



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

THE HONGKONG AND SHANGHAI
BANKING CORPORATION
LIMITED-PHILIPPINE BRANCHES,
Petitioner,

G.R. No. 166018

— versus —

COMMISSIONER OF INTERNAL
REVENUE,
Respondent;

x ----- x

THE HONGKONG AND SHANGHAI
BANKING CORPORATION
LIMITED-PHILIPPINE BRANCHES,
Petitioner,

G.R. No. 167728

SERENO, CJ.,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

— versus —

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

JUN 04 2014

x ----- x

DECISION

LEONARDO-DE CASTRO, J.:

These petitions for review on *certiorari*¹ assail the Decision² and Resolution dated July 8, 2004 and October 25, 2004, respectively, of the Court of Appeals in CA-G.R. SP No. 77580, as well as the Decision³ and Resolution dated September 2, 2004 and April 4, 2005, respectively, of the

¹ Under Rule 45 of the Rules of Court.

² *Rollo* (G.R. No. 166018), pp. 27-37; penned by Associate Justice Conrado M. Vasquez, Jr. with Associate Justices Josefina Guevara-Salonga and Fernanda Lampas Peralta, concurring.

³ *Rollo* (G.R. No. 167728), pp. 31-41; penned by Associate Justice Marina L. Buzon with Associate Justices Mario L. Guarifia III and Hakim S. Abdulwahid, concurring.

Court of Appeals in CA-G.R. SP No. 70814. The respective Decisions in the said cases similarly reversed and set aside the decisions of the Court of Tax Appeals (CTA) in CTA Case Nos. 5951⁴ and 6009,⁵ respectively, and dismissed the petitions of petitioner Hongkong and Shanghai Banking Corporation Limited-Philippine Branches (HSBC). The corresponding Resolutions, on the other hand, denied the respective motions for reconsideration of the said Decisions.

HSBC performs, among others, custodial services on behalf of its investor-clients, corporate and individual, resident or non-resident of the Philippines, with respect to their passive investments in the Philippines, particularly investments in shares of stocks in domestic corporations. As a custodian bank, HSBC serves as the collection/payment agent with respect to dividends and other income derived from its investor-clients' passive investments.⁶

HSBC's investor-clients maintain Philippine peso and/or foreign currency accounts, which are managed by HSBC through instructions given through electronic messages. The said instructions are standard forms known in the banking industry as SWIFT, or "Society for Worldwide Interbank Financial Telecommunication." In purchasing shares of stock and other investment in securities, the investor-clients would send electronic messages from abroad instructing HSBC to debit their local or foreign currency accounts and to pay the purchase price therefor upon receipt of the securities.⁷

Pursuant to the electronic messages of its investor-clients, HSBC purchased and paid Documentary Stamp Tax (DST) from September to December 1997 and also from January to December 1998 amounting to ₱19,572,992.10 and ₱32,904,437.30, respectively, broken down as follows:

A. September to December 1997

September 1997	₱ 6,981,447.90
October 1997	6,209,316.60
November 1997	3,978,510.30
December 1997	2,403,717.30
Total	₱19,572,992.10

B. January to December 1998

January 1998	₱ 3,328,305.60
February 1998	4,566,924.90
March 1998	5,371,797.30
April 1998	4,197,235.50

⁴ *Rollo* (G.R. No. 166018), pp. 39-48.

⁵ *Rollo* (G.R. No. 167728), pp. 48-64.

⁶ *Id.* at 32.

⁷ *Id.*

May 1998	2,519,587.20
June 1998	2,301,333.00
July 1998	1,586,404.50
August 1998	1,787,359.50
September 1998	1,231,828.20
October 1998	1,303,184.40
November 1998	2,026,379.70
December 1998	2,684,097.50
Total	₱32,904,437.30

On August 23, 1999, the Bureau of Internal Revenue (BIR), thru its then Commissioner, Beethoven Rualo, issued BIR Ruling No. 132-99 to the effect that instructions or advises from abroad on the management of funds located in the Philippines which do not involve transfer of funds from abroad are not subject to DST. BIR Ruling No. 132-99 reads:

