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

Sections 23(F), 42(C)(3) and 108(A) of the Tax Code, as amended; Aces Philippines Cellular Satellite Corporation vs. CIR	OT- 014-2025 JAN 07 2025	Person to Contact: Chief, Legal and Legislative Division Tel Nos. 8926-55-36 / 8927-09-63

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 of your opinion that **Online Loans Pilipinas Financing, Inc.**[1] ("OLP") is exempt from payment of withholding tax for services rendered abroad by Tyrads Pte. Ltd., 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, Tyrads Pte. Ltd. is a NRFC registered under the laws of Singapore; 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 4, 2022; and that it is engaged in the business of advertising services.

On June 6, 2020, the above-mentioned Corporations entered into a Lead Generation Agreement wherein Tyrads Pte. Ltd. shall render advertising services for a fee or renumeration to OLP and said service is rendered in the place of business of the former. Tyrads Pte. Ltd. shall engage Webmasters to place OLP's advertisements on the internet to attract customers. Thereafter, Tyrads Pte. Ltd. shall provide results by providing a statistical data according to the conditions set forth in the placement of the advertisements. OLP will pay Tyrads Pte. Ltd. all incurred charges and fees based on the statistical data provided by the latter.

[1] Formerly: Magic World Technologies, Inc.

In this regard, you would like to have confirmation of your opinion that the payment of service fees by OLP to Tyrads Pte. Ltd. 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.

The rule in this jurisdiction regarding tax situs is that the source of income is the property, activity or service that produced the income, the test of taxability is the "source" and the source of income is that activity which produced the income[2]. In ascertaining the income source, we must inquire into the property, activity or service that produced the income, or where the inflow of wealth originated.[3]

In *Aces Philippines Cellular Satellite Corporation vs. the Commissioner of Internal Revenue*[4], the Supreme Court discussed that in determining the income generating activity of a NRFC, the services provided in the service agreement must be examined in its entirety or as a whole, and not to single out or compartmentalize one particular activity, thus:

> *The Court agrees with the CTA that the income-generating activity takes place not during the act of transmission but only upon the gateway's receipt of the call as routed by the satellite. As will be discussed below, the Court identifies the gateway's receipt of the call as the income source as it coincides with (1) the completion or delivery of the service, and (2) the inflow of economic benefits in favor of Aces Bermuda.*
>
> *1) The gateway's receipt of the routed call marks the completion or delivery of the service.*
>
> *In rejecting Aces Philippines' attempt to single out the act of transmission as the income-producing activity, the Court echoes the CTA En Banc's keen observation that "there is a continuous and very real connection" within the components of the Aces System. While the satellite appears to be the focal point of the system, the Court cannot ignore that there is a two-/three-way inter-connection or inter-dependence between/among the satellite in outer space, the control center in Indonesia, and the terminals and gateways in the Philippines.*
>
> *By itself, the act of transmission only suggests that a Philippine subscriber has made a call and that the satellite received the call and signaled the control center to determine where the call should be routed. At this point, the satellite and its control center have only determined the location the call shall be directed to but have not actually routed the call. Thus, it is clear that*

[2] *CIR v. British Overseas Airways Corporation* (G.R. Nos. 65773-74, April 30, 1987)
[3] *Aces Philippines Cellular Satellite Corporation vs. CIR* (GR No. 226680, August 30, 2021)
[4] GR No. 226680, August 30, 2022

nothing has been sold/delivered yet to Aces Philippines. At best, Aces Bermuda's provision of its service remains in-progress at this stage and requires further action to be completed.

That Aces Bermuda's service: (a) relies on the inter-connectivity of the Aces Satellite System's components, and (b) cannot be compartmentalized to the point of transmission are inherent in the nature of its principal undertaking.

