REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

Quezon City

September 1, 2005

REVENUE REGULATIONS NO. 16-2005

SUBJECT: Consolidated Value-Added Tax Regulations of 2005

TO: All Internal Revenue Officers and Others Concerned

Pursuant to the provisions of Secs. 244 and 245 of the National Internal Revenue Code of 1997, as last amended by Republic Act No. 9337 (Tax Code), in relation to Sec. 23 of the said Republic Act, these Regulations are hereby promulgated to implement Title IV of the Tax Code, as well as other provisions pertaining to Value-Added Tax (VAT). These Regulations supersedes Revenue Regulations No. 14-2005 dated June 22, 2005.

COVERAGE, NATURE, BASIS, AND RATE OF VALUE-ADDED TAX (VAT)

SECTION 4.105-1. ***Persons Liable.*** **–** Any person who, in the course of his trade or business, sells, barters, exchanges or leases goods or properties, or renders services, and any person who imports goods, shall be liable to VAT imposed in Secs. 106 to 108 of the Tax Code.

However, in the case of importation of taxable goods, the importer, whether an individual or corporation and whether or not made in the course of his trade or business, shall be liable to VAT imposed in Sec. 107 of the Tax Code.

"Person" refers to any individual, trust, estate, partnership, corporation, joint venture, cooperative or association.

"Taxable person" refers to any person liable for the payment of VAT, whether registered or registrable in accordance with Sec. 236 of the Tax Code.

"VAT-registered person" refers to any person who is registered as a VAT taxpayer under Sec. 236 of the Tax Code. His status as a VAT-registered person shall continue until the cancellation of such registration.

"Taxable sale" refers to the sale, barter, exchange and/or lease of goods or properties, including transactions "deemed sale" and the performance of service for a consideration, whether in cash or in kind, all of which are subject to tax under Secs. 106 and 108 of the Tax Code.

SEC. 4.105-2. ***Nature and Characteristics of VAT.*** **–** VAT is a tax on consumption levied on the sale, barter, exchange or lease of goods or properties and services in the Philippines and on importation of goods into the Philippines. The seller is the one statutorily liable for the payment of the tax but the amount of the 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 RA No. 9337. However, in the case of importation, the importer is the one liable for the VAT.

SEC. 4.105-3. ***Meaning of "In the Course of Trade or Business".*** **–** The term *"in the course of trade or business"* means the regular conduct or pursuit of a commercial or economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit 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.

Non-resident persons who perform services in the Philippines are deemed to be making sales in the course of trade or business, even if the performance of services is not regular.

SEC. 4.106-1. ***VAT on Sale of Goods or Properties.*** – VAT is imposed and collected on every sale, barter or exchange, or transactions "deemed sale" of taxable goods or properties at the rate of 10% of the gross selling price or gross value in money of the goods or properties sold, bartered, or exchanged, or deemed sold in the Philippines.

SEC. 4.106-2. ***Meaning of the Term "Goods or Properties".*** – The term "goods or properties" refers to all tangible and intangible objects which are capable of pecuniary estimation and shall include, among others:

(1) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business;

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

(3) The right or the privilege to use any industrial commercial or scientific equipment;

(4) The right or the privilege to use motion picture films, films, tapes and discs; and

(5) Radio, television, satellite transmission and cable television time.

SEC. 4.106-3. ***"Sale of Real Properties".*** – Sale of real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business of the seller shall be subject to VAT.

In the case of sale of real properties on the installment plan, the real estate dealer shall be subject to VAT on the installment payments, including interest and penalties, actually and/or constructively received by the seller.

Sale of residential lot exceeding ₱1,500,000.00, residential house and lot or other residential dwellings exceeding ₱2,500,000.00, where the instrument of sale (whether the instrument is nominated as a deed of absolute sale, deed of conditional sale or otherwise) is executed on or after July 1, 2005, shall be subject to 10% VAT.

Installment sale of residential house and lot or other residential dwellings exceeding ₱1,000,000.00, where the instrument of sale (whether the instrument is nominated as a deed of absolute sale, deed of conditional sale or otherwise) was executed prior to July 1, 2005, shall be subject to 10% VAT.

"Sale of real property on installment plan" means sale of real property by a real estate dealer, the initial payments of which in the year of sale do not exceed twenty-five percent (25%) of the gross selling price.

However, in the case of sale of real properties on the deferred-payment basis, not on the installment plan, the transaction shall be treated as cash sale which makes the entire selling price taxable in month of sale.

"Sale of real property by a real estate dealer on a deferred payment basis, not on the installment plan" means sale of real property, the initial payments of which in the year of sale exceed twenty-five percent (25%) of the gross selling price.

"Initial payments" means payment or payments which the seller receives before or upon execution of the instrument of sale and payments which he expects or is scheduled to receive in cash or property (other than evidence of indebtedness of the purchaser) during the year when the sale or disposition of the real property was made. It covers any down payment made and includes all payments actually or constructively received during the year of sale, the aggregate of which determines the limit set by law.

Initial payments do not include the amount of mortgage on the real property sold except when such mortgage exceeds the cost or other basis of the property to the seller, in which case, the excess shall be considered part of the initial payments.

Also excluded from initial payments are notes or other evidence of indebtedness issued by the purchaser to the seller at the time of the sale.

Pre-selling of real estate properties by real estate dealers shall be subject to VAT in accordance with rules prescribed above.

"Real estate dealer" includes any person engaged in the business of buying, developing, selling, exchanging real properties as principal and holding himself out as a full or part-time dealer in real estate.

Transmission of property to a trustee shall not be subject to VAT if the property is to be merely held in trust for the trustor and/or beneficiary. However, if the property transferred is one for sale, lease or use in the ordinary course of trade or business and the transfer constitutes a completed gift, the transfer is subject to VAT as a deemed sale transaction pursuant to Sec. 4.106-7(a)(1) of these Regulations. The transfer is a completed gift if the transferor divests himself absolutely of control over the property, i.e., irrevocable transfer of corpus and/or irrevocable designation of beneficiary.

SEC. 4.106-4. *Meaning of the Term "Gross Selling Price".* – The term *"gross selling price"* means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding VAT. The excise tax, if any, on such goods or properties shall form part of the gross selling price.

In the case of sale, barter or exchange of real property subject to VAT, gross selling price shall mean the consideration stated in the sales document or the fair market value whichever is higher. The term "fair market value" shall mean whichever is the higher of: 1) the fair market value as determined by the Commissioner (zonal value), or 2) the fair market value as shown in schedule of values of the Provincial and City Assessors (real property tax declaration). However, in the absence of zonal value, gross selling price refers to the market value shown in the latest real property tax declaration or the consideration, whichever is higher. If the gross selling price is based on the zonal value or market value of the property, the zonal or market value shall be deemed inclusive of VAT. If the VAT is not billed separately, the selling price stated in the sales document shall be deemed to be inclusive of VAT.

SEC. 4.106-5. *Zero-Rated Sales of Goods or Properties.* – *A* zero-rated sale of goods or properties (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services, related to such zero-rated sale, shall be available as tax credit or refund in accordance with these Regulations.

The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export sales. – *"Export Sales"* shall mean:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported, paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) The sale of raw materials or packaging materials to a non-resident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods, paid for in acceptable foreign currency, and accounted for in accordance with the rules and regulations of the BSP;

(3) The sale of raw materials or packaging materials to an export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;

Any enterprise whose export sales exceed 70% of the total annual production of the preceding taxable year shall be considered an export-oriented enterprise.

(4) Sale of gold to the BSP; and

(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

"Considered export sales under Executive Order No. 226" shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; *Provided*, further, That without actual exportation the following shall be considered constructively exported for purposes of these provisions: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones; (3) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (4) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.

For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee; and *Provided*, finally, that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI.

(6) The sale of goods, supplies, equipment and fuel to persons engaged in international shipping or international air transport operations; *Provided*, That the same is limited to goods, supplies, equipment and fuel pertaining to or attributable to the transport of goods and passengers from a port in the Philippines directly to a foreign port without docking or stopping at any other port in the Philippines; *Provided*, further, that if any portion of such fuel, goods or supplies is used for purposes other than that mentioned in this paragraph, such portion of fuel, goods and supplies shall be subject to 10% VAT.

(b) *"Foreign Currency Denominated Sale"*. – *"Foreign Currency Denominated Sale"* means the sale to a non-resident of goods, except those mentioned in Secs. 149 and 150 of the Tax Code, assembled or manufactured in the Philippines for delivery to a resident in the Philippines, paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.

Sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other non-residents of the Philippines as well as returning Overseas Filipinos under the Internal Export Program of the government paid for in convertible foreign currency and accounted for in accordance with the rules and regulations of the BSP shall also be considered export sales.

(c) "Sales to Persons or Entities Deemed Tax-exempt under Special Law or International Agreement". - Sales of goods or property to persons or entities who are tax-exempt under special laws, e.g. sales to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority (SBMA) pursuant to R.A. No. 7227, sales to enterprises duly registered and accredited with the Philippine Economic Zone Authority (PEZA) or international agreements to which the Philippines is signatory, such as, Asian Development Bank (ADB), International Rice Research Institute (IRRI), etc., shall be effectively subject to VAT at zero-rate.

SEC. 4.106-6. ***Meaning of the Term "Effectively Zero-rated Sale of Goods and Properties".*** – The term "**effectively zero-rated sale of goods and properties**" shall refer to the local sale of goods and properties by a VAT-registered person to a person or entity who was granted indirect tax exemption under special laws or international agreement. Under these Regulations, transactions which, although not involving actual export, are considered as "constructive export" shall be entitled to the benefit of zero-rating, such as local sales of goods and properties to persons or entities covered under pars. (a) no. (3) - (sale to export-oriented enterprises), (a) no. (6) - (sale of goods, supplies, equipment and fuel to persons engaged in international shipping or international air transport operations), (b) (Foreign Currency Denominated Sale) and (c) (Sales to Tax-Exempt Persons or Entities) of the preceding section.

Except for Export Sale under Sec. 4.106-5(a) and Foreign Currency Denominated Sale under Sec. 4.106-5(b), other cases of zero-rated sales shall require prior application with the appropriate BIR office for effective zero-rating. Without an approved application for effective zero-rating, the transaction otherwise entitled to zero-rating shall be considered exempt. The foregoing rule notwithstanding, the Commissioner may prescribe such rules to effectively implement the processing of applications for effective zero-rating.

SEC. 4.106-7. ***Transactions Deemed Sale.*** –

(a) The following transactions shall be ***"deemed sale"*** pursuant to Sec. 106 (B) of the Tax Code:

(1) Transfer, use or consumption not in the course of business of goods or properties originally intended for sale or for use in the course of business. Transfer of goods or properties not in the course of business can take place when VAT-registered person withdraws goods from his business for his personal use;

(2) Distribution or transfer to:

i. Shareholders or investors share in the profits of VAT-registered person;

Property dividends which constitute stocks in trade or properties primarily held for sale or lease declared out of retained earnings on or after January 1, 1996 and distributed by the company to its shareholders shall be subject to VAT based on the zonal value or fair market value at the time of distribution, whichever is applicable.

ii. Creditors in payment of debt or obligation.

(3) Consignment of goods if actual sale is not made within 60 days following the date such goods were consigned. Consigned goods returned by the consignee within the 60-day period are not deemed sold;

(4) Retirement from or cessation of business with respect to all goods on hand, whether capital goods, stock-in-trade, supplies or materials as of the date of such retirement or cessation, whether or not the business is continued by the new owner or successor. The following circumstances shall, among others, give rise to transactions "deemed sale" for purposes of this Section;

i. Change of ownership of the business. There is a change in the ownership of the business when a single proprietorship incorporates; or the proprietor of a single proprietorship sells his entire business.

ii. Dissolution of a partnership and creation of a new partnership which takes over the business.

(b) The Commissioner of Internal Revenue shall determine the appropriate tax base in cases where a transaction is deemed a sale, barter or exchange of goods or properties under Sec. 4.106-7 paragraph (a) hereof, or where the gross selling price is unreasonably lower than the actual market value. The gross selling price is unreasonably lower than the actual market value if it is lower by more than 30% of the actual market value of the same goods of the same quantity and quality sold in the immediate locality on or nearest the date of sale.

For transactions deemed sale, the output tax shall be based on the market value of the goods deemed sold as of the time of the occurrence of the transactions enumerated in Sec. 4.106-7(a)(1),(2), and (3) of these Regulations. However, in the case of retirement or cessation of business, the tax base shall be the acquisition cost or the current market price of the goods or properties, whichever is lower.

In the case of a sale where the gross selling price is unreasonably lower than the fair market value, the actual market value shall be the tax base.

SEC. 4.106-8. ***Change or Cessation of Status as VAT-registered Person.*** **–**

(a) Subject to output tax

The VAT provided for in Sec. 106 of the Tax Code shall apply to goods or properties originally intended for sale or use in business, and capital goods which are existing as of the occurrence of the following:

(1) Change of business activity from VAT taxable status to VAT-exempt status. An example is a VAT-registered person engaged in a taxable activity like wholesaler or retailer who decides to discontinue such activity and engages instead in life insurance business or in any other business not subject to VAT;

(2) Approval of a request for cancellation of registration due to reversion to exempt status.

(3) Approval of a request for cancellation of registration due to a desire to revert to exempt status after the lapse of three (3) consecutive years from the time of registration by a person who voluntarily registered despite being exempt under Sec. 109 (2) of the Tax Code.