Date: August 23, 1999

**FERRY TOLEDO VICTORINO GONZAGA
& ASSOCIATES**

G/F AFC Building, Alfaro St.
Salcedo Village, Makati
Metro Manila

Attn: Atty. Tomas C. Toledo
Tax Counsel

Gentlemen:

This refers to your letter dated July 26, 1999 requesting on behalf of your clients, the CITIBANK & STANDARD CHARTERED BANK, for a ruling as to whether or not the electronic instructions involving the following transactions of residents and non-residents of the Philippines with respect to their local or foreign currency accounts are subject to documentary stamp tax under Section 181 of the 1997 Tax Code, viz:

A. Investment purchase transactions:

An overseas client sends instruction to its bank in the Philippines to either:

- (i) debit its local or foreign currency account and to pay a named recipient in the Philippines; or
- (ii) receive funds from another bank in the Philippines for deposit into its account and to pay a named recipient in the Philippines.”

The foregoing transactions are carried out under instruction from abroad and [do] not involve actual fund transfer since the funds are

already in the Philippine accounts. The instructions are in the form of electronic messages (i.e., SWIFT MT 100 or MT 202 and/or MT 521). In both cases, the payment is against the delivery of investments purchased. The purchase of investments and the payment comprise one single transaction. DST has already been paid under Section 176 for the investment purchase.

B. Other transactions:

An overseas client sends an instruction to its bank in the Philippines to either:

- (i) debit its local or foreign currency account and to pay a named recipient, who may be another bank, a corporate entity or an individual in the Philippines; or
- (ii) receive funds from another bank in the Philippines for deposit to its account and to pay a named recipient, who may be another bank, a corporate entity or an individual in the Philippines.”

The above instruction is in the form of an electronic message (i.e., SWIFT MT 100 or MT 202) or tested cable, and may not refer to any particular transaction.

The opening and maintenance by a non-resident of local or foreign currency accounts with a bank in the Philippines is permitted by the Bangko Sentral ng Pilipinas, subject to certain conditions.

In reply, please be informed that pursuant to Section 181 of the 1997 Tax Code, which 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 Thirty centavos (₱0.30) on each Two hundred pesos (₱200), or fractional part thereof, of the face value of any such bill of exchange, or order, or Philippine equivalent of such value, if expressed in foreign currency. (Underscoring supplied.)

a documentary stamp tax shall be imposed on any bill of exchange or order for payment purporting to be drawn in a foreign country but payable in the Philippines.

Under the foregoing provision, the documentary stamp tax shall be levied on the instrument, *i.e.*, a bill of exchange or order for the payment of money, which purports to draw money from a foreign country but payable in the Philippines. In the instant case, however, while the payor is

residing outside the Philippines, he maintains a local and foreign currency account in the Philippines from where he will draw the money intended to pay a named recipient. The instruction or order to pay shall be made through an electronic message, *i.e.*, SWIFT MT 100 or MT 202 and/or MT 521. Consequently, there is no negotiable instrument to be made, signed or issued by the payee. In the meantime, such electronic instructions by the non-resident payor cannot be considered as a transaction *per se* considering that the same do not involve any transfer of funds from abroad or from the place where the instruction originates. Insofar as the local bank is concerned, such instruction could be considered only as a memorandum and shall be entered as such in its books of accounts. The actual debiting of the payor's account, local or foreign currency account in the Philippines, is the actual transaction that should be properly entered as such.

Under the Documentary Stamp Tax Law, the mere withdrawal of money from a bank deposit, local or foreign currency account, is not subject to DST, unless the account so maintained is a current or checking account, in which case, the issuance of the check or bank drafts is subject to the documentary stamp tax imposed under Section 179 of the 1997 Tax Code. In the instant case, and subject to the physical impossibility on the part of the payor to be present and prepare and sign an instrument purporting to pay a certain obligation, the withdrawal and payment shall be made in cash. In this light, the withdrawal shall not be subject to documentary stamp tax. The case is parallel to an automatic bank transfer of local funds from a savings account to a checking account maintained by a depositor in one bank.

