REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

February 7, 2007

REVENUE REGULATIONS NO. 4-2007

SUBJECT : Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

TO : All Internal Revenue Officers and Others Concerned.

Section 1. SCOPE. - Pursuant to the provisions of Sec. 244 and 245 of the National Internal Revenue Code of 1997, as amended, in relation to Title IV of the same Tax Code, these Regulations are hereby promulgated to amend certain provisions of Revenue Regulations (RR) No. 16-2005, as amended, otherwise known as the Consolidated Value-Added Tax Regulations of 2005.

Section 2. VAT ON SALE OF GOODS OR PROPERTIES. - Sec. 4.106-1 of RR No. 16-2005 is hereby amended to read as follows:

> "**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 twelve percent (12%) (starting February 1, 2006) 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."

Section 3. SALE OF REAL PROPERTIES. - Sec. 4.106-3 of RR No. 16-2005 is hereby amended to read as follows:

> "**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.
>
> Sale of residential lot with gross selling price exceeding P1,500,000.00, residential house and lot or other residential dwellings with gross selling price exceeding P2,500,000.00, 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 Nov. 1, 2005, shall be subject to ten percent (10%) output VAT, and starting Feb. 1, 2006, to twelve percent (12%) output VAT.
>
> Installment sale of residential house and lot or other residential dwellings with gross selling price exceeding P1,000,000.00, 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 November 1, 2005, shall be subject to ten percent (10%) output 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 (25%) of the gross selling price.

In case of installment sale, the seller shall be subject to output VAT on the installment payments received, including the interests and penalties for late payment, actually and/or constructively received, subject to the provisions of Sec.4.106-4 hereof. Correspondingly, the buyer of the property can claim the input tax in the same period as the seller recognized the output tax.

Installment payments, including interests and penalties, actually and/or constructively received starting February 1, 2006 shall be subject to twelve percent (12%) output VAT.

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

In the case of sale of real properties on a deferred-payment basis not on the installment plan, the transaction shall be treated as cash sale which makes the entire selling price taxable in the month of sale. Output tax shall be recognized by the seller and input tax shall accrue to the buyer at the time of the execution of the instrument of sale.

Payments subsequent to "initial payments" shall no longer be subject to output VAT, in the case of sale on a deferred payment basis.

Pre-selling of real estate properties by real estate dealers shall be subject to VAT in accordance with the 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 Section 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."

Section 4. GROSS SELLING PRICE. - Sec. 4.106-4 of RR No. 16-2005 is hereby amended to read as follows:

"**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. If the VAT is not billed separately in the document of sale, the selling price or the consideration stated therein shall be deemed to be inclusive of VAT. The term 'fair market value' shall mean whichever is 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/fair market value as determined by the Commissioner, 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 exclusive of VAT. Thus, the zonal value/market value, net of the output VAT, should still be higher than the consideration in the document of sale, exclusive of the VAT.

If the sale of real property is on installment plan where the zonal value/fair market value is higher than the consideration/selling price, exclusive of the VAT, the VAT shall be based on the ratio of actual collection of the consideration, exclusive of the VAT, against the agreed consideration, exclusive of the VAT, appearing in the Contract to Sell/Contract of Sale applied to the zonal value/fair market value of the property at the time of the execution of the Contract to Sell/Contract of Sale at the inception of the contract. Thus, since the output VAT is based on the market value of the property which is higher than the consideration/selling price in the sales document, exclusive of the VAT, the input VAT that can

be claimed by the buyer shall be the separately-billed output VAT in the sales document issued by the seller. Therefore, the output VAT which is based on the market value must be billed separately by the seller in the sales document with specific mention that the VAT billed separately is based on the market value of the property.

Illustration:

ABC Corporation sold a parcel of land to XYZ Company on July 2, 2006 for P1,000,000.00, plus the output VAT, with a monthly installment payment of P10,000.00, plus the output VAT. The zonal value of the subject property at the time of sale amounted to P1,500,000.00. Compute for the output tax due on the installment payment.

