

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Nineteenth Congress
First Regular Session

House Bill No. 372



Introduced by Representative JOEY SARTE SALCEDA

**AN ACT
IMPOSING VALUE-ADDED TAX ON DIGITAL TRANSACTIONS
IN THE PHILIPPINES, AMENDING FOR THE PURPOSE
SECTIONS 105, 108, 109, 110, 113, 114, AND 236 AND
ADDING A NEW SECTION 105-A OF THE NATIONAL INTERNAL
REVENUE CODE OF 1997, AS AMENDED**

EXPLANATORY NOTE

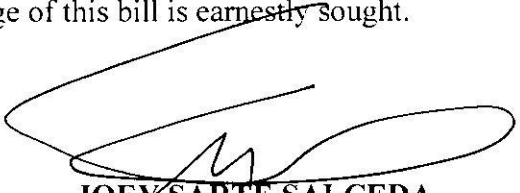
The COVID-19 pandemic has hastened the adoption of digital technologies in the private and public sectors. The internet economy in the Philippines significantly improved from a pre-pandemic gross mean value (GMV) of Php 379.4 billion in 2019 to Php 921.4 billion GMV in 2021 based on Google's e-Economy SEA 2021 report. Moreover, the report cites the internet economy of the country as the fastest-growing among Southeast Asian countries and is projected to grow by 24% by 2025.

The Philippines has implemented the value-added tax (VAT) since the 1980s with the assumption that VAT is levied where the final consumption of the product or service takes place. Because of the significant developments in e-commerce, international tax reforms expanded the tax base to include nonresident digital service providers (DSPs). With the need to improve the government's fiscal standing, the country needs to pursue the same direction.

This measure seeks to level the playing field between traditional and digital businesses by clarifying the imposition of value-added tax (VAT) on DSPs. It follows House Bill No. 7425, which was approved on Third and Final Reading in the 18th Congress, under the authorship and sponsorship of Rep. Sharon S. Garin and this Representation, Chairperson Joey Sarte S. Salceda of the Committee on Ways and Means.

This bill clarifies that digital services such as digital advertising, subscription-based services, and other online services that can be delivered through the internet as VAT-able. The measure also aims to strengthen tax compliance through simplified invoicing and registration requirements for VAT-registered nonresident DSPs.

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



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REVENUE CODE OF 1997, AS AMENDED

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

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

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

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

“The phrase ‘in the course of trade or business’ means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

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

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

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

“FOR THIS PURPOSE, THE TERM ‘DIGITAL SERVICE PROVIDER’ REFERS TO A SERVICE PROVIDER OF A DIGITAL SERVICE OR GOOD TO A BUYER, THROUGH OPERATING AN ONLINE PLATFORM FOR PURPOSES OF BUYING AND SELLING OF GOODS OR SERVICES OR BY MAKING TRANSACTIONS FOR THE PROVISION OF DIGITAL SERVICES ON BEHALF OF ANY PERSON: *PROVIDED*, THAT THE DIGITAL SERVICE PROVIDER MAY BE:

“(A) A THIRD PARTY, SUCH AS A SELLER OF GOODS AND SERVICES WHO, THROUGH INFORMATION-BASED TECHNOLOGY OR

THE INTERNET, SELLS MULTIPLE PRODUCTS FOR ITS OWN ACCOUNT, OR ONE WHO ACTS AS AN INTERMEDIARY BETWEEN A SUPPLIER AND BUYER OF GOODS AND SERVICES, SUCH AS A MERCHANDISER OR RETAILER, WHO COLLECTS OR RECEIVES PAYMENT FOR SUCH GOODS AND SERVICES FROM A BUYER IN BEHALF OF THE SUPPLIER AND RECEIVES A COMMISSION THEREON;

“(B) A PLATFORM PROVIDER FOR PROMOTION THAT USES THE INTERNET TO DELIVER MARKETING MESSAGES TO ATTRACT BUYERS;

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

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

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

“FOR THIS PURPOSE, THE TERM ‘BUYER’ REFERS TO ANY PERSON WHO RESIDES OR CONSUMES TAXABLE DIGITAL SERVICES IN THE PHILIPPINES FROM A DIGITAL SERVICE PROVIDER EITHER FOR PERSONAL CONSUMPTION, OR FOR TRADE OR BUSINESS PURPOSES. THE TERM “DIGITAL SERVICE” REFERS TO ANY SERVICE THAT IS DELIVERED OR SUBSCRIBED OVER THE INTERNET OR OTHER ELECTRONIC NETWORK AND WHICH CANNOT BE OBTAINED

