REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Secs. 109(1)(E) & (V); 122; RR 09-04
BIR Ruling No. 005-2007
DT - [illegible]
JUL [illegible] 2021

REYES TACANDONG & CO.
Citibank Tower, 8741 Paseo de Roxas
Makati City 1226

Attention: **Atty. Rommel T. Geocaniga**
Tax Services

Gentlemen:

This refers to your letter dated June 4, 2019 requesting on behalf of your client, WIRECARD E-MONEY PHILIPPINES, INC., (the "Company") for confirmation that the Company is subject to Gross Receipts Tax (GRT) at the rate of 5%, as an "Other Non-Bank Financial Intermediary" (NBFI) under Section 2.3 of Revenue Regulations (RR) No. 09-2004.

Background:

The Company is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with current registered addres at 5/F Makati Sky Plaza 6788 Ayala Avenue, Barangay San Lorenzo, Makati City. The Company is registered with the Securities and Exchange Commission (SEC) with Company Registration No. [illegible] and with the BIR with Tax Identification Number (TIN)

The primary purpose of the Company, as stated in its Articles of Incorporation (AOI), is as follows:

> "To engage in the business of electronic money ("e-money") issuance and distribution insofar as the same may be allowed or permitted under existing laws, including such other services or activities that may be related or incidental to the business of e-money, such as but not limited to, bills payment, remittance, top-up services, mobile commerce, mobile payment, merchant acquiring, and such other payment, collection, and delivery services or facilities, for e-money and other similar products, whether offline or online through telecommunication systems or other electronic channels; provided that the foreign exchange currency transactions of the Corporation shall be limited to ordinary money changing activities or "spot" foreign currency transactions; provided further that the corporation shall not engage in the business of being a commodity futures broker of otherwise engage in financial derivatives activities such as foreign currency swaps, forwards, options or other

similar instruments as defined under BSP Circular No. 102, series of 1995." (Underscoring supplied)

Consistent with its primary purpose, the Company was granted approval by the Bangko Sentral ng Pilipinas (BSP) in a letter dated July 6, 2018 to undertake merchant acquiring activities. Moreover, pursuant to the *BSP Manual of Regulations for Non-Bank Financial Institutions (MORNBFI)*, the Company was granted approval by the BSP to operate as a Remittance and Transfer Company (RTC) with a Type "C" E-Money Issuer (EMI) registration in letters dated November 27, 2017 and July 5, 2018, with Certificate of Registration bearing MSB Registration No. 53-0008-00-000.

In connection thereto, through a Local Asset Purchase Agreement (LAPA), the Company obtained Citibank N.A.'s merchant acquiring business. To date, the Company has only actively engaged in and earned revenues from its merchant acquiring activities. As can be seen in Note 14 in reference to Note 19 of the Company's Audited Financial Statements.

As a merchant acquirer, thru the use of the Point-of-Sale (POS) Terminals or credit card terminals, the Company secures authorization for credit or debit card transactions issued under various card associations, such as Visa or MasterCard. This allows consumers to make non-cash purchases from merchant/service establishments (M/SEs) using their cards. These purchases are supported by charge sales slips or credit card drafts, which the M/SEs shall periodically furnish to the Company. The Company shall, in turn, settle or pay the M/SEs the amounts reflected in the drafts less the fees payable to the respective card associations and card issuers, and the Merchant Discount Rate (MDR). The MDR or discount earned represents the Company's income in relation to its merchant acquiring activities in exchange of assuming credit risk after purchasing the M/SEs receivables.

In support of your request, you submitted copies of the Company's Articles of Incorporation and By-Laws; BSP's Approval of License to Operate as Electronic Money Issuer (EMI); BSP Certificate of Registration with MSB Registration No. 000 issued on June 26, 2018; BSP's letter dated July 5, 2018 informing the Company of the approval of application to operate as a Remittance and Transfer Company pursuant to the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI); and BSP letter dated July 6, 2018 approving the Company's request to undertake merchant acquiring activities.