Formula:

$$\frac{\text{Actual collection (exclusive of the VAT)}}{\text{Agreed consideration (exclusive of the VAT)}} \times \text{Zonal value} \times 12\%$$

$$\frac{\text{P10,000.00}}{\text{P1,000,000.00}} \times \text{P1,500,000.00} = \text{P15,000.00}$$

$$\text{P15,000.00} \times 12\% = \text{P1,800.00}$$

Selling price is the amount of consideration in a contract of sale between the buyer and seller or the total price of the sale which may include cash or property and evidence of indebtedness issued by the buyer, excluding the VAT. "

Section 5. ZERO-RATED SALES. - Sec. 4.106-5 of RR No. 16-2005 is hereby amended to read as follows:

"SEC. 4.106-5. ***Zero-Rated Sales of Goods or Properties***. - Xxx xxx xxx.

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

(a) Export Sales. - Xxx xxx.

(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 pursuant to EO 226 and other special laws, even without actual exportation, the following shall be considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones; (3) sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227; (4) 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); (5) 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.

Xxx xxx xxx.

(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, or vice versa, without docking or stopping at any other port in the Philippines unless the docking or stopping at any other Philippine port is for the purpose of unloading passengers and/or cargoes that originated from abroad, or to load passengers and/or cargoes bound for abroad; 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 twelve percent (12%) output VAT starting February 1, 2006.

(b) Foreign Currency Denominated Sale. - Xxx xxx xxx xxx.

(c) Sales to Persons or Entities Deemed Tax-exempt Under Special Law or International Agreement. - Sale of goods or property to persons or entities who are tax-exempt under special laws or international agreements to which the Philippines is a signatory, such as, Asian Development Bank (ADB), International Rice Research Institute (IRRI), etc., shall be effectively subject to VAT at zero-rate."

Section 6. EFFECTIVELY ZERO-RATED. - Sec. 4.106-6 of RR No. 16-2005 is hereby amended to read as follows:

"**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."

Section 7. TRANSACTIONS DEEMED SALE. – Sec. 4.106-7 of RR No. 16-2005 is hereby amended to read as follows:

"**SEC. 4.106-7.** ***Transactions Deemed Sale***. - xxx xxx xxx.

(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. Nonetheless, if one of the parties in the transaction is the government as defined and contemplated under the Administrative Code, the output VAT on the transaction shall be based on the actual selling price.

Xxx xxx xxx."

Section 8. CHANGE OR CESSATION OF STATUS AS VAT-REGISTERED PERSON. – Sec. 4.106-8 of RR No. 16-2005 is hereby amended to read as follows:

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

(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 Php 1 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 (Php 1 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, subject to exceptions provided under Section 4.106-3 hereof. On the other hand, if the transferee of the transferred real property by a real estate dealer is another real estate dealer, in an exchange where the transferor gains control of the transferee-corporation, no output VAT is imposable on the said transfer.

(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."

Section 9. VAT ON THE SALE OF SERVICES AND USE OR LEASE OF PROPERTIES. - Sec. 4.108-1 of RR No. 16-2005 is hereby amended to read as follows:

"**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 twelve percent (12%) of the gross receipts (excluding VAT) starting February 1, 2006."

Section 10. DEFINITIONS AND SPECIFIC RULES ON SELECTED SERVICES. - Sec. 4.108-3 of RR No. 16-2005 is hereby amended to read as follows:

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

Xxx xxx xxx.

(e) Domestic common carriers by air and sea are subject to twelve percent (12%) 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 starting Feb. 1, 2006.

(f) Sale of electricity by generation, transmission, and distribution companies shall be subject to twelve percent (12%) VAT on their gross receipts starting Feb. 1, 2006; 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.

Xxx xxx xxx.

(h) Services of franchise grantees xxx xxx.

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 twelve percent (12%) VAT imposed under Sec. 108 of the Tax Code starting Feb. 1, 2006. This includes among others, the Philippine and Amusement Gaming Corporation (PAGCOR), and its licensees or franchisees.

Xxx xxx xxx.

(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 insurance premiums are subject to VAT whereas non-life reinsurance premiums are not subject to VAT, the latter being already subjected to VAT upon receipt of the insurance premiums. Insurance and reinsurance commissions, whether life of non-life, are subject to VAT.

(j) Pre-need Companies xxx xxx.

