

[ERC RESOLUTION NO. 20, S. 2005, November 07, 2005]

IMPLEMENTING THE RECOVERY OF VALUE ADDED TAX (VAT) AND OTHER PROVISIONS OF REPUBLIC ACT NO. 9337 AFFECTING THE ELECTRIC POWER INDUSTRY

WHEREAS, the Congress of the Philippines has enacted Republic Act No. 9337 (An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237, and 288 of the National Internal Revenue Code (NIRC) of 1997, as amended, and for other Purposes);

WHEREAS, Section 6 of R. A. No. 9337 provides that "Section 108 of the NIRC of 1997, as amended, is hereby further amended to read as follows:

Section 108. Value Added Tax (VAT) on Sale of Services and Use or Lease of Properties.

"(A) Rate and Base of Tax. _ There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: Provided, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:

(i) Value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth (2 4/5%); or

(ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 ½%).

The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by xxx xxx xxx, sales of electricity by generation companies, transmission, and distribution companies; services of franchise grantees of electric utilities, xxx xxx xxx."

"xxx xxx xxx."

"The term 'gross receipts' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value added tax."

"(B) Transactions Subject to Zero Percent (0%) Rate. - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) xxx xxx xxx.; and

(7) 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."

WHEREAS, Section 15 of R. A. No. 9337 further amended Section 119 of the NIRC of 1997, as amended, exempts franchise grantees of electricity from franchise taxes.

WHEREAS, Section 24 of R. A. No. 9337 provides that "The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the NIRC of 1997, as amended:

(A) Section 13 of R.A. No. 6395 on the exemption from value-added tax of the National Power Corporation (NPC);

(B) Section 6, fifth paragraph of R.A. No. 9136 on the zero rate imposed on the sales of generated power by generation companies; and

(C) All other laws xxx which are contrary to xxx ."

WHEREAS, said R. A. No. 9337 shall take effect on November 1, 2005;

WHEREAS, the Commission in the exercise of its power and authority had previously authorized Private Distribution Utilities to collect National Franchise taxes;

WHEREAS, in Revenue Memorandum Circular No. 61-2005 of the Bureau of Internal Revenue (BIR), said agency clarified certain provisions of Revenue Regulation No. 14-2005 as amended by Revenue Regulations No. 16-2005, implementing the Tax Code of 1997, as amended by R. A. No. 9337, affecting generation, transmission and distribution companies as well as electric cooperatives as defined in R. A. No. 9136 subject to the value added tax as well as their suppliers and customers effective November 1, 2005;

WHEREAS, this Commission is vested with the power and authority to determine, fix and regulate the rates charged by all electric distribution utilities (DUs), the NPC and the National Transmission Corporation (TRANSCO), pursuant to R. A. No. 9136 and Section 18 of R. A. No. 7638;

NOW, THEREFORE, be it resolved, as this Commission hereby resolves, to implement, as it hereby implements, Section 4, 6, 15 and 24 of R. A. No. 9337 by allowing the

Generation Companies (GC), TRANSCO and all DUs to impose the appropriate VAT rate subject to the following:

I. GENERAL PRINCIPLES

(a) The imposition of VAT directed herein shall be based on the Gross Receipts (GR) of GC, TRANSCO and DUs concerned and shall be reflected as a separate item in their individual billing statements to their customers in a format approved by ERC. The current billing format as approved by the Commission is hereto attached as Annex "A"*. Furthermore sample billing statements are attached as Annexes "A-1"* and "A-2"*.

(b) The imposition of the VAT replaces the payment of the National Franchise Tax.

(c) The VAT rate used in this Resolution shall be ten percent (10%) unless increased by the President of the Philippines to twelve percent (12%), or zero percent (0%) or a combination of both, in appropriate cases.

(d) GR shall not include the Energy Tax under Batas Pambansa 36, the Universal Charges implemented under R. A. 9136, Benefits to Host Communities under Energy Regulation 1-94 and security deposit for metering machines including interests provided that when applied to the consumer's liability, it shall be subject to VAT.

(e) GR shall be net of all discounts and gross of penalties.

(f) The corresponding amount of VAT for the sale of electricity to the government shall be reflected as a separate line item in the sample bill. 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 its agencies, including government-owned or controlled corporations (GOCC), in lieu of the actual input VAT directly attributable or ratably apportioned to such sales. The withholding of the five percent (5%) final VAT shall be made when the payments of purchases of electricity were actually or constructively made. The VAT withheld shall be remitted to the BIR within ten (10) days following the end of the month the withholding was made.

(g) Electricity sold, transmitted and distributed on or before October 31, 2005 but which will be collected on or after November 1, 2005 shall be considered accrued as VAT zero rated provided such is billed by November 30, 2005.

(h) "Deferred Charges" such as Generation Rate Adjustment Mechanism (GRAM) and Incremental Currency Exchange Rate Adjustment (ICERA) incurred on or before October 31, 2005 although billed and collected thereafter, shall still be considered as VAT zero rated. For this purpose, an inventory of the said "Deferred Charges" shall be submitted to the BIR by November 30, 2005.

(i) Generation rate and foreign exchange rate adjustments to electricity sold on or before October 31, 2005, although billed and collected thereafter, shall be considered as VAT zero-rated.

(j) Penalties including the corresponding VAT imposed on DUs by reason of their fault or negligence shall not be passed on to DUs' customers.

(k) The GC and TRANSCO shall bill the end-user through the DUs for the sale and transmission of electricity and ancillary services including the VAT thereon. The amount collected from the end-user for such charges shall not form part of the GR of the DUs and shall not be claimed by the DUs as input tax. The amount collected from the end-user as payment for the generation and transmission charges including the VAT thereon shall form part of the GR and output VAT of the GC or TRANSCO, accordingly.

The DUs may advance, exclusive of the corresponding VAT, the generation and transmission charges to the GC and TRANSCO, respectively. The amount advanced may be offset against the amount collected from the end-user and only the VAT portion of the generation and transmission charges shall be remitted to the GC and TRANSCO upon collection from the end-user. The reckoning of the sale subject to VAT between the GC and TRANSCO to the end-user shall be upon collection on the billing made by the DUs.

(l) The GC and TRANSCO, whose billing periods start on the 26th day of each month shall calculate the VAT on a pro rata basis applied on electricity consumption beginning November 01, 2005. A sample computation of VAT calculation on a pro rata basis is shown in Annex "B"*.

(m) DUs with billing cycles that do not start on the 1st day of each month shall calculate the VAT on a pro-rata basis applied on the distribution component for consumption beginning November 1, 2005. The generation and transmission components shall be billed to their end users upon receipt of the power bills from the GC and TRANSCO. A sample computation of VAT calculation on a pro rata basis for the distribution component is shown in Annex "C"*.

(n) Pursuant to RMC 61-2005, sales of electricity by GC, TRANSCO, and DUs or to Philippine Economic Zone Authority (PEZA) or Subic Bay Metropolitan Authority (SBMA) registered enterprises shall effectively be subject to the zero (0%) VAT rate.