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REPUBLIC ACT NO. 9238

February 05, 2004

AN ACT AMENDING CERTAIN SECTIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, BY EXCLUDING SEVERAL SERVICES FROM THE COVERAGE OF THE VALUE-ADDED TAX AND RE-IMPOSING THE GROSS RECEIPTS TAX ON BANKS AND NON-BANK FINANCIAL INTERMEDIARIES PERFORMING QUASI-BANKING FUNCTIONS AND OTHER NON-BANK FINANCIAL INTERMEDIARIES BEGINNING JANUARY 01, 2004

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. Section 108 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"(A) Rate and Base of Tax. ~ There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of the gross receipts, derived from the sale or exchange of services, including the use or lease of properties.

The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; [services of banks, non-bank financial intermediaries and finance companies;] and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase "sale or exchange of services" shall likewise include:

(1) The lease or the use of or the right or privilege to use any copyright, patent, design or model plan, secret formula or process, goodwill, trademark, trade brand or other like property or right;

(2) The lease or the use of, or the right to use of any industrial, commercial or scientific equipment;

(3) The supply of scientific, technical, industrial or commercial knowledge or information;

(4) The supply of any assistance that is ancillary and subsidiary to and is furnished as a means of enabling the application or enjoyment of any such property, or right as is mentioned in subparagraph (2) or any such knowledge or information as is mentioned in subparagraph (3);

(5) The supply of services by a nonresident person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any brand, machinery or other apparatus purchased from such non resident person;

(6) The supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture project or scheme;

(7) The lease of motion picture films, films, tapes and discs; and

(8) The lease or the use of or the right to use radio, television, satellite transmission and cable television time.

Lease of properties shall be subject to the tax herein imposed irrespective of the place where the contract of lease or licensing agreement was executed if the property is leased or used in the Philippines.

The term "gross receipts" means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advance payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

(B) Transactions Subject to Zero Percent (0%) Rate. ~ The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;

(4) Services rendered to vessels engaged exclusively in international shipping; and

(5) Services performed by subcontractors and/or contractors in processing converting, or manufacturing goods for an enterprises whose export sales exceed seventy percent (70%) of total annual production.

(c) Determination of Tax. ~ The tax shall be computed by multiplying the total amount indicated in the official receipt by one-eleventh (1/11)."

Section. 2. Section 109 of the same Code is hereby amended by rewording paragraph (l) and inserting additional paragraphs after (z) which shall now read as follows:

"SEC. 109. Exempt Transactions. ~ The following shall be exempt from the value-added tax.

(a) Sale of nonfood agricultural products; marine and forest products in their original state by the primary producer or the owner of the land where the same are produced;

(b) Sale of cotton and cotton seeds in their original state; and copra;

(c) Sale or importation of agricultural and marine food products in their original state, livestock and poultry of a kind generally used as, or yielding or producing foods for human consumption; and breeding stock and genetic materials therefor.

Products classified under this paragraph and paragraph (a) shall be considered in their original state even if they have undergone the simple processes of preparation or preservation for the market, such as freezing, drying, salting, broiling, roasting, smoking or stripping, Polished and/or husked rice, corn grits, raw cane sugar and molasses, and ordinary salt shall be considered in their original state;

(d) Sale or importation of fertilizers; seeds, seedling and fingerlings; fish, prawn, livestock and poultry feeds, including ingredients, whether locally produced or imported, used in the manufacture of finished feeds (except specialty feeds for race horses, fighting cocks, aquarium fish, zoo animals and other animals generally considered as pets);

(e) Sale or importation of coal and natural gas, in whatever form or state, and petroleum products (except lubricating oil, processed gas, grease, wax and petrolatum) subject to excise tax imposed under title VI;

(f) Sale or importation of raw materials to be used by the buyer or importer himself in the manufacture of petroleum products subject to excise tax, except lubricating oil, processed gas, grease, wax and petrolatum;

(g) Importation of passenger and/or cargo vessels or more than five thousand tons (5,000), whether coastwise or ocean-going, including engine and spare parts of said vessels to be used by the importer himself as operator thereof;

