

NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



'22 JUL 11 P 4 :05

SENATE
S. No. 250

RECEIVED BY: _____

Introduced by Senator **PIA S. CAYETANO**

AN ACT
IMPOSING VALUE-ADDED TAX ON DIGITAL TRANSACTIONS IN THE PHILIPPINES, AMENDING FOR THE PURPOSE SECTIONS 105, 108, 109, 113, 114, AND 236 AND ADDING A NEW SECTION 105-A OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED

EXPLANATORY NOTE

Undoubtedly, the pandemic has greatly contributed to the sudden growth of the global digital economy, especially in the Philippines. The implementation of community quarantine, which prevented the public from going outside, encouraged Filipinos to use various online platforms to access their basic needs, such as online shopping for food, clothes, etc. They likewise heavily rely on the internet and digital services for education, work, and even entertainment. Based on the *e-Conomy Southeast Asia (SEA) Report*,¹ the Philippines is now the fastest growing internet economy in Southeast Asia, driven by e-commerce and food delivery services. Our country has seen twelve million (12,000,000) new digital consumers since the start of the pandemic in 2020, of which 63% are from non-metro areas and 99% of them intend to continue using these services even beyond the COVID-19 pandemic.

As the country moves towards more digitalization, so too must our tax regime. The government needs to catch-up with the trends and constantly expend an all-out

¹ Adobo Magazine. (2021, November 11). Insight: e-Conomy SEA Report 2021: PH now the fastest growing internet economy in SEA, driven by e-commerce and food delivery services. *Adobo Magazine*. <https://www.adobomagazine.com/insight/insight-e-conomy-sea-report-2021-ph-now-the-fastest-growing-internet-economy-in-sea-driven-by-e-commerce-and-food-delivery-services/>

effort to strengthen its revenue-generating capability to aid our country's economic recovery from the adverse impacts of COVID-19.

This bill, which was based on the measure transmitted by the House of Representatives to the Senate in the 18th Congress, aims to level the playing field between traditional and digital businesses by clarifying the imposition and collection of value added tax (VAT) from digital service providers, which are required to help the government monitor and collect VAT from persons engaging businesses on their digital platforms. It is important to note that this bill does not impose new taxes, but merely strengthens and streamlines the Bureau of Internal Revenue's authority to collect VAT on digital transactions by providing measures on how resident and non-resident digital service providers should comply with the VAT requirements imposed by the National Internal Revenue Code. With a tax base that will widen further in the coming years, this bill can sustainably augment the revenues to support the government in its path towards economic recovery and growth.

In view of the foregoing, the approval of this bill is earnestly sought.

Pia S. Cayetano
PIA S. CAYETANO

NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

'22 JUL 11 P4 :05

RECEIVED BY: _____



SENATE

S. No. 250

Introduced by Senator **PIA S. CAYETANO**

AN ACT
IMPOSING VALUE-ADDED TAX ON DIGITAL TRANSACTIONS IN THE PHILIPPINES, AMENDING FOR THE PURPOSE SECTIONS 105, 108, 109, 113, 114, AND 236 AND ADDING A NEW SECTION 105-A OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED

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

1 Section 1. Section 105 of the National Internal Revenue Code of 1997, as
2 amended, is hereby further amended to read as follows:

3 SEC. 105. *Persons Liable.* - Any person who, in the course of trade or business,
4 sells, barter, exchanges, leases goods or properties, **INCLUDING THOSE DIGITAL**
5 **OR ELECTRONIC IN NATURE**, renders services, **INCLUDING THOSE RENDERED**
6 **ELECTRONICALLY**, and any person who imports goods shall be subject to the value-
7 added tax (VAT) imposed in Sections 106 to 108 of this Code.

8 "The value-added tax is an indirect tax and the amount of tax may be shifted or
9 passed on to the buyer, transferee or lessee of the goods, properties or services. This
10 rule shall likewise apply to existing contracts of sale or lease of goods, properties, or
11 services at the time of the effectivity of Republic Act No. 7716.

