

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

THIRTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 1318

Introduced by : **REP. RAUL V. DEL MAR**

EXPLANATORY NOTE

Given the increasingly alarming budgetary deficit and the undeniable lack of sources of funding, the government must now look at its taxing powers to raise the necessary revenues to meet its expenditures. We have a good idea of our revenue requirements. What is needed is the political will to push for the adoption of measures to relate to the revenue shortfall problem which, understandably, is immediately in the area of taxation and tax reforms.

The attached bill seeks to make corporations contribute more to the overall government revenues through a fair and simple system of corporate taxation by shifting the corporate tax structure from net income to gross income taxation. With gross income as the tax base and the tax rate 15%, the proposed legislation is designed to greatly enhance tax collection and significantly reduce the causes of revenue leakages.

Studies have shown that the actual maximum corporate tax rate, currently 32% of taxable or net income, is actually much lower because of the erosion of the corporate tax, which results from tax avoidance and inefficient tax administration made possible by the legal "manipulations" of the statutory deductions from corporate tax, aggravated by the discretion of our tax collectors – and this is a significant source of corruption – in determining the allowance or disallowance of deductions and hence determining the taxable income. Prevailing tax preferences – tax incentives, tax credits and tax exemptions – enjoyed by corporations which have no basis in sound economic policy are also a significant cause of corporate tax erosion – as they represent revenues foregone. But this is another matter that should be addressed distinctly.

The finance sector is quick to point this out: corrupt revenue officials plus incompetent tax administration equals government revenue shortage, an equation that no one cares to seriously dispute. The simplicity and fairness of the proposed gross income taxation will hopefully change this equation. Simplicity will mean less paperwork and less discretion on the part of our revenue authority. Fairness is easily there because the proposed system of gross income taxation will not discriminate between small and large corporations nor between different kinds of corporate activities or corporate enterprises.

It really comes down to a choice between a lower tax rate and effective implementation (15% on gross income) than higher tax rate and inefficient administration (32% on net income).

Adopting a system of gross income taxation is not gazing into the crystal ball. Nor it is simply above the level of guesswork. We have a concept of gross income taxation written in our tax laws – reviewed at length by Congress prior to the passage of the 1997 Tax Reform Act – granted as an option to domestic and resident foreign corporations, the availment of which is subject to the approval of the President once the required statutory conditions are met (see Sec. 27 (A), National Internal Revenue Code, as amended). We also have our experience with the concept of Minimum Corporate Income Tax – 2% of gross income imposed on domestic and resident foreign corporations (Sec. 27 (E) and 28 (A) (2), NIRC), a form of gross income taxation now being implemented. Even the question of what constitutes "gross income", hard to measure according to some tax theorists and practitioners, is there – defined in our tax code. This is not to mention the established practice of taxing nonresident alien individuals not engaged in trade or business and nonresident foreign corporations on the basis of "entire" or gross income.

In short, what it means to tax gross income is clear enough. Our administrative competence can be enhanced by an honest and determined machinery through some complementary measures, not necessarily legislative. What is being proposed is an acceptable system of gross income taxation that would effectively meet the objectives of fiscal adequacy (getting the desired revenues), administrative feasibility (easy to understand on the part of taxpayer and easy to implement on the part of the tax collector) and tax fairness (based on equity and ability to pay), the essential characteristics of a sound tax system.

In this light, approval of the bill is earnestly sought.

RAUL V. DEL MAR

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

THIRTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 1318

Introduced by : **REP. RAUL V. DEL MAR**

AN ACT
ADOPTING THE GROSS INCOME TAXATION FOR CORPORATIONS AMENDING FOR THE PURPOSE PERTINENT PROVISIONS OF TITLE II OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES

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

SECTION 1. Section 27(A) of the National Revenue Code of 1997, as amended, is hereby deleted and in lieu thereof of a new Section 27(A) is hereby inserted which shall read as follows:

"*SEC. 27. RATES OF INCOME TAX ON DOMESTIC CORPORATIONS.*

"(A) IN GENERAL – EXFCEPT AS OTHERWISE PROVIDED IN THIS CODE, AN INCOME TAX AT THE RATE OF FIFTEEN PERCENT (15%) IS HEREBY IMPOSED UPON THE GROSS INCOME DURING THE TAXABLE YEAR FROM ALL SOURCES WITHIN AND WITHOUT THE PHILIPPINES BY EVERY CORPORATION, AS DEFINED UNDER SECTION 22(B) OF THIS CODE, AND TAXABLE UNDER THIS TITLE AS A CORPORATION, ORGANIZED IN, OR EXISTING UNDER THE LAWS OF THE PHILIPPINES.

