REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

Sections 23(F), 42(C)(3), 107 and 108(A) of the Tax Code of 1997, as amended; RMC No. 44-2005;
BIR Ruling No. 009-2005
CT- 008-2025
JAN 06 2025

Online Loans Pilipinas Financing, Inc.
1402-1406 Tycoon Center
Pearl Drive San Antonio
Pasig City, Philippines

Attention: **Adrian Paulo B. Roco**
President

Marian I. Abarquez
Chief Financial Officer

Gentlemen:

This refers to your request for confirmation that **Online Loans Pilipinas Financing, Inc.** ("OLP") is exempt from the payment of withholding tax on payments for services rendered abroad by Fingers Media Limited Liability Company ("Fingers Media LLC"), a non-resident foreign corporation ("NRFC").

It is represented that OLP is a corporation organized and existing under the laws of the Republic of Philippines offering financial services such as loans which services are provided through web and mobile applications.

On the other hand, Fingers Media LLC is a NRFC registered under the laws of the Republic of Belarus – City of Minsk; that it is not registered as a corporation, partnership or one-person corporation in the Philippines per Certificate of Non–Registration of Company issued by the Securities and Exchange Commission on March 3, 2022; and that it is engaged in the business of technology development services.

On October 12, 2020, the above-mentioned Corporations entered into a Service Agreement for Software Suite Development and Modification. Fingers Media LLC undertakes the performance of the following services for a renumeration:

1. To perform work on the development, enhancement and/or implementation of Software Suite (mobile terminal application) and other relevant services and/or work; and
2. To transfer to OLP exclusive rights to the above Software Suite, source code in full and all the relevant technical documentation.

It is further represented that the services are performed in Fingers Media LLC's head Office in Minsk, Belarus. Moreover, the Corporation is not registered and doing business in the Philippines.

Lastly, it is represented that Fingers Media LLC will transfer to OLP the exclusive intellectual property rights of the Software Suite and its source code in full and without any limitations. On this note, OLP is entitled to freely possess, use and dispose of the Software Suite and its components, inter alia – enhance, rework, alienate and otherwise transfer them to third parties without any limitations.

In this regard, you would like to have confirmation of your opinion that the payment of service fees by OLP to Fingers Media LLC is not subject to withholding tax.

In reply, please be informed that ***Section 23(F) of the National Internal Revenue Code of 1997 (Tax Code), as amended***, states that a foreign corporation, whether engaged or not in trade or business in the Philippines, is taxable only on income derived from sources within the Philippines. Concerning income from the provision of service, under ***Section 42(A) (3) of the Tax Code***, as amended, this is considered derived in the Philippines only if the services are actually performed in the Philippines.

Accordingly, since Fingers Media LLC, a NRFC, performed the services required of it under the agreement outside the Philippines, service fees paid by OLP shall be exempt from income tax pursuant to the above-mentioned provisions.

With respect to value-added tax (VAT), payments for the sale or exchange of services are subject to VAT only if the services are performed in the Philippines as provided under ***Section 108 (A) of the Tax Code, as amended***. Hence, since the services are performed by Fingers Media LLC outside the Philippines, the service fees to be paid are likewise exempt from VAT.

In view of the foregoing exemptions from income tax and VAT, the payment of service fees by OLP to Fingers Media LLC are not subject to withholding tax.

However, please note that the transfer of the exclusive intellectual property rights of the Software Suite and its source code to OLP may be subjected to business income tax. The determination of whether a transfer of a copyright right in a software is a sale or exchange of property is made on the basis of whether, taking into account all facts and circumstances, there has been a transfer of all substantial rights in the copyright[1]. When only copyright rights are transferred, payments made in consideration therefor are royalties. On the other hand, when copyright ownership is transferred, payments made in consideration therefor are business income[2]. Thus, the amount paid in consideration of the copyright or portions thereof transferred by a NRFC shall be subject to a final tax of 25%[3].

Therefore, the payment for the transfer of the exclusive rights of the Software Suite and its source code to OLP shall be subject to a 25% final withholding tax based on the gross income under ***Section 28(B) of the Tax Code, as amended***. In this regard, OLP shall withhold the said income tax rate pursuant to ***Revenue Regulations No. 2-98, as amended***.

[1] Section 5(a) of RMC No. 44-2005
[2] *Ibid.*
[3] Section 7 of RMC No. 44-2005

Furthermore, the electronic transfer of software from the non-resident supplier is considered importation of software and is subject to VAT under ***Section 107 of the Tax Code, as amended and Revenue Memorandum Circular (RMC) No. 07-2006***. Accordingly, OLP being the direct importer of the downloadable software is subject to the 12% VAT and is required to withhold the VAT from its payment before it telegraphically transfers it to the account of Fingers Media LLC[4].

This ruling is issued on the basis of the facts as represented. However, if upon investigation it shall be disclosed that the actual facts are different, then this ruling shall be without force and effect insofar as the herein parties are concerned.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

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[4] DA ITAD BIR Ruling No. 136-06, dated November 8, 2006