(4) Approval of a request for cancellation of registration of one who commenced business with the expectation of gross sales or receipts exceeding ₱1,500,000.00, but who failed to exceed this amount during the first twelve months of operation.

(b) Not subject to output tax

The VAT shall not apply to goods or properties existing as of the occurrence of the following:

(1) Change of control of a corporation by the acquisition of the controlling interest of such corporation by another stockholder or group of stockholders. The goods or properties used in business or those comprising the stock-in-trade of the corporation, having a change in corporate control, will not be considered sold, bartered or exchanged despite the change in the ownership interest in the said corporation.

> ***Illustration:*** Abel Corporation is a merchandising concern and has an inventory of goods for sale amounting to Php1 million. Nel Corporation, a real estate developer, exchanged its real estate properties for the shares of stocks of Abel Corporation resulting to the acquisition of corporate control. The inventory of goods owned by Abel Corporation (Php1 million worth) is not subject to output tax despite the change in corporate control because the same corporation still owns them. This is in recognition of the separate and distinct personality of the corporation from its stockholders. However, the exchange of real estate properties held for sale or for lease, for shares of stocks, whether resulting to corporate control or not, is subject to VAT. This is an actual exchange of properties which makes the transaction taxable.

(2) Change in the trade or corporate name of the business;

(3) Merger or consolidation of corporations. The unused input tax of the dissolved corporation, as of the date of merger or consolidation, shall be absorbed by the surviving or new corporation.

SEC. 4.106-9. ***Allowable Deductions from Gross Selling Price.*** – In computing the taxable base during the month or quarter, the following shall be allowed as deductions from gross selling price:

(a) Discounts determined and granted at the time of sale, which are expressly indicated in the invoice, the amount thereof forming part of the gross sales duly recorded in the books of accounts.

Sales discount indicated in the invoice at the time of sale, the grant of which is not dependent upon the happening of a future event, may be excluded from the gross sales within the same month/quarter it was given.

(b) Sales returns and allowances for which a proper credit or refund was made during the month or quarter to the buyer for sales previously recorded as taxable sales.

SEC. 4.107-1. ***VAT on Importation of Goods.*** –

(a) In general. – VAT is imposed on goods brought into the Philippines, whether for use in business or not. The tax shall be based on the total value used by the BOC in determining tariff and customs duties, plus customs duties, excise tax, if any, and other charges, such as postage, commission, and similar charges, prior to the release of the goods from customs custody.

In case the valuation used by the BOC in computing customs duties is based on volume or quantity of the imported goods, the landed cost shall be the basis for computing VAT. Landed cost consists of the invoice amount, customs duties, freight, insurance and other charges. If the goods imported are subject to excise tax, the excise tax shall form part of the tax base.

The same rule applies to technical importation of goods sold by a person located in a Special Economic Zone to a customer located in a customs territory.

No VAT shall be collected on importation of goods which are specifically exempted under Sec. 109 (1) of the Tax Code.

(b) Applicability and payment. – The rates prescribed under Sec. 107 (A) of the Tax Code shall be applicable to all importations withdrawn from customs custody.

The VAT on importation shall be paid by the importer prior to the release of such goods from customs custody.

"Importer" refers to any person who brings goods into the Philippines, whether or not made in the course of his trade or business. It includes non-exempt persons or entities who acquire tax-free imported goods from exempt persons, entities or agencies.

(c) Sale, transfer or exchange of imported goods by tax-exempt persons. – In the case of goods imported into the Philippines by VAT-exempt persons, entities or agencies which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the latter shall be considered the importers thereof and shall be liable for VAT due on such importation. The tax due on such importation shall constitute a lien on the goods, superior to all charges/or liens, irrespective of the possessor of said goods.

SEC. 4.108-1. ***VAT on the Sale of Services and Use or Lease of Properties.*** – Sale or exchange of services, as well as the use or lease of properties, as defined in Sec. 108 (A) of the Tax Code shall be subject to VAT, equivalent to 10% of the gross receipts (excluding VAT).

SEC. 4.108-2. ***Meaning of "Sale or Exchange of Services".*** – The term *"sale or exchange of services"* means the performance of all kind of services in the Philippines for

others for a fee, remuneration or consideration, whether in kind or in cash, including those performed or rendered by the following:

(1) construction and service contractors;

(2) stock, real estate, commercial, customs and immigration brokers;

(3) lessors of property, whether personal or real;

(4) persons engaged in warehousing services;

(5) lessors or distributors of cinematographic films;

(6) persons engaged in milling, processing, manufacturing or repacking goods for others;

(7) proprietors, operators, or keepers of hotels, motels, rest houses, pension houses, inns, resorts, theaters, and movie houses;

(8) proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers;

(9) dealers in securities;

(10) lending investors;

(11) 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;

(12) 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;

(13) sales of electricity by generation, transmission, and/or distribution companies;

(14) franchise grantees of electric utilities, telephone and telegraph, radio and/or television broadcasting and all other franchise grantees, except franchise grantees of radio and/or television broadcasting whose annual gross receipts of the preceding year do not exceed Ten Million Pesos (₱10,000,000.00), and franchise grantees of gas and water utilities;

(15) non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and

(16) 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 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) hereof or any such knowledge or information as is mentioned in subparagraph (3) hereof;

(5) The supply of services by a non-resident 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 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 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.

SEC. 4.108-3. ***Definitions and Specific Rules on Selected Services.*** **–**

a. Lessors of Property. – All forms of property for lease, whether real or personal, are liable to VAT subject to the provisions of Sec. 4.109-1(B)(1)(v) of these Regulations.

"Real estate lessor" includes any person engaged in the business of leasing or subleasing real property.

Lease of property shall be subject to VAT regardless of the place where the contract of lease or licensing agreement was executed if the property leased or used is located in the Philippines.

VAT on rental and/or royalties payable to non-resident foreign corporations or owners for the sale of services and use or lease of properties in the Philippines shall be based on the contract price agreed upon by the licensor and the licensee. The licensee shall be responsible for the payment of VAT on such rentals and/or royalties in behalf of the non-resident foreign corporation or owner in the manner prescribed in Sec. 4.114-2(b) hereof.

"Non-resident lessor/owner" refers to any person, natural or juridical, an alien, or a citizen who establishes to the satisfaction of the Commissioner of Internal Revenue the fact of his physical presence abroad with a definite intention to reside therein, and who owns/leases properties, real or personal, whether tangible or intangible, located in the Philippines.

In a lease contract, the advance payment by the lessee may be:

(i) a loan to the lessor from the lessee, or

(ii) an option money for the property, or

(iii) a security deposit to insure the faithful performance of certain obligations of the lessee to the lessor, or

(iv) pre-paid rental.

If the advance payment is actually a loan to the lessor, or an option money for the property, or a security deposit for the faithful performance of certain obligations of the lessee, such advance payment is not subject to VAT. However, a security deposit that is applied to rental shall be subject to VAT at the time of its application.

If the advance payment constitutes a pre-paid rental, then such payment is taxable to the lessor in the month when received, irrespective of the accounting method employed by the lessor.

(b) "***Warehousing service***" means rendering personal services of a warehouseman such as:

(1) engaging in the business of receiving and storing goods of others for compensation or profit;

(2) receiving goods and merchandise to be stored in his warehouse for hire; or

(3) keeping and storing goods for others, as a business and for use.

(c) A **miller**, who is a person engaged in milling for others (except *palay* into rice, corn into corn grits, and sugarcane into raw sugar), is subject to VAT on sale of services. If the miller is paid in cash for his services, VAT shall be based on his gross receipts for the month or quarter. If he receives a share of the milled products instead of cash, VAT shall be based on the actual market value of his share in the milled products. Sale by the owner or the miller of his share of the milled product (except rice, corn grits and raw sugar) shall be subject to VAT.

(d) All receipts from service, hire, or operating lease of transportation equipment not subject to the percentage tax on domestic common carriers and keepers of garages imposed under Sec. 117 of the Tax Code shall be subject to VAT.

"Common carrier" refers to persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public and shall include transportation contractors.

Common carriers by land with respect to their gross receipts from the transport of passengers including operators of taxicabs, utility cars for rent or hire driven by the lessees (rent-a-car companies), and tourist buses used for the transport of passengers shall be subject to the percentage tax imposed under Sec. 117 of the Tax Code, but shall not be liable for VAT.

(e) Domestic common carriers by air and sea are subject to 10% VAT on their gross receipts from their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines.

(f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10% VAT on their gross receipts; *Provided*, That sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels shall be subject to 0% VAT.

"Generation companies" refers to persons or entities authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity. For this purpose, generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of the RA No. 9136 (EPIRA). They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities.

"Transmission companies" refers to any person or entity that owns and conveys electricity through the high voltage backbone system and/or subtransmission assets, e.g. NPC or TRANSCO. 'Subtransmission assets' shall refer to the facilities related to the power delivery service below the transmission voltages and based on the functional assignment of asset including, but not limited to step-down transformers used solely by load customers, associated switchyard/substation, control and protective equipment, reactive compensation equipment to improve power factor, overhead lines, and the land where such facilities/equipments are located. These include NPC assets linking the transmission system and the distribution system which are neither classified as generation or transmission.

"Distribution companies" refer to persons or entities which operate a distribution system in accordance with the provisions of the EPIRA. They shall include any distribution utility such as an electric cooperative organized pursuant to Presidential Decree No. 269, as amended, and/or under RA No. 6938, or as otherwise provided in the EPIRA, a private corporation, or a government-owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with the EPIRA.

For this purpose, a distribution system refers to the system of wires and associated facilities belonging to a franchised distribution utility extending between the delivery points on the transmission or subtransmission system or generator connection and the point of connection to the premises of the end-users.

"*Gross Receipts*" under this Subsection (f) shall refer to the following:

(a) Total amount charged by generation companies for the sale of electricity and related ancillary services; and/or
(b) Total amount charged by transmission companies for transmission of electricity and related ancillary services; and/or
(c) Total amount charged by distribution companies and electric cooperatives for distribution and supply of electricity, and related electric service. The universal charge passed on and collected by distribution companies and electric cooperatives shall be excluded from the computation of the Gross Receipts.

(g) Dealers in securities and lending investors shall be subject to VAT on the basis of their gross receipts. However, for Dealer in Securities, the term "gross receipts" means gross selling price less cost of the securities sold..

"Dealer in securities" means a merchant of stock or securities, whether an individual partnership or corporation, with an established place of business, regularly engaged in the purchase of securities and their resale to customers, that is, one who as a merchant buys securities and sells them to customers with a view to the gains and profits that may be derived therefrom.

Lending investor" includes all persons other than banks, non-bank financial intermediaries, finance companies and other financial intermediaries not performing quasi-banking functions who make a practice of lending money for themselves or others at interest.

(h) Services of franchise grantees of telephone and telegraph, radio and/or television broadcasting, toll road operations and all other franchise grantees, except gas and water utilities, shall be subject to VAT in lieu of franchise tax, pursuant to Sec. 20 of RA No.7716, as amended. However, franchise grantees of radio and/or television broadcasting whose annual gross receipts of the preceding year do not exceed Ten Million Pesos (₱10,000,000.00) shall not be subject to VAT, but to the three percent (3%) franchise tax imposed under Sec. 119 of the Tax Code, subject to the optional registration provisions under Sec. 9.236-1(c) hereof.

Likewise, franchise grantees of gas and water utilities shall be subject to two percent (2%) franchise tax on their gross receipts derived from the business covered by the law granting the franchise pursuant to Sec. 119 of the Tax Code.

Gross receipts of all other franchisees, other than those covered by Sec. 119 of the Tax Code, regardless of how their franchises may have been granted, shall be subject to the 10% VAT imposed under Sec. 108 of the Tax Code. This includes among others, the Philippine and Amusement Gaming Corporation (PAGCOR), and its licensees or franchisees.

Franchise grantees of telephone and telegraph shall be subject to VAT on their gross receipts derived from their telephone, telegraph, telewriter exchange, wireless and other communication equipment services. However, amounts received for overseas dispatch, message, or conversation originating from the Philippines are subject to the percentage tax under Sec. 120 of the Tax Code and hence exempt from VAT.

(i) Non-life insurance companies including surety, fidelity, indemnity and bonding companies are subject to VAT. They are not liable to the payment of the premium tax under Sec. 123 of the Tax Code.

"Non-life insurance companies" including surety, fidelity, indemnity and bonding companies, shall include all individuals, partnerships, associations, or corporations, including professional reinsurers defined in Sec. 280 of PD 612, otherwise known as The Insurance Code of the Philippines, mutual benefit associations and government-owned or controlled corporations, engaging in the business of property insurance, as distinguished from insurance on human lives, health, accident and insurance appertaining thereto or connected therewith which shall be subject to the percentage tax under Sec. 123 of the Tax Code.

The gross receipts from non-life insurance shall mean total premiums collected, whether paid in money, notes, credits or any substitute for money.

Non-life reinsurance premiums are subject to VAT. Insurance and reinsurance commissions, whether life or non-life, are subject to VAT.

VAT due from the foreign reinsurance company is to be withheld by the local insurance company and to be remitted to the BIR in accordance with Sec. 4.114-2(b)(2) hereof by filing the Monthly Remittance Return of Value-Added Tax Withheld (BIR Form 1600).

