REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Sections 27 (A) & (D)(5) , 98, 175, & 188, Tax Code, as amended
BIR Ruling No. 1286-2018 BIR Ruling No. OT-025-20
OT- 410-2022
OCT 07 2022

SGV & Co.
6760 Ayala Avenue
1226 Makati City

Attention: **Atty. Cheryl Edeline C. Ong, CPA**
Partner, Tax Services

Gentlemen:

This refers to your request on behalf of your client, **TAIHEIYO CEMENT PROPERTIES, INC. ("TCPI," or "the Company)** for confirmation of your opinion that the transfer of shares from a former trustee bank to a newly designated trustee bank is not subject to capital gains tax (CGT), donor's tax, value-added tax (VAT) and documentary stamp tax (DST); and that there is no need to secure a Certificate Authorizing Registration for the said transfer.

Background

1. TCPI, formerly Grand Cement Manufacturing Corporation ("GCMC") is a domestic corporation duly organized and existing under the laws of the Philippines.

2. On August 1, 2001, then GCMC established a retirement benefit plan known as the "Grand Cement Manufacturing Corporation Retirement Plan" ("GCMC Plan") which became effective on the same date. The purpose of the GCMC Plan was to provide for the payment of benefits to its employees when they are retired, disabled, or separated from service, or in the event of death, the payment of definite amounts to their beneficiaries, subject to the conditions and limitation set forth therein.

3. The creation of the GCMC Plan also necessitates the creation of a Fund to which contributions shall be made and from which disbursements shall be paid, and provides for a Trustee to receive, hold, invest, and administer the same. Therefore, the Board of Directors of GCMC, through Board Resolution dated July 27, 2001,

appointed **BPI Assets Management and Trust Corporation ("BPI Trust Corp.")**, formerly Bank of the Philippine Islands Asset Management and Trust Group ("BPI-AMTG"), as the trustee to manage and administer the retirement fund for the benefit and account of the employees covered by the GCMC Plan.

4. As the Trustee thereof, BPI Trust Corp. owns common shares of stock of Solid Earth Development Corporation ("SEDC") for the benefit of those covered under the Retirement Plan. Thereafter, BPI requested for confirmation on September 19, 2001 from the Bureau of Internal Revenue (BIR) that GCMC Plan is a "reasonable private benefit plan" within the contemplation of Section 32 (B)(6)(a) of the National Internal Revenue Code of 1997 (Tax Code), as amended, which the BIR confirmed in the affirmative.

5. Based on the BIR confirmatory ruling, the BIR declared that the retirement benefits to be received by the employee-member shall be exempt from all taxes; the income of the Trust Fund from its investments ar exempt from income tax; and that the contribution of the company to the retirement fund are deductible from its gross income.

6. In April 2003, TCPI fully acquired GCMC. Thus, GCMC was renamed as **Taiheiyo Cement Properties, Inc.**

7. Currently, the Company has a Retirement Plan duly registered with the BIR.

8. The said Retirement Plan was managed by trustee, **BPI Trust Corp.** In 2019, the Company considered having another trustee to manage the Retirement Fund. The change in trustee did not affect the ownership of shares and there was no change in the beneficial or equitable ownership of such shares. Thus, TCPI executed Board Resolution No. 2019 changing the trustee bank for the Employees' Retirement Plan trust fund from BPI-AMTG to **Metropolitan Bank & Trust Company – Trust Banking Group ("MBTC-TBG")**, thereby appointing MBTC-TBG as successor Trustee thereof, to wit:

> "RESOLVED, as it is hereby resolved that the trustee bank for the Employees' Retirement Plan trust fund be changed from Bank of the Philippine Islands, Asset Management and Trust Group (AMTG) to Metropolitan Bank & Trust Company – Trust Banking Group (MBTC-TBG).
>
> RESOLVED, that the Board of Directors of the Corporation hereby appoints METROPOLITAN BANK & TRUST COMPANY – TRUST BANKING GROUP (MBTC-TBG) as successor Trustee."

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9. Further thereto, a special meeting was held on March 13, 2020 and Board Resolution No. 2020 was executed. Thereafter, the Board of Directors of TCPI resolved that the change of trustee bank from BPI-AMTG to MBTC-TBG will not in any way modify the Employees Retirement Plan, viz:

    "RESOLVED, that the change of trustee bank will not in any way modify the Employees Retirement Plan in any way."

