

[BIR REVENUE REGULATIONS NO. 9-2004, June 21, 2004]

IMPLEMENTING CERTAIN PROVISIONS OF REPUBLIC ACT NO. 9238, RE-IMPOSING THE GROSS RECEIPTS TAX ON BANKS AND NON-BANK FINANCIAL INTERMEDIARIES PERFORMING QUASI-BANKING FUNCTIONS AND OTHER NON-BANK FINANCIAL INTERMEDIARIES BEGINNING JANUARY 1, 2004

SECTION 1. Pursuant to the provisions of Section 244 in relation to Sections 121 and 122 of the National Internal Revenue Code of 1997 (Code), these Regulations are hereby promulgated in order to implement Sections 3 and 4 of Republic Act No. 9238 re-imposing the gross receipts tax on banks and non-bank financial intermediaries performing quasi-banking functions and other non-bank financial intermediaries, beginning January 1, 2004.

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

2.1 Financial Institution - shall refer to banks, non-bank financial intermediaries performing quasi-banking functions, and other non-bank financial intermediaries including finance companies. This does not, however, include insurance companies.

2.2 Banks or Banking Institutions - shall refer to those entities as defined in Section 3 of Republic Act No. 8791, as amended, otherwise known as the General Banking Law of 2000. The term "banks" or "banking institutions" are synonymous and interchangeable and specifically include universal banks, commercial banks, thrift banks (savings and mortgage banks, stock savings and loan associations, and private development banks), cooperative banks, rural banks, Islamic banks and other classification of banks as may be determined by the Monetary Board of the Bangko Sentral ng Pilipinas.

2.3 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. This includes all entities regularly engaged in the lending of funds or purchasing of receivables or other obligations with funds obtained from the public through the issuance, endorsement or acceptance of debt instruments of any kind for their own account, or through the issuance of certificates of assignment or similar instruments with recourse, trust certificates, or of repurchase agreements, whether any of these means of obtaining funds from the public is done on a regular basis or only occasionally.

2.4 Quasi-banking Activities - shall refer to the borrowing of funds from twenty (20) or more personal or corporate lenders at any one time, through the issuance,

endorsement or acceptance of debt instruments of any kind other than deposits for the borrower's own account, or through the issuance of certificates of assignment or similar instruments, with recourse, or of repurchase agreements for purposes of relending or purchasing receivables and other similar obligations. Provided, however, that commercial, industrial and other non-financial companies, which borrows funds through any of these means for the limited purpose of financing their own needs or the needs of their agents or dealers, shall not be considered as performing quasi-banking functions.

2.5 Deposit Substitutes - shall refer to an alternative form of obtaining funds from the public (the term "public" means borrowing from twenty (20) or more individual or corporate lenders at any one time), other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purchasing of receivables and other obligations, or financing their own needs or the needs of their agent or dealer. These instruments may include, but need not be limited to, bankers' acceptances, promissory notes, repurchase agreements, including reverse repurchase agreements entered into by and between the Bangko Sentral ng Pilipinas (BSP) and any authorized agent bank, certificates of assignment or participation and similar instruments with recourse: *Provided, however,* That debt instruments issued for inter-bank call loans with maturity of not more than five (5) days to cover deficiency in reserves against deposit liabilities including those between or among banks and quasi-banks shall not be considered as deposit substitute debt instruments.

2.6 Insurance Companies - shall refer to entities that undertakes for a consideration to indemnify another (insured) against loss, damage or liability arising from an unknown or contingent event.

2.7 Financing Companies - shall refer to corporations except banks, investments houses, savings and loan associations, insurance companies, cooperatives, and other financial institutions organized or operating under other special laws, which are primarily organized for the purpose of extending credit facilities to consumers and to industrial, commercial, or agricultural enterprises, by direct lending or 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 financial leasing of movable as well as immovable properties (R.A. No. 5980 as amended by R.A. No. 8556).

2.8. Financial Leasing - shall refer to the mode of extending credit through a non-cancellable lease contract under which the lessor purchases or acquires, at the instance of the lessee, machinery, equipment, motor vehicles, appliances, business and office machines, and other movable or immovable property in consideration of the periodic payment by the lessee of a fixed amount of money sufficient to amortize at least seventy percent (70%) of the purchase price or acquisition cost, including any incidental expenses and a margin of profit over an obligatory period of not less than two (2) years during which the lessee has the right to hold and use the leased property with the right to expense the lease rentals paid to the lessor and bears the cost of repairs, maintenance, insurance and preservation thereof, but with no obligation or option on his part to purchase the leased property from the owner-lessor at the end of the lease contract (R.A. No. 5980 as amended by R.A. No. 8556). A finance lease is a lease that transfers substantially all the risks and rewards incident to ownership of an asset. Title may or may not eventually be

transferred.

