

**REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE**
Quezon City

January 30, 2008

REVENUE MEMORANDUM CIRCULAR NO. 31-2008

**SUBJECT : Clarification of Issues Concerning Common Carriers
by Sea and their Agents Relative to the Transport of
Passengers, Goods or Cargoes**

TO : All Internal Revenue Officers and Others Concerned

I. Background

This Revenue Memorandum Circular is issued to clarify certain provisions of the National Internal Revenue Code of 1997, as amended (Code), as it applies to shipping companies and their agents as well as their suppliers to ensure that the law is properly implemented and taxes are properly collected, in a manner that aligns with acceptable business practices.

II. Definition of Terms

1. **Common Carrier** - refers to individuals, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water or air, for compensation, offering their services to the public and shall include transportation contractors.
2. **Gross Receipts** – the term refers to 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 advance payments actually or constructively received during the taxable quarter/period for the services performed or to be performed for another person, excluding VAT, but shall not include amount earmarked for remittance to a third party as agreed in an implied or express contract or mandated by law and invoiced/receipted by such third party directly to the real customer or actual recipient of the service.

For common carriers, gross receipts is the amount actually or constructively received as compensation for the services of undertaking the contract of carriage.

3. **International Sea Carrier** - refers to a foreign shipping company doing business in the Philippines, having touched or intention of touching any Philippine port to perform international sea transportation services/activities from the Philippines to anywhere in the world and vice versa, in the case of on-line carrier, or having maintained business establishment, agent or representative office in the Philippines for the sale of owned tickets/passage documents or tickets/passage documents of other shipping companies, which shipping companies operate without touching any Philippine port, in the case of off-line carrier. International sea carrier includes both off-line carrier and on-line carrier.

III. Questions and Answers

Q-1 *Who are the common carriers subject to the regular VAT rate (10% effective Nov. 1, 2005/12% effective Feb. 1, 2006) under R.A. 9337?*

A-1: The common carriers subject to VAT under R.A. 9337 are domestic common carriers by sea or air where they are liable to pay the regular 10%/12% output VAT on their domestic operation and 0% output VAT on their on-line international operation. Domestic common carriers which transport goods and cargoes by land, however, are already subject to VAT even prior to R.A. 9337.

Common carriers by land with respect to their gross receipts from the transport of passengers including operators of taxicabs, utility cars for rent or hire driven by the lessees and tourist buses used for the transport of passengers shall be subject to the 3% percentage tax imposed under Section 117 of the Code, but shall not be liable to VAT. On-line international common carrier by air and sea shall continue to be subject to the 3% common carrier's tax under Section 118 of the Code.

Q-2: *What transactions of domestic sea carriers are subject to VAT?*

A-2: Transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines is subject to 12% VAT. Any other income incidental to its operations shall likewise be subject to 12% VAT.

Q-3: *Are on-line international sea carriers subject to VAT?*

A-3: No. On-line international sea carriers are not subject to VAT they being subject to percentage tax under Title V of the Tax Code. They are liable to the three percent (3%) percentage tax imposed on their gross receipts from outbound fares and freight, pursuant to Section 118 of the Code.

However, if these on-line international sea carriers engage in other transactions not exempt under Section 119 of the Code, they shall be liable to the twelve percent (12%) VAT on these transactions.

Q-4: *Are demurrage fees collected by on-line international sea carriers due to delay by the shipper in unloading their inbound cargoes subject to tax?*

A-4: Yes, Demurrage fees, which are in the nature of rent for the use of property of the carrier in the Philippines is considered income from Philippine source and is subject to income tax under the regular rate as the other types of income of the on-line carrier. Said other line of business may likewise be subject to VAT or percentage tax applying the rule on threshold discussed in the succeeding paragraph.

Q-5: *Are detention fees and other charges collected by international sea carriers subject to tax?*

A-5: Detention fees and other charges relating to outbound cargoes and inbound cargoes are all considered Philippine-sourced income of the international sea carriers they being collected for the use of property or rendition of services in the Philippines, and are subject to the Philippine income tax under the regular rate, and to the Value added tax, if the total annual receipts from all the VAT-registered activities exceeds one million five hundred thousand pesos (P1,500,000.00). However, if the total annual gross receipts do not exceed one million five hundred thousand pesos, said taxpayer is liable to pay the 3% percentage tax.

