

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

March 31, 2003

REVENUE MEMORANDUM CIRCULAR NO. 23-2003

SUBJECT : Clarifying Certain Issues Relative to Imposition of Value-Added Tax (VAT) on Services of Stock, Real Estate, Commercial, Customs and Immigration Brokers Beginning January 1, 2003

TO : All Internal Revenue Officers and Others Concerned.

Q-1. When did the services of stock, real estate, commercial, customs and immigration brokers first begin to be subject to value-added tax?

A-1. Stock, real estate, commercial, customs and immigration brokers initially became subject to VAT in 1988 when the original VAT Law was promulgated under Executive Order (E.O.) No. 273 which repealed then Section 174 of the National Internal Revenue Code (Tax Code), as amended which then imposed the seven percent (7%) broker's tax on such services.

Q-2. Why and when was the imposition of VAT on such services suspended?

A-2. The imposition of VAT on such services was suspended by virtue of Section 1 of Republic Act (R.A.) No. 8761, amending Section 5 of R.A. No. 8424 which provided that beginning January 1 to December 31, 2000 services rendered by stock, real estate, commercial, customs and immigration brokers shall, in lieu of VAT, be subject to seven percent (7%) broker's tax. The imposition of broker's tax was further extended to cover the years 2001 and 2002 due to the deferment on VAT coverage by R.A. No. 9010 on selected services which included services rendered by said brokers.

Q-3 Is there a revenue issuance or Revenue Regulations issued to announce the implementation of VAT on stock, real estate, commercial, customs and immigration brokers? What other revenue regulations govern the implementation of VAT on services rendered by such brokers?

A-3. Yes, Revenue Regulations (R.R.) No. 1-2003, as amended by R.R. No. 3-2003, implementing Section 5 of R.A. No. 8424, as last amended by Section 1 of R.A. No. 9010, subject services rendered by the above-mentioned brokers to VAT beginning January 1, 2003.

The imposition of VAT on such services shall likewise be governed by the provisions of R.R. No. 7-95, as amended, otherwise known as “The Consolidated VAT Regulations.”

Q-4. Is there a possibility that these services may be exempted from the VAT system?

A-4. Yes, if there is a new law issued deferring the implementation of the VAT on selected services starting January 1, 2003.

Q-5. What is the taxable base for computing the VAT on sale of service?

A-5. Gross receipts.

Q-6. What do you mean by the term “gross receipts”?

A-6. 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 period/quarter for the services performed or to be performed for another person, excluding value-added tax.

Normally, gross receipts of brokers shall consist of commission income or service fee received in exchange for the services rendered.

Q-7. In the case of those brokers who get advances or deposits from clients, how are these amounts treated for VAT purposes?

A-7. Deposits or advance payment of the broker’s compensation or service fee shall form part of the gross receipts for purposes of VAT during the taxable period they are received.

Thus, advance payment for transportation, overtime and facilitation fee, being expenses obviously incurred for the customs broker’s benefit to facilitate the clearing of goods through customs, shall form part of the broker’s gross receipts notwithstanding that the same is reimbursed by the client.

However, advance payments made by the customs broker for expenses such as arrastre, wharfage, form or waybills, magna scale, documentation, trucking and handling charges shall not form part of the customs broker’s gross receipts if invoiced directly in the name of the customs broker’s clients by the person performing such service and if the reimbursement to the broker is not covered by the broker’s VAT invoice/official receipt.

Q-8. How do you compute the VAT on sale of services based on gross receipts?

- A-8. The VAT on sale of services based on gross receipts is computed by applying the rate of 10% on the taxable gross receipts for a given taxable period (monthly or quarterly) or the factor 1/11 on the total invoice amount (gross receipts + output VAT) to arrive at the output VAT or the VAT on sales.

Q-9. What is the basis in computing the VAT payable? How is excess input VAT treated?

- A-9. The VAT payable is computed by deducting from the total output tax during the period (month or quarter) the total allowable input tax during the same period. The allowable input tax includes a carry-over of the excess input tax from the preceding period/s in addition to those derived from current purchases. Advanced VAT payment and VAT withheld by authorized VAT withholding agents are likewise allowable as tax credits against the VAT payable. Should the allowable input tax credits, together with the advance VAT payments and/or withholding exceed the output tax, the difference is called excess input VAT which is treated as a carry-over to the next taxable period.

Q-10. Who are those brokers required to register as VAT-taxpayers under R.R. No. 1-2003? What are the consequences, if any, of failure to register?

- A-10. Customs/real estate/stock/immigration/commercial brokers, with gross receipts of more than P550,000 in the preceding year or with expected gross receipts exceeding P550,000 for any 12-month period, in case of new taxpayers, are required to register as VAT-taxpayers. As such, they are required to file the monthly VAT Declaration and the quarterly VAT Return. They shall still pay the annual business registration fee of five hundred pesos (P500) for every business establishment. In case of failure to register, they shall, nevertheless, be liable for the payment of VAT plus all the applicable penalties, but they cannot claim input VAT. Neither can the customers/clients of the VAT-Registrable taxpayer claim input VAT for the non-VAT official receipt issued to them.

Q-11. Who are those brokers required to register as NON-VAT (percentage) taxpayers?

- A-11. Customs/real estate/stock/immigration/commercial brokers with gross receipts for the preceding year or with expected gross receipts for any 12-month period, for new taxpayers, exceeding P100,000 but not exceeding P550,000 and who have not opted for VAT coverage are required to register as NON-VAT (percentage) taxpayers liable to the 3% percentage tax based on gross receipts pursuant to Section 116 of the Tax Code. As such, they are required to file the monthly Percentage Tax Return using BIR Form No. 2551 M. They shall still pay the

annual business registration fee of five hundred pesos (P500) for every business establishment not later than January 31 of each year. In case of failure to register, they shall be liable for the payment of the 3% Percentage Tax plus all the applicable penalties.

Q-12. Who are exempt from the payment of the VAT, the 3% Percentage Tax?

- A-12. Those whose gross receipts do not exceed P100,000 in all lines of taxable business/profession during any 12-month period shall be exempt from the payment of VAT, Percentage Tax, but they are still required to register.

Q-13. Who are required to register and pay the annual registration fee of P500 with the Revenue District Office(RDO)/Large Taxpayers District Office(LTDO) that has jurisdiction over the establishment?

- A-13. In general, the following are required to register and pay the annual registration fee of P500 each with the RDO/LTDO having jurisdiction over (a) or (b) below:
- (a) Main or head office;
 - (b) Branch that generates sales.

Thus, if an individual broker has business offices in Pasig City (main office) and in Mandaluyong City (branch or extension office), he must register and pay the annual registration fee of P500 each with RDO 43 (Pasig) and RDO 41 (Mandaluyong);

Q-14. What is the deadline for the registration of those newly covered by the VAT system or the NON-VAT payment system, whichever is applicable, and for the payment of the annual registration fee?

- A-14. Those taxpayers newly covered by the VAT system or the NON-VAT payment system, whichever is applicable, as enumerated in A-1 above, shall register as either VAT-taxpayers or NON-VAT (Percentage) taxpayers, and pay the annual registration fee of P500 for every place of establishment on or before January 31, 2003. The annual registration fee for the subsequent years shall be paid on or before January 31 of the applicable year. For a newly opened establishment, the registration fee of P500 shall be paid before the start of operations of the said establishment.

It should be noted, however, that R.R. No. 11-2003 extended the deadline for VAT registration of brokers until March 19, 2003.

Q-15. What compliance activities should a VAT taxpayer, after registration as such, do promptly or periodically?

- A-15. The following compliance activities must be performed by a VAT-registered taxpayer:

- (a) Pay the annual registration fee of P500 for every place of business or establishment or facility that generates sales, after updating registration records of the taxpayer with the Bureau of Internal Revenue (BIR);
- (b) Register books of accounts of the business, including practice of profession, before using the same;
- (c) Register VAT sales invoices and VAT official receipts for use for transactions subject to VAT. (If there are other transactions not subject to VAT, a separate set of non-VAT invoice or non-VAT official receipt needs to be registered for use for such transactions);
- (d) File Monthly Value-added Tax Declaration on or before the 20th day following the end of the taxable month (for manual filers)/on or before the prescribed due dates enunciated in R.R. No. 26-2002 (for e-filers) using BIR Form No. 2550M and Quarterly VAT Return on or before the 25th day following the end of the taxable quarter using BIR Form No. 2550Q, reflecting therein gross receipts (for seller of service)/gross sales(for seller of goods) and output tax (VAT on sales), purchases of goods and services made in the course of trade or business/exercise of profession and input tax (VAT on purchases), other allowable tax credits as in the case of advance VAT payment and VAT withheld by payors, and VAT payable or excess input VAT, whichever is applicable, with the accredited agent banks (AABs) of the BIR or Revenue Collection Officers (RCOs) of the BIR (in areas without AAB), for returns with payment, or with the RDO/LTDO having jurisdiction over the taxpayer (home RDO/LTDO), for returns without payment;
- (e) Submit with the RDO/LTDO having jurisdiction over the taxpayer, on or before the deadline set in the filing of the Quarterly VAT Return, the soft copy of the Quarterly Schedule of Monthly Sales and Output Tax (if the quarterly sales exceed P2,500,000), and the soft copy of the Quarterly Schedule of Monthly Domestic Purchases and Input Tax/ the soft copy of the Schedule of Transactional/Individual Importation (if the quarterly total purchases exceed P1,000,000), reflecting therein the data prescribed by R. R. No. 8-2002.

Q-16. What compliance activities should a Non-VAT (percentage) taxpayer, after registration as such, do promptly or periodically?

A-16. The following compliance activities must be performed by a Non-VAT taxpayer subject to percentage tax:

- (a) Pay the annual registration fee of P500 for every place of business or establishment or facility that generates sales, after updating the registration records of the taxpayer with the BIR;

- (b) Register the books of accounts of the business, including practice of profession, before the use thereof;
- (c) Register sales invoices and official receipts as non-VAT invoices, or as non-VAT official receipts for use on transactions not subject to VAT. (If there are other transactions subject to VAT, a separate set of VAT-invoice or VAT-official receipt need be registered for use on such transactions);
- (d) File the Monthly Percentage Tax Return on or before the 20th day following the end of the taxable month (for manual filers) or on or before the prescribed due dates enunciated in R.R. No. 26-2002 (for e-filers) using BIR Form No. 2551M, and reflecting therein the gross receipts (for seller of service)/gross sales(for seller of goods), other allowable tax credits as in the case of advanced tax payment, tax withheld by payors, etc., and tax payable or refundable, whichever is applicable, with the accredited agent banks (AABs) of the BIR or Revenue Collection Officers (RCOs) of the BIR (in areas without AAB), for returns with payment, or with the RDO/LTDO having jurisdiction over the taxpayer (home RDO/LTDO), for returns without payment.

Q-17. What are the allowable input tax credits to brokers?

A-17. The allowable input tax credits are the VAT on purchases of goods and services made in the course of trade or business or, in other words, those that are necessary and have direct connection in the earning of the taxable receipts which are reasonable in amount compared to the declared taxable receipts, and a ratable portion of any input tax on purchases of goods and services which benefits both the activity subject to VAT and the activity not subject to VAT.

Example. - Mr. A, a customs broker realized a total amount of P1,100,000 from his brokering services for the quarter ending December 31, 2003. At the same time, he also has four (4) units of taxicabs from which he realized a total amount of P550,000. His purchases of goods/services from VAT-registered suppliers are as follows:

(a)	Purchases of forms and supplies for brokering business	P 220,000
(b)	Purchase of spare parts of taxicabs	110,000
(c)	Freight services on brokering business	88,000
(d)	Insurance premiums for taxicabs	55,000
(e)	Rental of office space used both for administering his brokering and taxicab business	330,000
Total Purchases of Goods/Services		P 803,000
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In this particular example, the gross receipts derived by Mr. A as customs broker shall be subject to VAT in accordance with Section 108 of the Tax Code, while gross receipts derived from his taxi business shall be subject to the three percent (3%) common carrier's tax imposed under Section 117 of the same Code.

The net VAT due from Mr. A, as well as the allocable input tax credits that may be claimed thereon, are computed as follows:

Output Tax Due (P1,100,000 x 1/11)		P100,000.00
<i>Less : Input Taxes</i>		
(a) Directly Attributable		
(i) Purchase of supplies	P220,000	
(2) Freight services	88,000	
Total Purchases	P308,000	
Multiplied by VAT factor	<u>x 1/11</u>	(P28,000.00)
(b) Purchase of service common to both the activity subject to VAT and the activity not subject to VAT Rental of office space -P330,000		
Total Sales [P1,000,000 (VAT) plus P550,000 (NON-VAT) = P1,550,000		
Rule on Apportionment - P1,000,000/P1,550,000 x P330,000 =	P212,900 <u>x 1/11</u>	(P19,354.55)
Net VAT Payable		P52,645.45 =====

Note that input taxes incurred for the purchase of spare parts and insurance premiums paid for the taxi cabs can not be deducted as input taxes because these are not in any way connected to the pursuit of the activities of Mr. A as a customs broker, the activity that is subject to VAT.

For his business as an operator of a common carrier, he shall be liable to the percentage tax at the rate of 3% of his gross receipts or P16,500 (i.e., P550,000 x 3%) imposed under Section 117 of the Tax Code.

Q-18. What is the basis for computing VAT on the sale of service by the aforementioned brokers?

A-18. As provided in Section 108 of the Tax Code, there shall be levied, assessed and collected a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale of such services. Gross receipts means "*the total amount of money or its equivalent representing the contract price, compensation, service fee, or 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/period for the services performed or to be performed for another person, excluding the value added tax*".

VAT is determined by multiplying the amount of gross receipts by 10% or the total amount in the official receipt (gross receipts plus output VAT) by the factor 1/11. The amount derived is called "*output tax*," which is the VAT due on the sale or lease of taxable goods or properties or services of any person registered or required to register as a VAT taxpayer, in accordance with Section 236 of the Tax Code.

Example. - Mr. X is a real estate broker. He received as commission a total amount of P3,000,000 for the year ending December 2003.

For VAT purposes, he shall be liable to VAT at the rate of 10% of the gross receipts, excluding the VAT. In this case, the total amount that he received is considered to be inclusive of VAT, and therefore, VAT is computed by applying the factor 1/11, as follows:

Total amount received	P3,000,000.00
Multiply by 1/11	<u>1/11</u>
Output Tax	P 272,727.27
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Q-19. Are all amounts received by these brokers subject to VAT?

A-19. If the services of such persons are rendered on an in-house basis where the same is rendered under an employer-employee relationship, all remunerations received on account thereof, whether these be in the form of salaries, wages, emoluments, honoraria or fees, are considered as compensation income that is exempt from the imposition of VAT pursuant to Section 109 (o) of the Tax Code.

However, amounts received on account of services rendered other than under an employer-employee relationship shall be subject to VAT under Section 108 of the Tax Code subject, however, to the P550,000 threshold provided for in Section 109(z) of the same Code.

Q-20. What happens to those services rendered prior to January 1, 2003 but will only be collected and paid on or after January 1, 2003. Will the amounts collected be subject to VAT?

A-20. The same shall not be included as part of the gross receipts subject to VAT provided that for purposes of claiming VAT-exemption, the following conditions are complied with:

- (a) There shall be filed with the RDO not later than March 19, 2003, an information return showing the name/s of the contractee/s, client/s, customer/s and the amount/s of contract price outstanding (unpaid) as of December 31, 2002, and containing a declaration to pay the applicable percentage tax due, if any;
- (b) The seller billed the unpaid amount not later than December 31, 2002 and a copy of such billing is attached to the information return required in (a) hereof;
- (c) The seller has recorded in his/its books of accounts for the year 2002 the amount receivable;
- (d) The seller issued or should issue a non-VAT invoice and/or receipt to the buyer for this purpose; and,
- (e) The seller files not later than January 20, 2003 or on or before the 20th day of the next month, depending upon the month of collection of the consideration, the regular percentage tax return for the payment of the percentage tax on payments received after 2002 (applicable to brokers only).

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

Q-21. What is the basis in computing the percentage tax on seller of service?

A-21. The gross receipts for the month.

Q-22. During the transition period (January 1 to June 30, 2003), what compliance requirements must be followed by the taxpayers newly covered by the VAT system starting January 1, 2003?

A-22. During the transition period, the following guidelines shall be followed:

(a.) *Registration* - Affected taxpayers are required to register as VAT taxpayers not later than March 19, 2003, without penalty, by using BIR Form No. 1905 for those who are already registered with the BIR. Those who will register for the first time shall use BIR Form No. 1901 for individuals and BIR Form No. 1903 for juridical persons.

(b.) *Unused receipts* - Taxpayers who need to change status from NON-VAT to VAT as a result of the lapse of effectivity of R.A. No. 9010 should submit, on or before March 19, 2003, an inventory of unused receipts as of December 31, 2002, indicating therein the number of booklets and their corresponding serial numbers. Unused NON-VAT receipts shall be allowed for use in transactions subject to VAT provided the phrase "VAT-registered as of _____" is stamped on all copies thereof. These properly-stamped receipts shall be allowed for use in transactions subject to VAT until June 30, 2003.

(c.) *Billed but uncollected sale of services* - Amounts due on sale of services rendered on or before December 31, 2002, payment of which are due on or after that date shall be considered accrued as of December 31, 2002 for the purpose of VAT-exemption and payment of any applicable percentage tax, subject to the following conditions:

1. There shall be filed with the RDO not later than March 19, 2003, an information return showing the name/s of the contractee/s, client/s, customer/s, and the amount/s of the contract price outstanding as of December 31, 2002, and containing a declaration to pay the applicable percentage tax due, if any;
2. The seller billed the unpaid amount not later than December 31, 2002 and a copy of such is attached to the information return required in (1) hereof;
3. the seller has recorded in its books of accounts for the year 2002 the amount receivable, or reflected such information in the Notes to Financial Statements, if he reports under the cash basis of accounting;
4. The seller issued or should issue non-VAT invoice and/or receipt to the buyer for this purpose; and
5. The seller files not later than January 20, 2003 or on before the 20th day of the next month, depending upon the month of collection of the consideration, the regular percentage tax return for the payment of the percentage tax on payments received after 2002.

Failure to comply with any of the above-stated conditions shall automatically subject the gross receipts to value-added tax.

Q-23. During the transition period, what compliance requirements must be followed by the taxpayers newly covered by the Percentage tax payment system starting January 1, 2003?

A-23. During the transition period, the following guidelines shall be followed:

- (a.) *Registration* - Affected taxpayers are required to update their registration as NON-VAT (percentage) taxpayers not later than January 31, 2003 without penalty by using BIR Form No. 1905 for those who are already registered with the BIR. Those who will register for the first time shall use BIR Form No. 1901 for individuals, and BIR Form No. 1903 for juridical persons.
- (b.) *Billed but uncollected sale of services* - Amounts due on sale of services rendered on or before December 31, 2002 by taxpayers, payment of which are due on or after that date shall be considered accrued as of December 31, 2002 for the purpose of VAT-exemption, subject to the following conditions:
 1. An information return shall be filed showing the name/s of the contractee/s, client/s, customer/s, and the amount/s of the contract price outstanding as of December 31, 2002, and containing a declaration to pay the applicable tax due, if any;
 2. The seller billed the unpaid amount not later than December 31, 2002 and a copy of such is attached to the information return required in (1) hereof;
 3. The seller has recorded in its books of accounts for the year 2002 the amount receivable; and
 4. The seller issues or should issue non-VAT invoice and/or receipt to the buyer for this purpose.

Q-24. Are brokers still allowed to claim 8% transitional input tax credits on their inventory as of December 31, 2002.

A-24. Brokers who were already subject to VAT prior to its suspension in Taxable Year 2000 by R.A. No. 8761 shall no longer be allowed to claim the 8% transitional input tax on their inventory as of December 31, 2002. However, any input tax outstanding in their books as corroborated in their VAT returns as of December 31, 1999 and still unused as of December 31, 2002 shall be allowed as transitional input tax.

For those covered by the VAT System for the first time (e.g., brokers who have just exceeded the P550,000 threshold), the Regulations provide a presumptive input tax of 8% of the value of goods (other than capital goods), materials or supplies not for sale, but purchased for use in the pursuit of their business and are on hand as of December 31, 2002, or the actual VAT paid on such goods, materials, or supplies, whichever is higher, to be deducted against

the output tax due on gross receipts realized beginning January 1, 2003, provided that an inventory list of such goods, materials, or supplies showing the quantity, description and value thereof should be filed with the appropriate RDO not later than March 19, 2003.

Q-25. What BIR forms should be used insofar as the VAT and the aforementioned brokers are concerned?

A-25. The forms to be used are:

- a) Form 1901 – registration of individuals
- b) Form 1903 – registration of juridical persons like general professional partnerships and corporations
- c) Form 1905 – for changes in registration data like from NON-VAT to VAT
- d) Form 0605 – for payment of registration fee
- e) Form 2550M – monthly VAT declaration
- f) Form 2550Q – quarterly VAT return
- g) Form 2551M – monthly percentage tax return

All internal revenue officers and employees are hereby enjoined to give this Circular as wide a publicity as possible.

(Original Signed)
GUILLERMO L. PARAYNO, JR.
Commissioner of Internal Revenue