Xxx xxx xxx."

Section 11. GROSS RECEIPTS. - Sec. 4.108-4 of RR No. 16-2005 is hereby amended to read as follows:

"**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 the VAT, except those amounts earmarked for payment to unrelated third (3rd) party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor.

A payment is a payment to a third (3rd) party if the same is made to settle an obligation of another person, e.g., customer or client, to the said third party, which obligation is evidenced by the sales invoice/official receipt issued by said third party to the obligor/debtor (e.g., customer or client of the payor of the obligation).

An advance payment is an advance payment on behalf of another if the same is paid to a third (3rd) party for a present or future obligation of said another party which obligation is evidenced by a sales invoice/official receipt issued by the obligee/creditor to the obligor/debtor (i.e., the aforementioned "another party") for the sale of goods or services by the former to the latter.

For this purpose 'unrelated party' shall not include taxpayer's employees, partners, affiliates (parent, subsidiary and other related companies), relatives by consanguinity or affinity within the fourth (4th) civil degree, and trust fund where the taxpayer is the trustor, trustee or beneficiary, even if covered by an agreement to the contrary.

'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.) deposits 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."

Section 12. ZERO-RATED SALE OF SERVICES. - Sec. 4.108-5(b)(4) of RR No. 16-2005 is hereby amended to read as follows:

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

Xxx xxx xxx.

(b) **Transactions Subject to Zero Percent (0%) VAT Rate**. - xxx xxx xxx

(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 twelve percent (12%) VAT under Sec. 108 of the Tax Code starting Feb. 1, 2006;

Xxx xxx xxx."

Section 13. EFFECTIVELY ZERO-RATED SALE OF SERVICES. - Sec. 4.108-6 of RR No. 16-2005 is hereby amended to read as follows:

"SEC. 4.108-6. ***Meaning of the term '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."

Section 14. VAT-EXEMPT TRANSACTIONS. - Sec. 4.109-1(B)(1) of RR No. 16-2005 is hereby amended to read as follows:

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

Xxx xxx xxx.

(B) Exempt transactions . – Subject to the provisions of Sec. 4.109-2 hereof, the following transactions shall be exempt from VAT:

Xxx xxx xxx.

(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.

Sale by agricultural cooperatives to non-members can only be exempted from VAT if the producer of the agricultural products sold is the cooperative itself. If the cooperative is not the producer (e.g., trader), then only those sales to its members shall be exempted from VAT;

It is to be reiterated however, that sale or importation of agricultural food products in their original state is exempt from VAT irrespective of the seller and buyer thereof, pursuant to Subsection (a) hereof.

Xxx xxx xxx.

(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.

However, even if the real property is not primarily held for sale to customers or held for lease in the ordinary course of trade or business but the same is used in the trade or business of the seller, the sale thereof shall be subject to VAT being a transaction incidental to the taxpayer's main business.

Xxx xxx xxx.

(q) Xxx xxx xxx.

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, hotel rooms, lodging houses, inns and pension houses.

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.

Xxx xxx xxx.

(t) Importation of life-saving equipment, safety and rescue equipment and communication and navigational safety equipment, steel plates and other metal plates including marine-grade aluminum plates, used for shipping transport operations; Provided, that the 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';

(u) Importation of capital equipment, machinery, spare parts, life-saving and navigational equipment, steel plates and other metal plates including marine-grade aluminum plates to be used in the construction, repair, renovation or alteration of any merchant marine vessel operated or to be operated in the domestic trade. Provided, that the exemption shall be subject to the provisions of Section 19 of Republic Act. No. 9295, otherwise known as 'The Domestic Shipping Development Act of 2004';

(v) 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, or vice versa, without docking or stopping at any other port in the Philippines unless the docking or stopping at any other Philippine port is for the purpose of unloading passengers and/or cargoes that originated from abroad, or to load passengers and/or cargoes bound for abroad; 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 twelve percent (12%) VAT starting February 1, 2006;

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

(x) 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 (P1,500,000.00). Provided, that not later than January 31, 2009 and every three (3) years thereafter, the amount of P1,500,000.00 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 sale shall not be included in determining the threshold."

