May 17, 2018

BIR RULING NO. 824-18

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

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

Attention: *AAA*

Gentlemen :

This refers to your letter dated February 14, 2018 requesting legal opinion on the tax implication of the cancellation of 587,500,000 shares of stocks of First United Bank, now named as United Coconut Planters Bank ("UCPB"), registered in the names of six (6) Coconut Industry Investment Fund Corporations (collectively known as **"CIIF Oil Mills"**), and the issuance of new shares of equivalent number in the name of the **Republic of the Philippines**, in order to give effect to and implement the Supreme Court's Decisions in the cases of *Confederation of Coconut Farmers Organization of the Philippines, Inc. v. Aquino, et al.*, G.R. No. 217965, August 8, 2017, *COCOFED, et al. v. Republic of the Philippines*, G.R. No. 177857-58, and *Danilo S. Ursua v. Republic of the Philippines*, G.R. No. 178193, January 24, 2012.

It is represented that the following companies are the six (6) CIIF Oil Mills with their respective shareholdings:

	Name of Corporation	Number of Shares
1.	Legaspi Oil Company, Inc.	260,000,000
2.	Granexport Manufacturing Corp.	60,000,000
3.	Cagayan de Oro Oil Co., Inc.	170,000,000
4.	San Pablo Manufacturing Corp.	50,000,000
5.	Southern Luzon Coconut Oil Mills, Inc.	37,500,000

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6. Iligan Coconut Industries, Inc. 10,000,000

It is further represented that the above shares of stocks of UCPB had been sequestered by the Presidential Commission on Good Government (PCGG) as they were purchased from funds coming from the Coconut Consumer Stabilization Fund (CCSF), otherwise known as the Coconut Levy Fund created in 1973 by Presidential Decree (PD) No. 276. The Supreme Court held in *COCOFED, et al. v. Republic of the Philippines*, G.R. No. 177857-58, and *Danilo S. Ursua v. Republic of the Philippines*, G.R. No. 178193, January 24, 2012, that:

a. Coconut levy funds are in the nature of taxes;

b. Coconut levy funds cannot be used to purchase shares of stocks to be given for free to private individuals, and thus the so-called Farmers' UCPB Shares covered by 64.98% of the UCPB shares of stock are owned by the Republic of the Philippines; and

c. The CIIF Companies, the CIIF Holding Companies, and the Converted SMC Series 1 Preferred Shares, totaling 753,848,312 shares, together with all dividends, are owned by the Government, to be used only for the benefit of the coconut farmers and for the development of the coconut industry.

These shares of stocks are subject for reconveyance to the government pursuant to Executive Order (EO) No. 179 issued by President Benigno Aquino on March 18, 2015. The validity of the aforesaid EO was upheld in the case of *Confederation of Coconut Farmers Organization of the Philippines, Inc. v. Aquino, et al.*, G.R. No. 217965, August 8, 2017. Section 4 of the said Order reads as follows:

> *"Section 4. Transfer and Reconveyance of Coco Levy Assets to the Government. — Pursuant to the Decisions of the Supreme Court in Philippine Coconut Producers Federation, Inc. (COCOFED), et al. v. Republic of the Philippines, et al. (G.R. Nos. 177857-177858 and G.R. No. 178193), Eduardo Cojuangco, Jr. v. Republic of the Philippines, (G.R. No. 180705), Republic v. Sandiganbayan (G.R. No. 118661), Republic of the Philippines v. COCOFED, (G.R. Nos. 147062-64), the PCGG, the Bureau of Treasury ("BTr"), the Governance Commission for GOCCs ("GCG") and the OSG, the government representatives to the boards of sequestered or surrendered corporations, and any government agency having any Coco Levy Asset in their administration, authority, custody or control, shall perform or cause the performance of the following:*
>
> > *4.1 Within sixty (60) days from the effectivity of this Order, reconvey and transfer title to the Republic of the Philippines over the Coco Levy Assets, including but not limited to the following:*
> >
> > *a. the shares of stock in UCPB determined to be owned by the*

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Government;

b. *the shares of stock in the CIIF Companies and the CIIF Holding Companies;*

c. *the Five Million Five Hundred Thousand (5,500,000) SMC shares paid by SMC and UCPB to and registered in the name of PCGG as arbitration fee on or about 22 March 1999 ("PCGG SMC Shares")."*

Based on the foregoing, you now request confirmation that the cancellation of 587,500,000 UCPB shares registered under the names of **CIIF Oil Mills**, and the subsequent issuance of new shares of equivalent number in the name of the Republic of the Philippines, pursuant to the Supreme Court's Decisions in the above cases, is not subject to capital gains tax (CGT), donor's tax and documentary stamp tax (DST).

We rule as follows:

Capital Gains Tax

Section 27 (D) (2) of the 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:

xxx xxx xxx

"(C) Capital Gains from 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."

xxx xxx xxx

The above-cited 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 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. *(BIR Ruling No. 675-2017 dated December 29, 2017)*

Donor's Tax

Section 98 of the Tax Code of 1997 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

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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)*.

In this case, there is no intention to donate on the part of the UCPB or the **CIIF Oil Mills** as the transfer was made in compliance with the above Supreme Court's Decisions. The transfer of the legal title to the Republic of 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 Oil Mills**. *(BIR Ruling No. 675-2017 dated December 29, 2017)*

Documentary Stamp Tax

The transfer of the subject shares by UCPB in favor of the Republic of the Philippines is likewise not subject to documentary stamp tax imposed under Section 175 of the Tax Code of 1997, 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 acknowledgement on the Deed of Compliance is subject to the documentary stamp tax under Section 188 of the same Code. *(BIR Ruling No. 675-2017 dated December 29, 2017)*

This will, therefore, serve as authority for the concerned Revenue District Officer to issue the corresponding Certificate Authorizing Registration (CAR) so that UCPB or the **CIIF Oil Mills** 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

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