Likewise, the receipt of funds from another bank in the Philippines for deposit to the payee's account and thereafter upon instruction of the non-resident depositor-payor, through an electronic message, the depository bank to debit his account and pay a named recipient shall not be subject to documentary stamp tax.

It should be noted that the receipt of funds from another local bank in the Philippines by a local depository bank for the account of its client residing abroad is part of its regular banking transaction which is not subject to documentary stamp tax. Neither does the receipt of funds makes the recipient subject to the documentary stamp tax. The funds are deemed to be part of the deposits of the client once credited to his account, and which, thereafter can be disposed in the manner he wants. The payor-client's further instruction to debit his account and pay a named recipient in the Philippines does not involve transfer of funds from abroad. Likewise, as stated earlier, such debit of local or foreign currency account in the Philippines is not subject to the documentary stamp tax under the aforementioned Section 181 of the Tax Code.

In the light of the foregoing, this Office hereby holds that the instruction made through an electronic message by non-resident payor-client to debit his local or foreign currency account maintained in the Philippines and to pay a certain named recipient also residing in the Philippines is not the transaction contemplated under Section 181 of the 1997 Tax Code. Such being the case, such electronic instruction purporting to draw funds from a local account intended to be paid to a named recipient in the Philippines is not subject to documentary stamp tax

imposed under the foregoing Section.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation it shall be disclosed that the facts are different, this ruling shall be considered null and void.

Very truly yours,

(Sgd.) BEETHOVEN L. RUALO
Commissioner of Internal Revenue⁸

With the above BIR Ruling as its basis, HSBC filed on October 8, 1999 an administrative claim for the refund of the amount of ₱19,572,992.10 allegedly representing erroneously paid DST to the BIR for the period covering September to December 1997.

Subsequently, on January 31, 2000, HSBC filed another administrative claim for the refund of the amount of ₱32,904,437.30 allegedly representing erroneously paid DST to the BIR for the period covering January to December 1998.

As its claims for refund were not acted upon by the BIR, HSBC subsequently brought the matter to the CTA as CTA Case Nos. 5951 and 6009, respectively, in order to suspend the running of the two-year prescriptive period.

The CTA Decisions dated May 2, 2002 in CTA Case No. 6009 and dated December 18, 2002 in CTA Case No. 5951 favored HSBC. Respondent Commissioner of Internal Revenue was ordered to refund or issue a tax credit certificate in favor of HSBC in the reduced amounts of ₱30,360,570.75 in CTA Case No. 6009 and ₱16,436,395.83 in CTA Case No. 5951, representing erroneously paid DST that have been sufficiently substantiated with documentary evidence. The CTA ruled that HSBC is entitled to a tax refund or tax credit because Sections 180 and 181 of the 1997 Tax Code do not apply to electronic message instructions transmitted by HSBC's non-resident investor-clients:

The instruction made through an electronic message by a non-resident investor-client, which is to debit his local or foreign currency account in the Philippines and pay a certain named recipient also residing in the Philippines is not the transaction contemplated in Section 181 of the Code. In this case, the withdrawal and payment shall be made in cash. It is 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 act of debiting the account is not subject to the documentary stamp tax under Section 181. Neither is the transaction subject to the documentary stamp tax under Section 180 of the same Code. These electronic message instructions cannot be considered negotiable instruments as they lack the feature of negotiability, which, is the ability to be transferred (Words and

⁸

Id. at 44-47.

Phrases).

These instructions are considered as mere memoranda and entered as such in the books of account of the local bank, and the actual debiting of the payor's local or foreign currency account in the Philippines is the actual transaction that should be properly entered as such.⁹

The respective dispositive portions of the Decisions dated May 2, 2002 in CTA Case No. 6009 and dated December 18, 2002 in CTA Case No. 5951 read:

II. CTA Case No. 6009

WHEREFORE, in the light of all the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of Petitioner the amount of ₱30,360,570.75 representing erroneous payment of documentary stamp tax for the taxable year 1998.¹⁰

