REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
**BUREAU OF INTERNAL REVENUE**

**Quezon City**

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| 24(C); 98; 175; RR 13-2004 | | |

Person to Contact: Chief, Law Division
Tel. Nos. 926-55-36/927-09-63

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Date DEC 0 2 2020

**SECURITY BANK CORPORATION**
Security Bank Centre, 6776 Ayala Avenue
Makati City

Attention: **Mr. Joselito E. Mape, EVP**
*Chief Financial Officer*

Gentlemen:

This refers to your letter dated September 12, 2019 requesting for confirmation that the transfer of Manila Polo Club Inc. (MPC) Membership share from one officer to another shall not be subject to capital gains tax (CGT), donor's tax and documentary stamp tax (DST).

Background:

Security Bank Corporation (the "Company") is a domestic corporation engaged in the banking business. It provides expanded commercial banking services such as deposit products, loans and trade finance, domestic and foreign fund transfers, treasury, foreign exchange and trust services.

The Company owns shares from MPC recorded as asset in its books as of December 31, 2018. Due to MPC's policy and in order to avail of the privileges of the club, one (1) proprietary share was issued to its former President, Alberto S. Villarosa covered by Proprietary Membership Certificate No. . The afore-mentioned membership share is now being transferred to Sanjiv Vohra, the new President of the Company.

The Company is the beneficial owner of the MPC share under Proprietary Membership Certificate (PMC) No. 5681. The MPC share is currently under the name of the Company's Director and Senior Executive Vice President and Chief Operating Officer, Alberto S. Villarosa, who was designated as the authorized playing representative and signatory of the Company at the Manila Polo Club, per Assistant Corporate Secretary's Certificate dated November 5, 2002.

On October 3, 2003, Alberto S. Villarosa deposed in his unilateral Declaration of Trust that the Company has purchased a proprietary share of the Manila Polo Club Inc. which was registered in his name to comply with the rules of MPC that only a natural person shall be admitted as a proprietary member. He further admitted that he does not have any title, right, claim or interest whatsoever over the said MPC share registered under his name.

On September 6, 2019, the Company's Assistant Corporate Secretary certified that the Company is the true and beneficial owner of one (1) proprietary share of MPC under PMC No. 5681 which appears in the name of Alberto S. Villarosa, an assignee of the Company. Furthermore, it was also certified that the Board of Directors of the Company in its regular Board meeting held on July 30, 2019, approved the lateral transfer of the aforementioned MPC share to its newly elected President and Chief Executive Officer, Sanjiv Vohra.

On September 9, 2019, Sanjiv Vohra deposed in his unilateral Declaration of Trust that the Company owns one (1) a proprietary share of the Manila Polo Club Inc., as evidenced by PMC No. 5681, formerly assigned to Alberto S. Villarosa; and that he 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.

We reply, as follows:

***The transfer of MPC Shares from Alberto S. Villarosa to Sanjiv Vohra is not subject to CGT and DST.***

Upon execution of the two unilateral Declarations of Trust, a trust relationship was created between the Company and Alberto S. Villarosa, on one hand, and with Sanjiv Vohra 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 Declarations of Trust which Alberto S. Villarosa and Sanjiv Vohra 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 trustees, are the declarant/appointees, Albert S. Villarosa and Sanjiv Vohra.

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]

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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.

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, the Company purchased the MPC Share and 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 Alberto S. Villarosa to its new trustee-appointee, is not subject to CGT considering that the transfer involves neither monetary consideration nor change in beneficial ownership.

Section 24(C) of the Tax Code of 1997, 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 Share will be transferred from Alberto S. Villarosa's name, as the current Trustee, to Sanjiv Vohra, who will be the Company's new trustee-appointee. Since Alberto S. Villarosa only possessed legal title over the MPC Share, the transfer of the subject share in favor of Sanjiv Vohra will be limited only to the transfer of the legal title.

The intention of the Company in giving legal title of the MPC Share to Sanjiv Vohra 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 MPC 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 trustees and/or from such trustees to the next trustees, 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 Declarations of Trust, this Office confirms that the transfer is not subject to CGT.

***The Transfer is not subject to DST***

Likewise, the transfer is not subject to DST under Section 175 of the Tax Code of 1997, as amended. The rule is that the assignment of shares of stock of a domestic corporation is subject

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[5] G.R. No. 202247, 19 June 2013.
[6] Salud v. Commissioner of Internal Revenue, C.T.A. EB CASE NO. 412. 30 April 2009.

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to DST upon execution of the deed transferring ownership or rights thereto, or upon deliver, 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 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 shares. Only the legal title was transferred when the Company changed its appointees from Alberto S. Villarosa to Sanjiv Vohra. Second, the execution of and by the express provisions of the Declarations of Trust, the intention of the parties was clearly for Alberto S. Villarosa and now Sanjiv Vohra to hold the share in trust for the Company.

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."

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[7] RR 13-2004.
[8] G.R. Nos. 172045-46, 16 June 2009.

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OT- 0653-2020
DEC 0 2 2020



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 Alberto S. Villarosa to Sanjiv Vohra 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 the Company.

In view thereof, the herein transfers cannot be subject to DST as there are no transfer or conveyance to Sanjiv Vohra 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 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 transfer or conveyance of the MPC share from Alberto S. Villarosa to Sanjiv Vohra, the same shall not be subject to donor's tax under Section 98 of the Tax Code of 1997, as amended.

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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