REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

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REVENUE REGULATIONS NO. 16-2023

SUBJECT : Further Amending the Provisions of Revenue Regulations No. 2-98, as Amended, to Impose Withholding Tax on Gross Remittances Made by Electronic Marketplace Operators and Digital Financial Services Providers to Sellers/Merchants

TO : All Internal Revenue Officials, Employees and Others Concerned

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SECTION 1. SCOPE. – Pursuant to the provisions of Sections 244 and 245 of the National Internal Revenue Code (NIRC) of 1997, as amended, these Regulations are hereby promulgated to further amend the provisions of Sections 2.57.2 and 2.57.3 of Revenue Regulations (RR) No. 2-98 to impose a withholding tax on gross remittances made by electronic marketplace (e-marketplace) operators and digital financial services providers to sellers/merchants for goods and services sold/paid through the former's platform/facility.

SECTION 2. AMENDMENTS. – The pertinent provisions of Sections 2.57.2 and 2.57.3 of RR No. 2-98, as amended by RR No. 11-2018, are hereby further amended to impose a withholding tax on gross remittances by e-marketplace operators and digital financial services providers to online sellers/merchants for the goods and services sold/paid through the former's platform/facility. The amendments shall be read as follows:

"**SECTION 2.57.2.** ***Income Payments Subject to Creditable Withholding Tax and Rates Prescribed Thereon.*** – Except as herein otherwise provided, xxx. –

xxx

(X) ***Remittances of Electronic Marketplace Operators and Digital Financial Services Providers to Merchants.*** – On one-half (½) of the gross remittances by e-marketplace operators and digital financial services providers to the sellers/merchants for the goods or services sold/paid through their platform/facility. - One percent (1%)

Provided, however, that the withholding tax imposed under this sub-section shall not apply to the following instances:

(a) If the annual total gross remittances to an online seller/merchant for the past taxable year has not exceeded Five Hundred Thousand Pesos (P500,000.00); or

(b) If the cumulative gross remittances to an online seller/merchant in a taxable year has not yet exceeded Five Hundred Thousand Pesos (P500,000.00); or

(c) If the seller/merchant is duly exempt from or subject to a lower income tax rate pursuant to any existing law or treaty. Provided that, the concerned seller/merchant is able to secure the necessary certification, clearance, ruling, or any other document serving as proof of entitlement to the said exemption or lower income tax rate. The said proof of entitlement shall be submitted by the seller/merchant to the e-marketplace operator or digital financial services provider concerned.

The term '***gross remittance***' shall refer to the total amount received by an e-marketplace operator or digital financial services provider from a buyer/consumer for the goods and services sold by or paid to the seller/merchant through the platform/facility of the e-marketplace operator or digital financial services provider, excluding the following:

(a) sales returns and discounts; separately billed delivery or shipping fee; and value-added tax, collected by the e-marketplace operator from the online consumer and subsequently remitted to the online seller; and

(b) consideration for the use of the e-marketplace and/or digital financial services platform.

For purposes of this sub-section, the collection of gross remittance by the e-marketplace operator shall cover the following payment arrangements as illustrated below:

Mr. Lauro purchased a toolbox thru Teendahan, an e-marketplace platform for online shopping:

(a) Thru the electronic wallet (e-wallet) of the e-marketplace operator being maintained by the online consumer;

Mr. Lauro paid the total amount of the value of the goods and shipping fee using TDPay, the e-wallet of the e-marketplace. In this scenario, his order was paid in advance by using TDPay.

The e-wallet account of the consumer in the e-marketplace is maintained by cashing in or loading money, which can be used to pay any transaction made within the e-marketplace. In this scenario, the e-marketplace operator has the control over the money upon debiting the payment from the e-wallet of the online buyer/consumer.

(b) Thru payment of the online buyer/consumer using the e-wallet feature of a digital financial services provider (e.g., mobile payment services, banking services or credit card) for the account of the e-marketplace operator; and

In this scenario, Mr. Lauro paid using his e-wallet in CashLess, a mobile payment service other than his e-wallet in Teendahan, by linking his CashLess account in Teendahan as another mode of

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payment or by transferring of money from his CashLess account to Teendahan's account.