(j) Pre-need Companies are corporations registered with the Securities and Exchange Commission and authorized/licensed to sell or offer for sale pre-need plans, whether a single plan or multi-plan. They are engaged in business as seller of services providing services to plan holders by managing the funds provided by them and making payments at the time of need or maturity of the contract.

As service providers, the compensation for their services is the premiums or payments received from the plan holders.

(k) Health Maintenance Organizations (HMOs) are entities, organized in accordance with the provisions of the Corporation Code of the Philippines and licensed by the appropriate government agency, which arranges for coverage or designated managed care services needed by plan holders/members for fixed prepaid membership fees and for a specified period of time.

HMO's gross receipts shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value-added tax. The compensation for their services representing their service fee, is presumed to be the total amount received as enrollment fee from their members plus other charges received .

SEC. 4.108-4. ***Definition of Gross Receipts.*** **-*"Gross receipts"*** refers to 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 applied as payments for services rendered and advance payments actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding VAT.

"Constructive receipt" occurs when the money consideration or its equivalent is placed at the control of the person who rendered the service without restrictions by the payor. The following are examples of constructive receipts:

(1) deposit in banks which are made available to the seller of services without restrictions;

(2) issuance by the debtor of a notice to offset any debt or obligation and acceptance thereof by the seller as payment for services rendered; and

(3) transfer of the amounts retained by the payor to the account of the contractor.

SEC. 4.108-5. ***Zero-Rated Sale of Services.*** **-**

(a) In general. - A zero-rated sale of service (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these Regulations.

(b) Transactions Subject to Zero Percent (0%) VAT Rate. - The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT 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 BSP;

(2) Services other than processing, manufacturing or repacking rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the 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 persons engaged in international shipping or air transport operations, including leases of property for use thereof; *Provided*, however, that the services referred to herein shall not pertain to those made to 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, the same being subject to 10% VAT under Sec. 108 of the Tax Code;

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

(6) Transport of passengers and cargo by domestic air or sea carriers from the Philippines to a foreign country. Gross receipts of international air carriers doing business in the Philippines and international sea carriers doing business in the Philippines are still liable to a percentage tax of three percent (3%) based on their gross receipts as provided for in Sec. 118 of the Tax Code but shall not to be liable to VAT; and

(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels; *Provided*, however, that zero-rating shall apply strictly to the sale of power or fuel generated through

renewable sources of energy, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power.

SEC. 4.108-6. ***Effectively Zero-Rated Sale of Services***. The term "**effectively zero-rated sales of services"** shall refer to the local sale of services by a VAT-registered person to a person or entity who was granted indirect tax exemption under special laws or international agreement. Under these Regulations, effectively zero-rated sale of services shall be limited to local sales to persons or entities that enjoy exemptions from indirect taxes under subparagraph (b) nos. (3), (4) and (5) of this Section. The concerned taxpayer must seek prior approval or prior confirmation from the appropriate offices of the BIR so that a transaction is qualified for effective zero-rating. Without an approved application for effective zero-rating, the transaction otherwise entitled to zero-rating shall be considered exempt. The foregoing rule notwithstanding, the Commissioner may prescribe such rules to effectively implement the processing of applications for effective zero-rating.

SEC. 4.109-1. ***VAT-Exempt Transactions.*** **–**

(A) In general. – "VAT-exempt transactions" refer to the sale of goods or properties and/or services and the use or lease of properties that is not subject to VAT (output tax) and the seller is not allowed any tax credit of VAT (input tax) on purchases.

The person making the exempt sale of goods, properties or services shall not bill any output tax to his customers because the said transaction is not subject to VAT.

(B) Exempt transactions. –

(1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from VAT*:*

(a) 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.

Livestock shall include cows, bulls and calves, pigs, sheep, goats and rabbits. Poultry shall include fowls, ducks, geese and turkey. Livestock or poultry does not include fighting cocks, race horses, zoo animals and other animals generally considered as pets.

Marine food products shall include fish and crustaceans, such as, but not limited to, eels, trout, lobster, shrimps, prawns, oysters, mussels and clams.

Meat, fruit, fish, vegetables and other agricultural and marine food products classified under this paragraph shall be considered in their original date 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, including those using advanced technological means of packaging, such as shrink wrapping in plastics, vacuum packing, tetra-pack, and other similar packaging methods.

Polished and/or husked rice, corn grits, raw cane sugar and molasses, ordinary salt and copra shall be considered as agricultural food products in their original state.

Sugar whose content of sucrose by weight, in the dry state, has a polarimeter reading of 99.5 ^{o} and above are presumed to be refined sugar.

Cane sugar produced from the following shall be presumed, for internal revenue purposes, to be refined sugar:

(1) product of a refining process,

(2) products of a sugar refinery, or

(3) product of a production line of a sugar mill accredited by the BIR to be producing and/or capable of producing sugar with polarimeter reading of 99.5° and above, and for which the quedan issued therefor, and verified by the Sugar Regulatory Administration, identifies the same to be of a polarimeter reading of 99.5° and above.

Bagasse is not included in the exemption provided for under this section.

(b) Sale or importation of fertilizers, seeds, seedlings 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);

"Specialty feeds" refers to non-agricultural feeds or food for race horses, fighting cocks, aquarium fish, zoo animals and other animals generally considered as pets.

(c) Importation of personal and household effects belonging to residents of the Philippines returning from abroad and non-resident 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;

(d) Importation of professional instruments and implements, wearing apparel, domestic animals, and personal household effects (except any vehicle, vessel, aircraft, machinery and other goods for use in the manufacture and merchandise of any kind in commercial quantity) belonging to persons 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 of Internal Revenue, that such persons are actually coming to settle in the Philippines and that the change of residence is *bonafide*;

(e) Services subject to percentage tax under Title V of the Tax Code, as enumerated below:

(1) Sale or lease of goods or properties or the performance of services of non-VAT-registered persons, other than the transactions mentioned in paragraphs (A) to (U) of Sec. 109(1) of the Tax Code, the gross annual sales and/or receipts of which does not exceed the amount of One Million Five Hundred Thousand Pesos (₱1,500,000.00); *Provided*, That not later than January 31, 2009 and every three (3) years thereafter, the amount herein stated shall be adjusted to its present value using the Consumer Price Index, as published by the National Statistics Office (NSO) (Sec. 116 of the Tax Code);

(2) Services rendered by domestic common carriers by land, for the transport of passengers and keepers of garages (Sec. 117);

(3) Services rendered by international air / shipping carriers (Sec. 118);

(4) Services rendered by franchise grantees of radio and/or television broadcasting whose annual gross receipts of the preceding year do not exceed Ten Million Pesos (P10,000,000.00), and by franchise grantees of gas and water utilities (Sec. 119);

(5) Service rendered for overseas dispatch, message or conversation originating from the Philippines (Sec. 120);

(6) Services rendered by any person, company or corporation (except purely cooperative companies or associations) doing life insurance business of any sort in the Philippines (Sec. 123);

(7) Services rendered by fire, marine or miscellaneous insurance agents of foreign insurance companies (Sec. 124);

(8) Services of proprietors, lessees or operators of cockpits, cabarets, night or day clubs, boxing exhibitions, professional basketball games, Jai-Alai and race tracks (Sec. 125); and

(9) Receipts on sale, barter or exchange of shares of stock listed and traded through the local stock exchange or through initial public offering (Sec. 127).

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

"Agricultural contract growers" refers to those persons producing for others poultry, livestock or other agricultural and marine food products in their original state.

(g) Medical, dental, hospital and veterinary services, except those rendered by professionals.

Laboratory services are exempted. If the hospital or clinic operates a pharmacy or drug store, the sale of drugs and medicine is subject to VAT.

(h) Educational services rendered by private educational institutions duly accredited by the Department of Education (DepED), the Commission on Higher Education (CHED) and the Technical Education and Skills Development Authority (TESDA) and those rendered by government educational institutions;

"Educational services" shall refer to academic, technical or vocational education provided by private educational institutions duly accredited by the DepED, the CHED and TESDA and those rendered by government educational institutions and it does not include seminars, in-service training, review classes and other similar services rendered by persons who are not accredited by the DepED, the CHED and/or the TESDA;

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

(j) 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;

(k) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws except those granted under PD No. 529 — Petroleum Exploration Concessionaires under the Petroleum Act of 1949; and

(l) Sales by agricultural cooperatives duly registered and in good standing with the Cooperative Development Authority (CDA) 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;

(m) Gross receipts from lending activities by credit or multi-purpose cooperatives duly registered and in good standing with the Cooperative Development Authority,

(n) Sales by non-agricultural, non-electric and non-credit cooperatives duly registered with and in good standing with the CDA; *Provided*, That the share capital contribution of each member does not exceed Fifteen Thousand Pesos (₱15,000.00) and regardless of the aggregate capital and net surplus ratably distributed among the members.

Importation by non-agricultural, non-electric and non-credit cooperatives of machineries and equipment, including spare parts thereof, to be used by them are subject to VAT.

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

(p) The following sales of real properties are exempt from VAT, namely:

(1) Sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business.

(2) Sale of real properties utilized for low-cost housing as defined by RA No. 7279, otherwise known as the "Urban Development and Housing Act of 1992" and other related laws, such as RA No. 7835 and RA No. 8763.

"Low-cost housing" refers to housing projects intended for homeless low-income family beneficiaries, undertaken by the Government or private developers, which may either be a subdivision or a condominium registered and licensed by the Housing and Land Use

Regulatory Board/Housing (HLURB) under BP Blg. 220, PD No. 957 or any other similar law, wherein the unit selling price is within the selling price ceiling per unit of ₱750,000.00 under RA No. 7279, otherwise known as the "Urban Development and Housing Act of 1992" and other laws, such as RA No. 7835 and RA No. 8763.

(3) Sale of real properties utilized for socialized housing as defined under RA No. 7279, and other related laws, such as RA No. 7835 and RA No. 8763, wherein the price ceiling per unit is ₱225,000.00 or as may from time to time be determined by the HUDCC and the NEDA and other related laws.

"Socialized housing" refers to housing programs and projects covering houses and lots or home lots only undertaken by the Government or the private sector for the underprivileged and homeless citizens which shall include sites and services development, long-term financing, liberated terms on interest payments, and such other benefits in accordance with the provisions of RA No. 7279, otherwise known as the "Urban Development and Housing Act of 1992" and RA No. 7835 and RA No. 8763. "Socialized housing" shall also refer to projects intended for the underprivileged and homeless wherein the housing package selling price is within the lowest interest rates under the Unified Home Lending Program (UHLP) or any equivalent housing program of the Government, the private sector or non-government organizations.

(4) Sale of residential lot valued at One Million Five Hundred Thousand Pesos (₱1,500,000.00) and below, or house & lot and other residential dwellings valued at Two Million Five Hundred Thousand Pesos (₱2,500,000.00) and below where the instrument of sale/transfer/disposition was executed on or after November 1, 2005; *Provided*, That not later than January 31, 2009 and every three (3) years thereafter, the amounts stated herein shall be adjusted to its present value using the Consumer Price Index, as published by the National Statistics Office (NSO); *Provided*, further, that such adjustment shall be published through revenue regulations to be issued not later than March 31 of each year;

If two or more adjacent residential lots are sold or disposed in favor of one buyer, for the purpose of utilizing the lots as one residential lot, the sale shall be exempt from VAT only if the aggregate value of the lots do not exceed P1,500,000.00. Adjacent residential lots, although covered by separate titles and/or separate tax declarations, when sold or disposed to one and the same buyer, whether covered by one or separate Deed of Conveyance, shall be presumed as a sale of one residential lot.

(q) Lease of residential units with a monthly rental per unit not exceeding Ten Thousand Pesos (₱10,000.00), regardless of the amount of aggregate rentals received by the lessor during the year; *Provided,* that not later than January 31, 2009 and every three (3) years thereafter, the amount of ₱10,000.00 shall be adjusted to its present value using the Consumer Price Index, as published by the NSO;

The foregoing notwithstanding, lease of residential units where the monthly rental per unit exceeds Ten Thousand Pesos (₱10,000.00) but the aggregate of such rentals of the lessor during the year do not exceed One Million Five Hundred Pesos (₱1,500,000.00) shall likewise be exempt from VAT, however, the same shall be subjected to three percent (3%) percentage tax.

In cases where a lessor has several residential units for lease, some are leased out for a monthly rental per unit of not exceeding P10,000.00 while others are leased out for more than P10,000.00 per unit, his tax liability will be as follows:

1. The gross receipts from rentals not exceeding P10,000.00 per month per unit shall be exempt from VAT regardless of the aggregate annual gross receipts.
2. The gross receipts from rentals exceeding P10,000.00 per month per unit shall be subject to VAT if the aggregate annual gross receipts from said units only (not including the gross receipts from units leased for not more than P10,000.00) exceeds P1,500,000.00. Otherwise, the gross receipts will be subject to the 3% tax imposed under Section 116 of the Tax Code.

The term ***'residential units'*** shall refer to apartments and houses & lots used for residential purposes, and buildings or parts or units thereof used solely as dwelling places (*e.g.*, dormitories, rooms and bed spaces) except motels, motel rooms, hotels and hotel rooms.

The term ***'unit'*** shall mean an apartment unit in the case of apartments, house in the case of residential houses; per person in the case of dormitories, boarding houses and bed spaces; and per room in case of rooms for rent.

