

THIRTEENTH CONGRESS OF THE REPUBLIC
OF THE PHILIPPINES
First Regular Session

5 JUN -6 P6:27

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S E N A T E

S. No. 2038

Introduced by Senators S. R. Osmeña III and Ma. Ana Consuelo
A. S. Madrigal

EXPLANATORY NOTE

This bill seeks to amend Section 110 (B) of the National Internal Revenue Code (NIRC) of 1997, as amended. Section 110 (B) is the result of an amendment to the NIRC which was included in Republic Act No. 9337. It introduces a cap on input VAT tax credits of 70% of output VAT that has the effect of creating a minimum 3% tax on gross receipts.

The cap on input tax credits sought to address the under-reporting of output VAT and over-reporting of input VAT by non-compliant taxpayers. The original amendment approved in the Senate Bill was a 90% cap. At that level, the rule should not generally impact adversely on compliant taxpayers but would result in non-compliant taxpayers having to account for closer to their true tax liability. At a 90% cap, the measure is acceptable, as a rough proxy for VAT; at 70%, it is punitive.


Moreover, the introduction of the minimum VAT removes the incentive for taxpayers to enter the formal sector of the tax base. Taxpayers would have an incentive to obtain goods from the informal or tax-evading sector since there will be no input tax paid for the purchase.

On the other hand, the provision in Section 110 (B) contains drafting ambiguities. The second proviso may be interpreted as qualifying the first, so that the input tax attributable to zero-rated sales will be fully creditable despite the 70% cap.

A cap on input VAT may not be considered best practice in a VAT system, but its imposition in the Philippine setting may prove to be valuable since evasion appears to be widespread. However, the level of cap needs to be realistic to ensure that compliant taxpayers will not prefer to be outside the ambit of the tax system.

In view of the foregoing, approval of this bill is earnestly requested.


SERGIO OSMEÑA III
Senator


MA. ANA CONSUELO A. S. MADRIGAL
Senator

THIRTEENTH CONGRESS OF THE REPUBLIC
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SENATE

S. No. 2038

Introduced by Senators S. R. Osmeña III and Ma. Ana Consuelo
A. S. Madrigal

AN ACT
AMENDING SECTION 110 (B) OF THE NATIONAL INTERNAL REVENUE
CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES

*Be it enacted by the Senate and the House of Representatives of the Republic of
the Philippines in Congress assembled:*

1 SECTION 1. Section 110 (B) of the National Internal Revenue Code of
2 1997, as amended, is hereby further amended to read as follows:

3 "SEC. 110. *Tax Credits.* –

4 (A) *Creditable Input Tax.* –

5 (1) x x x

6 x x x

7 (B) *Excess Output or Input Tax.* –

8 (1) If at the end of any taxable quarter the output tax
9 exceeds the **ALLOWABLE** input tax, the excess shall be
10 paid by the VAT-registered person.

11 (2) **THE ALLOWABLE INPUT TAX FOR ANY**
12 **QUARTER SHALL BE THE LOWER OF:**

13 (a) **THE INPUT TAX FOR ANY QUARTER PLUS**
14 **ANY EXCESS INPUT TAX CARRIED FORWARD**
15 **FROM PREVIOUS QUARTERS; OR**

1 **(b) THE AGGREGATE OF:**

2 **(i) NINETY PERCENT (90%) OF THE**
3 **OUTPUT TAX ON THE PERSON'S GROSS**
4 **SALES OR RECEIPTS FOR THE QUARTER**
5 **THAT ARE SUBJECT TO TEN PERCENT**
6 **(10%) VALUE-ADDED TAX; AND**

7 **(ii) ONE HUNDRED PERCENT (100%) OF**
8 **THE PERSON'S INPUT TAX**
9 **ATTRIBUTABLE TO GROSS SALES OR**
10 **RECEIPTS OF THE PERSON FOR THE**
11 **PERIOD THAT ARE ZERO-RATED OR**
12 **EFFECTIVELY ZERO-RATED.**

13 **(3) ANY INPUT TAX IN EXCESS OF THE ALLOWABLE**
14 **INPUT TAX FOR ANY QUARTER [If the input tax exceeds**
15 **the output tax, the excess] shall be carried over to the**
16 **succeeding quarter or quarters.[: *Provided*, that the input tax**
17 **inclusive of input VAT carried over from the previous quarter**
18 **that may be credited in every quarter shall not exceed**
19 **seventy percent (70%) of the output VAT:]**

20 **(4) IF THE ALLOWABLE INPUT TAX EXCEEDS THE**
21 **OUTPUT TAX BECAUSE THE PERSON MAKES ZERO-**
22 **RATED OR EFFECTIVELY ZERO-RATED SALES, THE**
23 **EXCESS SHALL BE CARRIED OVER TO THE**
24 **SUCCEEDING QUARTER OR QUARTERS: *Provided*,**
25 **[*however*, that any input tax attributable to zero-rated sales**
26 **by a] THAT THE VAT-registered person may at his option**
27 **HAVE THE EXCESS [be] refunded or credited against other**
28 **internal revenue taxes, subject to the provisions of Section**
29 **112.**

1 (C) x x x

2 x x x. "

3 SEC. 2. **Implementing Rules and Regulations.** — The Secretary of
4 Finance shall, upon the recommendation of the Commissioner of Internal
5 Revenue, promulgate the necessary Rules and Regulations for the effective
6 implementation of this Act.

7 SEC. 3. **Repealing Clause.** — All provisions of laws, orders, decrees,
8 including rules and regulations inconsistent herewith are hereby repealed and/or
9 modified accordingly.

10 SEC. 4. **Separability Clause.** — If any part or provision of this Act shall
11 be held to be unconstitutional or invalid, other provisions hereof which are not
12 affected thereby shall continue to be in full force and effect.

13 SEC. 5. **Effectivity.** — This Act shall take effect on July 1, 2005.

14 Approved,