Q-6: *Are domestic common carriers engaged in both domestic and international transport operations subject to VAT on both operations?*

A-6: Domestic carriers are subject to 12% VAT on income derived from their domestic operations. However, their income from international transport operations, involving the transport of passengers, goods and cargoes from the Philippines to a foreign country, shall be subject to VAT at zero rate (0%) while income from international transport operations involving the transport of passengers, goods and cargoes from a foreign country to the Philippines shall be VAT-exempt, the latter being revenue/receipts from foreign source.

Q-7: *Can on-line international sea carriers opt to be under the VAT system and be subject to VAT at zero-rate on their international operations similar to domestic corporations?*

A-7: No. The business of an international sea carrier is exempt from VAT because this is a service subject to percentage tax. If the main business is exempt from VAT, the VAT-exempt person can not elect that its exempt business/es be placed under the VAT system. The

option to be subject to VAT on its exempt transactions is available only to a VAT-registered person.

Q-8: *Are domestic shipping carriers with international operations considered as “international carriers” and be subject to the 3% common carrier’s tax under Section 118 of the Code?*

A-8: No. “International shipping carriers” refers to foreign shipping companies only. It does not include domestic sea carriers/corporations with international shipping operations.

Q-9: *Are shipping carriers which operate under a government franchise still required to pay the franchise tax in addition to the VAT?*

A-9: No. The VAT is in lieu of the franchise tax.

Q-10: *Are the sale, importation or lease of passenger or cargo vessels, including engine, equipment and spare parts thereof for domestic or international transport operations exempt from VAT?*

A-10: The sale, importation or lease of passenger or cargo vessels, including engine, equipment and spare parts thereof for domestic or international transport operations, are exempt from VAT. Provided, that the exemption from VAT on the importation and local purchase of passenger and/or cargo vessels shall be limited to those of one hundred fifty (150) tons and above, including engine and spare parts of said vessels. Provided, further, that the vessels to be imported shall comply with the age limit requirement, at the time of acquisition counted from the date of the vessel’s original commissioning, as follows: (i) for passenger and/or cargo vessels, the age limit is fifteen (15) years old; (ii) for tankers, the age limit is ten (10) years old; and (iii) for high-speed passenger crafts, the age limit is five (5) years old. Provided, finally, that the exemption shall be subject to the provisions of Section 4 of Republic Act No. 9295, otherwise known as “The Domestic Shipping Development Act of 2004.”

Q-11: *What is the consequence if the domestic shipping carrier fails to comply with Section 4 of R.A. 9295?*

A-11: The importation or local purchase of passenger and/or cargo vessels, including engine, equipment and spare parts thereof, shall not be exempt from VAT.

Q-12: *Are the importation of life-saving equipment, safety and rescue equipment and communication and navigational safety equipment, steel plates and other metal plates, including marine-grade aluminum plates, used for transportation operations of Philippine Registered Vessel, exempt from VAT?*

A-12: Yes, provided that it has complied with Section 4(b) of R.A. 9295.

Q-13: *Are importation of fuel, goods and supplies by persons engaged in international shipping exempt from VAT?*

A-13: The importation of fuel, goods and supplies for use in the international sea transport operations is VAT exempt. *Provided*, that the said fuel, goods and supplies shall be used exclusively or shall pertain to the transport of goods and/or passenger from a port in the Philippines directly to a foreign port without stopping at any other port in the Philippines to unload passengers and/or cargoes loaded in and from another domestic port; *Provided*, further, that if any portion of such fuel, goods or supplies is used for purposes other than that mentioned in this paragraph, such portion of fuel, goods and supplies shall be subject to 12% VAT.

Q-14: *Are sales of goods, supplies, equipment, fuel and services to persons engaged in international shipping operations subject to VAT?*

A-14: The sale of goods, supplies, equipment, fuel and services (including leases of property) to the common carrier to be used in its international sea transport operations is zero-rated. *Provided*, that the same is limited to goods, supplies, equipment, fuel and services pertaining to or attributable to the transport of goods and passengers from a port in the Philippines directly to a foreign port without docking or stopping at any other port in the Philippines to unload passengers and/or cargoes loaded in and from another domestic port; *Provided*, further, that if any portion of such fuel, equipment, goods or supplies and services is used for purposes other than that mentioned in this paragraph, such portion of fuel, equipment, goods, supplies and services shall be subject to 12% VAT.