(r) Sale, importation, printing or publication of books and any newspaper, magazine, review, or 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;

(s) Sale, importation or lease of passenger or cargo vessels and aircraft, including engine, equipment and spare parts thereof for domestic or international transport operations; *Provided*, that the exemption from VAT on the importation and local purchase of passenger and/or cargo vessels shall be limited to those of one hundred fifty (150) tons and above, including engine and spare parts of said vessels; *Provided*, further, that the vessels to be imported shall comply with the age limit requirement, at the time of acquisition counted from the date of the vessel's original commissioning, as follows: (i) for passenger and/or cargo vessels, the age limit is fifteen (15) years old, (ii) for tankers, the age limit is ten (10) years old, and (iii) For high-speed passenger crafts, the age limit is five (5) years old; *Provided*, finally, that exemption shall be subject to the provisions of Section 4 of Republic Act No. 9295, otherwise known as "The Domestic Shipping Development Act of 2004";

(t) Importation of fuel, goods and supplies by persons engaged in international shipping or air transport operations; *Provided*, that the said fuel, goods and supplies shall be used exclusively or shall pertain to the transport of goods and/or passenger from a port in the Philippines directly to a foreign port without stopping at any other port in the Philippines; *Provided*, further, that if any portion of such fuel, goods or supplies is used for purposes other than that mentioned in this paragraph, such portion of fuel, goods and supplies shall be subject to 10% VAT;

(u) Services of banks, non-bank financial intermediaries performing quasi-banking functions, and other non-bank financial intermediaries subject to percentage tax under Secs. 121 and 122 of the Tax Code, such as money changers and pawnshops; and

(v) 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 One Million Five Hundred Thousand Pesos (₱1,500,000.00); *Provided*, That not later than January 31, 2009 and every three (3) years thereafter, the amount of ₱1,500,000.00 shall be adjusted to its present value using the Consumer Price Index, as published by the NSO.

For purposes of the threshold of P1,500,000.00, the husband and the wife shall be considered separate taxpayers. However, the aggregation rule for each taxpayer shall apply. For instance, if a professional, aside from the practice of his profession, also derives revenue from other lines of business which are otherwise subject to VAT, the same shall be combined for purposes of determining whether the threshold has been exceeded. Thus, the VAT-exempt sales shall not be included in determining the threshold.

SEC. 4.109-2 A VAT-registered person may, in relation to Sec. 9.236-1(c) of these Regulations, elect that the exemption in Subsection (1) hereof shall not apply to his sales of goods or properties or services. Once the election is made, it shall be irrevocable for a period of three (3) years counted from the quarter when the election was made.

SEC. 4.110-1. ***Credits For Input Tax.*** **--** ***"Input tax"*** means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.

It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:

(a) Purchase or importation of goods

(1) For sale; or

(2) For conversion into or intended to form part of a finished product for sale, including packaging materials; or

(3) For use as supplies in the course of business; or

(4) For use as raw materials supplied in the sale of services; or

(5) For use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code,

(b) Purchase of real properties for which a VAT has actually been paid;

(c) Purchase of services in which a VAT has actually been paid;

(d) Transactions "deemed sale" under Sec. 106 (B) of the Tax Code;

(e) Transitional input tax allowed under Sec. 4.111 (a) of these Regulations;

(f) Presumptive input tax allowed under Sec. 4.111 (b) of these Regulations;

(g) Transitional input tax credits allowed under the transitory and other provisions of these Regulations.

SEC. 4.110-2. ***Persons Who Can Avail of the Input Tax Credit.*** **--** The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:

(a) To the importer upon payment of VAT prior to the release of goods from customs custody;

(b) To the purchaser of the domestic goods or properties upon consummation of the sale; or

(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

SEC. 4.110-3. ***Claim for Input Tax on Depreciable Goods.*** **--** Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (₱1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

(a) If the estimated useful life of a capital good is five (5) years or more – The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.

(b) If the estimated useful life of a capital good is less than five (5) years – The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of the capital good. The claim for input tax credit shall commence in the calendar month that the capital goods were acquired.

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One million pesos (₱ 1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition; *Provided*, however, that the total amount of input taxes (input tax on depreciable capital goods plus other allowable input taxes) allowed to be claimed against the output tax in the quarterly VAT Returns shall be subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.

The aggregate acquisition cost of a depreciable asset in any calendar month refers to the total price agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired in instalment for an acquisition cost of more than ₱ 1,000,000.00 will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed ₱ 1,000,000.00.

Illustration: LBH Corporation sold capital goods on installment on October 1, 2005. It is agreed that the selling price, including the VAT, shall be payable in five (5) equal monthly installments. The data pertinent to the sold assets are as follows:

Selling Price	-	₱ 5,000,000.00 (exclusive of VAT)
Passed-on VAT	-	500,000.00
Original Cost of Asset	-	3,000,000.00
Accumulated Depreciation		
at the time of sale	-	1,000,000.00
Unutilized Input Tax (Sold Asset)	-	100,000.00

Accounting Entries:

SELLER			BUYER		
Oct. 1, 2005			Oct. 1, 2005		
Cash	₱ 1,100,000.00		Asset	₱ 5,000,000.00	
Installment Receivable	4,400,000.00		Input Tax	500,000.00	
Accumulated Depreciation	1,000,000.00				
Output Tax		500,000.00	Cash		1,100,000.00
Asset		3,000,000.00	Installment Payable		4,400,000.00
Gain on sale of asset		3,000,000.00			
To Record VAT Liability:			----------		
Output Tax	500,000.00				
Input Tax		100,000.00			
VAT Payable		400,000.00			
Periodic Receipt of Installment:			*Periodic Subsequent Payment:*		
Cash	1,100,000.00		Installment Payable	1,100,000.00	
Installment Receivable		1,100,000.00	Cash		1,100,000.00

* The input tax of ₱ 500,000.00 on the bought capital goods worth ₱ 5,000,000.00 shall be spread evenly over a period of 60 months starting the month of purchase.

If the depreciable capital good is sold/transferred within a period of five (5) years or prior to the exhaustion of the amortizable input tax thereon, the entire unamortized input tax on the capital goods sold/transferred can be claimed as input tax credit during the month/quarter when the sale or transfer was made but subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.

SEC. 4.110-4. ***Apportionment of Input Tax on Mixed Transactions.*** -- A VAT-registered person who is also engaged in transactions not subject to VAT shall be allowed to recognize input tax credit on transactions subject to VAT as follows:

1. All the input taxes that can be directly attributed to transactions subject to VAT may be recognized for input tax credit; *Provided*, that input taxes that can be directly attributable to VAT taxable sales of goods and services to the Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall not be credited against output taxes arising from sales to non-Government entities; and

2. If any input tax cannot be directly attributed to either a VAT taxable or VAT-exempt transaction, the input tax shall be pro-rated to the VAT taxable and VAT-exempt transactions and only the ratable portion pertaining to transactions subject to VAT may be recognized for input tax credit.

Illustration: ERA Corporation has the following sales during the month:

Sale to private entities subject to 10%	-	₱100,000.00
Sale to private entities subject to 0%	-	100,000.00
Sale of exempt goods	-	100,000.00
Sale to gov't. subjected to 5% final VAT Withholding	-	100,000.00
Total sales for the month	-	₱400,000.00

The following input taxes were passed on by its VAT suppliers:

Input tax on taxable goods (10%)	-	₱ 5,000.00
Input tax on zero-rated sales	-	3,000.00
Input tax on sale of exempt goods	-	2,000.00
Input tax on sale to government	-	4,000.00
Input tax on depreciable capital good not attributable to any specific activity (monthly amortization for 60 months)	-	₱20,000.00

A. The creditable input tax for the month shall be computed as follows:

Input tax on sale subject to 10%	-	₱ 5,000.00
Input tax on zero-rated sale	-	3,000.00
Ratable portion of the input tax not directly attributable to any activity:		

Taxable sales (0% and 10%) / Total Sales	X	Amount of input tax not directly attributable		
₱200,000.00 / 400,000.00	X	P20,000.00	-	₱ 10,000.00
Total creditable input tax for the month			-	₱18,000.00

B. The input tax attributable to sales to government for the month shall be computed as follows:

Input tax on sale to gov't.			-	₱ 4,000.00
Ratable portion of the input tax not directly attributable to any activity:				
Taxable sales to government / Total Sales	X	Amount of input tax not directly attributable		
₱100,000.00 / 400,000.00	X	P20,000.00	-	₱ 5,000.00
Total input tax attributable to sales to government			-	₱ 9,000.00

C. The input tax attributable to VAT-exempt sales for the month shall be computed as follows:

Input tax on VAT-exempt sales			-	₱ 2,000.00
Ratable portion of the input tax not directly attributable to any activity:				
VAT-exempt sales / Total Sales	X	Amount of input tax not directly attributable		
₱100,000.00 / 400,000.00	X	P20,000.00	-	₱ 5,000.00
Total input tax attributable to VAT-exempt sales			-	₱ 7,000.00

The table below shows a summary of the foregoing transactions of ERA Corporation:

	Output VAT	Input VAT directly Attributable	Input VAT not directly Attributable to any Activity	Total Input VAT	Credit-able Input VAT	Net VAT Payable	Excess Input VAT for carry-over/	Input VAT for refund	Unrecove rable input VAT
Sale Subject to 10% VAT	10,000	5,000	5,000	10,000	10,000	0	0	0	0
Sale Subject to 0% VAT	0	3,000	5,000	8,000	8,000	0	0	8,000	0
Sale of Exempt Goods	0	2,000	5,000	7,000	0	0	0	0	7,000*
Sale to Government subject to 5% Final withholding VAT	10,000	4,000	5,000	9,000	5,000**	5,000***	0	0	4,000*

* These amounts are not available for input tax credit but may be recognized as cost or expense.
** Standard input VAT of 5% on sales to Government as provided in SEC. 4.114-2(a)
*** Withheld by Government entity as Final Withholding VAT

The input tax attributable to VAT-exempt sales shall not be allowed as credit against the output tax but should be treated as part of cost or expense.

Notwithstanding the foregoing provisions, for persons engaged in both zero-rated sales under Sec. 108(B)(6) of the Tax Code and non-zero rated sales, the aggregate input taxes shall be allocated ratably between the zero-rated sale and non-zero-rated sale.

SEC. 4.110-5. ***Determination of Input Tax Creditable during a Taxable Month or Quarter.*** **--** The amount of input taxes creditable during a month or quarter shall be determined in the manner illustrated above by adding all creditable input taxes arising from the transactions enumerated under the preceding subsections of Sec. 4.110 during the month or quarter plus any amount of input tax carried-over from the preceding month or quarter, reduced by the amount of claim for VAT refund or tax credit certificate (whether filed with the BIR, the Department of Finance, the Board of Investments or the BOC) and other adjustments, such as purchases returns or allowances, input tax attributable to exempt sales and input tax attributable to sales subject to final VAT withholding.

SEC. 4.110-6. ***Determination of the Output Tax and VAT Payable and Computation of VAT Payable or Excess Tax Credits.*** **--** In a sale of goods or properties, the output tax is computed by multiplying the gross selling price as defined in these Regulations by the regular rate of VAT. For sellers of services, the output tax is computed by multiplying the gross receipts as defined in these Regulations by the regular rate of VAT.

In all cases where the basis for computing the output tax is either the gross selling price or the gross receipts, but the amount of VAT is erroneously billed in the invoice, the total invoice amount shall be presumed to be comprised of the gross selling price/gross receipts plus the correct amount of VAT. Hence, the output tax shall be computed by multiplying the total invoice amount by a fraction using the rate of VAT as numerator and one hundred percent

(100%) plus rate of VAT as the denominator. Accordingly, the input tax that can be claimed by the buyer shall be the corrected amount of VAT computed in accordance with the formula herein prescribed.

There shall be allowed as a deduction from the output tax the amount of input tax deductible as determined under Sec. 4.110-1 to 4.110-5 of these Regulations to arrive at VAT payable on the monthly VAT declaration and the quarterly VAT returns, subject to the limitations set forth in Section 4.110-7.

SEC. 4.110-7. ***VAT Payable (Excess Output)t or Excess Input Tax.***

(a) If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person.

Illustration:

For a given taxable quarter ABC Corp. has output VAT of 100 and input VAT of 80. Since output tax exceeds the input tax for such taxable quarter, all of the input tax may be utilized to offset against the output tax. Thus, the net VAT payable is 100 minus 80 = 20.

(b) If the input tax inclusive of input tax carried over from the previous quarter exceeds the output tax, the input tax inclusive of input tax carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output tax; Provided, That, the excess input tax shall be carried over to the succeeding quarter or quarters; Provided, however, that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or applied for a tax credit certificate which may be used in the payment of internal revenue taxes, subject to the limitations as may be provided for by law, as well as, other implementing rules.

Illustration:

For a given taxable quarter XYZ Corp. has output VAT of 100 and input VAT of 110. Since input tax exceeds the output tax for such taxable quarter, the 70% limitation is imposed to compute the amount of input tax which may be utilized. The total allowable input tax which may be utilized is 70 (70% of the output tax). Thus, the net VAT payable is 100 less 70 = 30. The unutilized input tax amounting to 40 is carried over to the succeeding month.

SEC. 4.110-8. ***Substantiation of Input Tax Credits.*** **--**

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

(1) For the importation of goods - import entry or other equivalent document showing actual payment of VAT on the imported goods.