"FOR PURPOSES OF THIS SECTION, THE TERM 'GROSS INCOME' DERIVED FROM BUSINESS SHALL BE EQUIVALENT TO GROSS SALES LESS SALES RETURNS, DISCOUNTS AND ALLOWANCES AND COST OF GOODS SOLD. 'COST OF GOODS SOLD' SHALL INCLUDE ALL BUSINESS EXPENSS DIRECTLY INCURRED TO PRODUCE THE MERCHANDISE TO BRING THEM TO THEIR PRESENT LOCATION AND USE.

"FOR A TRADING OR MERCHANDISING CONCERN, 'COST OF GOODS' SOLD SHALL INCLUDE THE INVOIVE COST OF THE GOODS SOLD, PLUS IMPORT DUTIES, FREIGHT IN TRANSPORTATING THE GOODS TO THE PLACE WHERE THE GOODS ARE ACTUALLY SOLD, INCLUDING INSURANCE WHILE THE GOODS ARE IN TRANSIT.

"FOR A MANUFACTURING CONCERN, 'COST OF GOOD MANUFACTURED AND SOLD' SHALL INCLUDE ALL COSTS OF PRODUCTION OF FINISHED GOODS, SUCH AS RAW MATERIALS USED, DIRECT LABOR AND MANUFACTURING OVERHEAD, FREIGHT COST, INSURANCE PREMIUMS AND OTHER COSTS INCURRED TO BRING THE RAW MATERIALS TO THE FACTORY OR WAREHOUSE.

"IN THE CASE OF TAXPAYERS ENGAGED IN THE SALE OF SERVICE, 'GROSS INCOME' MEANS GROSS RECEIPTS LESS SALES RETURNS, ALLOWANCES AND DISCOUNTS AND COST OF SERVICES. 'COST OF SERVICES' SHALL MEAN ALL DIRECT COSTS AND EXPENSES NECESSRILY INCURRED TO PROVIDE THE SERVICES REQUIRED BY THE CUSTOMERS AND CLINETS INCLUDING (A) SALARIES AND EMPLOYEE BENEFITS OF PERSONNEL, CONSULTANTS AND SPECIALISTS DIRECTLY RENDERING THE SERVICES AND (B) COST OF FACILITIES DIRECTLY UTILIZED IN PROVIDING THE SERVICE AND SUCH AS DEPRECIATION OR RENTAL OF EQUIPMENT USED AND COST OF SUPPLIES: PROVIDED, HOWEVER, THAT IN THE CASE OF BANKS, 'COST OF SERVICES' SHALL INCLUDE INTEREST EXPENSE.

"WHENEVER IN THE JUDGMENT OF THE COMMISSIONER THERE ARE SOME COST ITEMS OR COST COMPONENTS TO BE INCLUDED IN THE COST OF GOODS OR COST OF SERVICES, AS THE CASE MAY BE, TAKING INTO ACCOUNT THE SPECIAL CIRCUMSTANCES, NATURE AND CHARACTER OF THE CORPORATE TRADE, BUSINESS OR INDUSTRY, THE SECRETARY OF FINANCE, UPON RECOMMENDATION OF THE COMMISSIONER, MAY, BY RULES AND REGULATIONS, ALLOW SUCH INCLUSION."

SEC. 2. Section 27(E) of the National Internal Revenue Code, as amended, is hereby deleted and in lieu thereof, a new Section 27(E) is hereby inserted which shall read as follows:

"(E) TAX ON OTHER INCOME – ANY INCOME, GAIN OR PROFIT OF WHATEVER KIND AND WHATEVER FORM DERIVED BY A DOMESTIC CORPORATION FROM ALL OTHER SOURCES NOT SPECIFICALLY EXEMPT FROM TAX UNDER THIS TITLE SHALL BE SUBJECT TO A FINAL TAX AT THE RATE OF FIFTEEN PERCENT (15%) OF THE TOTAL AMOUNT THEREOF.

SEC. 3. Section 28(A) (1) of the National Internal Revenue Code, as amended, is hereby deleted and in lieu thereof a new Section 28(A)(1) is hereby inserted which shall read as follows:

"*SEC. 28. RATES OF INCOME TAX ON FOREIGN CORPORATIONS.* –

"(A) TAX ON RESIDENT FOREIGN CORPORATIONS.