2.9 Operating Lease - shall refer to a lease other than a finance lease of a finance company.

2.10 Interest Income - the term shall include interest and discounts earned on loans and investment transactions.

2.11 Securities - shall include shares of stock in a corporation and rights to subscribe for or to receive such shares; and bonds, debentures, notes or certificates, or other evidence of indebtedness issued by any corporation, including those issued by the government or political subdivision thereof, with interest coupons or in registered form.

2.12 Government Securities - shall refer to securities issued by the Republic of the Philippines or any of its agencies, instrumentalities, and political subdivisions.

2.13 Private Securities - shall refer to securities not covered by Subsection 2.12 hereof.

2.14 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 financial institutions within the Philippines, which include:

- a. Financial intermediation service fee;
- b. Financial leasing income;
- c. Rentals on properties, real or personal;
- d. Royalties;
- e. Commissions;
- f. Trust fees;
- g. Estate planning fees;
- h. Service fees;
- i. Other charges or fees received as compensation for services
- j. Net trading gains;
- k. Net foreign exchange gains
- l. Gain on sale or redemption of investments;
- m. Net gain from the sale of properties acquired through foreclosure lodged under the account "Real and Other Properties Owned and Acquired" (ROPOA) or under any other appropriate account, which is measured by the difference between the selling price or the consideration received for such sale and the carrying cost or book value of the asset at the time of sale as determined in accordance with the generally accepted accounting principles prescribed by the Bangko Sentral ng Pilipinas (BSP) for banks and non-bank financial intermediaries performing quasi-banking functions, or by the Securities and Exchange Commission (SEC) for other financial intermediaries; and
- n. All other receipts of gross income specified in Section 32 (A) of the Code not otherwise enumerated above.

In determining gross receipts, any amount withheld by the payor of the

income as taxes, i.e., on rentals, interests, etc. shall form part thereof under the doctrine of constructive receipt of income.

SECTION 3. Imposition of Gross Receipts Tax (GRT) on Banks and Non-Bank Financial Intermediaries Performing Quasi-Banking Functions - There shall be collected on gross receipts from sources within the Philippines by all banks and non-bank financial intermediaries performing quasi-banking functions in accordance with the following schedule:

a. On interest, commissions and discounts from lending activities as well as income from financial leasing, on the basis of remaining maturities of instruments from which such receipts are derived:

Maturity period of five (5) years or less ----- -----	5%
Maturity period is more than five (5) years ----- -----	1%

b. On dividends and equity shares in the net income of subsidiaries 0%

c. On royalties, rentals of property, real or personal, profit from exchange and all other items treated as gross income under Section 32 of the Code -----
----- 5%

d. On net trading gains within the taxable year on foreign currency, debt securities, derivatives and other similar financial instruments -----
----- 5%

In computing for the net trading gain within the taxable year on items of income provided in (d) above, the figure to be reported in the monthly percentage tax return (GRT) shall be the cumulative total of the net trading gain/loss since the first month of the applicable taxable year less the figures already reflected in the previous months of the same taxable year. Provided, that net trading loss on items of income provided in (d) above may only be deducted from net trading gain on items of income provided in (d) above, but not from any other items of gross receipt to arrive at the total monthly gross receipts tax due.

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Illustrations:

ABC Bank has the following income/loss for the month of March 2004:

Interest Income with Maturity of less than five years	P 50,000.00
Rentals	50,000.00
Net trading Loss	(10,000.00)

For the month of March 2004, ABC Bank is liable for GRT amounting to P5,000.00 computed as follow:

Interest Income with Maturity of Less than Five years	P50,000.00	
Multiply by GRT Rate	5%	P2,500.00
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Rentals	P50,000.00	
Multiply by GRT Rate	5%	P2,500.00
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Total		P5,000.00

For the month of April 2004, ABC Bank has the following income:

Interest Income with Maturity of less than five years	P100,000.00
Rentals	P 50,000.00
Net trading gain	P 20,000.00

For the month of April 2004, ABC Bank is liable for GRT amounting to P8,000.00 computed as follow:

Interest Income with Maturity of Less than Five years	P100,000.00	
Multiply by GRT Rate	5%	P5,000.00
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Rentals	P 50,000.00	
Multiply by GRT Rate	5%	P2,500.00

Net Trading Gain for April 2004	P 20,000.00	
Less: Net Trading Loss for March 2004	(10,000.00)	
Adjusted Net Trading Gain	P 10,000.00	
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Multiply by GRT Rate	5%	500.00
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