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

Sections 180, 181, and 182 of the Tax Code of 1997, as amended
BIR Ruling No. 0345-2019; BIR Ruling No. OT-223-2021
OT - 326 - 2021
AUG 31 2021

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Attention: **ATTY. BENEDICT R. TUGONON**
and
ATTY. ALYANNA PAULINE C. APACIBLE

Gentlemen:

This refers to your request on behalf of your client, Vantage Financial Corporation ("VFC"), for a ruling confirming that the money transfer remittances which it releases to recipients in the Philippines on behalf of various offshore money transfer companies, including among other, Western Union, are exempt from documentary stamp tax (DST) under Sections 180, 181, and 182 of the National Internal Revenue Code (Tax Code) of 1997, as amended.

It is represented that VFC, doing business under the name and style of eBiz, with Taxpayer Identification Number (TIN) is a financial service corporation duly organized and existing under the laws of the Philippines, with principal office address at 15th Floor, PSE Tower, 5th Avenue corner 28th Street, Bonifacio Global City, Taguig. Its main business is offering financial services through its own branches and sub-agents. These financial services include money remittances or transfer, ticketing, bills payment and foreign exchange. Money transfers through global partners, such as and primarily with Western Union, are currently its core undertaking (the "Money Transfers").

In view of the foregoing, you now request for confirmation that VFC's Money Transfers are not covered and consequently exempt from the DST imposed under Sections 180, 181, and 182 of the Tax Code of 1997, as amended.

In reply, please be informed as follows:

1. DST under Sections 180 and 181 of the Tax Code of 1997, as amended.

Sections 180 and 181 of the Tax Code of 1997, as amended, state that:

> *"SEC. 180. Stamp Tax on All Bills of Exchange or Drafts. - On all bill 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."*

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[1] Republic Act (RA) No. 10963 increased the tax rate from 0.30 to 0.60 effective January 01, 2018.

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> *"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)[2] 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)

A bill of exchange is defined under Section 126 of the Negotiable Instrument 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 (RR) 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."*

In the case of *The Hongkong and Shanghai Banking Corporation Limited-Philippine Branches vs. Commissioner of Internal Revenue*[3], the Supreme Court states that:

> *"The Court agrees with the CTA that the* ***DST under Section 181 of the Tax Code is levied on the acceptance or payment of "a bill of exchange purporting to be drawn in a foreign country but payable in the Philippines"*** *and that* ***"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."*** *A bill of exchange is one of two general forms of negotiable instruments under the Negotiable Instruments Law.*
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> *The Court further agrees with the CTA that the electronic messages of HSBC's investor-clients containing instructions to debit their respective local or foreign currency accounts in the Philippines and pay a certain named recipient also residing in the Philippines is not the transaction contemplated under Section 181 of the Tax Code as such instructions are "parallel to an automatic bank transfer of local funds from a savings account to a checking account 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.*
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> *More fundamentally, the instructions given through electronic messages that are subjected to DST in these cases are not negotiable instruments as they do*

[2] RA No. 10963 increased the tax rate from 0.30 to 0.60 effective January 01, 2018.

[3] G.R. Nos. 166018 & 167728, June 4, 2014

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:*
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> *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.*

> *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)

Accordingly, considering that the Money Transfers of VFC 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 Sections 180 and 181 of the Tax Code of 1997, as amended.

2. DST under Section 182 of the Tax Code of 1997, as amended.

Section 182 of the Tax 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)* [4] *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."*
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> *"Art 568. The essential conditions of letters of credit shall be:*
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> *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

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[4] RA No. 10963 increased the tax rate from 0.30 to 0.60 effective January 01, 2018.

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refuses to part with his goods before he is paid, and a buyer, who wants to have control of the goods before paying.[5]

Moreover, RR 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 the Money Transfers of VFC, 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, they are not subject to DST under Section 182 of the Tax Code of 1997, as amended.

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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[5] 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).