(2) For the domestic purchase of goods and properties – invoice showing the information required under Secs. 113 and 237 of the Tax Code.

(3) For the purchase of real property – public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.

(4) For the purchase of services – official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.

(b) Transitional input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.

(c) Input tax on "deemed sale" transactions shall be substantiated with the invoice required under Sec. 4.113-2 of these Regulations.

(d) Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor.

(e) Advance VAT on sugar shall be supported by the Payment Order showing payment of the advance VAT.

SEC. 4.111-1. ***Transitional/Presumptive Input Tax Credits.--***

(a) Transitional Input Tax Credits on Beginning Inventories

Taxpayers who became VAT-registered persons upon exceeding the minimum turnover of ₱1,500,000.00 in any 12-month period, or who voluntarily register even if their turnover does not exceed ₱1,500,000.00 (except franchise grantees of radio and television broadcasting whose threshold is ₱10,000,000.00) shall be entitled to a transitional input tax on the inventory on hand as of the effectivity of their VAT registration, on the following:

(1) goods purchased for resale in their present condition;

(2) materials purchased for further processing, but which have not yet undergone processing;

(3) goods which have been manufactured by the taxpayer;

(4) goods in process for sale; or

(5) goods and supplies for use in the course of the taxpayer's trade or business as a VAT-registered person.

The transitional input tax shall be two percent (2%) of the value of the beginning inventory on hand or actual VAT paid on such, goods, materials and supplies, whichever is higher, which amount shall be creditable against the output tax of VAT-registered person. The value allowed for income tax purposes on inventories shall be the basis for the computation of the 2% transitional input tax, excluding goods that are exempt from VAT under Sec. 109 of the Tax Code.

The threshold amount of ₱1,500,000.00 shall be adjusted, not later than January 31, 2009 and every three years thereafter, to its present value using the Consumer Price Index as published by the NSO.

(b) Presumptive Input Tax Credits

Persons or firms engaged in the processing of sardines, mackerel, and milk, and in manufacturing refined sugar, cooking oil and packed noodle-based instant meals, shall be allowed a presumptive input tax, creditable against the output tax, equivalent to four percent (4%) of the gross value in money of their purchases of primary agricultural products which are used as inputs to their production.

As used in this paragraph, the term processing shall mean pasteurization, canning and activities which through physical or chemical process alter the exterior texture or form or inner substance of a product in such manner as to prepare it for special use to which it could not have been put in its original form or condition.

SEC. 4.112-1. ***Claims for Refund/Tax Credit Certificate of Input Tax.*** **--**

(a) Zero-rated and Effectively Zero-rated Sales of Goods, Properties or Services

A VAT-registered person whose sales of goods, properties or services are zero-rated or effectively zero-rated may apply for the issuance of a tax credit certificate/refund of input tax attributable to such sales. The input tax that may be subject of the claim shall exclude the portion of input tax that has been applied against the output tax. The application should be filed within two (2) years after the close of the taxable quarter when such sales were made.

In case of zero-rated sales under Secs. 106(A)(2)(a)(1) and (2), and Sec. 106(A)(2)(b) and Sec. 108(B)(1) and (2) of the Tax Code, the payments for the sales must have been made in acceptable foreign currency duly accounted for in accordance with the BSP rules and regulations.

Where the taxpayer is engaged in both zero-rated or effectively zero-rated sales and in taxable (including sales subject to final withholding VAT) or exempt sales of goods, properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, only the proportionate share of input taxes allocated to zero-rated or effectively zero-rated sales can be claimed for refund or issuance of a tax credit certificate.

In the case of a person engaged in the transport of passenger and cargo by air or sea vessels from the Philippines to a foreign country, the input taxes shall be allocated ratably between his zero-rated sales and non-zero-rated sales (sales subject to regular rate, subject to final VAT withholding and VAT-exempt sales).

(b) Cancellation of VAT registration

A VAT-registered person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Sec. 106 (C) of the Tax Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which he may use in payment of his other

internal revenue taxes; *Provided,* however, that he shall be entitled to a refund if he has no internal revenue tax liabilities against which the tax credit certificate may be utilized.

(c) Where to file the claim for refund/tax credit certificate

Claims for refunds/tax credit certificate shall be filed with the appropriate BIR office (Large Taxpayers Service (LTS) or Revenue District Office (RDO)) having jurisdiction over the principal place of business of the taxpayer; *Provided*, however, that direct exporters may also file their claim for tax credit certificate with the One Stop Shop Center of the Department of Finance; *Provided*, finally, that the filing of the claim with one office shall preclude the filing of the same claim with another office.

(d) Period within which refund or tax credit certificate/refund of input taxes shall be made

In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with subparagraph (a) above.

In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from the receipt of said denial, otherwise the decision shall become final. However, if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty (120) day period from the date of submission of the application with complete documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 120-day period.

(e) Manner of giving refund

Refund shall be made upon warrants drawn by the Commissioner of Internal Revenue or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on Audit (COA), the provision of the Revised Administrative Code to the contrary notwithstanding; *Provided*, that refunds under this paragraph shall be subject to post audit by the COA.

SEC. 4.113-1. ***Invoicing Requirements.*** **--**

(A) A VAT-registered person shall issue: --

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a "VAT Invoice" or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice /official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. – The following information shall be indicated in VAT invoice or **VAT official** receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; ***Provided*, That:**

(a) The amount of tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) In the case of sales in the amount of one thousand pesos (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.

SEC. 4.113-2. ***Invoicing and Recording Deemed Sale Transactions*.--** In the case of Sec. 4.106-7(a) (1) of these Regulations, a memorandum entry in the subsidiary sales journal to record withdrawal of goods for personal use is required. In the case of Sec. 4.106-7(a) (2) and (3) of these Regulations, an invoice shall be prepared at the time of the occurrence of the transaction, which should include, all the information prescribed in Sec. 4.113-1. The data appearing in the invoice shall be duly recorded in the subsidiary sales journal. The total amount of "deemed sale" shall be included in the return to be filed for the month or quarter.

In the case of Sec. 4.106-7(a) (4) an inventory shall be prepared and submitted to the RDO who has jurisdiction over the taxpayer's principal place of business not later than 30 days after retirement or cessation from business.

An invoice shall be prepared for the entire inventory, which shall be the basis of the entry into the subsidiary sales journal. The invoice need not enumerate the specific items appearing in the inventory, but it must show the total amount. It is sufficient to just make a reference to the inventory regarding the description of the goods. However, the sales invoice number should be indicated in the inventory filed and a copy thereof shall form part of this invoice. If the business is to be continued by the new owners or successors, the entire amount of output tax on the amount deemed sold shall be allowed as input taxes. If the business is to be

liquidated and the goods in the inventory are sold or disposed of to VAT-registered buyers, an invoice or instrument of sale or transfer shall to prepared citing the invoice number wherein the tax was imposed on the deemed sale. At the same time the tax paid corresponding to the goods sold should be separately indicated in the instrument of sale.

Example: "A", at the time of retirement, had 1,000 pieces of merchandise which was deemed sold at a value of ₱20,000.00 with an output tax of ₱2,000.00. After retirement, "A" sold to "B", 500 pieces for ₱12,000.00. In the contract of sale or invoice, "A" should state the sales invoice number wherein the output tax on "deemed sale" was imposed and the corresponding tax paid on the 500 pieces is ₱1,000.00, which is included in the ₱12,000.00, or he should indicate it separately as follows:

Gross selling price	₱ 11,000.00
VAT previously paid on "deemed sale"	1,000.00
Total	₱ 12,000.00

In this case, "B" shall be entitled only to P1,000 as input tax and not 1/11 of P12,000.00

SEC. 4.113-3. ***Accounting Requirements.*** **--** Notwithstanding the provisions of Sec. 233, all persons subject to VAT under Sec. 106 and 108 of the Tax Code shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which every sale or purchase on any given day is recorded. The subsidiary journal shall contain such information as may be required by the Commissioner of Internal Revenue.

A subsidiary record in ledger form shall be maintained for the acquisition, purchase or importation of depreciable assets or capital goods which shall contain, among others, information on the total input tax thereon as well as the monthly input tax claimed in VAT declaration or return.

SEC. 4. 113-4. ***Consequences of Issuing Erroneous VAT Invoice or VAT Official Receipt.*** **--**

(A) Issuance of a VAT Invoice or VAT Receipt by a non-VAT person. – If a person who is not VAT-registered issues an invoice or receipt showing his TIN, followed by the word "VAT", the erroneous issuance shall result to the following:

(1) The non-VAT person shall be liable to:

(i) the percentage taxes applicable to his transactions;

(ii) VAT due on the transactions under Sec. 106 or 108 of the Tax Code, without the benefit of any input tax credit; and

(iii) a 50% surcharge under Sec. 248 (B) of the Tax Code;

(2) VAT shall be recognized as an input tax credit to the purchaser under Sec. 110 of the Tax Code, provided the requisite information required under Subsection 4.113 (B) of these Regulations is shown on the invoice or receipt.

(B) Issuance of a VAT Invoice or VAT Receipt on an Exempt Transaction by a VAT-registered Person – If a VAT-registered person issues a VAT invoice or VAT official receipt for a VAT-exempt transaction, but fails to display prominently on the invoice or receipt the words "VAT-exempt sale", the transaction shall become taxable and the issuer shall be liable to pay VAT thereon. The purchaser shall be entitled to claim an input tax credit on his purchase.

SEC. 4.113-5. ***Transitional Period.*** – Notwithstanding Sec. 4.113-1 (B) hereof, taxpayers may continue to issue VAT invoices and VAT official receipts for the period July 1, 2005 to December 31, 2005, in accordance with BIR administrative practices that existed as of December 31, 2004 but subject to the Transitory and Other Provisions of these Regulations

SEC. 4.114-1. ***Filing of Return and Payment of VAT.*** **--**

(A) Filing of Return. – Every person liable to pay VAT shall file a quarterly return of the amount of his quarterly gross sales or receipts within twenty five (25) days following the close of taxable quarter using the latest version of Quarterly VAT Return. The term *"taxable quarter"* shall mean the quarter that is synchronized to the income tax quarter of the taxpayer (i.e., the calendar quarter or fiscal quarter).

Amounts reflected in the monthly VAT declarations for the first two (2) months of the quarter shall still be included in the quarterly VAT return which reflects the cumulative figures for the taxable quarter. Payments in the monthly VAT declarations shall, however, be credited in the quarterly VAT return to arrive at the net VAT payable or excess input tax/over-payment as of the end of a quarter.

Example. — Suppose the accounting period adopted by the taxpayer is fiscal year ending October 2003, the taxpayer has to file monthly VAT declarations for the months of November 2002, December 2002, and for the months of February, March, May, June, August, and September for Year 2003, on or before the 20th day of the month following the close of the taxable month. His quarterly VAT returns corresponding to the quarters ending January, April, July, and October 2003 shall, on the other hand, be filed and taxes due thereon be paid, after crediting payments reflected in the Monthly VAT declarations, on or before February 25, May 25, August 25, and November 25, 2003, respectively.

The monthly VAT Declarations (BIR Form 2550M) of taxpayers whether large or non-large shall be filed and the taxes paid not later than the 20th day following the end of each month.

For purposes of filing returns under the Electronic Filing and Payment System (EFPS) the taxpayers classified under the following business industries shall be required to file Monthly VAT Declarations on or before the dates prescribed as follows:

Business Industry	**Period for filing of Monthly VAT Declarations**
Group A	
Insurance and Pension Funding	25 days following the end of the month
Activities Auxiliary to Financial Intermediation	
Construction	
Water Transport	
Hotels and Restaurants	
Land Transport	
Group B	
Manufacture & Repair of Furniture	24 days following the end of the month
Manufacture of Basic Metals	
Manufacture of Chemicals and Chemical Products	
Manufacture of Coke, Refined Petroleum & Fuel Products	
Manufacture of Electrical Machinery & Apparatus N.E.C.	
Manufacture of Fabricated Metal Products	
Manufacture of Food, Products & Beverages	
Manufacture of Machinery & Equipment NEC	
Manufacture of Medical, Precision, Optical Instruments	
Manufacture of Motor Vehicles, Trailers & Semi-Trailers	
Manufacture of Office, Accounting & Computing Machinery	
Manufacture of Other Non-Metallic Mineral Products	
Manufacture of Other Transport Equipment	
Manufacture of Other Wearing Apparel	
Manufacture of Paper and Paper Products	
Manufacture of Radio, TV & Communication Equipment/Apparatus	
Manufacture of Rubber & Plastic Products	
Manufacture of Textiles	
Manufacture of Tobacco Products	

Manufacture of Wood & Wood Products	
Manufacturing N.E.C.	
Metallic Ore Mining	
Non-Metallic Mining & Quarrying	
Group C	
Retail Sale	23 days following
Wholesale Trade and Commission Trade	the end of the
Sale, Maintenance, Repair of Motor Vehicle,	month
Sale of Automotive Fuel	
Collection, Purification And Distribution of Water	
Computer and Related Activities	
Real Estate Activities	
Group D	
Air Transport	22 days following
Electricity, Gas, Steam & Hot Water Supply	the end of the
Postal & Telecommunications	month
Publishing, Printing & Reproduction of Recorded Media	
Recreational, Cultural & Sporting Activities	
Recycling	
Renting of Goods & Equipment	
Supporting & Auxiliary Transport Activities	
Group E	
Activities of Membership Organizations Inc.	21 days following
Health and Social Work	the end of the
Public Admin & Defense Compulsory Social Security	month
Research and Development	
Agricultural, Hunting, and Forestry	
Farming of Animals	
Fishing	
Other Service Activities	
Miscellaneous Business Activities	
Unclassified	

It is reiterated and clarified, however, that the return for withholding of VAT shall be filed on or before the tenth (10th) day of the following month, which is likewise the due date for the payment of this type of withholding tax.