12 "The phrase 'in the course of trade or business' means the regular conduct or
13 pursuit of a commercial or an economic activity, including transactions incidental thereto,
14 by any person regardless of whether or not the person engaged therein is a nonstock,

1 nonprofit private organization (irrespective of the disposition of its net income and
2 whether or not it sells exclusively to members or their guests), or government entity.

3 "The rule of regularity, to the contrary notwithstanding, services as defined in this
4 Code rendered in the Philippines by nonresident foreign persons shall be considered as
5 being rendered in the course of trade or business."

6 Sec. 2. A new Section designated as Section 105-A of the National Internal
7 Revenue Code of 1997, as amended, is hereby amended to read as follows:

8 **"SEC. 105-A. PERSONS LIABLE IN DIGITAL OR ELECTRONIC**
9 **TRANSACTIONS. - THE NONRESIDENT DIGITAL SERVICE PROVIDER IS**
10 **LIABLE FOR ASSESSING, COLLECTING, AND REMITTING THE VALUE-**
11 **ADDED TAX ON THE TRANSACTIONS THAT GO THROUGH ITS PLATFORM.**

12 **"FOR THIS PURPOSE, THE TERM 'DIGITAL SERVICE PROVIDER'**
13 **REFERS TO A SERVICE PROVIDER OF A DIGITAL SERVICE OR GOOD TO**
14 **A BUYER, THROUGH OPERATING AN ONLINE PLATFORM FOR PURPOSES**
15 **OF BUYING AND SELLING OF GOODS OR SERVICES OR BY MAKING**
16 **TRANSACTIONS FOR THE PROVISION OF DIGITAL SERVICES ON**
17 **BEHALF OF ANY PERSON: PROVIDED, THAT THE DIGITAL SERVICE**
18 **PROVIDER MAY BE:**

19 **"(A) A THIRD PARTY, SUCH AS A SELLER OF GOODS AND**
20 **SERVICES WHO, THROUGH INFORMATION-BASED TECHNOLOGY OR**
21 **THE INTERNET, SELLS MULTIPLE PRODUCTS FOR ITS OWN ACCOUNT,**
22 **OR ONE WHO ACTS AS AN INTERMEDIARY BETWEEN A SUPPLIER AND**
23 **BUYER OF GOODS AND SERVICES, SUCH AS A MERCHANDISER OR**
24 **RETAILER, WHO COLLECTS OR RECEIVES PAYMENT FOR SUCH GOODS**
25 **AND SERVICES FROM A BUYER IN BEHALF OF THE SUPPLIER AND**
26 **RECEIVES A COMMISSION THEREON;**

27 **"(B) A PLATFORM PROVIDER FOR PROMOTION THAT USES THE**
28 **INTERNET TO DELIVER MARKETING MESSAGES TO ATTRACT BUYERS;**

1 “(C) A HOST OF ONLINE AUCTIONS CONDUCTED THROUGH THE
2 INTERNET, WHERE THE SELLER SELLS THE PRODUCT OR SERVICE TO
3 THE PERSON WHO OFFERS THE HIGHEST PRICE FOR IT;

4 “(D) A SUPPLIER OF DIGITAL SERVICES TO A BUYER IN
5 EXCHANGE FOR A REGULAR SUBSCRIPTION FEE OVER THE USAGE OF
6 THE SAID PRODUCT OR SERVICE; AND

7 “(E) A SUPPLIER OF GOODS OR ELECTRONIC AND ONLINE
8 SERVICES THAT CAN BE DELIVERED THROUGH AN INFORMATION
9 TECHNOLOGY INFRASTRUCTURE, SUCH AS THE INTERNET.