(c) Payment in cash which is personally collected from the buyers/consumers by persons or entities, on behalf of the e-marketplace operator, and deposited or transferred thereafter to the account of the e-marketplace operator.

In this scenario, Mr. Lauro chose cash-on-delivery as his mode of payment. He will pay the rider or delivery partner of the e-marketplace upon delivery of his order. Subsequently, the rider will remit the payment collected from Mr. Lauro to the e-marketplace operator.

For clarity, the following terms shall have the following meaning:

1. '***Electronic Marketplace***' shall refer to a digital service platform whose business is to connect online buyers/consumers with online sellers/merchants, facilitate and conclude the sales, process the payment of the products, goods or services through such digital platform, or facilitate the shipment of goods or provide logistics services and post-purchase support within such platforms, and otherwise retains oversight over the consummation of the transaction, such as, but not limited to the following:

(a) marketplace for online shopping;

Illustration:

Purchases in an e-marketplace where the payment is collected by the e-marketplace operator and remits the same to the seller/merchant.

Teendahan is an e-marketplace platform for online shopping where products of various sellers or businesses can be offered and purchased by customers. A customer will add-to-cart the goods he intends to buy and will proceed to check-out for the delivery and payment instructions.

Ms. Eua purchased a bag from an online seller using Teendahan and chose cash-on-delivery as her mode of payment. The goods were delivered to her and the rider collected the payment in behalf of the seller. Afterwards, Teendahan remitted the payment received from customer to the seller, net of corresponding fees for the use of the e-marketplace and withholding tax.

(b) food delivery platform;

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Illustration:

Purchases in a food delivery platform where the payment is collected by the platform and remits the same to the seller/merchant.

Tara Kain is a food delivery platform where products of various restaurants which are available for order by customers are reflected and offered. A customer will add-to-cart the goods he intends to buy and will proceed to check-out for the delivery and payment instructions.

Ms. Arie ordered thru Tara Kain her favorite sushi in a Japanese restaurant she likes. She paid using the e-wallet in the platform and the goods were delivered to her thereafter, hence, the rider did not collect any payment from her anymore considering that the bill was already collected by Tara Kain. Tara Kain subsequently remitted the payment received from the customer to the seller, net of corresponding fees for the use of the e-marketplace and withholding tax.

(c) platform for booking of resort, hotel, motel, inn, house, condominium unit, bed space, room for rent, and other similar lodging accommodations located in the Philippines; and

Illustration:

Booking transactions made thru an online platform which offers various accommodations for resort, hotel, motel, inn, homes, condominium units, and any other similar services where payment is collected by the platform in advance or upon booking.

iStay is a platform for booking transactions on various locations with the abovementioned accommodations.

Newlyweds Mr. JC and Mrs. Haidee decided to book for a one-week hotel accommodation at LT Hotel in Palawan thru iStay. They chose to pay in full using a credit card upon booking thru the mobile application. Accordingly, iStay will remit the said payment to LT Hotel, net of corresponding fees for the use of the platform and withholding tax.

In this scenario, there are two instances of withholding tax. First, the credit card company shall withhold iStay pursuant to (H) Section 2.57.2 of RR No. 11-2018. Second, iStay shall withhold the remittance to LT Hotel pursuant to these Regulations.

(d) other similar online service or product marketplaces.

In all the above cases, use of other modes of payments such as credit card, e-wallet of the platform, and other mobile payment

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services similar in the abovementioned illustrations shall likewise be covered by these Regulations.

2. ***'Sellers/Merchants'*** shall refer to local sellers/merchants for purposes of imposing the creditable withholding tax under these Regulations.

3. ***'Digital Financial Services Platform'*** shall refer to the financial technology provided by digital financial services providers which are capable of offering a wide array of services of financial nature that are made available to the public through the internet, mobile application, or other similar means, including banking services, insurance and insurance-related services, payment and money transmission services, and other similar or related services.