II. CTA Case No. 5951

WHEREFORE, in the light of the foregoing, the instant petition is hereby partially granted. Accordingly, respondent is hereby **ORDERED** to **REFUND**, or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the reduced amount of ₱16,436,395.83 representing erroneously paid documentary stamp tax for the months of September 1997 to December 1997.¹¹

However, the Court of Appeals reversed both decisions of the CTA and ruled that the electronic messages of HSBC's investor-clients are subject to DST. The Court of Appeals explained:

At bar, [HSBC] performs custodial services in behalf of its investor-clients as regards their passive investments in the Philippines mainly involving shares of stocks in domestic corporations. These investor-clients maintain Philippine peso and/or foreign currency accounts with [HSBC]. Should they desire to purchase shares of stock and other investments securities in the Philippines, the investor-clients send their instructions and advises via electronic messages from abroad to [HSBC] in the form of SWIFT MT 100, MT 202, or MT 521 directing the latter to debit their local or foreign currency account and to pay the purchase price upon receipt of the securities (*CTA Decision, pp. 1-2; Rollo, pp. 41-42*). Pursuant to Section 181 of the NIRC, [HSBC] was thus required to pay [DST] based on its acceptance of these electronic messages – which, as [HSBC] readily admits in its petition filed before the [CTA], were essentially orders to pay the purchases of securities made by its client-investors (*Rollo, p. 60*).

Appositely, the BIR correctly and legally assessed and collected the [DST] from [HSBC] considering that the said tax was levied against

⁹ Id. at 55.

¹⁰ Id. at 63.

¹¹ *Rollo* (G.R. No. 166018), p. 47.

the acceptances and payments by [HSBC] of the subject electronic messages/orders for payment. The issue of whether such electronic messages may be equated as a written document and thus be subject to tax is beside the point. As We have already stressed, Section 181 of the law cited earlier imposes the [DST] not on the bill of exchange or order for payment of money but on the acceptance or payment of the said bill or order. The acceptance of a bill or order is the signification by the drawee of its assent to the order of the drawer to pay a given sum of money while payment implies not only the assent to the said order of the drawer and a recognition of the drawer's obligation to pay such aforesaid sum, but also a compliance with such obligation (*Philippine National Bank vs. Court of Appeals*, 25 SCRA 693 [1968]; *Prudential Bank vs. Intermediate Appellate Court*, 216 SCRA 257 [1992]).

What is vital to the valid imposition of the [DST] under Section 181 is the existence of the requirement of acceptance or payment by the drawee (in this case, [HSBC]) of the order for payment of money from its investor-clients and that the said order was drawn from a foreign country and payable in the Philippines. These requisites are surely present here.

It would serve the parties well to understand the nature of the tax being imposed in the case at bar. In *Philippine Home Assurance Corporation vs. Court of Appeals* (301 SCRA 443 [1999]), the Supreme Court ruled that [DST is] levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments, independently of the legal status of the transactions giving rise thereto. In the same case, the High Court also declared – citing *Du Pont vs. United States* (300 U.S. 150, 153 [1936])

The tax is not upon the business transacted but is an excise upon the privilege, opportunity, or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself. x x x.

To reiterate, the subject [DST] was levied on the acceptance and payment made by [HSBC] pursuant to the order made by its client-investors as embodied in the cited electronic messages, through which the herein parties' privilege and opportunity to transact business respectively as drawee and drawers was exercised, separate and apart from the circumstances and conditions related to such acceptance and subsequent payment of the sum of money authorized by the concerned drawers. Stated another way, the [DST] was exacted on [HSBC's] exercise of its privilege under its drawee-drawer relationship with its client-investor through the execution of a specific instrument which, in the case at bar, is the acceptance of the order for payment of money. The acceptance of a bill or order for payment may be done in writing by the drawee in the bill or order itself, or in a separate instrument (*Prudential Bank vs. Intermediate Appellate Court, supra.*) Here, [HSBC]'s acceptance of the orders for the payment of money was veritably 'done in writing in a separate instrument' each time it debited the local or foreign currency accounts of its client-investors pursuant to the latter's instructions and advises sent by electronic messages to [HSBC]. The [DST] therefore must be paid upon the execution of the specified instruments or facilities covered by the tax – in

this case, the acceptance by [HSBC] of the order for payment of money sent by the client-investors through electronic messages. x x x.¹²

Hence, these petitions.

