REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

National Office Building
Quezon City

Secs. 24 (C); 98; 175 of the Tax Code of 1997, as amended; RR No. 13-2004
BIR Ruling No. OT-338-2021; BIR Ruling No. OT-421-2021; BIR Ruling No. OT-467-2021
OT-435-2022
NOV 22 2022

UNIONBANK
UnionBank Plaza
Meralco Avenue cor. Onyx
& Sapphire Roads, Ortigas Center
Pasig City

Attention: **Atty. Menchie Monsod Tormon**
VP – Head of Tax and Insurance

Gentlemen:

This refers to your request for confirmation that the transfer of UnionBank ("Bank")-owned Manila Polo Club ("Club") share from one nominee to another is exempt from payment of taxes.

Background:

The Bank is the true and beneficial owner of one (1) proprietary membership share in the Club having paid valuable consideration to purchase the same from the Club for the exclusive use of its designated corporate officer. The proprietary share is recorded as an asset in its books as of December 31, 2018.

Inasmuch as the Club's Articles of Incorporation and By-Laws provide that only natural persons shall be admitted as shareholders, the subject share was registered in the name of Mr. Eugene Acevedo under proprietary membership certificate no. (3 ("Share"), although the Bank remained the true and beneficial owner thereof. Since Mr. Acevedo is no longer connected with the Bank, the Bank transferred the Share to its new nominee, Ms. Mary Joyce Gonzalez. There was no consideration involved in the transfer and only the legal title was transferred to the new nominee and the Bank will remain as the true and beneficial owner.

The Share covered by Proprietary Membership Certificate No. (is currently under the name of Eugene S. Acevedo, pursuant to a Declaration of Trust that he executed on December 6, 2012.

On August 15, 2022, Ms. Mary Joyce S. Gonzalez, as the Executive Vice-President of the Bank, executed a Declaration of Trust in favor of the Bank for the Share covered by Proprietary Certificate No. (.

A replacement proprietary membership certificate, however, has not yet been issued to Ms. Mary Joyce S. Gonzalez until a ruling from the Bureau of Internal Revenue is issued in her favor.

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We reply, as follows:

The transfer of the Share from Mr. Eugene S. Acevedo to Ms. Mary Joyce S. Gonzalez is not subject to CGT.

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[1].

In the Declaration of Trust which Ms. Mary Joyce S. Gonzalez executed, she acknowledged that the transfer did not give her any kind of right, claim or interest whatsoever in the Share and that she is holding only the legal ownership of the same with the beneficial ownership pertaining to the Bank. Here, the trustor is the Bank while the trustee is Ms. Mary Joyce S. Gonzalez.

In the case of *Sime Darby Pilipinas, Inc. v. Mendoza*[2], 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 Bank purchased the Share and gave the 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 the Club, only natural persons may become registered members. Thus, the transfer of the legal title of the Share from Mr. Eugene S. Acevedo (old trustee-appointee) to its new trustee-appointee, Ms. Mary Joyce S. Gonzalez, is not subject to CGT under Section 24(C) of the National Internal Revenue Code (Tax Code) of 1997, as amended, considering that the transfer involves neither monetary consideration nor change in beneficial ownership. *(BIR Ruling No. OT-467-2021 dated December 14, 2021)*

The Transfer is not subject to DST

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 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*[3] 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

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[1] Resurreccion de Leon, et al. v. Emiliano Molo-Peckson, et al., G.R. No. L-17809, 29 December 1962.
[2] G.R. No. 202247, 19 June 2013.
[3] RR 13-2004.

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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)

In view thereof, the herein transfer cannot be subject to DST as there was no transfer or conveyance to Ms. Mary Joyce S. Gonzalez of the beneficial ownership of or any right, claim or interest over the Share or over the assets of the Bank. 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.

The Transfer is not subject to Donor's Tax

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.

Clearly, there is no intention on the part of the Bank to donate the Share in favor of Ms. Mary Joyce S. Gonzalez. Thus, the transfer of the Share from one nominee to another 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,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

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