Section 15. VAT REGISTERED PERSON MAY ELECT THAT EXEMPT TRANSACTIONS UNDER SEC. 4.109-1 BE REGISTERED FOR VAT PURPOSES. – Sec. 4.109-2 of RR No. 16-2005 is hereby amended to read as follows:

"**SEC. 4.109-2**. ***Exempt Transactions May be Registered for VAT Purposes.*** - A VAT-registered person may, in relation to Sec. 9.236-1(c) of these Regulations, elect that the exemption in Sec. 4.109-1(B) 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 except for franchise grantees of radio and TV broadcasting whose annual gross receipts for the preceding year do not exceed ten million pesos (P10,000,000.00) where the option becomes perpetually irrevocable."

Section 16. INPUT TAX ON DEPRECIABLE GOODS. - Sec. 4.110-3 of RR No. 16-2005 is hereby amended to read as follows:

"**SEC. 4.110-3.** ***Claim for Input Tax on Depreciable Goods.*** -Xxx xxx xxx.

(a) Xxx xxx xxx.

(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 a capital good. The claim for input tax credit shall commence in the 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 (P1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition.

Capital goods or properties refers to goods or properties with estimated useful life greater than one (1) year and which are treated as depreciable assets under Sec. 34(F) of the Tax Code, used directly or indirectly in the production or sale of taxable goods or services.

The aggregate acquisition cost of depreciable assets in any calendar month refers to the total price, excluding the VAT, agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired on installment for an acquisition cost of more than P1,000,000.00, excluding the VAT, will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed P1,000,000.00.

Xxx xxx xxx.

Construction in progress (CIP) is the cost of construction work which is not yet completed. CIP is not depreciated until the asset is placed in service. Normally, upon completion, a CIP item is reclassified and the reclassified asset is capitalized and depreciated.

CIP is considered, for purposes of claiming input tax, as a purchase of service, the value of which shall be determined based on the progress billings. Until such time the construction has been completed, it will not qualify as capital goods as herein defined, in which case, input tax credit on such transaction can be recognized in the month the payment was made; Provided, that an official receipt of payment has been issued based on the progress billings.

In case of contract for the sale of service where only the labor will be supplied by the contractor and the materials will be purchased by the contractee from other suppliers, input tax credit on the labor contracted shall still be recognized on the month the payment was made based on a progress billings while input tax on the purchase of materials shall be recognized at the time the materials were purchased.

Once the input tax has already been claimed while the construction is still in progress, no additional input tax can be claimed upon completion of the asset when it has been reclassified as a depreciable capital asset and depreciated."

Section 17. INPUT TAX ON MIXED TRANSACTIONS. - Sec. 4.110-4 of RR No. 16-2005 is hereby amended to read as follows:

"**SEC. 4.110-4.** ***Apportionment of Input Tax on Mixed Transactions.*** - xxx xxx xxx.

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.

Claims for VAT refund/Tax Credit Certificate (TCC) with the Bureau of Internal Revenue, Board of Investment, and One-Stop-Shop and Duty Drawback Center of the Dept. of Finance should be deducted from the allowable input tax that are attributable to zero-rated sales.

2. Xxx xxx xxx.

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

Sale to private entities subject to 12%	- ₱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 12%	- ₱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 input tax attributable to sales to private entities subject to 12%, for the month, shall be computed as follows:

Input tax directly attributable to sale subject to 12%	-	P5,000.00

Ratable portion of the input tax not directly attributable to any activity:

Taxable sales (12%) / Total Sales	x	Amount of input tax not directly attributable to any activity		
₱100,000.00 / 400,000.00	X	₱20,000.00	-	₱5,000.00

Total input tax attributable to sales to private entities for the month - ₱10,000.00

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

Input tax directly attributable to zero-rated sale - P 3,000.00

Ratable portion of the input tax not directly attributable to any activity:

Taxable sales (0%) / Total Sales	x	Amount of input tax not directly attributable to any activity		
₱100,000.00 / 400,000.00	X	₱20,000.00	-	₱-5,000.00

Total input tax attributable to zero-rated sales for the month - ₱-8,000.00

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

Input tax directly attributable to 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 to any activity:		
P100,000.00 / 400,000.00	X	P20,000.00	-	₱5,000.00