10. In relation to such appointment, a Retirement Plan Trust Agreement was entered into between TCPI, as Trustor, and MBTC-TBG as Trustee, signifying that the former has appointed the latter as new Trustee of the Retirement Fund previously held in trust by BPI Trust Corp., and that MBTC-TBG has accepted such appointment.

11. Consequently, a **Deed of Assignment of Shares** was executed by and between BPI Trust Corp. and MBTC-TBG, as Assignor and Assignee, viz:

    "WHEREAS, the Assignor and its nominees are the registered owners of Common A shares of stock more specifically described and listed in Annex 'A' hereof (hereinafter, the 'Subject Shares') of SOLID EARTH DEVELOPMENT CORPORATION (the 'Company'), as the appointed trustee to manage and administer the retirement fund (the 'Retirement Fund') for the benefit and account of the employees covered by Taiheiyo Cement Properties, Inc. Retirement Plan, established by Taiheiyo Cement Properties, Inc. (the 'Trustors');

    WHEREAS, on November 29, 2019, the Board of Directors of Taiheiyo Cement Properties, Inc. approved the transfer of the Retirement Fund from Assignor to Assignee and a Trust Agreement was executed by and between Taiheiyo Cement Properties, Inc. and Assignee;

    WHEREAS, with a change of trustee of the Retirement Fund from Assignor to Assignee, there is a need to transfer the Subject Shares from Assignor to Assignee to consolidate the administration of the Retirement Fund;

    xxx

    WHEREAS, there is no change nor transfer in beneficial ownership as beneficial ownership continue to vest upon the trust account owned by the Trustors"

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Discussion/Ruling

Income Tax / CGT

In order for an income to be taxable, there must be a gain realized or received by the taxpayer, which is not excluded by law or treaty from taxation. Hence, all sales, exchanges or other dispositions of shares of stock by individuals, including estates and trusts, are subject to CGT. In the instant case, however, the transfer of the Subject Shares as a result of the change of trustee from the former trustee, BPI Trust Corp. to the newly designated trustee bank, MBTC-TBG by virtue of the Retirement Plan Trust Agreement is not a taxable event subject to either income tax or CGT considering that: (1) the shares are actually owned by the Retirement Plan and MBTC-TBG is merely a trustee of the Retirement Fund; (2) there is no actual transfer of ownership and beneficial title; and (3) no monetary consideration is involved and no gain or profit resulted in the transfer of the Subject Shares which is by virtue of an assignment as evidenced by the Deed of Assignment of Shares. Absent any gain realized from the transaction, no income tax can be imposed pursuant to Section 27 (A) and (D)(5) of the Tax Code, as amended.

Donor's Tax

Section 98 of the Tax Code, as amended, 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). In this case, there is no intention to donate since the change of trustee of TCPI Retirement Plan is merely for the purpose of consolidating the administration of the Retirement Fund to the newly designated trustee bank. Hence, the transfer of the Subject Shares is likewise not subject to the donor's tax imposed under Section 98 of the same Code.

VAT

Since there is no sale, exchange or disposition of goods or properties involved in the transaction, the transfer of the Subject Shares is likewise not subject to VAT imposed by Section 106 of the Tax Code, as amended.

DST

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. 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.** 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 shares. Only the legal title was transferred when the Company changed its former trustee to the newly designated trustee bank. Second, the execution of, and by the express provisions of the Retirement Plan Trust Agreement and the Deed of Assignment, the intention of the parties was clearly for the former trustee and the newly designated trustee bank to hold the shares in trust for the Company.

Furthermore, in the case of *Commissioner of Internal Revenue v. First Express Pawnshop, Inc.*[1], 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*

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

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 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 Subject Shares. The same remains with the Retirement Fund.

Therefore, the herein transfer cannot be subject to DST as there is no transfer or conveyance to the new trustee of the beneficial ownership of any right, claim or interest over the Subject Shares. 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 on the Deed of Assignment of Shares is subject to DST of ₱30.00[2] imposed by Section 188 of the same Code.

Certificate Authorizing Registration (CAR)

It is, however, understood that this Ruling is never intended, and shall not be construed, as giving authority to the Corporate Secretary of SEDC to effect transfer of the Certificate of Stocks in the name of MBTC-TBG without the necessary 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 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,

LILIA CATRIS GUILLERMO
Commissioner of Internal Revenue
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[2] The new DST rate of ₱30.00 is used since the transfer took place after to the effectivity of R.A. No. 10963.