"(1) IN GENERAL – EXCEPT AS OTHERWISE PROVIDED IN THIS CODE, A CORPORATION ORGANIZED, AUTHORIZED, OR EXISTING UNDER THE LAWS OF ANY FOREIGN COUNTRY, ENGAGED IN TRADE OR BUSINESS WITHIN THE PHILIPPINES SHALL BE SUBJECT TO AN INCOME TAX AT THE RATE OF FIFTEEN PERCENT (15%0 OF THE GROSS INCOME DERIVED DURING THE TAXABLE YEAR FROM ALL SOURCES WITHIN THE PHILIPPINES. FOR PURPOSES OF THIS SUBSECTION, GROSS INCOME SHALL BE DETERMINED IN THE SAME MANNER AS PROVIDED UNDER SECTION 27(A) OF THIS CODE.

SEC. 4. Section 28 (A)(2) of the Code, as amended is hereby deleted. Paragraphs (3), (4), (5), (6) and (7) of Section 28 (A) are hereby accordingly renamed Paragraphs (2), (3), (4), (5) and (6), respectively.

SEC. 5. A new paragraph to be known as paragraph (8) is hereby inserted under Section 28(A) of the National Internal Revenue Code of 1997, as amended, which shall read as follows:

"(8) OTHER INCOME – ANY INCOME, GAIN OF PROFIT OR WHATEVER KIND AND WHATEVER FORM DERIVED BY A RESIDENT FOREIGN CORPORATION FROM ALL OTHER SOURCES WITHIN THE PHILIPPINES AND WHICH IS NOT SPECIFICALLY EXEMPT FROM TAX UNDER THIS TITLE SHALL BE SUBJECT TO A FINAL TAX AT THE RATE OF FIFTEEN PERCENT (15%0 OF THE TOTAL AMOUNT THEREOF.

SEC. 6. Section 28(B)(1) of the National Internal Revenue Code, amended, is hereby amended to read as follows:

"(B)" TAX ON NON-RESIDENT FOREIGN CORPORATION –

"(1) IN GENERAL – EXCEPT AS OTHERWISE PROVIDED IN THIS CODE, A FOREIGN CORPORATION NOT ENGAGED IN TRADE OR BUSINESS IN THE PHILIPPINES SHALL PAY A TAX AT THE RATE OF FIFTEEN PERCENT (15%) OF THE GROSS INCOME RECEIVED DURING EACH TAXABLE YEAR FROM ALL SOURCES WITHIN THE PHILIPPINES, SUCH AS INTERESTS, DIVIDENDS, RENTS, ROYALTIES, SALARIES, PREMIUMS (EXCEPT REINSURANCE PREMIUMS), ANNUITIES, EMOLUMENTS OR OTHER FIXED OR DETERMINABLE ANNUAL, PERIODIC OR CASUAL GAINS, PROFITS AND INCOME, AND CAPITAL GAINS, EXCEPT CAPITAL GAINS SUBJECT TO TAX UNDER SUBPARAGRAPH 5 (b).

SEC. 7. Section 28(B) 5(b) of the National Internal Revenue Code, as amended, is hereby deleted. Paragraph (5)(c) of Section 28(B) is hereby renamed paragraph (5)(b).

SEC. 8. Section 31 of the National Internal Revenue Code, as amended, is hereby amended to read as follows:

"SEC. 31. Taxable Income Defined – The term 'taxable income', WHICH SHALL NOT APPLY TO TAXPAYERS TAXABLE ON

GROSS INCOME, AS PROVIDED UNDER THIS TITLE, means the pertinent items of gross income specified in this Code, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by this Code or other special laws."

SEC. 9. All sections of the National Internal Revenue Code of 1997, as amended, which are affected by the renumbering made under this Act, as well as cross-references made hereto, are hereby renumbered accordingly.

SEC. 10. ***Implementing rules and regulations.*** – The Secretary of Finance shall upon the recommendation of the Commissioner of the Bureau of Internal Revenue, promulgate the necessary rules and regulations for the effective implementation of this Act.

SEC. 11. ***Repealing Clause.*** – All laws, decrees, executive orders, rules and regulations or parts thereof which are contrary to or inconsistent with this Act are hereby repealed, amended or modified accordingly.

SEC. 12. ***Effectivity.*** – This Act shall take effect fifteen (15) days after the publication in the Official Gazette or in any two newspapers of general circulation, whichever comes earlier.

Approved,