HSBC asserts that the Court of Appeals committed grave error when it disregarded the factual and legal conclusions of the CTA. According to HSBC, in the absence of abuse or improvident exercise of authority, the CTA's ruling should not have been disturbed as the CTA is a highly specialized court which performs judicial functions, particularly for the review of tax cases. HSBC further argues that the Commissioner of Internal Revenue had already settled the issue on the taxability of electronic messages involved in these cases in BIR Ruling No. 132-99 and reiterated in BIR Ruling No. DA-280-2004.¹³

The Commissioner of Internal Revenue, on the other hand, claims that Section 181 of the 1997 Tax Code imposes DST on the acceptance or payment of a bill of exchange or order for the payment of money. The DST under Section 18 of the 1997 Tax Code is levied on HSBC's exercise of a privilege which is specifically taxed by law. BIR Ruling No. 132-99 is inconsistent with prevailing law and long standing administrative practice, respondent is not barred from questioning his own revenue ruling. Tax refunds like tax exemptions are strictly construed against the taxpayer.¹⁴

The Court finds for HSBC.

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.¹⁵

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

¹² *Rollo* (G.R. No. 167728), pp. 37-39.

¹³ *Id.* at 174-187; Memorandum for HSBC, pp. 13-26.

¹⁴ Memorandum for the Commissioner of Internal Revenue, *Rollo* (G.R. No. 166018), pp. 154-161.

¹⁵ The other type is the promissory note. *See* Titles II and III, Negotiable Instruments Law.

“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.¹⁶

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; and, 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.

Section 181 of the 1997 Tax Code, which governs HSBC’s claim for tax refund for taxable year 1998 subject of G.R. No. 167728, provides:

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 Thirty centavos (₱0.30) on each Two hundred pesos (₱200), or fractional part thereof, of the face value of any such bill of exchange, or order, or the Philippine equivalent of such value, if expressed in foreign currency. (Emphasis supplied.)

¹⁶ Rollo (G.R. No. 167728), p. 55.

Section 230 of the 1977 Tax Code, as amended, which governs HSBC's claim for tax refund for DST paid during the period September to December 1997 and subject of G.R. No. 166018, is worded exactly the same as its counterpart provision in the 1997 Tax Code quoted above.

The origin of the above provision is Section 117 of the Tax Code of 1904,¹⁷ which provided:

SECTION 117. The **acceptor or acceptors of any bill of exchange or order for the payment of any sum of money drawn or purporting to be drawn in any foreign country but payable in the Philippine Islands**, shall, before paying or accepting the same, place thereupon a stamp in payment of the tax upon such document in the same manner as is required in this Act for the stamping of inland bills of exchange or promissory notes, and no bill of exchange shall be paid nor negotiated until such stamp shall have been affixed thereto.¹⁸ (Emphasis supplied.)

It then became Section 30(h) of the 1914 Tax Code¹⁹:

SEC. 30. *Stamp tax upon documents and papers.* – Upon documents, instruments, and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right, or property incident thereto documentary taxes for and in respect of the transaction so had or accomplished shall be paid as hereinafter prescribed, by the persons making, signing, issuing, accepting, or transferring the same, and at the time such act is done or transaction had:

X X X X

(h) Upon any **acceptance or payment upon acceptance of any bill of exchange or order for the payment of money purporting to be drawn in a foreign country but payable in the Philippine Islands**, on each two hundred pesos, or fractional part thereof, of the face value of any such bill of exchange or order, or the Philippine equivalent of such value, if expressed in foreign currency, two centavos[.] (Emphasis supplied.)

¹⁷ Act No. 1189.