(h) Importation of personal and household effects belonging to the residents of the Philippines returning from abroad and nonresident citizens coming to resettle in the Philippines; *Provided*, That such goods are exempt from customs duties under the Tariff and Customs Code of the Philippines;

(i) Importation of professional instruments and implements, wearing apparel, domestic animals, and personal household effects (except any vehicle, vessel, aircraft, machinery, other goods for use in the manufacture and merchandise of any kind in commercial quantity) belonging to person coming to settle in the Philippines, for their own use and not for sale, barter or exchange, accompanying such persons, or arriving within ninety (90) days before or after their arrival, upon the production of evidence satisfactory to the Commissioner, that such persons are actually coming to settle in the Philippines and that the change of residence is bona fide;

(j) Services subject to percentage tax under Title V;

(k) Services by agricultural contract growers and milling for others of palay into rice, corn into grits and sugar cane into raw sugar;

(l) Medical, dental, hospital and veterinary services except those rendered by professionals;

(m) Educational services rendered by private educational institutions, duly accredited by the Department of Education, Culture and Sports (DECS) and the Commission of Higher Education (CHED), and those rendered by government educational institutions;

(n) Sale by the artist himself of his works of art, literary works, musical compositions and similar creations, or his services performed for the production of such works;

(o) Services rendered by individuals pursuant to an employer-employee relationship;

(p) Services rendered by regional or area headquarters established in the Philippines by multinational corporations which act as supervisory, communications and coordinating centers for their affiliates, subsidiaries or branches in the Asia-Pacific Region and do not earn or derive income from the Philippines;

(q) Transaction which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree Nos. 66, 529 and 1590;

(r) Sales by agricultural cooperatives duly registered with the Cooperative Development Authority to their members as well as sale of their produce, whether in its original state or processed form, to non-members; their importation of direct farm inputs, machineries and equipment, including spare parts thereof, to be used directly and exclusively in the production and/or processing of their produce;

(s) Sales by electric cooperatives duly registered with the Cooperative Development Authority or National Electrification Administration, relative to the generation and distribution of electricity as well as their importation of machineries and equipment, including spare parts, which shall be directly used in the generation and distribution of electricity;

(t) Gross receipts from lending activities by credit or multi-purpose cooperatives duly registered with the Cooperative Development Authority whose lending operation is limited to their members;

(u) Sales by non-agricultural, non-electrical and non-credit cooperatives duly registered with the Cooperative Development Authority: *Provided*, That the share capital contribution of each member does not exceed Fifteen Thousand Pesos (P15,000) and regardless of the aggregate capital and net surplus ratably distributed among the members;

(v) Export sales by persons who are not VAT-registered;

(w) Sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business or real property utilized for low-cost and socialized housing as defined by Republic Act No. 7279, otherwise known as the Urban Development and Housing Act of 1992, and other related laws, house and lot and other residential dwellings valued at One million pesos (P1,000,000.00) and below: *Provided*, That not later than January 31st of the calendar year subsequent to the effectivity of this Act and each calendar year thereafter, the amount of One million pesos (P1,000,000) shall be adjusted to its present value using the Costumer Price Index, as published by the National Statistics Office (NSO);

(x) Lease of a residential unit with a monthly rental not exceeding Eight thousand pesos (P8,000): *Provided*, That not later than January 31st of the calendar year subsequent to the effectivity of Republic Act No. 8241 and each calendar year thereafter, the amount of Eight thousand pesos (P8,000) shall be adjusted to its present value using the Consumer Price Index as published by the National Statistics Office (NSO);

(y) Sale, importation, printing or publication of books and any newspaper, magazine, review of bulletin which appears at regular intervals with fixed prices for subscription and sale and which is not devoted principally to the publication of paid advertisements;

(z) Sale or lease of goods or properties or the performance of services other than the transactions mentioned in the preceding paragraphs, the gross annual sales and/or receipts do not exceed the amount of Five hundred fifty thousand pesos (P550,000): *Provided*, That not later than January 31st of the calendar year subsequent to the effectivity of Republic Act No. 8241 and each calendar year thereafter, the amount of Five hundred fifty thousand pesos (P550,000) shall be adjusted to its present value using the Consumer Price Index, as published by the National Statistics Office (NSO);

(aa) Services of banks, non-bank financial intermediaries performing quasi-banking functions, and other non-bank financial intermediaries;

(bb) services rendered by doctors of medicine duly registered with the professional regulatory commission (PRC); and

(cc) services rendered by lawyers duly registered with the Integrated Bar of the Philippines (IBP).