To erase any doubt and to ensure receipt by the BIR before midnight of the due dates prescribed above for the filing of a return, the electronic return shall be filed on or before 10:00 p.m. of the above prescribed due dates.

For the electronic payment of tax for the returns required to be filed earlier under the staggered filing system, the taxpayer upon e-filing shall, still using the facilities of EFPS, likewise give instruction to the Authorized Agent Bank (AAB) to debit its account for the amount of tax on or before the due date for payment thereof as prescribed under the prevailing/applicable laws/regulations.

For purposes of these Regulations, the industry of the taxpayer is its primary line of business or the primary purpose of its existence as stated in the Articles of Incorporation, for corporate taxpayers.

(B) Payment of VAT

I. **Advance Payment** – The following are subject to the advance payment of VAT:

1. Sale of Refined Sugar.—

a. Requirement to Pay Advance VAT on Sale of Refined Sugar. – An advance VAT on the sale of refined sugar shall be paid by the owner/seller to the BIR through an AAB or to the Revenue Collection Officer (RCO) or deputized City or Municipal Treasurer in places where there are no AABs before any refined sugar can be withdrawn from any sugar refinery/mill.

b. Prohibition of Withdrawal/Transfer of Ownership. – The proprietor or operator of a sugar mill/refinery shall not allow any withdrawal of refined sugar from its premises without the advance payment of VAT and submission of proof of such payment, except when the refined sugar is owned and withdrawn by the cooperative, in which case the evidence of ownership, Authorization Allowing the Release and Sworn Statements provided in these Regulations must be presented.

The Regional Director, upon the recommendation of the RDO of the district having jurisdiction over the physical location of the sugar mill/refinery, may direct an internal revenue officer to be present during the withdrawal of refined sugar from the premises of the sugar mill/refinery in order to confirm and/or verify that the requirements of this Section are complied with.

c. Basis for Determining the Amount of Advance VAT Payment. –

i. Base Price. - The amount of advance VAT payment shall be determined by applying VAT rate of 10% on the applicable base price of P850.00 per 50 kg. bag for refined sugar

produced by a sugar refinery, and P 760.00 per 50 kg. bag for refined sugar produced by a sugar mill.

ii. Subsequent Base Price Adjustments. – The base price upon which the advance payment of VAT will be computed under the preceding paragraph shall be adjusted when deemed necessary by the Commissioner of Internal Revenue, upon consultation with the Chairman of the Sugar Regulatory Administration.

d. Proof of Advance Payment. – The RDO concerned or the duly constituted unit in its place such as the Regional Task Force on Sugar, as the Regional Director may decide, shall issue a *Certificate of Advance Payment of VAT.* This certificate shall serve as the authority of the sugar mill/refinery to release the refined sugar described therein, and together with the payment form (BIR Form No. 0605 or its equivalent) and the BIR-prescribed deposit slip duly validated by the AAB, or the Revenue Official Receipt (ROR) issued by the RCO or the duly authorized City or Municipal Treasurer, as the case may be, shall serve as proof of the payment for the advance VAT which can be credited against VAT liability/payable in VAT return/s to be filed.

e. Proof of exemption from the advance payment. – If a duly-registered agricultural cooperative claims ownership of refined sugar stocked in the sugar mill/refinery, the latter shall not release the said refined sugar unless an *Authorization Allowing the Release of Refined Sugar* is first secured from the RDO or any duly constituted unit in its place such as the Regional Task Force on Sugar created by the Regional Director as the latter may decide, of the BIR office having jurisdiction over the physical location of the sugar mill/refinery. In securing such authorization, the cooperative shall, in addition to that of satisfying VAT-exemption requirements under RR No. 20-2001, submit to the RDO or Regional Task Force concerned a Sworn Statement to the effect that-

(1) The sugar has not been bid, sold or otherwise transferred in ownership, at anytime prior to the removal from the refinery, to a trader or another entity; and

(2) The refined sugar is the property of the cooperative at the time of removal and it will not charge advance VAT or any other tax to the future buyer.

If the cooperative invokes ownership over the sugar cane and the milled/refined sugar, the sugar quedans must be in the name of the cooperative.

In the event the refined sugar is owned and/or withdrawn from the mill/refinery by a duly accredited and registered agricultural cooperative of good standing and said cooperative presents the "Authorization Allowing the Release of Refined Sugar", the mill/refinery shall release the same but only after notifying the RDO or the assigned duty officer with jurisdiction over the mill of the time and date of the release from the mill and the names and plate numbers of the carrying trucks so that the release can be given proper supervision and that advance VAT is collected from the transferee/buyer/customer should evidence show that the refined sugar has already been sold by the cooperative.

f. Information Returns to be Filed by the Proprietor or Operator of a Sugar Refinery and Cooperatives.

Every proprietor or operator of a sugar refinery or mill with production line accredited by the BIR to be capable of producing sugar with a polarimeter reading of 99.5° or above, or mill producing sugar with polarimeter reading of 99.5° or above shall render an *Information Return* to the RDO having jurisdiction over the physical location of the said sugar refinery/mill which issues the *Certificate of Advance Payment of VAT or Authorization Allowing the Release of Refined Sugar* not later than the 10th day following the end of the month. The aforesaid Information Return shall reflect the following information:

i. Name, TIN and RDO number of the Owner of the Refined Sugar;
ii. Number of bags of refined sugar released;
iii. Amount of Advance VAT Paid.

Likewise, every cooperative shall submit to RDO where it is registered a *List of Buyers of Sugar* together with a copy of the *Certificate of Advance Payment of VAT,* made by each of the respective buyer appearing in the list, not later than the 10th day following the end of the month with the following information:

i. Name, address, TIN and RDO No. of the Buyer;
ii. Number of bags of refined sugar sold/LKG;
iii. Amount of sales.
iv. Amount of Advance VAT paid by the buyer.

2. Sale of Flour. --

a. Requirement to Pay in Advance VAT on Sale of Flour and Time of Payment of Advance VAT. –

i. VAT on the sale of flour milled from imported wheat shall be paid prior to the release from the Bureau of Custom's custody of the wheat, which is imported and declared for flour milling.

ii. Purchases by flour millers of imported wheat from traders shall also be subjected to advance VAT and shall be paid by the flour miller prior to delivery.

b. Prohibition of Withdrawal of Shipment Before Payment of Advance VAT.-

Withdrawal, either partial or full of imported wheat to be used in the milling of flour from custom's custody shall not be allowed prior to payment of the Advance VAT and submission of documentary proof of payment such as the Authority to Release Imported Goods (ATRIG) issued by the BIR and the BIR Payment Form No. 0605 together with the deposit slip issued by the AAB or the ROR issued by the RCO in the absence of an AAB.

Importation of wheat by any trader shall still be exempt from the payment of VAT. However, in order to monitor all importation of wheat regardless of its intended use, the importer, whether miller or trader, shall be required to secure ATRIG from the BIR.

The BOC will require the submission of the ATRIG by the importer before releasing the imported wheat from its custody. For this purpose, importation of wheat shall be treated as an exception to the list of imported articles exempted from the issuance of ATRIG as contained in the BIR-BOC Joint Memorandum Circular No. 1-2002 dated September 16, 2002.

c. Securing the ATRIG and the Payment Form of the Advance VAT. –

To afford expediency and to minimize delay in the processing of ATRIG, the flour miller shall compute the Advance VAT payable and fill up the Payment Form Order (BIR Form No. 0605). The flour miller shall pay the amount indicated in the Payment Order to the AAB of the LTS/Large Taxpayers District Office (LTDO)/RDO where the flour miller is registered. **In the absence of an AAB in the RDO where the flour miller is registered, the payment shall be made to the RCO of said district.**

Upon payment, the flour miller will then present a copy of the duly validated payment form to the RDO having jurisdiction over the port of entry. Upon receipt of the properly validated and stamped Payment Order, the RDO having jurisdiction over the port of entry shall issue the ATRIG covering the importation of wheat by the flour miller in accordance with Revenue Memorandum Order No. 35-2002, which prescribes the guidelines for the issuance of ATRIG for Excise and VAT purposes.

For purchases of wheat from traders, the flour miller shall be required to present proof of payment of advance VAT to the trader prior to delivery or withdrawal of wheat from the latter's premises.

d. Basis for Determining the Amount of Advance VAT Payment. –

i. *Determination of advance VAT.* – The amount of advance VAT payment shall be determined by applying VAT rate of 10% on the tax base.

ii. *Tax Base* – Considering that in the course of the milling process, not all wheat is turned into flour, the tax base shall be as follows:

For wheat imported by the flour millers – 75% of the sum of: (a) the invoice value multiplied by the currency exchange rate on the date of payment; (b) estimated customs duties and other charges prior to the release of the imported wheat from customs custody, except for the advance VAT; and (c) Five percent (5%) on the sum of (a) and (b).

iii. *Subsequent tax base adjustments* – The tax base shall be adjusted whenever deemed necessary by the Commissioner of Internal Revenue, after proper prior consultations with the flour milling industry associations and upon approval by the Secretary of Finance.

e. Credit for Advance VAT Payments – The amount of advance VAT payments made by the flour miller shall be allowed as tax credit against VAT **liability/payable** of the flour miller. The Payment Order, **together with the deposit slip issued by the AAB or the ROR issued by the RCO,** shall serve as proof for the credit of such advance payment.

f. Reporting Requirements – All importers of wheat regardless of use, whether miller or trader, shall submit quarterly summary list of sales, purchases and importations.

(C) Short Period Return

Any person who retires from business with due notice to the BIR office where the taxpayer (head office) is registered or whose VAT registration has been cancelled shall file a final quarterly return and pay the tax due thereon within twenty five (25) days from the end of the month when the business ceases to operate or when VAT registration has been officially cancelled; *Provided*, however, that subsequent monthly declarations/quarterly returns are still required to be filed if the results of the winding up of the affairs/business of the taxpayer reveal taxable transactions. All persons first registered under Secs. 9.236-1 of these Regulations shall be liable to VAT on the effective date of registration stated in their Certificates of Registration; i.e., the first day of the month following their registration. If the effective date of registration falls on the first or second month of the taxable quarter, initial monthly VAT declaration shall be filed within twenty (20) days after the end of the month, and the initial quarterly return shall be filed on or before the 25th day after the end of the taxable quarter. On the other hand, if the effective date of registration falls on the third month of the taxable quarter the quarterly returns shall be filed on or before the 25th day of the month following the end of the taxable quarter, and no monthly VAT declaration need be filed for the initial quarter.

(D) Where to File and Pay

The monthly VAT declaration and quarterly return shall be filed with, and VAT due thereon paid to, an AAB under the jurisdiction of the Revenue District/BIR Office where the taxpayer (head office of the business establishment) is required to be registered.

In cases where there are no duly accredited agent banks within the municipality or city, the monthly VAT declaration and quarterly VAT return, shall be filed with and any amount due shall be paid to the RDO, Collection Agent or duly authorized Treasurer of the Municipality/City where such taxpayer (head office of the business establishment) is required to be registered.

The quarterly VAT return and the monthly VAT declaration, where no payment is involved, shall be filed with the RDO/LTDO/Large Taxpayers Assistance Division (LTAD), Collection Agent, duly authorized Municipal/City Treasurer of Municipality/City where the taxpayer (head office of the business establishment) is registered or required to be registered."

Taxpayers filing via EFPS shall comply with the provisions of the EFPS Regulations.

Only one consolidated quarterly VAT return or monthly VAT declaration covering the results of operation of the head office as well as the branches for all lines of business subject to VAT shall be filed by the taxpayer, for every return period, with the BIR office where said taxpayer is required to be registered.

SEC. 4.114-2. ***Withholding of VAT on Government Money Payments and Payments to Non-Residents.*** **–**

(a) 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/or of services taxed at 10% VAT pursuant to Secs. 106 and 108 of the Tax Code, deduct and withhold a final VAT due at the rate of five percent (5%) of the gross payment thereof.

The five percent (5%) final VAT withholding rate shall represent the net VAT payable of the seller. The remaining five percent (5%) effectively accounts for the standard input VAT for sales of goods or services to government or any of its political subdivisions, instrumentalities or agencies including GOCCs, in lieu of the actual input VAT directly attributable or ratably apportioned to such sales. Should actual input VAT exceed five percent (5%) of gross payments, the excess may form part of the sellers' expense or cost. On the other hand, if actual input VAT is less than 5% of gross payment, the difference must be closed to expense or cost.

(b) The government or any of its political subdivisions, instrumentalities or agencies, including GOCCs, as well as private corporations, individuals, estates and trusts, whether large or non-large taxpayers, shall withhold ten percent (10%) VAT with respect to the following payments:

(1) Lease or use of properties or property rights owned by non-residents;

(2) Services rendered to local insurance companies, with respect to reinsurance premiums payable to non-residents; and

(3) Other services rendered in the Philippines by non-residents.

In remitting VAT withheld, the withholding agent shall use BIR Form No. 1600-Remittance Return of VAT and Other Percentage Taxes Withheld.

