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