Q-15: *Are importation of fuel by shipping company exclusively engaged in international operations automatically exempt from the imposition of VAT? What about its purchases of fuel from domestic suppliers? Will these purchases automatically qualify as zero-rated?*

A-15: Direct importations of fuel by a shipping company that is exclusively engaged in international operations are considered as VAT exempt. However, the importer has to secure a VAT-exempt Authority to Release Imported Goods (ATRIG) from the appropriate BIR office prior to the release of imported fuel from the custody of the Bureau of Customs.

With respect to its domestic purchases of fuel, considering that the same are normally loaded directly to the international carrier/vessel, the sales thereof by its suppliers are considered as automatically zero-rated; hence, there is no need to secure prior approval for zero-rating from the BIR. The seller of the fuel must issue a zero-rated VAT invoice in the name of the international carrier/vessel and

the same must be supported by Delivery Receipt or any document, evidencing the actual loading of the fuel to the international carrier/vessel duly acknowledged by its captain or duly authorized representative.

Q-16: How shall we tax petroleum products imported by/directly sold to sea transportation companies that are engaged in both domestic and international operations?

A-16: It will depend upon the nature of procurement of petroleum products by these sea transportation companies:

1. If the sea transport operators locally purchase petroleum products on a per voyage basis, such that the specific lifting/purchase of the fuel can be directly identified to be used by the loading vessel for outbound international voyage, the said sales are considered effectively zero-rated or the importation is considered VAT-exempt. The domestic seller of the fuel must issue a zero-rated VAT invoice in the name of the carrier and the same must be supported by Delivery Receipt or any document evidencing the actual loading of the fuel to the carrier for outbound international voyage duly acknowledged by its captain or duly authorized representative;
2. If the petroleum products are imported/sold in bulk and the destinations of the vessel may be known only upon loading of the fuel to the departing vessel, such bulk importation by/ direct sales to the sea transport operators shall be subject to the 12% VAT. The concerned sea transport operators can either utilize the VAT paid on the importations or local purchases of fuel as credit against their output tax liabilities, or can claim for tax refund/credit such portion of VAT payments on local as well as imported purchases that are attributable to their zero-rated sales.
3. If the sea transport operator is maintaining dedicated tanks for the storage of fuel to be used exclusively for international voyage, and the imported/locally purchased petroleum products will be delivered directly to these dedicated storage tanks upon release from BOC custody/supplier oil company, the importation of these fuel by the sea transport operator shall be exempt from VAT, while its local purchases will be subject to VAT effective zero rating. In both cases, however, the maintenance of these storage tanks shall be subject to prior approval and regular monitoring by the BIR. Otherwise, the rule in the immediately preceding paragraph will apply.

Q-17: If the country of registry of the international vessel purchasing locally the petroleum product does not grant similar tax treatment to Philippine-registered carriers, are we still going to treat the sale of these products as zero-rated for VAT purposes?

A-17: Yes. Unlike the provisions of Section 135 of the Code with respect to the imposition of excise taxes on petroleum products, the provision of the new VAT law treating the direct sales of petroleum products to shipping companies engaged in international operations as zero-rated did not make any distinction. As such, the rule on reciprocity on these sales will not apply.

Q-18: *What is the basis in the computation of output VAT on sale of services of the shipping company?*

A-18: The basis in the computation of output VAT of a shipping company is its gross receipts as defined in this Circular.

Q19: *Which transactions with international sea transport operators are zero-rated?*

A19: Sale of services to persons engaged exclusively in international sea transport, including leases of property for use thereof, and the sale of goods supplies, equipment and fuel are zero-rated. However, sale of goods, supplies, equipment and fuel as well as services to persons engaged in both domestic and international sea transport operations shall be zero-rated only with respect to the portion that will be used in international operations.