Total input tax attributable to VAT-exempt sales - ₱7,000.00

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

Input tax directly attributable to sale to gov't.- P4,000.00

Ratable portion of the input tax
not directly attributable to any activity:

$$\frac{\text{Taxable sales to government}}{\text{Total Sales}} \times \text{Amount of input tax not directly attributable to any activity}$$

$$\frac{₱100,000.00}{400,000.00} \times ₱20,000.00 - ₱5,000.00$$

Total input tax attributable to sale to gov't. - ₱9,000.00

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	Creditable Input VAT	Net VAT Payable	Excess Input VAT for carry-over/	Input VAT for refund	Unrecoverable input VAT
Sale Subject to 12% VAT	12,000	5,000	5,000	10,000	10,000	2,000	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	12,000	4,000	5,000	9,000	7,000**	5,000***	0	0	2,000*

* These amounts are not available for input tax credit but may be recognized as cost or expense.
** Standard input VAT of 7% on sales to Government as provided in SEC. 4.114-2(a).
*** Withheld by Government entity as Final Withholding VAT.

Xxx xxx xxx."

Section 18. Determination of the Output Tax and VAT Payable and Computation of VAT Payable or Excess Tax Credits. – Sec. 4.110-6 of RR No. 16-2005 is hereby amended to read as follows:

"SEC. 4.110-6. Determination of the Output Tax and VAT Payable and Computation of VAT Payable or Excess Tax Credits. Xxx xxx xxx.

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 declaration and the quarterly VAT returns."

Section 19. VAT Payable (Excess Output) or Excess Input Tax.- Sec. 4.110-7 of RR No. 16-2005, as last amended by RR No. 2-2007, is hereby further amended to read as follows:

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

xxx **xxx** **xxx.**

(b.) If the input tax inclusive of input tax carried over from the previous quarter exceeds the output tax, 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 my be provided for by law, as well as, other implementing rules.

Illustration:

For a given taxable quarter, XYZ Corporation has output VAT of 100 and input VAT of 110. Since input tax exceeds the output tax for such taxable quarter, there is an excess input tax at the end of the quarter of 10 which may be carried over to the next quarter or quarters."

Section 20. Invoicing and Recording Deemed Sale Transactions.- Sec. 4.113-2 of RR No. 16-2005 is hereby amended to read as follows:

"SEC. 4.113-2. Invoicing and Recording Deemed Sale Transactions.

Xxx xxx xxx.

Xxx xxx xxx.

Xxx xxx xxx.

Example: "A" at the time of retirement, had 1,000 pieces of merchandise which was deemed sold at a value of P20,000.00 with an output tax of P2,000.00. After retirement, "A" sold to "B", 500 pieces for P12, 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 P1,000.00, which is included in the P12,000.00, or he should indicate it separately as follows:

Gross selling price	P11,000.00
VAT previously paid on "deemed sale"	1,000.00
Total	P12,000.00

In this case, "B" shall be entitled only to P1,000 as input tax and not 12/112 x 12,000."

Section 21. Filing of Return and Payment of VAT. SEC. 4.114-1 is hereby amended to read as follows:

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

(A) Filing of Return. – Xxx xxx xxx.

Xxx xxx xxx.

Xxx xxx xxx.

(B) Payment of VAT

I. Advance Payment. – Xxx xxx xxx.

1. Sale of Refined Sugar

(a) Xxx xxx xxx.

(b) Xxx xxx xxx.

(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 12% on the applicable base price of P850.00 per 50 kg. bag for refined sugar produced by a sugar refinery, and P760.00 per 50 kg. bag for refined sugar produced by a sugar mill.

ii. *Subsequent Base Price Adjustments. –*

Xxx xxx xxx.

(d) Xxx xxx xxx.

(e) Xxx xxx xxx.

(f) Xxx xxx xxx.

2. Sale of Flour

(a) Xxx xxx xxx.

(b) Xxx xxx xxx.

(c) Xxx xxx xxx.

(d) Basis of 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 12% on the tax base.

ii. *Tax Base.* – Xxx xxx xxx.

iii. *Subsequent tax base adjustments.* – Xxx xxx xxx.

