June 4, 2019

BIR RULING NO. 345-19

Sections 180, 181, and 182 of the NIRC of 1997, as amended; Republic Act (RA) No. 8042, as amended

Insights Philippines Legal Advisors
24/F, BGC Corporate Center, 30th St. cor. 11th Ave.,
Bonifacio Global City, Taguig City 1634

Attention: *AAA*

BBB

Gentlemen :

This refers to your letter dated October 27, 2017, requesting on behalf of your client, PETNET, Inc., for confirmation of your opinion that its Western Union Money Transfer Service transactions are not subject to Documentary Stamp Tax (DST) under Sections 180, 181, and 182 of the National Internal Revenue Code of 1997, as amended.

Background:

PETNET, Inc., with Taxpayer Identification Number (TIN) 000-000-000, is a corporation organized under Philippine laws, with address at East Offices Bldg., 114 Aguirre Street Legaspi Village, Makati City, Philippines. It is engaged in the business of remittance, transferring or transmitting money on behalf of any person to another person and/or entity. To render Money Transfer Services to its clients, PETNET, Inc. accesses Western Union's global IT platform where it can connect with its global network of agents to facilitate the various phases of a Money Transfer Service transactions.

Considering that there is a considerable number of Overseas Filipino Workers (OFW) who send remittances to their families in the Philippines, most Money Transfer Service transactions in the Philippines involve a sender abroad, who sends funds to a Philippine

Copyright 2020 CD Technologies Asia, Inc.

recipient. It also means that PETNET, Inc. typically acts as a receive agent for recipients of funds in the Philippines.

A Money Transfer Service transaction consists of three phases, described as follows:

1. The Send phase, which creates a Money Transfer Service transaction in the Western Union's global IT platform;

2. The Receive phase, which marks a Money Transfer Service transaction as paid in the Western Union's global IT platform; and

3. The Settlement phase, an end of the day process, wherein funds are settled between Western Union and its agents covering all Money Transfer Service transactions within a covered period.

In the Send phase, a customer outside the Philippines who intends to send funds to a specified Recipient in the Philippines gives a foreign Send Agent in his/her locality, the following information; (i) principal amount to be remitted, (ii) send fees, and (iii) information about the Sender and Recipient. The offshore Send Agent performs Know Your Customer, as required by relevant banking regulations in his/her jurisdiction, and enters information about the recipient into the Western Union's global IT platform. At this point, the Western Union's global IT platform generates a unique code (*i.e.*, MTCN), which acts like a password in accessing the transaction information in the system. The MTCN may only be used by the Recipient and is furnished by the Send Agent to the MTCN. With the use of MTCN, the use of the telegraphic transfers is obviated.

Meanwhile, in the Receive phase, the specified Recipient visits a branch of a Western Union Receive Agent, such as PETNET, Inc. in the Philippines, where he furnishes the latter with the MTCN together with his identification details. The Receive Agent uses the MTCN to locate the particular transaction in the Western Union's global IT platform and performs Know Your Customer measures to verify the identity of the Recipient. After ascertaining the Recipient's identity, the Receive Agent gives the Recipient the Principal's cash on hand.

Finally, a daily Settlement process takes place, wherein PETNET, Inc., as a Receive Agent, receives an advice from Western Union on the amount that it should receive from Western Union. The receivable is equivalent to Receive Agent's commission and the Principal, covering all the receive money transfer transactions done within the day. Western Union pays the receivable to PETNET, Inc., as Receive Agent, by way of a bank transfer from Western Union's account to PETNET, Inc.'s account.

In view of the foregoing, you now request for confirmation that the Money Transfer Service transactions are not subject to DST under Sections 180, 181, and 182 of the National

Copyright 2020 CD Technologies Asia, Inc.

Internal Revenue Code of 1997, as amended. Specifically:

1. The Money Transfer Service is not subject to DST under Section 180 of the National Internal Revenue Code of 1997, as amended, because it is not a negotiable bill of exchange or draft;

2. The Money Transfer Service is not subject to DST under Section 181 of the National Internal Revenue Code of 1997, as amended, because there is no acceptance, considering that it is not a negotiable bill of exchange nor order of payment; and

3. The Money Transfer Service is not subject to DST under Section 182 of the National Internal Revenue Code of 1997, as amended, because the Money Transfer Service is not a foreign bill of exchange nor a letter of credit, and there is no telegraphic transfer involved in a Money Transfer Service transaction.