WITHOUT THE USE OF INFORMATION TECHNOLOGY AND WHERE THE DELIVERY OF THE SERVICE MAY BE AUTOMATED. DIGITAL SERVICES SHALL INCLUDE ONLINE LICENSING OF SOFTWARE, UPDATES, AND ADD-ONS, WEBSITE FILTERS AND FIREWALLS; MOBILE APPLICATIONS, VIDEO GAMES, AND ONLINE GAMES; WEBCAST AND WEBINARS; PROVISION OF DIGITAL CONTENT SUCH AS MUSIC, FILES, IMAGES, TEXT AND INFORMATION; ADVERTISEMENT PLATFORM SUCH AS PROVISION OF ONLINE ADVERTISING SPACE ON INTANGIBLE MEDIA PLATFORM; ONLINE PLATFORM SUCH AS ELECTRONIC MARKETPLACES OR NETWORKS FOR THE SALE, DISPLAY, AND COMPARISON OF PRICES OF TRADE PRODUCTS OR SERVICES; SEARCH ENGINE SERVICES; SOCIAL NETWORKS; DATABASE AND HOSTING SUCH AS WEBSITE HOSTING, ONLINE DATA WAREHOUSING, FILE SHARING AND CLOUD STORAGE SERVICES; INTERNET-BASED TELECOMMUNICATION; ONLINE TRAINING SUCH AS PROVISION OF DISTANCE TEACHING, E-LEARNING, ONLINE COURSES AND WEBINARS; ONLINE NEWSPAPERS AND JOURNAL SUBSCRIPTION; AND PAYMENT PROCESSING SERVICES.”

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

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

“(A) *Rate and Base of Tax.* – There shall be levied, assessed and collected, a value-added tax equivalent to twelve percent (12%) of 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, **WHETHER RENDERED ELECTRONICALLY OR OTHERWISE**, 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 relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines; sales of electricity by generation companies, transmission by any entity, and distribution companies, including electric cooperatives; services of franchise grantees of electric utilities, telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code 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 the 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 nonresident 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 SUPPLY BY ANY PERSON, WHETHER RESIDENT OR NONRESIDENT, OF DIGITAL SERVICES SUCH AS ONLINE ADVERTISEMENT SERVICES, PROVISION FOR DIGITAL ADVERTISING SPACE, AND ANY OTHER FACILITY OR SERVICE FOR THE PURPOSE OF ONLINE ADVERTISEMENT;

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

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

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

“[8] (11) 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 advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

“x x x.”

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

“SEC. 109. *Exempt Transactions.* –

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

“(A) x x x

“(B) x x x

“(C) x x x

“(D) x x x

“(E) x x x

“(F) x x x

“(G) x x x

“(H) Educational services **INCLUDING ONLINE COURSES AND WEBINARS** rendered by private educational institutions, duly accredited by the Department of Education (DepEd), the Commission on Higher Education (CHED), the Technical Education and Skills Development Authority (TESDA) and those rendered by government educational institutions;

“(I) x x x

“(J) x x x

“(K) x x x

“(L) x x x

“(M) x x x

“(N) x x x

“(O) x x x

“(P) x x x

“(Q) x x x

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

“x x x.”

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

“SEC. 110. *Tax Credits.* –

“(A) *Creditable Input Tax.* –

“(1) x x x

“(2) x x x

“*Provided,* That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos P[hP]1,000,000): *Provided, however,* That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, further,* That the amortization of the input VAT shall only be allowed until December 31, 2021 after which taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the same as scheduled until fully utilized: *Provided, finally,* That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

“NOTWITHSTANDING THE FOREGOING, NO CREDITABLE INPUT TAX SHALL BE CLAIMED BY NONRESIDENT DIGITAL SERVICE PROVIDERS.

“x x x.”

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

“SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –

“(A) *Invoicing Requirements.* – A VAT-registered person shall issue:

“(1) x x x

“(2) x x x

“(B) x x x

“(C) x x x

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

“[D] (E) x x x

“[E] (F) x x x.”

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

“SEC. 114. *Return and Payment of Value-Added Tax.* –

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

“Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: *Provided,* That only one consolidated return

shall be filed by the taxpayer for his principal place of business or head office and all branches.

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

“(C) *Withholding of Creditable Value-Added Tax.* – The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof: *Provided*, That beginning January 1, 2021, the VAT withholding system under this Subsection shall shift from final to a creditable system: *Provided, further*, That [the payment for lease or use of properties or property rights to non-resident owners] **UNLESS THEY ARE DULY-REGISTERED WITH THE BUREAU OF INTERNAL REVENUE UNDER SECTION 236, PAYMENTS TO NONRESIDENTS FOR SERVICES RENDERED IN THE PHILIPPINES UNDER SECTION 108** shall be subject to twelve percent (12%) withholding tax at the time of payment: *Provided, finally*, That payments for purchases of goods and services arising from projects funded by Official Development Assistance (ODA) as defined under Republic Act No. 8182, otherwise known as the ‘Official Development Assistance Act of 1996’, as amended, shall not be subject to the final withholding tax system as imposed in this Subsection. For purposes

of this Section, the payor or person in control of the payment shall be considered as the withholding agent.”

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

“SEC. 236. *Registration Requirements.* –

“(A) x x x

“(B) x x x

“(C) x x x

“(D) x x x

“(E) x x x

“(F) x x x

“(G) *Persons Required to Register for Value-Added Tax.* –

“(1) x x x

“(2) x x x

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

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

“(B) THERE ARE REASONABLE GROUNDS TO BELIEVE THAT THE GROSS SALES OR RECEIPTS OF THE DIGITAL SERVICE BUSINESS FOR

THE NEXT TWELVE (12) MONTHS FROM THE DATE OF FILING OF VAT RETURN, OTHER THAN THOSE THAT ARE EXEMPT UNDER SECTION 109(A) TO (BB), WILL EXCEED THREE MILLION PESOS (P3,000,000);

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

“X X X.”

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

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

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

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

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

Approved,