REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Section 181 of the Tax Code of 1997, as amended
BIR Ruling No. 0345-2019
[illegible]
[illegible]

QUIASON MAKALINTAL BAROT TORRES IBARRA SISON & DAMASO
21st Floor, Robinsons-Equitable Tower
4 ADB Avenue Corner Pedro Poveda Street
1605 Ortigas Center, Pasig City

Attention: **ATTY. BENEDICT R. TUGONON**
and
ATTY. MICHAEL FRANCIS D. CASTRO

Gentlemen:

This refers to your request on behalf of your client, PETNET, Inc. ("PETNET"), for a ruling confirming the exemption from documentary stamp tax (DST) the money transfer remittances which PETNET, Inc. releases to recipients in the Philippines on behalf of various offshore money transfer companies ("MTCs"), including Western Union.

Background:

PETNET, operating under the name Pera Hub, with Taxpayer Identification Number (TIN) [illegible], is a corporation duly organized and existing under the laws of the Philippines, with address at East Offices Building, 114 Aguirre Street, Legaspi Village, Makati City. Its main business is offering financial services such as loans, loading services, remittances, transfer money and other financial services, in collaboration with various MTCs.

PETNET had earlier requested for a ruling from the Bureau of Internal Revenue (BIR) and subsequently, the BIR issued BIR Ruling No. 0345-2019 dated June 04, 2019 which confirmed that Western Union Money Transfer Service Transactions of PETNET are not subject to DST under Sections 180 and 182 of the National Internal Revenue Code (Tax Code) of 1997, as amended. However, the same BIR Ruling states that the Western Union Money Transfer Service Transactions of PETNET are subject to DST under Section 181 of the Tax Code of 1997, as amended, as follows:

> *"……the Western Union Money Transfer Service transactions of PETNET, Inc. are not considered bills of exchange. However, said transactions fall under "an acceptance of an order for the payment of money purporting to be drawn in a foreign country but payable in the Philippines". Thus, such transactions are subject to DST under Section 181 of the National Internal Revenue Code of 1997, as amended, except those remittances of all overseas Filipino workers, upon proper showing of proof of entitlement by the overseas Filipino worker's beneficiary or recipient."*

Nonetheless, it is your position that Western Union Money Transfer Service Transactions of PETNET are likewise not subject to DST under Section 181 of the Tax Code of 1997, as amended, in the light of the decision of the Supreme Court in the case of *The*

maintained by a depositor in one bank." The Court favorably adopts the finding of the CTA that the electronic messages "cannot be considered negotiable instruments as they lack the feature of negotiability, which, is the ability to be transferred" and that the said electronic messages are "mere memoranda" of the transaction consisting of the "actual debiting of the [investor-client-payor's] local or foreign currency account in the Philippines" and "entered as such in the books of account of the local bank," HSBC.

More fundamentally, the instructions given through electronic messages that are subjected to DST in these cases are not negotiable instruments as they do not comply with the requisites of negotiability under Section 1 of the Negotiable Instruments Law, which provides:

> *Sec. 1. Form of negotiable instruments. - An instrument to be negotiable must conform to the following requirements:*
>
> *a) It must be in writing and signed by the maker or drawer;*
> *b) Must contain an unconditional promise or order to pay a sum certain in money;*
> *c) Must be payable on demand, or at a fixed or determinable future time;*
> *d) Must be payable to order or to bearer; and*
> *e) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.*

The electronic messages are not signed by the investor-clients as supposed drawers of a bill of exchange; they do not contain an unconditional order to pay a sum certain in money as the payment is supposed to come from a specific fund or account of the investor-clients; additionally, they are not payable to order or bearer but to a specifically designated third party. Thus, the electronic messages are not bills of exchange. As there was no bill of exchange or order for the payment drawn abroad and made payable here in the Philippines, there could have been no acceptance or payment that will trigger the imposition of the DST under Section 181 of the Tax Code.

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As stated above, Section 230 of the 1977 Tax Code, as amended, now Section 181 of the 1997 Tax Code, levies DST on either (a) the acceptance or (b) the payment of a foreign bill of exchange or order for the payment of money that was drawn abroad but payable in the Philippines. ***In other words, it levies DST as an excise tax on the privilege of the drawee to accept or pay a bill of exchange or order for the payment of money, which has been drawn abroad but payable in the Philippines****, and on the corresponding privilege of the drawer to have acceptance of or payment for the bill of exchange or order for the payment of money which it has drawn abroad but payable in the Philippines.*

Acceptance applies only to bills of exchange*. Acceptance of a bill of exchange has a very definite meaning in law. In particular, Section 132 of the Negotiable Instruments Law provides:*

> *Sec. 132. Acceptance; how made, by and so forth. – The acceptance of a bill [of exchange] is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.*

> ***Under the law, therefore, what is accepted is a bill of exchange, and the acceptance of a bill of exchange is both the manifestation of the drawee's consent to the drawer's order to pay money and the expression of the drawee's promise to pay.*** *It is "the act by which the drawee manifests his consent to comply with the request contained in the bill of exchange directed to him and it contemplates an engagement or promise to pay." Once the drawee accepts, he becomes an acceptor. As acceptor, he engages to pay the bill of exchange according to the tenor of his acceptance.*
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> *Acceptance is made upon presentment of the bill of exchange, or within 24 hours after such presentment. Presentment for acceptance is the production or exhibition of the bill of exchange to the drawee for the purpose of obtaining his acceptance."* (Emphasis and underscoring supplied)

In a Western Union Money Transfer Service Transaction of PETNET, the principal amount is not drawn from the credit of the sender, but is paid and withdrawn in cash by the specified recipient in the Philippines. Also, the order of the payment of money is not made by way of a telegraphic transfer. Hence, it is not considered as a bill of exchange nor a foreign bill of exchange.

Accordingly, considering that the Western Union Money Transfer Service Transactions of PETNET are not signed by the investor-clients as supposed drawers of a bill of exchange; do not contain an unconditional order to pay a sum certain in money as the payment is supposed to come from a specific fund or account of the clients; are not payable to order or bearer but to a specifically designated third party; they are not bills of exchange. Thus, they are not subject to DST under Section 181 of the Tax Code of 1997, as amended.

This ruling amends BIR Ruling No. 0345-2019 and 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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