In reply, please be informed as follows:

1. DST under Section 180 of the National Internal Revenue Code of 1997, as amended.

Section 180 of the National Internal Revenue Code of 1997, as amended, states that:

"SEC. 180. Stamp Tax on All Bills of Exchange or Drafts. — On all bills of exchange (between points within the Philippines) or drafts, there shall be collected a documentary stamp tax of sixty centavos (P0.60) [1] on each Two hundred pesos (P200), or fractional part thereof, of the face value of any such bill of exchange or draft."

A bill of exchange is defined under Section 126 of the Negotiable Instruments Law as follows:

"Sec. 126. Bill of exchange, defined. — A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer."

Also, the term "Bill of Exchange" is defined under Section 39 of Revenue Regulations No. 26, to wit:

"SECTION 39. Definition of "Bill of Exchange." — The term "bill of exchange" denotes checks, drafts, and all other kinds of orders for the payment of money, payable at sight or on demand or after a specific period after sight or from a stated date."

Copyright 2020 CD Technologies Asia, Inc.

In the case of *Hongkong and Shanghai Banking Corporation Limited-Philippine Branches vs. Commissioner of Internal Revenue*, [2] which may find application in the instant case, the Supreme Court states that:

> *"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."*
>
> *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."*

Accordingly, considering that the Western Union Money Transfer Service transactions of PETNET, Inc., 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

Copyright 2020 CD Technologies Asia, Inc.

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 180 of the National Internal Revenue Code of 1997, as amended.

2. DST under Section 181 of the National Internal Revenue Code of 1997, as amended.

Section 181 of the National Internal Revenue Code of 1997, as amended, provides that:

> *"SEC. 181. Stamp Tax Upon Acceptance of Bills of Exchange and Others. — Upon any acceptance or payment of any bill of exchange or order for the payment of money purporting to be drawn in a foreign country but payable in the Philippines, there shall be collected a documentary stamp tax of Sixty centavos (P0.60)* [3] *on each Two hundred pesos (P200), or fractional part thereof, of the face value of any such bill of exchange, or order, or the Philippine equivalent to such value, if expressed in foreign currency."* (Underscoring supplied)

While the Western Union Money Transfer Service transactions of PETNET, Inc. are not considered bills of exchange as discussed above, the 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." The transactions, therefore, are subject to DST under Section 181 of the National Internal Revenue Code of 1997, as amended.

It is worthwhile to note, however, that Section 35 of RA No. 8042, [4] as amended by RA No. 10022 [5] states, *viz.*:

> *"SEC. 35. Exemption from Travel Tax Documentary Stamp and Airport Fee. — All laws to the contrary notwithstanding, the migrant workers shall be exempt from the payment of travel tax and airport-fee upon proper showing of proof of entitlement by the POEA.*
>
> *The remittances of all overseas Filipino workers, upon showing of the same proof of entitlement by the overseas Filipino worker's beneficiary or recipient, shall be exempt from the payment of documentary stamp tax."* (Underscoring supplied)

Thus, notwithstanding Section 181 of the National Internal Revenue Code of 1997, as amended, remittances of overseas Filipino workers thru Western Union Money Transfer Service transactions of PETNET, Inc. are exempt from DST upon proper showing of proof of entitlement by the overseas Filipino worker's beneficiary or recipient.

3. DST under Section 182 of the National Internal Revenue Code of 1997, as amended.

Copyright 2020 CD Technologies Asia, Inc.

