

FIRST DIVISION

[G.R. No. 166018, June 04, 2014]

**THE HONGKONG AND SHANGHAI BANKING CORPORATION
LIMITED-PHILIPPINE BRANCHES, PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT;**

[G.R. NO. 167728]

**THE HONGKONG AND SHANGHAI BANKING CORPORATION
LIMITED-PHILIPPINE BRANCHES, PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

These petitions for review on *certiorari*^[1] assail the Decision^[2] 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 Decision^[3] and Resolution dated September 2, 2004 and April 4, 2005, respectively, of the 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. 5951^[4] 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 P19,572,992.10 and P32,904,437.30, respectively, broken down as follows:

A. September to December 1997

September 1997	P 6,981,447.90
October 1997	6,209,316.60
November 1997	3,978,510.30
December 1997	2,403,717.30
Total	P19,572,992.10

B. January to December 1998

January 1998	P 3,328,305.60
February 1998	4,566,924.90
March 1998	5,371,797.30
April 1998	4,197,235.50
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	P32,904,437.30

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 (P0.30) on each Two hundred pesos (P200), 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 Revenue^[8]

With the above BIR Ruling as its basis, HSBC filed on October 8, 1999 an administrative claim for the refund of the amount of P19,572,992.10 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 P32,904,437.30 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.