VAT withheld and paid for the non-resident recipient (remitted using BIR Form No. 1600), which VAT is passed on to the resident withholding agent by the non-resident recipient of the income, may be claimed as input tax by said VAT-registered withholding agent upon filing his own VAT Return, subject to the rule on allocation of input tax among taxable sales, zero-rated sales and exempt sales. The duly filed BIR Form No. 1600 is the proof or documentary substantiation for the claimed input tax or input VAT.

Nonetheless, if the resident withholding agent is a non-VAT taxpayer, said passed-on VAT by the non-resident recipient of the income, evidenced by the duly filed BIR Form No. 1600, shall form part of the cost of purchased services, which may be treated either as an "asset" or "expense", whichever is applicable, of the resident withholding agent.

VAT withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made.

SEC.4.114-3. ***Submission of Quarterly Summary List of Sales and Purchases***. —

a. Persons Required to Submit Summary Lists of Sales/Purchases. —

(1) Persons Required to Submit Summary Lists of Sales. — All persons liable for VAT such as manufacturers, wholesalers, service-providers, among others, with quarterly total sales/receipts (net of VAT) exceeding Two Million Five Hundred Thousand Pesos (₱2,500,000.00).

(2) Persons Required to Submit Summary Lists of Purchases. — All persons liable for VAT such as manufacturers, service-providers, among others, with quarterly total purchases (net of VAT) exceeding One Million Pesos (₱ 1,000,000.00).

b. When and Where to File the Summary Lists of Sales/Purchases. — The quarterly summary list of sales or purchases, whichever is applicable, shall be submitted in diskette form to the RDO or LTDO or LTAD having jurisdiction over the taxpayer, on or before the twenty-fifth (25th) day of the month following the close of the taxable quarter (VAT quarter)-calendar quarter or fiscal quarter. However, taxpayers under the jurisdiction of the LTS, and those enrolled under the EFPS, shall, through electronic filing facility submit their Summary List of Sales/Purchases to the RDO/LTDO/LTAD, on or before the thirtieth (30th) day of the month following the close of the taxable quarter.

c. Information that Must be Contained in the Quarterly Summary List of Sales to be Submitted. — The quarterly summary list must contain the monthly total sales generated from regular buyers/customers, regardless of the amount of sale per buyer/customer, as well as from casual buyers/customers with individual sales amounting to ₱100,000.00 or more. For this purpose, the term "regular buyers/customers" shall refer to buyers/customers who are engaged in business or exercise of profession and those with whom the taxpayer has transacted at least six (6) transactions regardless of amount per transaction either in the previous year or current year. The term "casual buyers/customers", on the other hand, shall refer to buyers/customers who are engaged in business or exercise of profession but did not qualify as regular buyers/customers as defined in the preceding statement.

The foregoing paragraph, notwithstanding, information pertaining to sales made to buyers not engaged in business or practice of profession (e.g., foreign embassies) may still be required from the seller.

The Quarterly Summary List of Sales to Regular Buyers/Customers and Casual Buyers/Customers and Output Tax shall reflect the following:

(1) BIR-registered name of the buyer who is engaged in business/exercise of profession;

(2) TIN of the buyer (Only for sales that are subject to VAT);

(3) Exempt Sales;

(4) Zero-rated Sales;

(5) Sales Subject to VAT (exclusive of VAT);

(6) Sales Subject to Final VAT Withheld; and
(7) Output Tax (VAT on sales subject to 10%).

(The total amount of sales shall be system-generated)

d. Information that must be Contained in the Quarterly Summary List of Purchases. — The following information must be indicated in the following quarterly summary schedules of purchases:

(1) The Quarterly Summary List of Local Purchases and Input Tax. –

a. BIR-registered name of the seller/supplier/service-provider;
b. Address of seller/supplier/service-provider;
c. TIN of the seller;
d. Exempt Purchases;
e. Zero-rated Purchases;
f. (i) Purchases Subject to VAT (exclusive of VAT) — on services;
   (ii) Purchases Subject to VAT (exclusive of VAT) — on capital goods; and
   (iii) Purchases Subject to VAT (exclusive of VAT) — on goods other than capital goods
   (iv) Purchases Subject to Final VAT Withheld
g. Creditable Input Tax; and }
} (to be computed not
h. Non-Creditable Input Tax.} on a per supplier basis but on a per month basis)

(The total amount of purchases shall be system-generated)

(2) The Quarterly Summary List of Importations. –

(a) The import entry declaration number;
(b) Assessment/Release Date;
(c) The date of importation;
(d) The name of the seller;
(e) Country of Origin;
(f) Dutiable Value;
(g) All Charges Before Release From Customs' Custody;
(h) Landed cost:
   (i) Exempt;
   (ii) Taxable (Subject to VAT);
(i) VAT paid;
(j) Official Receipt (OR) Number of the OR evidencing payment of the tax; and
(k) Date of VAT payment

For the claimed input tax arising from services rendered in the Philippines by non-residents, no summary list is required to be submitted.

e. Rules in the Presentation of the Required Information in the Summary Schedules. —

(1) The summary schedules of sales to regular buyers/customers shall not only refer to sales subject to VAT but shall likewise include sales subject to final VAT withheld, exempt and zero-rated sales.

(2) The summary schedule of purchases likewise shall not only refer to purchases subject to VAT but also to exempt and zero-rated purchases.

(3) The names of sellers/suppliers/service-providers and the buyers/customers shall be alphabetically arranged and presented in the schedules.

(4) All the summary lists or schedules mentioned above for submission to the BIR shall mention as heading or caption of the report/list/schedule the BIR-registered name, trade name, address and TIN of the taxpayer-filer and the covered period of the report/list/schedule.

(5) Failure to mention the TIN of the buyer in the "Schedule of Sales" may be a ground for the audit of the records of the buyer or of both the buyer and the seller.

(6) The quarterly summary lists shall reflect the consolidated monthly transactions per seller/supplier or buyer for each of the three (3) months of VAT taxable quarter of the taxpayer as reflected in the quarterly VAT return except the summary list of importation which shall show the individual transactions for the month for each month of the taxable quarter/VAT quarter. Thus, the period covered by the aforementioned summary list required to be submitted to the BIR shall be the covered period of the corresponding quarterly VAT return.

(7) The Quarterly Summary List of Sales and Purchases shall be submitted in magnetic form using 3.5-inch floppy diskettes following the format provided in Subsection (g) hereof. To provide for a clear-cut rule on the mandatory submission of the said summary lists in diskette form, the following shall be observed:

(a) Submission of said summary lists in diskette form shall be required for the taxable quarter where the total sales (taxable-net of VAT, zero-rated, exempt) exceed Two Million Five Hundred Thousand (₱2,500,000.00) or total purchases (taxable-net of VAT, zero-rated, exempt) exceed One Million Pesos (₱1,000,000.00). Thus, if the total quarterly sales amounted to ₱3,000,000.00 and the total quarterly purchases amounted to ₱900,000.00, the quarterly summary list to be submitted shall only be for sales and not for purchases. On the other hand, if the total quarterly sales amounted to ₱2,000,000.00 and the total quarterly purchases amounted to ₱1,500,000 then the quarterly summary list to be submitted shall only be for purchases and not for sales.

(b) Once any of the taxable quarters total sales and/or purchases exceed the threshold amounts as provided above, VAT taxpayer, in addition to the requirement that the summary list for such quarter be submitted in accordance with the herein prescribed electronic format, shall be further required to submit the summary lists for the next three (3) succeeding quarters, still in accordance with the herein prescribed electronic format, regardless of whether or not such succeeding taxable quarter sales and/or purchases exceed the herein set threshold amounts of ₱2,500,000.00 for sales and ₱1,000,000.00 for purchases.

f. The threshold amounts as herein set for sales and purchases may be increased/modified by the Commissioner of Internal Revenue if it is necessary for the improvement in tax administration.

g. Required Procedure and Format in the Submission of Quarterly List of Sales/Purchases. —

The Quarterly Summary List of Sales and Purchases as required above shall be submitted directly to the RDO or LTDO or LTAD having jurisdiction over the taxpayer on the same date when the Quarterly VAT return is due for filing with and the tax thereon due for payment to the appropriate AAB or BIR Office, whichever is applicable. The list shall contain all the information required in the preceding paragraphs and shall conform to the electronic format to be prescribed in a Revenue Memorandum Circular (RMC), using any of the following:

(1) Excel format;
(2) Taxpayer's own extract program; or
(3) The Data Entry Module developed by the BIR that will be available upon request or by downloading from the BIR's web site at http://www.bir.gov.ph, with the corresponding job aid.

For those who would choose either option 1 or option 2, such taxpayers shall use a validation module developed by the BIR, which can either be downloaded from the BIR website or made available in diskette form upon request.

Only diskettes readable upon submission shall be considered as duly filed/submitted Quarterly Summary List of Sales and Output Tax/Purchases and Input Tax/importations. Failure to submit the aforementioned quarterly summary lists in the manner prescribed above shall be punishable under the pertinent provisions of the Tax Code and regulations and shall trigger an audit of taxpayer's VAT liabilities.

(h) Issuance of Certificate of VAT Withheld at Source

The certificate or statement to be issued is the Certificate of Final Tax Withheld at Source (BIR Form No. 2306), a copy of which should be issued to the payee.

(i) Penalty Clause

(1) In addition to the penalties imposed for other violations of the withholding tax regulation, payors reported by the payees for not having issued the Certificate of Tax Withheld at Source, which report has been validated to be correct, shall be subject to mandatory audit on their withholding tax liabilities and to other appropriate sanctions under the Tax Code and applicable regulations.

(2) Penalties in case of failure to submit quarterly summary list of sales and purchases. - In accordance with the provisions of the Tax Code of 1997, a person who fails to file, keep or supply a statement, list, or information required herein on the date prescribed therefor shall pay, upon notice and demand by the Commissioner of Internal Revenue, an administrative penalty of One Thousand Pesos (₱1,000.00) for each such failure, unless it is shown that such failure is due to reasonable cause and not to willful neglect. For this purpose, the failure to supply the required information for each buyer or seller of goods and services shall constitute a single act or omission punishable hereof. However, the aggregate amount to be imposed for all such failures during a taxable year shall not exceed Twenty-five Thousand Pesos (₱25,000.00).

(3) In addition to the imposition of the administrative penalty, willful failure by such person to keep any record and to supply the correct and accurate information at the time or times as required herein, shall be subject to the criminal penalty under the relevant provisions of the Tax Code (e.g., Sec. 255, Sec. 256, etc.,), upon conviction of the offender.

(4) The imposition of any of the penalties under the Tax Code and the compromise of the criminal penalty on such violations, notwithstanding, shall not in any manner relieve the violating taxpayer from the obligation to submit the required documents.

(5) Finally, the administrative penalty shall be imposed at all times, upon due notice and demand by the Commissioner of Internal Revenue. A *subpoena duces tecum* for the submission of the required documents shall be issued on the second offense. A third offense shall set the motion for a criminal prosecution of the offender.

SEC. 4.115-1. ***Administrative and Penal Provisions.*** **--**

(a) Suspension of business operations. **–** In addition to other administrative and penal sanctions provided for in the Tax Code and implementing regulations, the Commissioner of Internal Revenue or his duly authorized representative may order suspension or closure of a business establishment for a period of not less than five (5) days for any of the following violations:

(1) Failure to issue receipts and invoices.

(2) Failure to file VAT return as required under the provisions of Sec. 114 of the Tax Code.

(3) Understatement of taxable sales or receipts by 30% or more of his correct taxable sales or receipt for the taxable quarter.

(4) Failure of any person to register as required under the provisions of Sec. 236 of the Tax Code.

(b) Surcharge, interest and other penalties. – The interest on unpaid amount of tax, civil penalties and criminal penalties imposed in Title XI of the Tax Code shall also apply to violations of the provisions of Title IV of the Tax Code.

SEC. 4.116-1. ***Tax on Persons Exempt from VAT.*** -- Any person, whose sales or receipts are exempt under Sec. 109 (1) (V) of the Tax Code from the payment of VAT and who is not a VAT-registered person shall pay a tax equivalent to three percent (3%) of his gross monthly sales or receipts; *Provided*, that cooperatives shall be exempt from the three (3%) gross receipts tax herein imposed.

SEC. 9.236-1. ***Registration of VAT Taxpayers.*** --

(a) In general. — Any person who, in the course of trade or business, sells, barters, exchanges goods or properties, or engages in the sale of services subject to VAT imposed in Secs. 106 and 108 of the Tax Code shall register with the appropriate RDO using the appropriate BIR forms and pay an annual registration fee in the amount of Five Hundred Pesos (₱500) using BIR Form No. 0605 for every separate or distinct establishment or place of business (save a warehouse without sale transactions) before the start of such business and every year thereafter on or before the 31st day of January.

"Separate or distinct establishment" shall mean any branch or facility where sale transactions occur.

"Branch" means a fixed establishment in a locality which conducts sales operation of the business as an extension of the principal office.

"Principal place of business" refers to the place where the head or main office is located as appearing in the corporation's Articles of Incorporation. In the case of an individual, the principal place of business shall be the place where the head or main office is located and where the books of accounts are kept.

"Warehouse" means the place or premises where the inventory of goods for sale are kept and from which such goods are withdrawn for delivery to customers, dealers, or persons acting in behalf of the business.