The withholding tax imposed under this sub-section shall cover remittances made by digital financial services providers to sellers/merchants thru its e-wallet feature or any other similar modes of payment and money transmission relating to the buyer/consumers' payment of the goods and services whether purchased directly by such buyer/consumer from physical stores or through the website or mobile application of the seller/merchant, provided however, that if the issuer and the acquirer is different, the withholding tax shall only be imposed on the remittances by the acquirer to the seller/merchant. For this purpose, the ***"Issuer"*** refers to a digital financial services provider that holds or has the duty to safekeep the money or financial assets of mobile payment service on behalf of the buyer/consumer. On the other hand, the ***"Acquirer"*** is a digital financial services provider that processes the transactions of credit or debit card payments on behalf of the seller/merchant.

Illustration:

Mr. Ray entered the Wander Feet store owned by Ms. Micah, a BIR-registered proprietor of the store. He bought a pair of shoes worth ₱5,000.00 and paid using CashLess, a mobile payment service (which, for this purpose is considered as the Issuer), by scanning the Quick Response (QR) code of the Wander Feet's account with CashLess. CT Bank is the Acquirer of Wander Feet. Considering that the Issuer of the money of Mr. Ray (CashLess) is different from the Acquirer (CT Bank), only the remittance of payment from CT Bank (the Acquirer) to Wander Feet (the seller/merchant) shall be subject to withholding tax under these Regulations.

Further, in all payments/remittances/transfers covered under these Regulations, the seller/merchant's account shall, at all times, be under the BIR-registered tradename of the seller/merchant.

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Illustration:

A restaurant owned by Ms. Tess with a BIR-registered tradename of Happy Tummy Kitchen accepts different modes of digital payment such as mobile payment service/e-wallet and bank transfer. A buyer/consumer ordered a rice meal and decided to pay using CashLess, a mobile payment service.

In this scenario, the restaurant shall receive the payment thru the mobile payment service/e-wallet for the account of their BIR-registered tradename of Happy Tummy Kitchen and not of an any individual account, such as the owner's personal account, or other than the registered tradename. Accordingly, the digital financial services provider (CashLess) will remit the payment to the restaurant (Happy Tummy Kitchen), net of corresponding fees for the use of the platform and withholding tax.

The withholding tax imposed under this sub-section shall be in addition to the existing withholding tax obligations being imposed to the e-marketplace operators and digital financial services providers such as, but not limited to, withholding taxes on payment to transportation contractors for the carriage of goods and merchandise and commissions on the goods and services actually sold, aside from the consideration for the use of the digital platform.

All online sellers/merchants shall register with the BIR on or before the commencement of business in an e-marketplace platform in accordance with Section 236 of the NIRC of 1997, as amended. Consequently, and in furtherance to the government's thrust to protect and uphold the interests of the buyers/consumers from trade malpractices, e-marketplace operators shall require from their respective sellers/merchants the submission of their Certificate of Registration (COR) or BIR Form No. 2303, and include the same as part of e-marketplace operators' minimum seller/merchant accreditation requirements.

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"**SECTION 2.57.3** ***Persons Required to Deduct and Withhold.*** – The following persons are hereby constituted as withholding agents for purposes of the creditable tax required to be withheld on income payments enumerated in Section 2.57.2:

xxx

Since tax herein involved and being withheld is income tax, the burden of the tax is really upon the seller although the mode of payment of the tax is through withholding by the buyer, or by the e-marketplace operator or digital financial services provider, in case the payment for the sale of goods or services were made therein. As such, the tax withheld is considered a part of the consideration agreed upon between the seller and buyer resulting, therefore, to

a net take to the seller of only the difference between the agreed consideration/selling price and the tax withheld.

xxx

SEC. 3. TRANSITORY PROVISION. – After the date of effectivity of these Regulations, a revenue memorandum issuance prescribing the implementation procedures and timeline for this purpose shall be separately issued by the BIR.

SEC. 4. SEPARABILITY CLAUSE. – If any provision of these Regulations is declared invalid by a competent court, the remainder of these Regulations or any provision not affected by such declaration of invalidity shall remain in force and effect.

SEC. 5. REPEALING CLAUSE. – All revenue issuances inconsistent with the provisions of these Regulations are hereby amended, modified or repealed accordingly.

SEC. 6. EFFECTIVITY. – These Regulations shall take effect after fifteen (15) days following its publication in the Official Gazette or in a newspaper of general circulation, whichever comes first.

BENJAMIN E. DIOKNO
Secretary of Finance
DEC 15 2023

Recommending Approval:

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
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