REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

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-440-2022
DEC 09 2022

LEAGOGO LAW OFFICE
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Attention: **Atty. Jose Lis C. Leagogo**
Atty. McDonald Abalos
Atty. Pola Lia Celina L. Lamarca

Gentlemen:

This refers to your request on behalf of your client, **THE HONG KONG AND SHANGHAI BANKING CORPORATION LIMITED** (the "HSBC"), for confirmation that the change of trustee of the Manila Polo Club Inc. (MPCI) Membership share from one trustee to another trustee is not subject to capital gains tax (CGT), donor's tax and documentary stamp tax (DST).

Background:

HSBC is a corporation duly registered in Hong Kong and is authorized to do business in the Philippines through its Philippine Branch.

HSBC purchased a proprietary share in Manila Polo Club Inc. ("Manila Polo Club" or the "Club") covered by Proprietary Membership Certificate No. 6730.

Under Article 7(c) of the Club's Articles of Incorporation, only natural persons shall be admitted as proprietary members, to wit

> "(c) Only natural persons shall be admitted as proprietary members. No person shall be entitled to own more than one proprietary membership certificate."

Though only natural persons are admitted as proprietary members, the Proprietary Membership Certificate itself may be owned by a corporate entity. As could be gleaned in Article 7(c) above, admission to be a member and enjoy the facilities of the Club is limited only to natural persons, but as regards ownership of the proprietary membership certificate, it may be owned by a corporation. If the intention is to limit its application to "natural" persons, the Articles of Incorporation should have stated so. With respect to owning the certificate, the second sentence of Article 7(c) uses the word "person" in the generic sense, and therefore includes corporations.

Since only natural persons can enjoy the facilities, HSBC assigns the proprietary Membership share in Manila Polo Club ("MPCI Share") to a senior executive ("trustee") for the sole purpose that he or she may enjoy the facilities and amenities of MPCI while he or she works at HSBC. Ownership of the MPCI Share, however, remains with HSBC.

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Thus, HSBC maintains the beneficial ownership over the MPCI Share as the same forms part of HSBC's assets and is recorded in its book account.

On the other hand, the trustee executes a Declaration of Trust in favor of HSBC confirming that there is no transfer of beneficial ownership of the MPCI Share. In the Declaration of Trust, it is shown that:

a) HSBC has purchased a proprietary share of Manila Polo Club, Inc.;
b) Only legal ownership over the proprietary membership certificate is transferred to the senior executive while the beneficial ownership of the MPCI Share remains with HSBC;
c) The transfer is for the sole purpose of making the senior executive qualified to avail of the use of the facilities of Manila Polo Club, Inc,;
d) The senior executive has no title, right, claim or interest whatsoever in the MPCI Share and the replacement certificate that will be issued;
e) No consideration was paid for the transfer of the MPCI Share to the senior executive.

In order for the trustee to enjoy the facilities of Manila Polo Club, a Proprietary Membership Certificate is issued by Manila Polo Club in the name of the trustee, upon submitting a copy of the Declaration of Trust. The trustee is then issued a card, which is presented every time the trustee uses the facilities of Manila Polo Club.

The MPCI Share covered by Proprietary Membership Certificate No. 6730 currently under the name of Ms. Ma. Theresa V. Garcia, pursuant to a Declaration of Trust that she executed on February 8, 2013.

On August 3, 2022, Mr. Sandeep Uppal, HSBC's President and Chief Executive Officer, executed a Declaration of Trust in favor of HSBC for the MPCI Share covered by Proprietary Certificate No. 6730.

Pursuant to the Declaration of Trust dated August 3, 2022, Mr. Sandeep Uppal is the current trustee for the MPCI Share. A replacement proprietary membership certificate, however, has not yet been issued to him until a ruling from the Bureau of Internal Revenue is issued in his favor.

We reply, as follows:

The transfer of MPCI Share from Ms. Ma. Theresa V. Garcia to Mr. Sandeep Uppal is not subject to CGT and DST.

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 Mr. Sandeep Uppal executed, he acknowledged that the transfer did not give him any kind of right, claim or interest whatsoever in the MPCI Share and that he is holding only the legal ownership of the same with the beneficial ownership pertaining to HSBC. Here, the trustor HSBC while the trustee is Mr. Sandeep Uppal

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,

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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.

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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, HSBC purchased the MPCI 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. Thus, the transfer of the legal title of the MPCI Share from Ms. Ma. Theresa V. Garcia (old trustee-appointee) to its new trustee-appointee, Mr. Sandeep Uppal, is not subject to CGT considering that the transfer involves neither monetary consideration nor change in beneficial ownership.

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 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. <u>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.**</u> 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 are no transfer or conveyance to Mr. Sandeep Uppal of the beneficial ownership of or any right, claim or interest over the MPCI Share or over the assets of MPCI. 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.

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[3] RR 13-2004.

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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 HSBC to donate the MPCI Share in favor of Mr. Sandeep Uppal. Thus, the transfer of the MPCI 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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gps(HSBC)