REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Secs. 24(C), 175 & 176, Tax Code, as amended
BIR Ruling No. OT-0653-2020
OT-421-2021
NOV 08

Sun Life of Canada (Philippines), Inc.
2nd Floor, Sun Life Centre, 5th Avenue corner Rizal Drive
Bonifacio Global City, Taguig City

Attention: **Atty. Marie Kristel D. Virtudez**
Tax Manager

Gentlemen:

This refers to your request for exemption from payment of capital gains tax (CGT) and donor's tax on the following transfer of Manila Polo Club ("MPC" or "Club") shares, owned by Sun Life of Canada Philippines, Inc. ("Sun Life" or the "Company"), from the former company playing representatives to the new Company playing representatives.

Background

1. Sun Life is a domestic corporation authorized to engage in the business of life insurance, including accident and health insurance.

2. It owns MPC shares then appoints as playing representatives its officers for the latter to be able to make use of its facilities in building their business network. The above-described transfers are without consideration and purely for the purpose of aiding the respective Company playing representatives to build a network which the Company believes will benefit its business in general.

3. Due to MPC's policy and in order to avail of the privileges of the Club, proprietary shares were issued to the following former Company playing representatives and are now being transferred to the new Company playing representatives:

Transferor	Transferee	Membership Certificate No.
Gregory S. Martin	Ma. Karenina M. Casas	
Rizalina G. Mantaring	Benedicto C. Sison	
Harry H. Manuel	Maria Lourdes D. Lopa	

4. The Company playing representatives deposed in their respective unilateral Declarations of Trust dated August 30, 2012 and November 17, 2008 that:

    a. The Sun Life is the true and beneficial owner of the subject proprietary share of MPC;
    b. He/She was appointed to represent the MPC share actually owned by the Company since it is provided in the Articles of Incorporation and By-laws of MPC that no institutional members are to be admitted as shareholder;
    c. The registration in his/her name was necessary to comply with the rules of MPC that only a natural person shall be admitted as a proprietary member;
    d. He/She does not have any title, right, claim or interest whatsoever over the said MPC share; and
    e. In any event that happening of which will cause him/her to cease from being the company officer designated to hold the share and enjoy the benefit and privileges thereof, the management of Sun Life may designate any other company officer it seems qualified to be the new holder of the share.

In reply, please be informed as follows:

The transfer of MPC shares from Transferor to Transferee is not subject to CGT.

Upon execution of the declaration of trust, a trust relationship was created between the Company and the declarant/appointee.

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 Declarations of Trust which the declarants/appointees executed, they acknowledged that the transfer did not give them any kind of right, claim, or interest whatsoever in the MPC share and that they are holding only 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 fiduciaries, also known as the trustees, are the declarants/appointees.

[1] Soledad Caezo substituted by William Caezo and Victoriano Caezo v. Concepcion Rojas, G.R. No. 148788, November 23, 2007.

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

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.

In the instant case, Sun Life, the purchaser of the MPC shares, intends to give legal title thereto to its Trustee-appointees, which title entitles the Trustee-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 MPC shares from the former Trustee-appointees ("Transferors") to the new Trustee-appointees ("Transferees"), 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 of 1997 (Tax Code), 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 <u>gain or profit</u> from the sale of capital assets.[6]

In this case, the MPC shares will be transferred from the Transferors' name to Transferees' name. Since the Transferors only possessed legal title over the MPC shares, the transfer of the subject shares in favor of the Transferees will be limited only to the transfer of the legal title.

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[3] Marsh Thomson v. Court of Appeals and the American Chamber of Commerce of the Philippines, Inc., G.R. No. 116631, October 28, 1998.
[4] Spouses Trinidad v. Imson, G.R. No. 197728, September 16, 2015.
[5] G.R. No. 202247, June 19, 2013.
[6] Salud v. Commissioner of Internal Revenue, CTA EB Case No. 412, April 30, 2009.

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The intention of the Company in giving legal title of the proprietary shares to the Transferees 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 proprietary shares, hence, must assign someone to use the club facilities on its behalf.

Since the beneficial ownership over the MPC share remains with the Company, there is no actual transfer of ownership of the MPC shares as between the Company and its Trustee-appointees and/or from such Transferors to the Transferees, and hence, no gain or profit shall be recognized.

THEREFORE, considering that 1) the aforementioned proprietary shares are actually owned by Sun Life, and the Transferors and the Transferees are mere nominees and/or trustees of Sun Life; 2) there is no actual transfer of ownership and beneficial title; and 3) no monetary consideration is involved, no gain or profit resulted in the Transfer which is merely by virtue of an assignment as evidenced by the Declarations of Trust. Such being the case, this Office confirms that the transfer is not subject to CGT.

The Transfer is not subject to donor's tax.

Well-settled in our jurisprudence is the fact that 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*).

Clearly, there is no intention on the part of the Transferors to donate to the Transferees the MPC shares since the transaction is purely for a legitimate business purpose. Thus, the transfer will not be subject to donor's tax since there is no intention to donate, and the transaction is a *bona fide* transaction effected solely for business reasons.

The Transfer is not subject to documentary stamp tax (DST).

The transfer is not subject to DST under Section 175 of the Tax Code, as amended.

The rule in this jurisdiction 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, 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" 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 thereof provides:

> "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 remain 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 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 tranferred when the Company changed its former appointee to the new appointee. Second, the execution of and by the express provisions of the Declarations of Trust, the intention of the parties was clearly for the former appointees and the new appointees to hold the shares in trust for the Company.

Furthermore, in the case of *Commissioner of Internal Revenue v. First Express Pawnshop, Inc.*[7], the Supreme Court explained that Sections 175 and 176 of the Tax Code, as amended, on DST contemplates the execution of a subscription agreement in order for a taxpayer to be liable to pay the DST, to wit:

> *"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."*

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

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 the former trustee to the new trustee 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 MPC shares. The same remains with Sun Life.

THEREFORE, the herein transfer cannot be subject to DST as there are no transfer or conveyance to the new trustees of the beneficial ownership of any right, claim or interest over the MPC 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. However, the notarial acknowledgment to the Deeds of Declarations of Trust is subject to DST imposed under Section 185 of the Tax Code, as amended.

It is, however, understood that this Ruling shall not serve as authority to the Corporate Secretary of the Club to effect the transfer of the MPC shares in the name of the Transferee-appointees without the necessary Tax Clearance (TCL) and/or Certificate Authorizing Registration (CAR) issued by this Bureau. In this regard, this Ruling shall be presented to the Revenue District Office (RDO) concerned in order for the latter to issue the TCL/CAR as prescribed in Revenue Memorandum Circular (RMC) No. 37-2012.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue
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