[BIR REGULATIONS NO. 12-2003, January 02, 2003]

AMENDING CERTAIN PROVISIONS OF REVENUE REGULATION NO. 18-99 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, 2003 PURSUANT TO SECTION 1 OF REPUBLIC ACT NO. 9010

SECTION 1. Scope. — Pursuant to the provisions of Section 244 in relation to Section 108, and Section 106 on certain cases, of the National Internal Revenue Code of 1997, these Regulations are hereby promulgated to amend certain provisions of Revenue Regulations No. 18-99 governing the imposition of VAT on banks, non-bank financial intermediaries and finance companies in accordance with Section 5 of Republic Act No. 8424 which imposition was last deferred by Section 1 of Republic Act No. 9010.

SEC. 2. Definition of Terms. — Section 2 of Revenue Regulations No. 18-99 is hereby amended to read as follows:

> "*SECTION 2. Definition of Terms*. — For purposes of these Regulations, the terms enumerated hereunder shall have the following meaning:
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> 2.1. *Financial Institution* — shall refer to banks, non-bank financial intermediaries including quasi banks and finance companies. *This does not, however, include insurance companies.*
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> 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 classifications of banks as may be determined by the Monetary Board of the Bangko Sentral ng Pilipinas.*
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> 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 likewise includes all other 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).*

2.9 *Interest Income — For purposes of these Regulations, the term shall include interest and discounts earned on loans and investment transactions.*

2.10 *Gross Receipts — For purposes of these Regulations, the term shall refer to the compensation for all financial and non-financial services, or combination thereof, exclusive of the value added tax, performed by financial institutions within the Philippines, which compensation or fees are actually or constructively received during the month or quarter, which include:*

(a) Financial intermediation services 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), which is measured by the difference between the selling price and the cost equivalent to the bid price or unpaid loan value, whichever is lower, at the time of foreclosure; and
(n) All other receipts of income specified in Section 32(A) of the Code not otherwise enumerated above, except those derived from sale of goods and properties which has a different taxable base and, therefore, covered by a separate provision or sub-section of these regulations.

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.

2.11. Gross Selling Price — The term shall refer to the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price. The gross selling price is multiplied by the VAT rate of 10% to arrive at the output VAT on sale of goods/properties.

SECTION 3. Computation of Output Tax. — Section 3 of Revenue Regulations No. 18-99 is hereby amended to read as follows:

"*SECTION 3. Computation of the Output Tax. —*

3.1. On Financial Intermediation Services. — The output tax on the services rendered by financial institutions for financial intermediation shall be computed by multiplying the gross receipts from financial intermediation services by 10%.

3.2. On Financial Leasing . —

The VAT payable on financial leasing is computed in the same manner as that for financial intermediation services of financial institutions as discussed in Subsection 3.1 hereof.

In this case, the input tax on the purchase of equipment held for lease shall not qualify as deduction from output tax since the recognized income comprised only of interest income (recovery of principal not included).

3.3 On Net Foreign Exchange (Forex) Gains. — The output tax on forex gains shall be computed by multiplying by 10%, the monthly net forex gains realized, which is the difference between the value of the foreign currencies sold and purchased. The net forex gains during the month shall be considered as the gross receipts of the financial institution.

3.4 On Net Trading Gains. — The output tax on the trading of securities, commercial papers, and other financial instruments shall be computed by multiplying by 10% the net gain realized from the trading of securities, which gain is the spread between the yield or selling price from trading of such securities, commercial papers and instruments and the cost (carrying cost net of unearned discount) of obtaining the same. The net trading gain is the gross receipt of the financial institution from the trading of securities, commercial papers and other financial instrument.

3.5 On ROPOA Sales or Sales of Other Properties Acquired Through Foreclosure. — The output tax on ROPOA sales, as well as other properties acquired through foreclosure sale, shall be determined by multiplying by ten percent (10%) the gain, or the difference between the amount realized at the time of sale and the cost thereof which is equivalent to the bid price or unpaid loan value, whichever is lower, at the time of the foreclosure of the property, which gain or difference shall be considered as the gross receipts of the financial institution from the aforesaid transactions.