The CTA En Banc emphasized that Aces Bermuda undertook to provide satellite communication time to petitioner Aces Philippines. As expressly described in the Air Time Purchase Agreement, Aces Bermuda's provision of satellite communication services relies on the entire Aces System consisting of a satellite that is interconnected with terminals and gateways. The technology was designed precisely to allow local service providers (e.g., Aces Philippines) to access, connect to, and use the Aces Satellite System so that, in turn, the local service providers can cater to their local subscribers (e.g., Philippine subscribers) whose calls require the use of/access to the Aces Satellite System to be able to contact and be connected to another mobile/landline number.

Thus, the fulfillment of Aces Bermuda's undertaking requires the satellite to have transmitted/routed the call (first segment) and a gateway to have received the call as routed by the satellite (second segment). At the point of transmission, Aces Philippines has not been given access to the Aces System yet. It is only when the call is actually routed to its gateway that Aces Philippines is able to connect its local subscriber to the intended recipient of the call. In this sense, the gateway's receipt of the call signifies completion/delivery of Aces Bermuda's service.

2) The accrual of satellite air time fees marks the inflow of economic benefits.

A reading of Section 3.2 of the Air Time Purchase Agreement, supra, reveals that Aces Bermuda charges satellite air time fees to Aces Philippines according to the latter's usage. Its usage is determined by allocation (Billable Units) based on all calls made to or from Aces Philippines' subscribers utilizing the Aces System — routed through the satellite — regardless of the location of the subscriber at the time of the call or the gateway handling the call. Certainly, Aces Philippines will not be charged anything at the point of transmission inasmuch as there has not been any usage at that time and satellite air time fees expressly exclude satellite utilization time for call set-up, unanswered calls and incomplete calls.

In other words, the satellite air time fees accrue only when the satellite air time is delivered to Aces Philippines (i.e., upon the gateway's receipt of the routed call) and is utilized by the Philippine subscriber for a voice or data call. The accrual of fees payable to Aces Bermuda signifies the inflow of economic benefits.(Citations omitted; Underscoring ours)

In this case, the Lead Generation Agreement expressly states that OLP will pay Tyrads Pte. Ltd. all incurred charges and fees based on the statistical data. 'Statistical data' refers to a detailed report on the customer's lead performance, specifying information on the amount of provided services. The term 'lead' on the other hand, refers to a measurable result (e.g. a purchase, an order, download, etc.) of display of the ads that is achieved by a user completing the necessary action on the customer's website. Based on the said definition, it can be inferred that the statistical data will contain information on how many users availed the services of OLP due to the advertisements provided in different websites. Thus, the provision of the statistical data by Tyrads Pte. Ltd. signifies the inflow of economic benefits which is its income-generating activity.

After having identified the source of income, we now inquire into its situs. It is settled that where the inflow of wealth and/or economic benefits proceeds from, and occurs within Philippine territory, it enjoys protection of the Philippine government. In consideration of such protection, the flow of wealth should share the burden of supporting the government, and thus, is subject to tax.[5]

In the *Aces Case*, the Supreme Court explained how to determine the situs of services performed by a NRFC, to wit:

> *"1) The income-generating activity is directly associated with the gateways located within Philippine territory.*
>
> *Verily, Aces Philippines' admits that the gateway's receipt of the call as routed by the satellite (i.e., second segment of Aces System) takes place in the Philippines. However, it insists that any income arising therefrom cannot be attributable to Aces Bermuda because: (a) Aces Bermuda's operations are confined to its satellite in outer space; and (b) Aces Philippines, not Aces Bermuda, owns the gateways and related equipment installed in the Philippines.*
>
> *These contentions do not persuade.*
>
> *First, the Court has already discussed above that Aces Bermuda's service encompasses both first and second segments of the Aces System's operations. The performance of the service does not cease at the point of transmission but continues until such time Aces Bermuda delivers the satellite communication time (i.e., routes the call) to the Philippine gateway.*
>
> *Second, while Aces Philippines is the legal owner/operator of the Philippine gateways, it cannot be denied that these gateways were constructed primarily to serve the needs and requirements of the Aces System.*
>
> *To recall, under the Gateway Agreement executed between PLDT and Aces Indonesia in 1995, Aces Indonesia had supplied PLDT with the necessary equipment and software to enable the latter "to construct, own and operate a [g]ateway or [g]ateways in the Philippines. The construction of the gateways was an act preparatory to the Air Time Purchase Agreement*