Any person who maintains a head or main office and branches in different places shall register with the RDO which has jurisdiction over the place wherein the main or head office or branch is located. However, the registration fee shall be paid to any accredited bank in the Revenue District where the head office or branch is registered provided that in areas where there are no accredited banks, the same shall be paid to the RDO, collection agent, or duly authorized treasurer of the municipality where each place of business or branch is situated.

Each VAT-registered person shall be assigned only one TIN. The branch shall use the 9-digit TIN of the Head Office plus a 3-digit Branch Code.

"VAT-registered person" refers to any person registered in accordance with this section.

"VAT-registrable person" refers to any person who is required to register under the provisions of this section but failed to register.

(b) Mandatory:

Any person who, in the course of trade or business, sells, barters or exchanges goods or properties or engages in the sale or exchange of services shall be liable to register if:

i. His gross sales or receipts for the past twelve (12) months, other than those that are exempt under Sec. 109 (1)(A) to (U) of the Tax Code, have exceeded One million five hundred thousand pesos (₱1,500,000.00); or

ii. There are reasonable grounds to believe that his gross sales or receipts for the next twelve (12) months, other than those that are exempt under Sec. 109 (1)(A) to (U) of the Tax Code, will exceed One million five hundred thousand pesos (₱1,500,000.00).

Every person who becomes liable to be registered under paragraph (1) of this subsection shall register with the RDO which has jurisdiction over the head office or branch of that person, and shall pay the annual registration fee prescribed in subsection 9.236-1(a) hereof. If he fails to register, he shall be liable to pay the output tax under Secs. 106 and/or 108 of the Tax Code as if he were a VAT-registered person, but without the benefit of input tax credits for the period in which he was not properly registered.

Moreover, franchise grantees of radio and television broadcasting, whose gross annual receipt for the preceding calendar year exceeded ₱10,000,000.00, shall register within thirty (30) days from the end of the calendar year.

(c) Optional VAT Registration. —

(1) Any person who is VAT-exempt under Sec. 4.109-1 (B) (1) (V) not required to register for VAT may, in relation to Sec. 4.109-2, elect to be VAT-registered by registering with the RDO that has jurisdiction over the head office of that person, and pay the annual registration fee of ₱500.00 for every separate and distinct establishment.

(2) Any person who is VAT-registered but enters into transactions which are exempt from VAT (mixed transactions) may opt that the VAT apply to his transactions which would have been exempt under Section 109(1) of the Tax Code, as amended. [Sec. 109(2)]

(3) Franchise grantees of radio and/or television broadcasting whose annual gross receipts of the preceding year do not exceed ten million pesos (P10,000,000.00) derived from the business covered by the law granting the franchise may opt for VAT registration. This option, once exercised, shall be irrevocable. (Sec. 119, Tax Code)

Any person who elects to register under this subsections (1) and (2) above shall not be allowed to cancel his registration for the next three (3) years.

The above-stated taxpayers may apply for VAT registration not later than ten (10) days before the beginning of the calendar quarter and shall pay the registration fee prescribed under sub-paragraph (a) of this Section, unless they have already paid at the beginning of the year. In any case, the Commissioner of Internal Revenue may, for administrative reason deny any application for registration. Once registered as a VAT person, the taxpayer shall be liable to

output tax and be entitled to input tax credit beginning on the first day of the month following registration.

SEC. 9.236-2. ***Registration of Non-VAT or Exempt Taxpayer.*** – Every person, other than those required to be registered as VAT persons, engaged in any business, shall, on or before the commencement of his business, or whenever he transfers to another revenue district, register with the RDO concerned within 10 days from the commencement of business or transfer in the manner prescribed under this Section and shall pay the applicable registration fee of Five Hundred Pesos (₱500.00) for every separate or distinct establishment or place of business, if he has not paid the registration fee in the beginning of the taxable year. The fee shall be paid to any AAB, where each place of business or branch is situated. In areas where there is no AAB, such person shall pay the fee prescribed herein with the RDO, RCO, or authorized municipal treasurer. The registration shall contain his name or style, place of residence, business, the place where such business is carried on, and such information as may be required by the Commissioner of Internal Revenue in the form prescribed therefor.

The following are required to register as non-VAT persons and pay the applicable registration fee:

1) VAT-exempt persons under Sec. 109 of the Tax Code who did not opt to register as VAT taxpayers;

2) Individuals engaged in business where the gross sales or receipts do not exceed One Hundred Thousand Pesos ₱100,000.00 during any 12-month period. They are required to register but will not be made to pay the registration fee of FIVE HUNDRED PESOS (₱500.00).

3) Non-stock, non-profit organizations and associations engaged in trade or business whose gross sales or receipts do not exceed ₱1,500,000.00 for any 12-month period or in an amount as adjusted thereafter every three (3) years depending on the annual Consumer Price Index as published by the NSO;

4) Cooperatives other than electric cooperatives. However, they are not required to pay the registration fee imposed in these Regulations.

SEC. 9.236-3. ***Application for Registration.*** **--** The application shall be filed with the RDO where the principal place of business, branch, storage place or premises is located, as the case may be, before commencement of business or production or qualification as a withholding agent. In the case of storage places, the application shall be filed within thirty (30) days from the date the aforesaid premises have been used for storage.

In any case, the Commissioner of Internal Revenue may, for administrative and meritorious reasons, deny or revoke any application for registration.

SEC. 9.236-4. ***Certificate of Registration.*** **--** The certificate shall be issued to the applicant by the BIR office concerned upon compliance with the requirements for registration.

SEC. 9-236-5. ***Posting of Registration Certificate.*** -- Every registered taxpayer shall post or exhibit his Registration Certificate and duly validated Registration Fee Return at a conspicuous place in his principal place of business and at each branch in such a way that is clearly and easily visible to the public.

SEC. 9.236-6. ***Cancellation of VAT Registration.*** -- A VAT-Registered person may cancel his registration for VAT if:

a. He makes written application and can demonstrate to the Commissioner of Internal Revenue's satisfaction that his gross sales or receipts for the following twelve (12) months, other than those that are exempt under Sec. 109 (1) (A) to (U) of the Tax Code, will not exceed One Million Five Hundred Thousand pesos (₱1,500,000.00); or

b. He has ceased to carry on his trade or business, and does not expect to recommence any trade or business within the next twelve (12) months.

Some other instances where a VAT-registered person may apply for cancellation of registration are:

1. A change of ownership, in the case of a single proprietorship;
2. Dissolution of a partnership or corporation;
3. Merger or consolidation with respect to the dissolved corporation(s);
4. A person who has registered prior to planned business commencement, but failed to actually start his business;

Some instances where taxpayer will update his registration by submitting a duly accomplished Registration Update Form (BIR Form No. 1905):

1. A person's business has become exempt in accordance with Sec. 4.109-1(B) (1) of these Regulations,
2. A change in the nature of the business itself from sale of taxable goods and/or services to exempt sales and/or services;
3. A person whose transactions are exempt from VAT who voluntarily registered under VAT system, who after the lapse of three years after his registration, applies for cancellation of his registration as such; and
4. A VAT-registered person whose gross sales or receipts for three consecutive years did not exceed P1,500,000.00 beginning November 1, 2005, which amount shall be adjusted to its present value every three years using the Consumer Price Index, as published by the NSO. Upon updating his registration, the taxpayer shall become liable to the percentage tax imposed in Sec. 116 of the Tax Code. A short period return for the remaining period that he was VAT-registered shall be filed within twenty five (25) days from the date of cancellation of his registration.

For purposes of the percentage tax, the taxpayer shall file a monthly return. An initial return shall be filed for the month following the month of cancellation / update of his registration.

All applications for cancellation of registration due to closure/cessation or termination of business shall be subjected to immediate investigation by the BIR office concerned to determine the taxpayer's tax liabilities.

Any minor change in the original registration (such as change of address within the same RDO, typographical errors, and etc.) which may not necessitate cancellation of the registration shall be effected by accomplishing the Registration Update Form (BIR Form No. 1905).

Any person, who opted to be registered as a VAT taxpayer, may apply for cancellation of such registration. However, the optional registration as a VAT taxpayer of a franchise grantee of radio and/or television broadcasting whose gross receipts for the preceding year did not exceed ₱10,000,000.00 shall not be revocable.

TRANSITORY AND OTHER PROVISIONS

(a) Transitional Input Tax Credit –

(i) For goods, materials or supplies not for sale but purchased for use in business in their present condition, which are not intended for further processing and are on hand as of the last day immediately preceding the effectivity of RA No. 9337, a transitional input tax equivalent to 2% of the value of the beginning inventory on hand or actual VAT paid on such goods, materials or supplies, whichever is higher, shall be allowed.

(ii) For goods purchased with the object of resale in their present condition, the same transitional input tax equivalent to 2% of the value of such goods unsold or actual VAT paid thereon whichever is higher, as of the day immediately preceding the effectivity of RA No. 9337 shall be allowed which amount may also be credited against the output tax of a VAT-registered person.

For this purpose, an inventory as of the day immediately preceding the effectivity of RA No. 9337of such goods or supplies showing the quantity, description and amount should be filed with the RDO or concerned BIR office not later than thirty (30) days from the effectivity of RA No. 9337.

In recognizing transitional input tax as of the day immediately preceding the effectivity of RA No. 9337, a journal entry should be made in the books debiting the input tax account and crediting the inventory account.

The term "goods" herein mentioned does not include capital goods.

(b) Unused invoice or receipts. – Taxpayers who changed status from NON-VAT to VAT or from VAT to NON-VAT as a result of the implementation of RA No. 9337 should submit within thirty (30) days from effectivity of the law an inventory of unused invoices or receipts as of the day immediately preceding the effectivity of RA No. 9337 indicating the number of booklets and the corresponding serial numbers. Unused non-VAT invoices/receipts shall be allowed for use in transactions subject to VAT provided the phrase **"VAT –registered as of [effectivity date of RA No. 9337]"** is stamped on all copies thereof. Likewise, unused

VAT invoices/receipts shall be allowed in VAT-exempt transactions provided the phrase **"Non-VAT-registered as of _____"** is stamped on all copies thereof. These unused invoices or receipts with the proper stamp shall be allowed for use in transactions subject to VAT/Non-VAT up to December 31, 2005.

(c) Billed but uncollected sale of services. – Amounts due on sale of services becoming liable to VAT under RA No. 9337 rendered before **the effectivity of RA No. 9337**, payments of which are receivable on or after **the effectivity of RA No. 9337**, shall be considered as accrued as of **the day immediately preceding the effectivity of RA No. 9337** for the purpose of VAT exemption and payment of any applicable percentage tax, if any, or VAT exemption as the case may be, subject to the following conditions:

(i) Information return to be filed on or before **sixty (60) days from the effectivity of RA No. 9337** showing the name(s) of the contractor(s), client(s), customer(s) and the amount(s) of the contract price outstanding as of **the day immediately preceding the effectivity of RA No. 9337**, and containing a declaration of the obligation to pay the applicable percentage tax due if any;

(ii) The seller billed the unpaid amount before **the effectivity of RA No. 9337**, and a copy of such billing is attached to the information return required in (i) hereof;

(iii)The seller has recorded in his books of accounts as of **the day immediately preceding the effectivity of RA No. 9337** the amount receivable; and

(iv)The seller files on or before the 20th day after each month, the regular percentage tax return for the payment of the percentage tax on payments received **after the effectivity of RA No. 9337**.

In the case of sale of electricity, if a billing period covers power consumption for the period before and after **the effectivity of RA No. 9337**, 10% VAT shall be applied only to electricity consumption for the period on or after **the effectivity of RA No. 9337**. The electricity consumption before **the effectivity of RA No. 9337** shall not be subject to 10% VAT but to the applicable franchise/percentage tax.

Failure to comply with the above-stated conditions shall automatically subject the gross receipts to the VAT.

(d) Importation. -- Goods previously VAT-exempt but became subject to VAT under RA No. 9337 imported into the Philippines prior to **the effectivity of RA No. 9337** shall remain VAT-exempt. On the other hand, goods previously VAT taxable but became VAT-exempt under RA No. 9337 imported into the Philippines prior to **the effectivity of RA No. 9337** shall, upon withdrawal from customs custody, be subject to VAT.

(e) Clarificatory Rules to be Issued through Revenue Memorandum Circulars (RMCs)- The Commissioner of Internal Revenue shall issue Revenue Memorandum Circulars to clarify the rules of implementation affecting certain peculiarities of each industry groupings such as but not limited to the power sector, oil and petroleum, and telecommunications.

REPEALING CLAUSE

All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of R.A. No. 9337 are deemed repealed, amended or modified. All other issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of these Regulations are deemed repealed, amended or modified.

No VAT exemptions may be granted by the BIR except those explicitly stated in Sec. 109(1) of the Tax Code, as amended by RA No. 9337. All previous exemptions granted through laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof promulgated or issued prior to the effectivity of RA No. 9337 are deemed repealed, amended or modified accordingly.

SEPARABILITY CLAUSE

If any of the provisions of these regulations is subsequently declared unconstitutional, the validity of the remaining provisions hereof shall remain in full force and effect

EFFECTIVITY

These Regulations shall take effect on November 1, 2005.

(Original Signed)
MARGARITO B. TEVES
Secretary
Department of Finance

Recommending Approval:

(Original Signed)
JOSE MARIO C. BUÑAG
OIC-Commissioner of Internal Revenue