

[BIR REGULATIONS NO. 18-99, December 21, 1999]

**IMPLEMENTING SECTION 5 OF REPUBLIC ACT NO. 8424,
OTHERWISE KNOWN AS THE TAX REFORM ACT OF 1997, AND
OTHER PERTINENT PROVISIONS OF THE NATIONAL INTERNAL
REVENUE CODE OF 1997 IMPOSING VAT ON SERVICES OF
BANKS, NON-BANK FINANCIAL INTERMEDIARIES AND FINANCE
COMPANIES, BEGINNING JANUARY 1, 2000.**

SECTION 1. Scope. — Pursuant to the provisions of Section 244 in relation to Section 108 of the National Internal Revenue Code of 1997, these Regulations are hereby promulgated to govern the imposition of VAT on banks, non-bank financial intermediaries and finance companies in accordance with Section 5 of Republic Act No. 8424.

SECTION 2. Definition of Terms. — For purposes of these Regulations, the terms enumerated hereunder shall have the following meaning:

1. Financial Institutions — shall refer to banks, non-bank financial intermediaries and finance companies.
2. Banks or Banking Institutions — shall refer to those entities duly authorized by the Monetary Board of the Bangko Sentral ng Pilipinas to engage in the lending of funds obtained from the public through the receipt of deposits of any kind. The terms "banks" or "banking institutions" are synonymous and interchangeable and specifically include universal bank, commercial banks, savings banks, mortgage banks, development banks, rural banks, stock savings and loan associations, and branches and agencies in the Philippines of foreign banks.
3. Non-bank Financial Intermediaries — shall refer to persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them or otherwise coursed through them, either for their own account or for the account of others;
4. Finance Companies — shall refer to corporations, or partnerships, except those regulated by the Bangko Sentral ng Pilipinas, the Insurance Commissioner and the Cooperatives Administration Office which are primarily organized for the purpose of extending credit facilities to consumers and to industrial, commercial, or agricultural enterprises, either by discounting or factoring commercial papers or accounts receivables, or by buying and selling contracts, leases, chattel mortgages, or other evidences of indebtedness, or by leasing of motor vehicles, heavy equipment and industrial machinery, business and office machines and equipment, appliances and other movable property.
5. Treasury Bill Rate (T-Bill rate) — Shall refer to the interest rate charged by the BSP on the 91-day Treasury Bills floated in the primary market.

6. Gross Receipts — For purposes of these Regulations, the term shall refer to the compensation for all financial and non-financial services, or combination thereof, performed by banks, non-bank financial intermediaries and finance companies, whether the fees charged are implicit or explicit, which compensation or fees are actually or constructively received during the month or quarter, which include:

- a. Financial intermediation services, which is equivalent to the net spread between the interest received and interest expense based on T-Bill rate;
- b. Rentals on properties, real or personal;
- c. Royalties;
- d. Commissions;
- e. Service charges and other fees;
- f. Net trading gains;
- g. Net forex gains;
- h. Trust fees;
- i. Estate planning fees; and
- j. Other charges or fees received as compensation for services.

For purposes of determining the compensation for financial intermediation services, the net spread between interest income received and interest expense computed by applying the T-Bill rate shall be considered as the implicit fee received by the financial institution. This is the fee received for bringing depositors/funders and borrowers together with the financial institution acting as broker or intermediary in the lending of funds.

SECTION 3. Computation of the Output Tax. —

3.1. On Financial Intermediation Services. — The output tax on the services rendered by banks including commercial banks, savings banks, mortgage banks, development banks, rural banks, stock savings and loan associations, and branches and agencies in the Philippines of foreign banks, non-bank financial intermediaries and finance companies for financial intermediation which is an implicit fee hidden in the interest income and interest expense shall be computed by multiplying the gross receipts from financial intermediation services by 1/11. The gross receipts is measured by deducting from the interest income actually or constructively received during the month, the interest expense computed by applying the average T-Bill rate of the previous month. Provided, however, that for the month of January 2000, the T-Bill rate to be applied is 8.895% per annum.

Illustration:

A loan amounting to P1 million was extended on March 2, 2000 by A Bank and Trust Company to Abel Mfg. Corporation at an interest rate of 18% p.a. to mature within 1 year from contract date. The interest was paid in advance. The average T-Bill rate for the previous month (February 2000) as certified by the BSP is 10%. The output tax due on the intermediation services is computed as follows:

Interest Received at contact rate	P 180,000	18%
Less: Interest Expense at Ave. T-Bill rate	100,000	10%
Service fee/Net Spread	P 80,000	8%
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The output tax on the financial intermediation services of P80,000 shall be computed by multiplying said figure with the factor 1/11 which results to P7,272.72.

Since the T-Bill rate is more elastic than the actual lending rate, the net spread on interest received shall be determined on a per contract of loan basis applying the following formula:

$$\text{Percentage of net spread divided by the interest rate per contract of loan} \\ = \text{Rate of Spread to Total Interest Received (ROS to TIR)}$$

Interest received multiplied by the ROS to TIR rate = Net Spread

Applying the above formula, the ROS to TIR is 44.44%. Applying this rate to total interest received of P180,000, the net spread is equivalent to P80,000.

In using the above formula, the spread/service fee is readily determinable as a ratio or percentage of the interest received.

The net spread computed above multiplied by the factor 1/11 will be the Output Tax due on the financial intermediation services which shall be the same amount that can be claimed as input tax credit by the VAT-registered borrower other than a Financial Institution.

3.2 Other Services. — The output tax on the sale of other services, by banks, non-bank financial intermediaries and finance companies, the compensation of which is explicitly charged from their customers, i.e. Service Charges, Commissions, rentals, etc., shall be computed by multiplying the total amount of gross receipts during the month or quarter by 1/11.

SECTION 4. *Treatment of the Output Tax Shifted to the Buyer of Services* . — In general, the payor of the income/fee who is a VAT-registered person shall be entitled to claim the output tax paid by the financial institution as an input tax credit. On the other hand, if the payor is not a VAT-registered person, the VAT passed on by the payee shall form part of his cost. Provided, that a VAT receipt/invoice shall be issued by the payee for all the compensation for services received which shall be used as the evidence for the claim of input tax.

In the case of a borrower who pays interest expense to the financial institution, the input tax shall be equivalent to the output tax paid on the intermediation services computed by the financial institution on a per contract-of-loan basis. Since the basis for the output tax on the part of the financial institution/lender is only the net spread referred to in Section 3 hereof rather than the total interest income, the VAT-registered borrower is entitled only to claim as input tax the amount of output tax paid by the lender which must be covered by a VAT receipt issued by the financial institution. Provided, however that if the borrower is another financial institution, no input tax on the intermediation services shall be allowed.

SECTION 5. *Allowable Input Taxes* . — The financial institution shall be entitled to claim as credit against the output tax all input taxes evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the Tax Code. This includes the VAT on importation or local purchase of goods and properties and the VAT on purchase of services. Provided, that, for purchase of services, the VAT must have been actually paid by the financial institution as evidenced by an official receipt.