10 “FOR THIS PURPOSE, THE TERM ‘BUYER’ REFERS TO ANY PERSON WHO
11 RESIDES OR CONSUMES TAXABLE DIGITAL SERVICES IN THE PHILIPPINES
12 FROM A DIGITAL SERVICE PROVIDER EITHER FOR PERSONAL CONSUMPTION,
13 OR FOR TRADE OR BUSINESS PURPOSES. THE TERM “DIGITAL SERVICE”
14 REFERS TO ANY SERVICE THAT IS DELIVERED OR SUBSCRIBED OVER THE
15 INTERNET OR OTHER ELECTRONIC NETWORK AND WHICH CANNOT BE
16 OBTAINED WITHOUT THE USE OF INFORMATION TECHNOLOGY AND WHERE
17 THE DELIVERY OF THE SERVICE MAY BE AUTOMATED. DIGITAL SERVICES
18 SHALL INCLUDE ONLINE LICENSING OF SOFTWARE, UPDATES, AND ADD-ONS,
19 WEBSITE FILTERS AND FIREWALLS; MOBILE APPLICATIONS, VIDEO GAMES,
20 AND ONLINE GAMES; WEBCAST AND WEBINARS; PROVISION OF DIGITAL
21 CONTENT SUCH AS MUSIC, FILES, IMAGES, TEXT AND INFORMATION;
22 ADVERTISEMENT PLATFORM SUCH AS PROVISION OF ONLINE ADVERTISING
23 SPACE ON INTANGIBLE MEDIA PLATFORM; ONLINE PLATFORM SUCH AS
24 ELECTRONIC MARKETPLACES OR NETWORKS FOR THE SALE, DISPLAY, AND
25 COMPARISON OF PRICES OF TRADE PRODUCTS OR SERVICES; SEARCH
26 ENGINE SERVICES; SOCIAL NETWORKS; DATABASE AND HOSTING SUCH AS
27 WEBSITE HOSTING, ONLINE DATA WAREHOUSING, FILE SHARING AND
28 CLOUD STORAGE SERVICES; INTERNET-BASED TELECOMMUNICATION;
29 ONLINE TRAINING SUCH AS PROVISION OF DISTANCE TEACHING, E-

1 **LEARNING, ONLINE COURSES AND WEBINARS; ONLINE NEWSPAPERS AND**
2 **JOURNAL SUBSCRIPTION; AND PAYMENT PROCESSING SERVICES.”**

3 Sec. 3. Section 108 of the National Internal Revenue Code of 1997, as amended,
4 is hereby further amended to read as follows:

5 “SEC. 108. Value-added Tax on Sale of Services and Use or Lease of
6 Properties. -

7 “(A) Rate and Base of Tax. - There shall be levied, assessed and collected,
8 a value-added tax equivalent to twelve percent (12%) of gross receipts derived
9 from the sale or exchange of services, including the use or lease of properties.

10 “The phrase ‘sale or exchange of services’ means the performance of all
11 kinds of services in the Philippines for others for a fee, remuneration or
12 consideration, **WHETHER RENDERED ELECTRONICALLY OR OTHERWISE**,
13 including those performed or rendered by construction and service contractors;
14 stock, real estate, commercial, customs and immigration brokers; lessors of
15 property, whether personal or real; warehousing services; lessors or distributors
16 of cinematographic films; persons engaged in milling, processing, manufacturing
17 or repacking goods for others; proprietors, operators or keepers of hotels, motels,
18 resthouses, pension houses, inns, resorts; proprietors or operators of restaurants,
19 refreshment parlors, cafes and other eating places, including clubs and caterers;
20 dealers in securities; lending investors; transportation contractors on their
21 transport of goods or cargoes, including persons who transport goods or cargoes
22 for hire and other domestic common carriers by land relative to their transport of
23 goods or cargoes; common carriers by air and sea relative to their transport of
24 passengers, goods or cargoes from one place in the Philippines to another place
25 in the Philippines; sales of electricity by generation companies, transmission by
26 any entity, and distribution companies, including electric cooperatives; services of
27 franchise grantees of electric utilities, telephone and telegraph, radio and television
28 broadcasting and all other franchise grantees except those under Section 119 of
29 this Code and non-life insurance companies (except their crop insurances),
30 including surety, fidelity, indemnity and bonding companies; and similar services