Q20: *How shall we tax petroleum products imported by/directly sold to international sea carriers that are engaged in both domestic and international operations?*

A20: It will depend on the nature of procurement of petroleum products by these international sea carriers:

1. If the international sea carrier locally procures petroleum products on a per voyage basis, such that the specific purchase of the fuel can be directly identified to be used by the loading vessel for outbound voyage, the said sales are considered zero-rated or the importation is considered VAT-exempt. The domestic seller of the fuel must issue a zero-rated VAT invoice in the name of the carrier and the same must be supported by Delivery Receipt or any document evidencing the actual loading of the fuel to the carrier for outbound international voyage duly acknowledged by its captain or duly authorized representative.
2. If the petroleum products are imported/sold in bulk and the destinations of the vessel may be known only upon loading of the fuel to the departing vessel, such bulk importation by/direct sales to the transport operators shall be subject to the 12% VAT. The concerned transport operators can either utilize the VAT paid on the importation or local purchase of fuel as credit against their output tax liabilities, or can claim for tax refund/credit such portion of the VAT payments on local as well

as imported purchases that are attributable to their zero-rated sales.

3. If the transport operator is maintaining dedicated tanks for the storage of fuel to be used exclusively for international voyage, and the imported/locally purchased petroleum products will be delivered directly to these dedicated storage tanks upon release from BOC custody/supplier oil company, the importation of these fuel by the transport operator shall be exempt from VAT while the local purchases will be subject to VAT at zero rate. In both cases, however, the maintenance of these storage tanks shall be subject to prior approval and regular monitoring by the BIR. Otherwise, the rule in the immediately preceding paragraph will apply.

Q-21: Who among the sea transport operators are required to register as VAT taxpayer effective November 1, 2005?

A-21: Philippine shipping companies, whether engaged in domestic or international trade, whose gross sales and/or receipts from the transport of passengers, goods and cargoes for any 12-month period exceed P1,500,000 are required to register as VAT taxpayers.

Q-22: Can domestic tickets, bills of lading and excess baggage tickets issued by domestic sea transport carriers serve as a VAT official receipt?

A-22: No, VAT-registered domestic sea transport carriers are still required to issue VAT Official Receipts on their sale of passenger or cargo tickets for both domestic and international operations. The passenger or cargo tickets are considered contracts of passage/carriage and cannot serve as official receipts. VAT Official Receipts are issued upon receipt, actual or constructive, of payments from the purchasers. In case of tickets sold thru general sales agents of such domestic sea transport carriers, the agents shall issue the VAT official receipts of the domestic sea transport carriers since the sellers of the tickets are the domestic sea transport carriers and not the agents who merely collect the proceeds of sales from the buyers on behalf of the domestic sea transport carriers.

The agents shall, in turn, bill the domestic sea carriers for their commissions and the 12% VAT on said commission, if the agents are VAT-registered or VAT-registrable taxpayers. The VAT official receipts issued by the agents to the domestic sea carriers shall be the bases of the latter in claiming input taxes on commissions paid to agents. On the other hand, if the agent is a qualified non-VAT taxpayer, he shall issue non-VAT official receipt to the domestic carrier. However, said non-VAT official receipt issued by the agent

to the domestic common carrier cannot generate input tax to the latter.

On the other hand, if the intermediary-entity between the carrier and the customer purchases in bulk passenger spaces or cargo spaces and resells the same to the said customer at a price dictated by said intermediary as evidenced by the issuance of the intermediary's official receipt and sales invoice/billing statement, a wholesaler-distributor/retailer relationship is created between the carrier and the intermediary and they shall be taxed accordingly.

Q-23: *What is the basis of the 12% VAT on the commission of the general sales agents with respect to their sales of domestic sea tickets?*

A-23: On the sale of passage tickets by agents, the said agent's gross receipts shall pertain to or cover their commission which is included in the price of passage tickets. The price of the passage tickets plus the 12% VAT passed on by the domestic sea carrier (seller) to the buyer shall, after issuance of the carrier's VAT official receipt to the said buyer, be collected by the agent on behalf of the domestic sea carrier. The agent shall remit to the carrier the following: the price of the tickets (less the agent's commission); the 12% VAT (less the VAT accruing on the agent's commission); and the 10% creditable withholding of income tax on agent's commission.

The proceeds of the sale of the ticket do not form part of the gross receipts of the agent. These are gross receipts of the carrier that personally, or through the agent, issued the carrier's VAT official receipt.