¹⁸ SECTION 116. There shall be levied, collected, and paid for and in respect to the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in this section, or for or in respect to the vellum, parchment, or paper upon which such instruments, matters, or things or any of them shall be written or printed by any person or persons who shall make, sign, or issue the same, on and after January first, nineteen hundred and five, the several taxes following:

X X X X

Second. X X X (b) on all bills of exchange (between points within the Philippine Islands), drafts and certificates of deposit drawing interest, or order for the payment of any sum of money otherwise than at sight or on demand, and on all promissory notes, except bank notes issued for circulation, and on each renewal of any such note, on each two hundred pesos or fractional part thereof, of the face value of any such bill of exchange, draft, certificate of deposit, or note, two centavos; X X X.

¹⁹ Act No. 2339, February 27, 1914.

It was implemented by Section 46 in relation to Section 39 of Revenue Regulations No. 26,²⁰ as amended:

SEC. 39. A Bill of Exchange is one that “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.”

SEC. 46. *Bill of Exchange, etc.* – **When any bill of exchange or order for the payment of money drawn in a foreign country but payable in this country whether at sight or on demand or after a specified period after sight or from a stated date, is presented for acceptance or payment, there must be affixed upon acceptance or payment of documentary stamp equal to ₱0.02 for each ₱200 or fractional part thereof.** (Emphasis supplied.)

It took its present form in Section 218 of the Tax Code of 1939,²¹ which provided:

SEC. 218. *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 four centavos on each two hundred pesos, or fractional part thereof, of the face value of any such bill of exchange or order, or the Philippine equivalent of such value, if expressed in foreign currency. (Emphasis supplied.)

It then became Section 230 of the 1977 Tax Code,²² as amended by Presidential Decree Nos. 1457 and 1959, which, as stated earlier, was worded exactly as Section 181 of the current Tax Code:

SEC. 230. *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 thirty centavos on each two hundred pesos, or fractional part thereof, of the face value of any such bill of exchange, or order, or the Philippine equivalent of such value, if expressed in foreign currency. (Emphasis supplied.)

The pertinent provision of the present Tax Code has therefore remained substantially the same for the past one hundred years. The identical text and common history of Section 230 of the 1977 Tax Code, as amended, and the 1997 Tax Code, as amended, show that the law imposes 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.

²⁰ Dated March 26, 1924. Entitled “Revised Documentary Stamp Tax Regulations.”

²¹ Commonwealth Act No. 466, June 15 1939.

²² Presidential Decree No. 1158, June 3, 1977.

DST is an excise tax on the exercise of a right or privilege to transfer obligations, rights or properties incident thereto.²³ Under Section 173 of the 1997 Tax Code, the persons primarily liable for the payment of the DST are those (1) making, (2) signing, (3) issuing, (4) accepting, or (5) transferring the taxable documents, instruments or papers.²⁴

In general, DST is levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. Examples of such privileges, the exercise of which, as effected through the issuance of particular documents, are subject to the payment of DST are leases of lands, mortgages, pledges and trusts, and conveyances of real property.²⁵

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.²⁶ Acceptance of a bill of exchange has a very definite meaning in law.²⁷ 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 exchange²⁸] 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.

²³ *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, 522 Phil. 693, 698 (2006).

²⁴ *Philacor Credit Corporation v. Commissioner of Internal Revenue*, G.R. No. 169899, February 6, 2013, 690 SCRA 28, 37.

²⁵ *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, supra note 23 at 698-699.

²⁶ *Philacor Credit Corporation v. Commissioner of Internal Revenue*, supra note 24.

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.

²⁷ *Id.* In this case, the Court stated that “acceptance” has “a narrow definition” with respect to foreign bills of exchange, and it is not limited to the common usage of the word “accepting” as in receiving.

²⁸ The relevant portion of Section 191 of the Negotiable Instruments Law provides that “Bill” “means bill of exchange.”

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."²⁹ Once the drawee accepts, he becomes an acceptor.³⁰ As acceptor, he engages to pay the bill of exchange according to the tenor of his acceptance.³¹

Acceptance is made upon presentment of the bill of exchange, or within 24 hours after such presentment.³² Presentment for acceptance is the production or exhibition of the bill of exchange to the drawee for the purpose of obtaining his acceptance.³³

Presentment for acceptance is necessary only in the instances where the law requires it.³⁴ In the instances where presentment for acceptance is not necessary, the holder of the bill of exchange can proceed directly to presentment for payment.