1 regardless of whether or not the performance thereof calls for the exercise or use
2 of the physical or mental faculties. The phrase 'sale or exchange of services' shall
3 likewise include:

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

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

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

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

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

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

22 **"(7) THE SUPPLY BY ANY PERSON, WHETHER RESIDENT OR**
23 **NONRESIDENT, OF DIGITAL SERVICES SUCH AS ONLINE**
24 **ADVERTISEMENT SERVICES, PROVISION FOR DIGITAL ADVERTISING**
25 **SPACE, AND ANY OTHER FACILITY OR SERVICE FOR THE PURPOSE OF**
26 **ONLINE ADVERTISEMENT;**

27 **"(8) THE SUPPLY BY ANY RESIDENT OR NONRESIDENT OF**
28 **DIGITAL SERVICES IN EXCHANGE FOR A REGULAR SUBSCRIPTION FEE**
29 **OVER THE USAGE OF THE SAID PRODUCT OR SERVICE;**

1 **“(9) THE SUPPLY OF ELECTRONIC AND ONLINE SERVICES THAT**
2 **CAN BE DELIVERED THROUGH AN INFORMATION TECHNOLOGY**
3 **INFRASTRUCTURE, SUCH AS THE INTERNET;**

4 “[7] (10) The lease of motion picture films, films, tapes and discs; and

5 “[8] (11) The lease or the use of or the right to use radio, television, satellite
6 transmission and cable television time.”

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

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

16 “x x x.”

17 Sec. 4. Section 109 of the National Internal Revenue Code, as amended, is further
18 amended to read as follows:

19 “SEC. 109. *Exempt Transactions.* -

20 “(1) Subject to the provisions of [s] Subsection (2) hereof, the following
21 transactions shall be exempt from the value-added tax:

22 “(A) XXX

23 “(B) XXX

24 “(C) XXX

25 “(D) XXX

26 “(E) XXX

27 “(F) XXX

28 “(G) XXX

29 “(H) Educational services **INCLUDING ONLINE COURSES AND**
30 **WEBINARS** rendered by private educational institutions, duly accredited by the

1 Department of Education (DepEd), the Commission on Higher Education (CHED),
2 the Technical Education and Skills Development Authority (TESDA) and those
3 rendered by government educational institutions;

4 "(I) XXX

5 "(J) XXX

6 "(K) XXX

7 "(L) XXX

8 "(M) XXX

9 "(N) XXX

10 "(O) XXX

11 "(P) XXX

12 "(Q) XXX

13 "(R) Sale, importation, printing or publication of books and any newspaper,
14 magazine, review or bulletin which appears at regular intervals with fixed prices or
15 subscription and sale and which is not devoted principally to the publication of paid
16 advertisements[;], **INCLUDING THOSE SOLD ELECTRONICALLY OR**
17 **ONLINE."**

18 "xxx."

19 SEC. 5. Section 110 of the National Internal Revenue Code, as amended, is
20 further amended to read as follows:

21 "SEC. 110. Tax Credits. -

22 "(A) Creditable Input Tax. -

23 "(1) XXX

24 "(2) XXX

25 "Provided, That the input tax on goods purchased or imported in a calendar
26 month for use in trade or business for which deduction for depreciation is allowed
27 under this Code shall be spread evenly over the month of acquisition and the fifty-
28 nine (59) succeeding months if the aggregate acquisition cost for such goods,
29 excluding the VAT component thereof, exceeds One million pesos (P[hP]
30 1,000,000): *Provided, however, That if the estimated useful life of the capital good*

1 is less than five (5) years, as used for depreciation purposes, then the input VAT
2 shall be spread over such a shorter period: *Provided, further,* That the amortization
3 of the input VAT shall only be allowed until December 31, 2021 after which
4 taxpayers with unutilized input VAT on capital goods purchased or imported shall
5 be allowed to apply the same as scheduled until fully utilized: *Provided, finally,*
6 That in the case of purchase of services, lease or use of properties, the input tax
7 shall be creditable to the purchaser, lessee or licensee upon payment of the
8 compensation, rental, royalty or fee.