In reply, please be informed that Section 2.3 of Revenue Regulations (RR) No. 9-2004 dated June 21, 2004 defines the term "non-bank financial intermediary", to wit:

> "SECTION 2. *Definition of Terms.* — For purposes of these Regulations, the terms enumerated hereunder shall have the following meaning:
>
> 2.3. Non-bank Financial Intermediaries — shall refer to persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them or otherwise coursed through them, either for their own account or for the account of others. This includes all entities regularly engaged in the lending of funds or **purchasing of receivables** or other obligations with funds obtained from the public through the

issuance, endorsement or acceptance of debt instruments of any kind for their own account, or through the issuance of certificates of assignment or similar instruments with recourse, trust certificates, or of repurchase agreements, whether any of these means of obtaining funds from the public is done on a regular basis or only occasionally." (Emphasis supplied)

In relation thereto, Section 122 of the National Internal Revenue Code (Tax Code), of 1997, as amended by Republic Act (RA) No. 9238, imposes a percentage tax based on gross receipts derived from sources within the Philippines on financial intermediaries not performing quasi-banking functions, which are doing business in the Philippines, to wit:

"SECTION 122. *Tax on Other Non-Bank Financial Intermediaries.* — There shall be collected a tax of five percent (5%) on the gross receipts derived by other non-bank financial intermediaries doing business in the Philippines, from interest, commissions, discounts and all other items treated as gross income under this Code: Provided, That interests, commissions and discounts from lending activities, as well as income from financial leasing, shall be taxed on the basis of remaining maturities of the instruments from which such receipts are derived, in accordance with the following schedule:

Maturity period is five (5) years or less 5%

Maturity period is more than five (5) years 1%

Provided, however, That in case the maturity period is shortened thru pretermination, then the maturity period shall be reckoned to end as of the date of pretermination for purposes of classifying the transaction and the correct rate shall be applied accordingly.

Provided, finally, That the generally accepted accounting principles as may be prescribed by the Securities and Exchange Commission for other non-bank financial intermediaries shall likewise be the basis for the calculation of gross receipts.

Nothing in this Code shall prelude the Commissioner from imposing the same tax herein provided on persons performing similar financing activities." (Underscoring ours)

From the above-quoted provisions of RR No. 9-2004 and Section 122 of the Tax Code, it is clear that GRT shall be imposed on persons, whether natural or juridical, as long as it is performing financing activities similar to a non-bank financial intermediary, such as the Company's purchase of receivables through its merchant acquiring activities.

Furthermore, embraced in the definition of the term "non-bank financial intermediaries" are financing companies which refer to corporations except banks, investments houses, savings and loan associations, insurance companies, cooperatives, and other financial institutions organized or operating under other special laws, which are primarily organized for the purpose of extending credit facilities to consumers and to industrial, commercial, or agricultural enterprises, by direct lending or by discounting or

factoring commercial papers or accounts receivables, or by buying and selling contracts, leases, chattel mortgages, or other evidences of indebtedness, or by financial leasing of movable as well as immovable properties. (*Sec. 2.7, Revenue Regulations No. 9-2004 citing R.A. No. 5980, as amended by R.A. No. 8556*)

In *BIR Ruling No. 005-2007* dated *February 22, 2007*, this Office ruled that an entity engaged in the business of investing and acquiring loans, receivables and other evidence of indebtedness is subject to GRT, since its activities are akin to the principal activities of non-bank financial intermediaries.

In view of the foregoing, given that the Company is engaged in the business of purchasing receivables through merchant acquiring and electronic money issuer (EMI) and registered as such with the BSP, it is considered as a nonbank financial intermediary.

Accordingly, this Office holds that for business tax purposes, the Company shall be treated as Non-Bank Financial Intermediary performing activities similar to a financing company, provided that it does not perform any activity that entails the imposition of VAT. Consequently, revenues earned from its merchant acquiring activities shall be treated as gross income arising from its purchase or acquisition of receivables is subject to GRT imposed under Section 122 of the Tax Code of 1997, as amended, and is exempt from VAT pursuant to Section 109 (1)(E) and (V)[1] of the same Code.

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,

CAESAR R. DULAY
Commissioner of Internal Revenue

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[1] As renumbered by Republic Act No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN)"