The foregoing exemptions notwithstanding, any person whose sale of goods or properties or services which are otherwise not subject to VAT, but who issue a VAT invoice or receipt therefor shall, in addition to his liability to other applicable percentage tax, if any, be liable to the tax imposed in Section 106 or 108 without the benefit of input tax credit, and such tax shall also be recognized as input tax credit to the purchaser under Section 110, all of this Code."

Section 3. Section 121 of the National Internal Revenue Code of 1997, as amended, is hereby restored with amendments to read as follows:

"Sec. 121. Tax on Banks and Non-Bank Financial Intermediaries Performing Quasi-Banking Functions. ~ There shall be collected a tax on gross receipts derived from sources within the Philippines by all banks and non-bank financial intermediaries in accordance with the following schedule:

(a) On interest, commissions and discounts from lending activities as well as income from financial leasing, on the basis of remaining maturities of instruments from which such receipts are derived:

maturity period is five (5) years or less ~ 5%

maturity period is more than five (5) years ~ 1%

(b) on dividends and equity shares in net income of subsidiaries ~ 0%

(c) on royalties, rentals of property, real or personal, profits from exchange and all other items treated as gross income under section 32 of this code ~ 5%

(d) on net trading gains within the taxable year on foreign currency, debt securities, derivatives and other similar financial instruments ~ 5%

Provided, however, that in case the maturity period referred to in paragraph (a) is shortened thru pretermination, then the maturity period shall be reckoned to end as of the date of pretermination for purposes of classifying the transaction and the correct rate shall be applied accordingly.

Provided, finally, that the generally accepted accounting principles as may be prescribed by the Bangko Sentral ng Pilipinas for the bank or non-bank financial intermediary performing quasi-banking functions shall likewise be the basis for the calculation of gross receipts.

Nothing in this code shall preclude the commissioner from imposing the same tax herein provided on persons performing similar banking activities."

Section 4. Section 122 of the National Internal Revenue Code of 1997, as amended, is hereby restored with amendments to read as follows:

"Sec. 122. Tax on Other Non-Bank Financial Intermediaries. ~ There shall be collected a tax of five percent (5%) on the gross receipts derived by other non-bank financial intermediaries doing business in the Philippines, from interest, commissions, discounts and all other items treated as gross income under this code: *Provided,* that interests, commissions and discounts from lending activities, as well as income from financial leasing, shall be taxed on the basis of remaining maturities of the instruments from which such receipts are derived, in accordance with the following schedule:

maturity period is five (5) years or less ~ 5%

maturity period is more than five (5) years ~ 1%

Provided, however, that in case the maturity period is shortened thru pretermination, then the maturity period shall be reckoned to end as of the date of pretermination for purposes of classifying the transaction and the correct rate shall be applied accordingly.

Provided, finally, that the generally accepted accounting principles as may be prescribed by the Securities and Exchange Commission for other non-bank financial intermediaries shall likewise be the basis for the calculation of gross receipts.

Nothing in this code shall preclude the Commissioner from imposing the same tax herein provided on persons performing similar financing activities."

Section 5. Implementing Rules and Regulations. – Within sixty (60) days from the effectivity of this Act, the Secretary of Finance shall, upon the recommendation of the Commissioner of Internal Revenue, promulgate the necessary rules and regulations for the effective implementation of this Act.

Section 6. Repealing Clause. – The provisions of Section 17(b) and the third paragraph, first sentence of Republic Act No. 7716; Section 11(b) of Republic Act No. 8241; Section 5, Title XIV of Republic Act No. 8424; Section 1(b) of Republic Act No. 8761 and Section 1(b) of Republic Act No. 9010; and all others laws, decrees, orders, rules and regulations, and issuances or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

Section 7. Effectivity Clause. – This Act shall take effect on January 1, 2004.