REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

COCOFED, et al. vs. Republic, GR Nos. 177857-58 & 178193; Cojuangco, Jr. vs Republic, GR No. 180705
BIR Ruling No. 058-2013 BIR Ruling No. 247-2012
#675-2017

12/29/2017

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

Attention: <u>Cynthia A. Almirez</u>
Chief Finance Officer

Gentlemen:

This refers to your letter dated November 7, 2017 requesting legal opinion on the tax implication of the cancellation o shares of First United Bank, later renamed as United Coconut Planters Bank ("UCPB"), issued in the names of various farmers and Mr. Eduardo Cojuangco, Jr., 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 G.R. Nos. ınd and G.R. No.

It is represented that UCPB is a domestic banking corporation duly authorized to operate as expanded commercial bank. As of September 30, 2017, the list of stockholders of UCPB included, among others, various coconut farmers, Philippine Coconut Authority (PCA) and Mr. Eduardo Cojuangco, Jr.

It is further represented that on October 23, 2015, the Sandiganbayan issued a Resolution in Civil Case No. , entitled *Republic of the Philippines vs. Eduardo Cojuangco, et al*, the dispositive portion of which reads:

> "*WHEREFORE, in view of the foregoing, the Motion for Execution filed by Plaintiff Republic of the Philippines is hereby* ***GRANTED***.
>
> *Accordingly, let a Writ of Execution issue implementing the Supreme Court Decisions in G.R. Nos. 177857-58 and 178193 and G.R. No. 180705. The PCA and defendant Cojuangco, Jr. are hereby ordered to surrender to the Court the necessary documents to effect the transfer of the subject shares of stock in favor of plaintiff Republic of the Philippines.* <u>*The UCPB is directed to cancel the subject shares of stock and to issue the equivalent number of shares in the name of the Republic of the Philippines.*</u>" (Underscoring supplied)

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Based on the foregoing, you now request confirmation that the cancellation of JCPB shares issued in the names of various farmers and Mr. Eduardo Cojuangco, Jr., and the issuance of new shares of equivalent number in the name of the Republic of the Philippines, pursuant to the Supreme Court's Decisions in G.R. Nos. and 1 and G.R. No. is not subject to capital gains tax (CGT), donor's tax and documentary stamp tax (DST).

We rule as follows:

Capital Gains Tax

Section 24(C) of the 1997 Tax Code, as amended, provides for the taxability of gains derived by a resident citizen 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. – The provisions of Section 39(B) notwithstanding, a final tax at the rates prescribed below is hereby imposed upon the 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:*
>
> | | |
> |---|---|
> | *Not over P100,000* | *5%* |
> | *On any amount in excess of P100,000* | *10%"* |

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. and nd G.R. No. 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. 058-2013 dated February 1, 2013 and BIR Ruling No. 247-2012 dated April 13, 2012*)

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 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*).

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In this case, there is no intention to donate on the part of the UCPB or the former owners of the shares as the transfer was made in compliance with the 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 former owners. (*BIR Ruling No. 058-2013 dated February 1, 2013 and BIR Ruling No. 247-2012 dated April 13, 2012*)

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. 058-2013 dated February 1, 2013 and BIR Ruling No. 247-2012 dated April 13, 2012*)

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

CAESAR R. DULAY
Commissioner of Internal Revenue

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