REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Secs. 27(D)(2), 176 & 188, Tax Code, as amended
BIR Ruling No. OT-0653-2020
OT-338-2021
SEP 2

Salvador Llanillo Bernardo
815-816 Tower One and Exchange Plaza
Ayala Triangle, Ayala Avenue
Makati City

Attention: **Atty. Rabiev Tobias M. Racho**
Atty. Racheile Anne D. Gutierrez

Gentlemen:

This refers to your letter dated February 26, 2019 requesting on behalf of your client, **Colgate-Palmolive Philippines, Inc. (CPPI)**, for confirmation that the transfer of its Membership Share in Manila Polo Club from *Mr. Manvendra N. Singh* (Mr. Singh), its former trustee, to *Mr. Arvind Sachdev* (Mr. Sachdev), its new trustee, is exempt from the payment of capital gains tax (CGT) and documentary stamp tax (DST).

As represented, CPPI is a domestic corporation duly organized and registered with the Philippine Securities and Exchange Commission. As such, CPPI is the beneficial owner of Membership Share in Manila Polo Club (MPC) evidenced by Proprietary Membership Certificate No. 6814 (the "Membership Share").

At present, the Membership Share of CPPI in MPC is placed under the name of *Mr. Singh,* who had previously served as CPPI's Customer Development Director and, accordingly, its trustee of the Membership Share. Subsequently, CPPI has sought to appoint its General Manager, *Mr. Sachdev,* as the new trustee of its Membership Share in MPC and to place the Membership Share in Mr. Sachdev's name.

In reply, please be informed as follows:

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

Upon execution of the respective unilateral Declarations of Trust of both Transferor-appointee and Transferee-appointee, a trust relationship was created between the Company and the Transferor-appointee, on one hand, and the Transferee-appointee on the other.

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 Declaration of Trust which the Transferor and Transferee 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 fiduciary, also known as the trustee, is the declarant/appointee.

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, CPPI, the purchaser of the MPC share, intends to give 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 MPC only natural persons may become registered members.

The transfer of the legal title of the MPC shares from the former trustee-appointee to the new trustee-appointee, is not subject to CGT considering that the transfer involves neither monetary consideration nor change in beneficial ownership.

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[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.
[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.

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 gain or profit from the sale of capital assets.[6]

In this case, the MPC share will be transferred from the former trustee-Transferor's name to new trustee-Transferee's name. Since former trustee-Transferor only possessed legal title over the MPC share, the transfer of the subject share in favor of the new trustee-Transferee will be limited only to the transfer of the legal title.

The intention of the Company in giving legal title of the proprietary share to the new trustee-Transferee is to make him 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 share, 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 share as between the Company and its trustee and/or from such trustee to the new trustee, and therefore, no gain or profit shall be recognized.

THEREFORE, considering that 1) the aforementioned proprietary share is actually owned by CPPI and the transferor and transferee are mere nominees and/or trustees of CPPI; 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 Declaration of Trust. Such being the case, this Office confirms that the transfer is not subject to CGT.

The Transfer is not subject to 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 dated December 23, 2004, implementing the provisions of Republic Act (RA) No. 9243, othrwise 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

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[6] Salud v. Commissioner of Internal Revenue, CTA EB Case No. 412, April 30, 2009.

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 share. Only the legal title was transferred when the Company changed its former appointee to the new appointee. Second, the execution of and by the express provisions of the Declaration of Trust, the intention of the parties was clearly for the former appointee and the new appointee to hold the share 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."*

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 in 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 share. The same remains with CPPI.

IN VIEW THEREOF, the herein transfers cannot be subject to DST as there are no transfer or conveyance to the new trustee of the beneficial ownership of or any right, claim or interest over the MPC share or over the assets of MPC. There being no new conveyance

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

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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 new transfer or conveyance of the MPC share from the former trustee to the new trustee, the same shall not be subject to donor's tax under Section 98 of the Tax Code, as amended.

This will, therefore, serve as authority for the Corporate Secretary to transfer the membership share in the name of the newly designated officer-nominee, *Mr. Sachdev*.

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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