9 **"NOTWITHSTANDING THE FOREGOING, NO CREDITABLE INPUT**
10 **TAX SHALL BE CLAIMED BY NONRESIDENT DIGITAL SERVICE**
11 **PROVIDERS.**

12 "x x x."

13 SEC. 6. Section 113 of the National Internal Revenue Code of 1997, as
14 amended, is further amended to read as follows:

15 "SEC. 113. Invoicing and Accounting Requirements for VAT-
16 Registered Persons. -

17 "(A) Invoicing Requirements. - A VAT-registered person shall issue;

18 "(1) XXX

19 "(2) XXX

20 "(B) XXX

21 "(C) XXX

22 "(D) **NOTWITHSTANDING SUBSECTION (A), A VAT-REGISTERED**
23 **NONRESIDENT DIGITAL SERVICE PROVIDER MAY ISSUE AN**
24 **ELECTRONIC INVOICE OR RECEIPT, SUBJECT TO THE RULES AND**
25 **REGULATIONS TO BE PRESCRIBED BY THE SECRETARY OF FINANCE**
26 **UPON THE RECOMMENDATION OF THE COMMISSIONER OF INTERNAL**
27 **REVENUE.**

28 "[D] (E) XXX

29 "[E] (F) XXX"

1 Sec. 7. Section 114 of the National Internal Revenue Code of 1997, as amended,
2 is further amended to read as follows:

3 "SEC. 114. *Return and Payment of Value-Added Tax.* -

4 "(A) In General. - Every person liable to pay the value-added tax
5 imposed under this Title shall file a quarterly return of the amount of his
6 gross sales or receipts within twenty-five (25) days following the close of
7 each taxable quarter prescribed for each taxpayer: *Provided*, however, That
8 VAT-registered persons shall pay the value-added tax on a monthly basis:
9 *Provided, finally*, That beginning January 1, 2023, the filing and payment
10 required under the Subsection shall be done within twenty-five (25) days
11 following the close of each taxable quarter.

12 "Any person, whose registration has been cancelled in accordance
13 with Section 236, shall file a return and pay the tax due thereon within
14 twenty-five (25) days from the date of cancellation of registration: *Provided*,
15 That only one consolidated return shall be filed by the taxpayer for his
16 principal place of business or head office and all branches.

17 "(B) Where to File the Return and Pay the Tax. - Except as the
18 Commissioner otherwise permits, the return shall be filed with and the tax
19 paid to an authorized agent bank. Revenue Collection Officer or duly
20 authorized city or municipal Treasurer in the Philippines located within the
21 revenue district where the taxpayer is registered or required to register.

22 "(C) Withholding of Creditable Value-Added Tax. - The Government
23 or any of its political subdivisions, instrumentalities or agencies, including
24 government-owned or -controlled corporations (GOCCs) shall, before
25 making payment on account of each purchase of goods and services which
26 are subject to the value-added tax imposed in Sections 106 and 108 of this
27 Code, deduct and withhold the value-added tax imposed in Sections 106
28 and 108 of this Code, deduct and withhold a final value added tax at the
29 rate of five percent (5%) of the gross payment thereof: *Provided*, That
30 beginning January 1, 2021, the VAT withholding system under this

1 Subsection shall shift from final to a creditable system: Provided, further,
2 That [the payment for lease or use of properties or property rights to non-
3 resident owners] **UNLESS THEY ARE DULY-REGISTERED WITH THE**
4 **BUREAU OF INTERNAL REVENUE UNDER SECTION 236, PAYMENTS**
5 **TO NONRESIDENTS FOR SERVICES RENDERED IN THE**
6 **PHILIPPINES UNDER SECTION 108** shall be subject to twelve percent
7 (12%) withholding tax at the time of payment: *Provided, finally,* That
8 payments for purchases of goods and services arising from projects funded
9 by Official Development Assistance (ODA) as defined under Republic Act
10 No. 8182, otherwise known as the 'Official Development Assistance Act of
11 1996y as amended, shall not be subject to the final withholding tax system
12 as imposed in this Subsection. For purposes of this Section, the payor or
13 person in control of the payment shall be considered as the withholding
14 agent."

