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-360-2021
OCT 04 2021

SALVADOR LLANILLO BERNARDO
815-816 Tower One and Exchange Plaza
Ayala Triangle, Ayala Avenue
Makati City

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

Gentlemen:

This refers to your letter dated August 8, 2018 requesting on behalf of your client, Wyeth Philippines, Inc. (the "Wyeth"), for confirmation that the transfer of Wyeth's Membership Shares 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:

Wyeth is a domestic corporation registered with the Securities and Exchange Commission and engaged in business in the Philippines. Wyeth is the beneficial owner of a Membership Share with Manila Polo Club (MPC) evidenced by Proprietary Membership Certificate No. 6985 (the "Membership Share"), which is registered in the name of whoever is serving as Wyeth's President and General Manager.

At present, the Membership Share of Wyeth in MPC is placed under the name of Joseph Eugene B. David, who had previously served as Wyeth's President and General Manager and, accordingly, its trustee of the Membership Share. In line therewith, Mr. David executed a Declaration of Trust dated November 23, 2015 where he acknowledged that Wyeth is the actual owner of the Membership Share, and that the registration of the Membership Share in his name is made in compliance with the rules of the MPC.

In 2018, Wyeth appointed Mr. Bert Demeyere as its new President and General Manager. In view thereof, Wyeth seeks to appoint Mr. Demeyere as the new trustee of its Membership Share in MPC and to place the Membership Share in his name. Mr. Demeyere likewise executed a Declaration of Trust dated July 30, 2018 for this purpose.

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We reply, as follows:

The transfer of Membership Share from Mr. David to Mr. Demeyere is not subject to CGT and DST.

Upon execution of the Declaration of Trust, a trust relationship was created between Wyeth and Mr. Demeyere.

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 Mr. Demeyere executed, he acknowledged that the Transfer did not give him any kind of right, claim or interest whatsoever in the Membership Share and that he is holding only the legal ownership of the same with the beneficial ownership pertaining to Wyeth. Here, the trustor and the *cestui que trust* is Wyeth while the fiduciary, also known as the trustee, is the assignee, Mr. Demeyere.

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.

Wyeth purchased the Membership Share and intends to give legal title thereto to its trustee, which title entitles the trustee only to the use and enjoyment of the club's facilities since, under the rules of MPC, only natural persons may become registered members.

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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.

The transfer of the legal title of the Membership Share to Mr. Demeyere, Wyeth's new assignee/trustee, 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 gain or profit from the sale of capital assets.[6]

In this case, the Membership Share will be transferred from the name of Mr. David as the old trustee to Mr. Demeyere who will be Wyeth's new trustee. Since Mr. David only possessed legal title over the Membership Share, the transfer of the share as between him and Mr. Demeyere will be limited only to the transfer of the legal title.

The intention of Wyeth in giving legal title of the Membership Share to Mr. Demeyere is to make him an extension of Wyeth's ownership over the same. Practically speaking, being a juridical entity, Wyeth 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 Wyeth, there is no actual transfer of ownership of the Membership Share as between Wyeth and its trustee and/or from such trustee to the next trustee, 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 Declaration of Trust dated July 30, 2018, this Office confirms that the transfer is not subject to CGT.

The Transfer of Membership Share is not subject to DST

Likewise, the Transfer is not subject to DST under Section 175 of the Tax Code, 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 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, otherwise known as *An Act Rationalizing Further the Structure and Administration of the Documentary Stamp Tax*[7] 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 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

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

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 complies 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 Wyeth changed its assignee from Mr. David to Mr. Demeyere. Second, the execution of and by the express provisions of the Declaration of Trust, the intention of the parties was clearly for Mr. Demeyere to hold the share in trust for Wyeth.

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 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 Mr. David to Mr. Demeyere 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 Wyeth.

In the case of *Brodett v. Commissioner of Internal Revenue*[9], the Court of Tax Appeals (CTA) ruled that a deficiency assessment of DST is invalid where there is no shift in the beneficial ownership of the subject shares of stock, and, effectively, no transfer of shares as contemplated under Section 175 of the Tax Code. In *Brodett* case, the transfer was merely a continuation and confirmation of title in favor of the ultimate and real beneficiary of the subject properties. There being no new conveyance to speak of, there was no new exercise of a privilege that may be taxed.

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[8] G.R. Nos. 172045-46, 16 June 2009.
[9] CTA Case No. 7049, 09 January 2009.

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In view thereof, the herein Transfer cannot be subject to DST as there is no transfer or conveyance to Mr. Demeyere of the beneficial ownership of or any right, claim or interest over the Membership Share or over the assets of Wyeth. 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 Declarations of Trust are subject to DST imposed under Section 188 of the Tax Code.

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

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