

**NINETEENTH CONGRESS OF THE
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Second Regular Session

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SENATE

P. S. RES. No. 955

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Introduced by SEN. WIN GATCHALIAN

RESOLUTION

URGING THE SENATE COMMITTEE ON WAYS AND MEANS TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE TAXABILITY OF INCOME PAYMENTS TO NONRESIDENT FOREIGN CORPORATIONS FOR CROSS-BORDER SERVICES RENDERED TO RESIDENTS

1 WHEREAS, under Section 23 (F) of the National Internal Revenue Code
2 ("NIRC"), as amended, "[a] foreign corporation, whether engaged or not in trade or
3 business in the Philippines, is taxable only on income derived from sources within the
4 Philippines." Any tax due shall be withheld at source by the income payor (withholding
5 agent),¹ who shall be responsible for filing the applicable return and remitting the tax
6 withheld to the BIR²;

7 WHEREAS, on August 30, 2022, the Supreme Court ruled in the case of *Aces*
8 *Philippines Cellular Satellite Corp. vs. Commissioner of Internal Revenue*³ ("Aces
9 Case") that a two-tier test must be applied in order to determine the taxability of
10 nonresident foreign corporations ("NRFC"), namely, source of income and situs of the
11 source of income;

12 WHEREAS, *Aces Case* involves the determination of whether the satellite air
13 time fee payments made by a domestic corporation to a NRFC is taxable in the
14 Philippines;

15 WHEREAS, the Supreme Court ruled that the income from satellite air time fees
16 is considered as derived from the Philippines since it is where the gateway's receipt of

¹ National Internal Revenue Code, as amended, Sec. 57 (A).

² *Id.* Sec. 58 (A).

³ GR No. 226680

1 the routed call coincides with the completion or delivery of the service and inflow of
2 economic benefits to the NRFC;

3 WHEREAS, in addition to the foregoing, the Supreme Court further rationalized
4 that the situs of the income from satellite air time fees is the Philippines since the
5 income generating activity is directly associated with the gateways located within the
6 Philippine territory and the NRFC engages in the business of providing satellite
7 communication services which is a government-regulated industry that enjoys the
8 protection of the Philippine government;

9 WHEREAS, based on the foregoing justifications, the Supreme Court ruled that
10 the income was earned in the Philippines and thus, taxable in the Philippines;

11 WHEREAS, on January 10, 2024, the Bureau of Internal Revenue issued
12 Revenue Memorandum Circular ("RMC") No. 5-2024⁴ to further clarify the proper tax
13 treatment of cross-border services in light of the Supreme Court's ruling in the *Aces*
14 *Case* and to provide a framework for assessing the final withholding tax and final
15 withholding value-added tax ("VAT") of the activities of NRFC within the Philippine
16 jurisdiction;

17 WHEREAS, the said RMC provides that income earned from cross-border
18 services is allocated to the countries where the services are performed, considering
19 the time spent, resources utilized, or value created in each jurisdiction while source of
20 income is determined by the location of the business activity rather than the
21 disbursement or receipt of funds and enumerates existing cross-border services akin
22 to that of *Aces Case*, such as consulting services, IT outsourcing, financial services,
23 telecommunications, engineering and construction, education and training, tourism
24 and hospitality, and other similar services;

25 WHEREAS, the BIR took the position through the RMC that payments to NRFCs
26 rendering cross-border services should be subject to twenty five percent (25%)
27 withholding tax plus twelve percent VAT on payments;

28 WHEREAS, the RMC causes uncertainty on the taxability of income payments
29 to NRFCs for cross-border services rendered to residents, as it expanded the
30 application of the *Aces Case* which only covers services rendered by the foreign

⁴ Entitled "Further Clarifying the Proper Tax Treatment of Cross- Border Services in Light of the Supreme Court En Banc Decision in *Aces Philippines Cellular Satellite Corp. v. Commissioner of Internal Revenue*, G.R. No. 226680, dated August 30, 2022"

1 satellite company completed using ground facilities located in the Philippines and the
2 provision of satellite communication services regulated in the Philippines, to other
3 types of cross border transactions which may not be akin to the factual circumstances
4 in the *Aces Case*;

5 WHEREAS, the RMC considers income payments from services performed
6 abroad as income derived from sources within the Philippines if such are so essential
7 that the entire service transaction cannot be accomplished without them, which runs
8 counter to Section 42 (C) (3) of the NIRC, as amended, which provides that
9 "compensation for labor or personal services performed without the Philippines" shall
10 be considered as "gross income from sources without the Philippines";

11 WHEREAS, if the utilization or consumption of the NRFC's services will be
12 considered as benefits to residents which needs to be taxed in the Philippines, as laid
13 out in the RMC, then all services rendered by NRFCs to residents will be deemed to
14 be Philippine-sourced income, hence, an NRFC will always be subject to income tax in
15 the Philippines;

16 WHEREAS, it is the mandate of the Senate Committee on Ways and Means as
17 part of the Congressional Oversight Committee as provided under Section 290 of the
18 NIRC, as amended, to review the implementation of the programs of the BIR, including
19 its issuances, in the implementation of the NIRC, among others;

20 RESOLVED BY THE SENATE, as it is hereby resolved by the Senate, to direct
21 the Senate Committee on Ways and Means, to conduct an inquiry, in aid of legislation,
22 on taxability of income payments to nonresident foreign corporations for cross-border
23 services rendered to residents, with an end view of crafting a policy recommendation,
24 as may be necessary.

Adopted,



WIN GATCHALIAN