15 SEC. 8. Section 236 of the National Internal Revenue Code (NIRC) of 1997,
16 as amended, is hereby further amended to read as follows:

17 "SEC. 236. Registration Requirements. -

18 "(A) XXX

19 "(B) XXX

20 "(C) XXX

21 "(D) XXX

22 "(E) XXX

23 "(F) XXX

24 "(G) Persons Required to Register for Value-Added Tax. -

25 "(1) XXX

26 "(2) XXX

27 **"(3) ANY NONRESIDENT DIGITAL SERVICE PROVIDER**
28 **WHO, IN THE COURSE OF TRADE OR BUSINESS, ENGAGES IN THE**
29 **SALE OR EXCHANGE OF DIGITAL SERVICES DEFINED UNDER THIS**
30 **ACT, SHALL BE LIABLE TO REGISTER FOR VALUE-ADDED TAX IF:**

1 “(A) THE GROSS SALES OR RECEIPTS OF SUCH DIGITAL
2 SERVICE BUSINESS FOR THE PAST TWELVE (12) MONTHS BEFORE
3 THE DATE OF FILING OF VAT RETURN, OTHER THAN THOSE THAT
4 ARE EXEMPT UNDER SECTION 109(A) TO (BB), HAVE EXCEEDED
5 THREE MILLION PESOS (P3,000,000); OR

6 “(B) THERE ARE REASONABLE GROUNDS TO BELIEVE THAT
7 THE GROSS SALES OR RECEIPTS OF THE DIGITAL SERVICE
8 BUSINESS FOR THE NEXT TWELVE (12) MONTHS FROM THE DATE
9 OF FILING OF VAT RETURN, OTHER THAN THOSE THAT ARE
10 EXEMPT UNDER SECTION 109(A) TO (BB), WILL EXCEED THREE
11 MILLION PESOS (P3,000,000);

12 PROVIDED, THAT THE BIR SHALL ESTABLISH A SIMPLIFIED
13 AUTOMATED REGISTRATION SYSTEM FOR NONRESIDENT DIGITAL
14 SERVICE PROVIDERS SUBJECT TO THE RULES AND REGULATIONS TO BE
15 PRESCRIBED BY THE SECRETARY OF FINANCE UPON THE
16 RECOMMENDATION OF THE COMMISSIONER OF INTERNAL REVENUE.

17 “x x x.”

18 Sec. 9. *Implementing Rules and Regulations.* - To carry out the provisions of this
19 Act, the implementing rules and regulations (IRR) shall be promulgated by the
20 Department of Finance (DOF), upon the recommendation of the BIR, and in coordination
21 with the Department of Information and Communications Technology (DICT) not later
22 than ninety (90) days after the approval of this Act.

23 Sec. 10. *Transitory Clause.* - Nonresident digital service providers shall immediately
24 be subject to value-added tax under this Act after one hundred eighty (180) days from
25 the effectivity of this Act.

26 Sec. 11. *Separability Clause.* - Should any provision of this Act or any part thereof
27 be declared invalid, the other provisions, so far as they are separable from the invalid
28 ones, shall remain in force and effect.

1 *Sec. 12. Repealing Clause.* - All laws, decrees, orders, and issuances, or portions
2 thereof, which are inconsistent with the provisions of this Act, are hereby repealed,
3 amended, or modified accordingly.

4 *Sec. 13. Effectivity* - This Act shall take effect fifteen (15) days after its publication
5 in the Official Gazette or in a newspaper of general circulation.

Approved,