[5] *Ibid.*

executed in 1997. It was instrumental in and necessary to providing and installing the required technology in the Philippines precisely to join PLDT/Aces Philippines to the Aces Satellite System.

The agreements, taken together, were instrumental in allowing Aces Bermuda to make its services available to Philippine subscribers. The nature of its undertaking necessitates Aces Bermuda to contract service providers in specific jurisdictions like the Philippines. Even if Aces Bermuda operates the satellite in outer space, it cannot provide its services completely even if a territory is within its coverage. It needs: (a) to cause the construction of terrestrial gateways that will receive signals from its satellite; (b) to provide the specific equipment and software to ensure that the gateways are compatible with the Aces System; and (c) to contract a local supplier (e.g., PLDT/Aces Philippines) that would operate the gateways and act as its local distributor of services.

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To stress, the income-generating activity (i.e., accrual of satellite airtime fee payments and completion of the principal undertaking) coincides with the receipt of the routed call by gateways located within Philippine territory. That income generation is dependent on the operations of facilities situated in the Philippines contributes to the income's Philippine situs. Verily, the gateways are legally owned by Aces Philippines. Nonetheless, Aces Bermuda has sufficient economic/beneficial interest in these Philippine properties, inasmuch as its Philippine operations are dependent on these local facilities." (Underscoring supplied)

As previously mentioned, the Lead Generation Agreement states that income payments to Tyrads Pte. Ltd. shall be based on the statistical data. It is the understanding of this Office that the statistical data can only be generated once customers or users from the internet avail the services of OLP because of the advertisements provided by Tyrads Pte. Ltd. Depending on the number of customers or users thereof, it will determine the amount payable to Tyrads Pte. Ltd. Upon careful reading of the Lead Generation Agreement, the posting of the advertisements online and availment of the services advertised allowed Tyrads Pte. Ltd. to perform its services within the Philippine territory.

Based on the foregoing discussions, since the services are considered performed within the Philippines, income payments to Tyrads Pte. Ltd. shall be subject to income tax and, consequently, to withholding tax.

With respect to value-added tax (VAT), ***Section 108 (A) of the Tax Code, as amended,*** provides that payments for the sale or exchange of services, including the use or lease of properties are subject to the twelve percent (12%) VAT only if the services are performed in the Philippines. The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration Thus, considering the above discussions, income payments made by OLP for the services performed by Tyrads Pte. Ltd. shall be subject to VAT.

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Settled is the rule that exemptions from tax are strictly construed against the taxpayer and liberally construed in favor of the taxing authority. One who claims tax exemption must point to a specific provision of law conferring, in clear and plain terms, exemption from the common burden and prove, through substantial evidence, that it is, in fact, covered by the exemption so claimed.[6]

In connection therewith, the rule is that the taxpayer bears the burden of proving that the "income was from sources outside the Philippines and exempt from the application of our income tax law."[7] In light of this context, it is the opinion of this Office that OLP failed to prove that the income payments to Tyrads Pte. Ltd. was solely from sources outside the Philippines.

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

CC: **Revenue District Office No. 43**
5th floor, Estancia East Wing Building
Meralco Avenue, Capital Commons
Pasig City

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[6] *Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE), et al. v. Commissioner, Bureau of Internal Revenue, et al.* (G.R. Nos. 213446 & 213658, July 3, 2018.)
[7] *Aces Philippines Cellular Satellite Corp. v. Commissioner of Internal Revenue* (G.R. No. 226680, August 30, 2022)