(e) Xxx xxx xxx.

(f) Xxx xxx xxx.

(C) Xxx xxx xxx.

(D) Xxx xxx xxx."

Section 22. WITHHOLDING OF VAT. - Sec. 4.114-2 of RR No. 16-2005 is hereby amended to read as follows:

"**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 twelve percent (12%) 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 seven percent (7%) 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 attributable to sale to government exceeds seven percent (7%) of gross payments, the excess may form part of the sellers' expense or cost. On the other hand, if actual input VAT attributable to sale to government is less than seven percent (7%) 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 corporation, individuals, estates and trusts, whether large or non-large taxpayers, shall withhold twelve percent (12%) VAT, starting February 1, 2006, with respect to the following payments:

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

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

Xxx xxx xxx."

Section 23. ISSUANCE OF TAX CREDIT CERTIFICATES FOR UNUTILIZED ADVANCE VAT PAYMENTS. – Sec. 8.229-1 is hereby added to the provisions of RR 16-2005, to read as follows:

"SEC. 8.229-1. Issuance of Tax Credit Certificate for Unutilized Advance VAT Payments. –

The advance payments made by the seller/owner of refined sugar and importer/miller of wheat/flour shall be allowed as credit against their output tax on the actual gross selling price of refined sugar/flour. However, advance payments which remains unutilized at the end of taxpayer's taxable year where the advance payment was made, which is tantamount to excess payment, may, at the option of the owner/seller/taxpayer or importer/miller/taxpayer, be available for the issuance of TCC upon application duly filed with the BIR by the seller/owner or importer/miller within two (2) years from the date of filing of the 4th quarter VAT return of the year such advance payments were made, or if filed out of time, from the last day prescribed by law for filing the return.

Advance VAT payments which have been the subject of an application for the issuance of TCC shall not be allowed as carry-over nor credited against the output tax of the succeeding quarter/year.

Advanced VAT payments which remained unutilized for more than one (1) year prior to the effectivity of these regulations may, at the option of the seller/owner of the refined sugar or importer/miller of wheat/flour, be the subject of application for TCC to be filed within two (2) years from the date of filing of the last quarterly VAT return where the unutilized advance VAT payments appeared, or if filed out of time, from the last day prescribed by law for filing the return.

Issuance of TCC shall be limited to the unutilized advance VAT payment and shall not include excess input tax. Issuance of TCC for input tax

attributable to zero-rated sales shall be covered by a separate application for TCC following applicable rules."

Section 24. REGISTRATION. - Sec. 9.236-1(b) and (c) of RR No. 16-2005 is hereby amended to read as follows:

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

Xxx xxx xxx.

(b) Mandatory:

Xxx xxx xxx.

Moreover, franchise grantees of radio and television broadcasting, whose gross annual receipt for the preceding taxable year exceeded P10,000,000.00 shall register within thirty (30) days from the end of the taxable year.

(c) Optional VAT Registration:

xxx xxx xxx.

The above-stated taxpayers may apply for VAT registration not later than ten (10) days before the beginning of the taxable 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 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."

Section 25. REGISTRATION OF NON-VAT OR EXEMPT TAXPAYER. - Sec. 9.236-2 of RR No. 16-2005 is hereby amended to read as follows:

"**SEC. 9.236-2.** ***Registration of Non-VAT or Exempt Taxpayer***. -

Xxx xxx xxx.

5) Radio and TV broadcasting whose gross annual receipts do not exceed ten million pesos (P10,000,000) and which do not opt to be VAT registered;

6. PEZA and other ecozone registered enterprises enjoying the preferential tax rate of 5% in lieu of all taxes;

7.) SBMA and other free port zone-registered enterprises enjoying the preferential tax rate of 5% in lieu of all taxes."

Section 26. REPEALING CLAUSE. – The provisions of RR 16-2005 and all other issuances inconsistent herewith are hereby repealed, modified or amended accordingly.

Section 27. EFFECTIVITY. – These Regulations shall take effect after fifteen (15) days following its publication in any newspaper of general circulation or in the Official Gazette.

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

Recommending Approval:

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

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