Presentment for payment is the presentation of the instrument to the person primarily liable for the purpose of demanding and obtaining payment thereof.³⁵

Thus, whether it be presentment for acceptance or presentment for payment, the negotiable instrument has to be produced and shown to the drawee for acceptance or to the acceptor for payment.

Revenue Regulations No. 26 recognizes that the acceptance or payment (of bills of exchange or orders for the payment of money that have been drawn abroad but payable in the Philippines) that is subjected to DST

²⁹ *Hunt v. Security State Bank*, 179 Pac. 248 (1919), cited in De Leon, Hector, *The Philippine Negotiable Instruments Law (and Allied Laws) Annotated* (2010 edition), p. 343.

³⁰ De Leon, *id.* at 239.

³¹ See Section 62, *Negotiable Instruments Law*.

³² Sec. 136 of the *Negotiable Instruments Law* provides:

Sec. 136. *Time allowed drawee to accept.* – The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; the acceptance, if given, dates as of the day of presentation.

³³ Campos, Jose Jr., *Notes and Selected Cases on Negotiable Instruments Law* (5th Edition), pp. 709-710.

³⁴ Section 143 of the *Negotiable Instruments Law* enumerates the cases where presentment for acceptance is essential:

Sec. 143. *When presentment for acceptance must be made.* – Presentment for acceptance must be made:

(a) Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or
(b) Where the bill expressly stipulates that it shall be presented for acceptance; or
(c) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

³⁵ Campos, *supra* note 33, p. 715.

under Section 181 of the 1997 Tax Code is done after presentment for acceptance or presentment for payment, respectively. In other words, the acceptance or payment of the subject bill of exchange or order for the payment of money is done when there is presentment either for acceptance or for payment of the bill of exchange or order for the payment of money.

Applying the above concepts to the matter subjected to DST in these cases, the electronic messages received by HSBC from its investor-clients abroad instructing the former to debit the latter's local and foreign currency accounts and to pay the purchase price of shares of stock or investment in securities do not properly qualify as either presentment for acceptance or presentment for payment. There being neither presentment for acceptance nor presentment for payment, then there was no acceptance or payment that could have been subjected to DST to speak of.

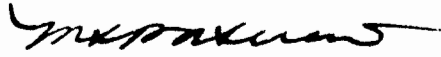
Indeed, there had been no acceptance of a bill of exchange or order for the payment of money on the part of HSBC. To reiterate, there was no bill of exchange or order for the payment drawn abroad and made payable here in the Philippines. Thus, there was no acceptance as the electronic messages did not constitute the written and signed manifestation of HSBC to a drawer's order to pay money. As HSBC could not have been an acceptor, then it could not have made any payment of a bill of exchange or order for the payment of money drawn abroad but payable here in the Philippines. In other words, HSBC could not have been held liable for DST under Section 230 of the 1977 Tax Code, as amended, and Section 181 of the 1997 Tax Code as it is not "a person making, signing, issuing, **accepting**, or, transferring" the taxable instruments under the said provision. Thus, HSBC erroneously paid DST on the said electronic messages for which it is entitled to a tax refund.

WHEREFORE, the petitions are hereby **GRANTED** and the Decisions dated May 2, 2002 in CTA Case No. 6009 and dated December 18, 2002 in CTA Case No. 5951 of the Court of Tax Appeals are **REINSTATED**.

SO ORDERED.

Teresito Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

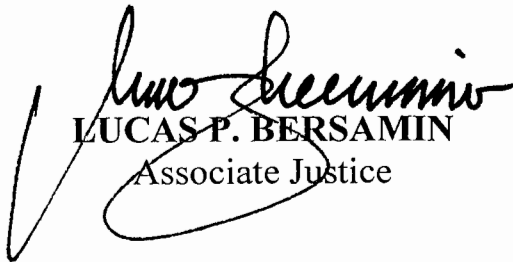
WE CONCUR:



MARIA LOURDES P. A. SERENO

Chief Justice

Chairperson



LUCAS P. BERSAMIN
Associate Justice




MARTIN S. VILLARAMA, JR.
Associate Justice



BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice