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TAX LAW FOR BUSINESS

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Online businesses and value-added tax

AS of 2017 there had been an increase in the share of adults who not only use the Internet, but also make online purchases. Based on reports, purchase transaction through the Internet has grown from 6.3 percentage points to 9.9 in 2017. With the rise of online business stores and with the undeniable convenience they present, it is easier than ever to sell and purchase goods and services online.

In 2013 the Bureau of Internal Revenue (BIR) released Revenue Memorandum Circular (RMC) 55-2013, reiterating the taxpayers' obligations in relation to online business transactions. What is relevant to my discussion is the portion which states that existing tax laws and revenue issuances on the tax treatment of purchases (local or imported) and sales (local or international) of goods (tangible or intangible) or services shall be equally applied with no distinction on whether the marketing channel is the Internet/digital media or the typical and customary physical medium.

This brings us to the topic on value-added tax (VAT). As so provided in our Internal Revenue Code, any person or entity, who, in the course of trade or business, sells, exchanges or leases goods or properties, or renders services, and any person who imports goods shall be liable for VAT. VAT is generally imposed on sale of goods in the Philippines as well as importation of goods into the Philippines. Likewise, VAT is imposed on receipts from services rendered in the Philippines. Instead of the VAT, the 3-percent percentage tax may be imposed upon persons selling items and services who make sales/receipts of not more than P3,000,000 a year.

How would the government be able to ensure compliance with the remittance of VAT or percentage tax for online transactions? RMC 55-2013 reminds that business establishments or persons who conduct business have certain obligations to fulfill, one of which would be to register with the BIR and another to file applicable tax returns on due dates and pay the corresponding taxes. However, this would address only the situations where the sellers are actually situated in the Philippines.

In cases of cross-border transactions, where our tax authority has no jurisdiction over the seller, requiring the sellers to register and pay their taxes will be difficult if not impossible to implement. As a result, many online transactions remain untaxed. The challenge is more apparent in cases of services sold through the Internet.

First, receipts from services are subject to VAT only if the service is rendered in the Philippines. In determining whether a service fee is subject to VAT in the Philippines or not, the important question to be addressed is—is the service considered rendered in the Philippines? Specifically, in cases of Internet-related transactions, are the online services that are viewable and accessible in the Philippines by the intended customers considered rendered in the Philippines?

Unfortunately, the Philippine tax laws had not caught up with the developments in the Internet commerce. Tax laws were not developed to address the changes that continue to take place with the developments/changes in technology. Although these are already common situations that are usually encountered by taxpayers and by the tax authorities/tax implementing agencies, our laws are still far from addressing these issues.

Second, even if the service is considered rendered in the Philippines and therefore subject to VAT, usually, the sellers involved are non-residents. The rules require that in such case, the payor of the service fee shall be considered as a withholding agent and be responsible in remitting the VAT. This may be easier to comply in a business-to-business transaction. Individuals, however, constitute a significant number of online customers, making it difficult for the tax authority to implement the payment through the withholding-tax system. This is just among the many situations involving online transactions where tax rules are deficient.

As technology continues to evolve, it brings new challenges. So, too, must the law adapt to the circumstances of the times.

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