Section 182 of the National Internal Revenue Code of 1997, as amended, states that:

> *"SEC. 182. Stamp Tax on Foreign Bills of Exchange and Letters of Credit. — On all foreign bills of exchange and letters of credit (including orders, by telegraph or otherwise, for the payment of money issued by express or steamship companies or by any person or persons) drawn in but payable out of the Philippines in a set of three (3) or more according to the custom of merchants and bankers, there shall be collected a documentary stamp tax of Sixty centavos (P0.60)* [6] *on each Two hundred pesos (P200), or fractional part thereof, of the face value of any such bill of exchange or letter of credit, or the Philippine equivalent of such face value, if expressed in foreign currency."*

This section imposes a documentary stamp tax on (1) foreign bills of exchange, (2) letters of credit, and (3) orders, by telegraph or otherwise, for the payment of money issued by express or steamship companies or by any person or persons. This enumeration is further limited by the qualification that they should be drawn in the Philippines and payable outside of the Philippines.

A "foreign bill of exchange" is one which may be drawn outside the Philippines, payable outside the Philippines, or both drawn and payable outside of the Philippines. Section 129 of the Negotiable Instruments Law states that:

> *"Sec. 129. Inland and foreign bills of exchange. — An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within the Philippines. Any other bill is a foreign bill. . . ."*

On the other hand, the Code of Commerce loosely defines a "letter of credit" and provides for its essential conditions, *viz.*:

> *"Art. 567. Letters of credit are those issued by one merchant to another or for the purpose of attending to a commercial transaction."*
>
> *"Art 568. The essential conditions of letters of credit shall be:*
>
> *1. To be issued in favor of a definite person and not to order.*
>
> *2. To be limited to a fixed and specified amount, or to one or more undetermined amounts, but within a maximum the limits of which has to be stated exactly."*

It is a financial device developed by merchants as a convenient and relatively safe mode of dealing with sales of goods to satisfy the seemingly irreconcilable interests of a seller, who refuses to part with his goods before he is paid, and a buyer, who wants to have

Copyright 2020 CD Technologies Asia, Inc.

control of the goods before paying. [7]

Moreover, Revenue Regulations No. 26 explains the phrase "orders, by telegraph or otherwise, for the payment of money" as follows:

> *"SECTION 51. What may be regarded as telegraphic transfer. — a local bank cables to a certain bank in a foreign country with which bank said local bank has a credit, and directs that foreign bank to pay to another bank or person in the same locality a certain sum of money, the document for and in respect such transaction will be regarded as a telegraphic transfer, taxable under the provisions of Section 1449(i) of the Administrative Code."*

In a Western Union Money Transfer Service transaction of PETNET, Inc., 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 foreign bill of exchange, a letter of credit, nor a telegraphic transfer. Thus, it is not subject to DST under Section 182 of the National Internal Revenue Code of 1997, as amended.

In view of the foregoing, the Western Union Money Transfer Service transactions of PETNET, Inc. are not subject to DST under Sections 180 and 182 of the National Internal Revenue Code of 1997, as amended, but subject to DST under Section 181 of the same Code, except those remittances of all overseas Filipino workers, upon proper showing of proof of entitlement by the overseas Filipino worker's beneficiary or recipient.

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,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. Republic Act (RA) No. 10963 increased the tax rate from 0.30 to 0.60 effective January 01, 2018.
2. G.R. Nos. 166018 & 167728, 4 June 2014.
3. Republic Act (RA) No. 10963 increased the tax rate from 0.30 to 0.60 effective January 01, 2018.
4. Migrant Workers and Overseas Filipinos Act of 1995.

Copyright 2020 CD Technologies Asia, Inc.

5. An Act Amending Republic Act No. 8042, Otherwise Known as the Migrant Workers and Overseas Filipinos Act of 1995, as Amended, further Improving the Standard of Protection and Promotion of the Welfare of Migrant Workers, their Families and Overseas Filipinos in Distress, and for Other Purposes.
6. Republic Act (RA) No. 10963 increased the tax rate from 0.30 to 0.60 effective January 01, 2018.
7. *Bank of America v. Court of Appeals*, G.R. No. 105395, 10 December 1993, 228 SCRA 357 citing William S. Shaterian, Export-Import Banking: The Instruments and Operations Utilized by American Exporters and Importers and Their Banks in Financing Foreign Trade, 284-374 (1947).

Copyright 2020 CD Technologies Asia, Inc.