Example: SL SHIPPING sold domestic ticket at ₱1,000.00 through its general sales agent (agent's commission is 3.5%). Shown herein-below is the computation:

	Buyer	
	Top 10,000 Corporation	Others
Price of Ticket	₱1,000.00	₱1,000.00
Add: 12% VAT	<u>120.00</u>	<u>120.00</u>
Sub-Total	₱1,120.00	₱1,120.00
Less: 2% Withholding Tax	<u>(20.00)</u>	
Total Amount Collected from Buyer	₱1,100.00	₱1,120.00
Less: Agent's Commission	(35.00)	(35.00)
12% VAT on Commission	<u>(4.20)</u>	<u>(4.20)</u>
Sub-Total	₱1,060.80	₱1,080.80
Add: 10% Withholding of Income Tax on Agent's Commission	<u>3.50</u>	<u>3.50</u>
Amount to be remitted by the Agent to SL SHIPPING	<u><u>₱1,064.30</u></u>	<u><u>₱1,084.30</u></u>

The agent shall remit to the BIR the 12% VAT accruing on its commission, net of input taxes incurred by the agent. On the other hand, the domestic shipping company shall remit the VAT on transport business, net of input taxes which includes the VAT on commission charged by the agent.

For buyers classified as belonging to the Top Ten Thousand (10,000) private corporations, they have to deduct and withhold 2% on their payments for domestic sea tickets and issue a Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) in the name of the domestic sea carrier as the income recipient. The latter shall in turn issue BIR Form No. 2307 to the income recipient-agent for the 10% creditable withholding tax withheld from the agent's commission.

Q-24: Will a non-VAT registered ticket agent be liable for VAT as a result of the 12% VAT passed on to buyers of domestic shipping ticket?

A-24: No. The 12% VAT on the sale of domestic passage tickets is passed on to the buyer by the seller which is the domestic sea carrier. The agent collects the payments for the domestic passage ticket plus the 12% VAT on behalf of the domestic sea carrier. The non-VAT registered ticket agent shall be liable to three percent (3%) tax on his gross receipts of commission income pursuant to Section 116 of the Tax Code, which commission income is evidenced by his issuance of Non-VAT Official Receipt to his customer which is the sea carrier. It is assumed, of course, that the annual gross receipts of the agent does not exceed P 1,500,000.

Q-25: How much should be the passed-on VAT on services rendered to the government? Is it 12% or 5% VAT?

A-25: The gross payments made by the government to sellers of goods and services shall be subject to a final VAT withholding of five percent (5%) on gross payments. However, the VAT to be passed on by the sellers of goods and services to the government shall still be 12% to cover the final VAT of 5% and the standard input tax of 7% (The 12% rate is effective on Feb. 1, 2006). The standard input tax shall cover the actual input tax plus or minus the difference between the standard input tax and the actual input tax, which difference shall be an adjustment to cost.

Q-26: Are shipping companies who are subject to VAT starting Nov. 1, 2005 entitled to transitional input tax?

A-26: Shipping companies are entitled to transitional input tax as follows:

- (i) For goods, materials or supplies not for sale but purchased for use in business in their present condition, which are not intended for further processing and are on hand as of October 31, 2005, a transitional input tax equivalent to 2% of the value of the inventory on hand as of Nov. 1, 2005, or actual VAT paid on

such goods, materials or supplies, whichever is higher, shall be allowed.

- (ii) For goods purchased with the object of resale in their present condition, the same transitional input tax equivalent to 2% of the value of such goods or the actual VAT paid on such goods unsold as of October 31, 2005, whichever is higher, shall be allowed, which amount may be credited against the output tax of the VAT-registered shipping company.

For this purpose, an inventory as of October 31, 2005 of such goods or supplies showing the quantity, description and amount should have been filed with the RDO or concerned BIR office not later than November 30, 2005.

In recognizing transitional input tax as of October 31, 2005, a journal entry should be made in the books debiting the input tax account and crediting the inventory/asset account.

Q-27: When a Philippine shipping company charters a vessel to an oil company doing business in the Philippines for use in domestic trade, is the charter income subject to VAT?

A-27: The charter income of the shipping company is subject to VAT since the service is performed within the Philippines.

Q-28: What is the treatment for VAT purposes on the charter income of a Philippine overseas shipping company engaged in international trade to another Philippine shipping company likewise engaged in overseas shipping?

A-28: Income earned/gross receipts from the charter of the vessel between two Philippine shipping companies which are domestic corporations whose operations are exclusively for overseas operation is subject to zero-percent (0%) VAT.

Q-29: Is the transport service rendered to a government agency by domestic carrier engaged in international shipping originating from foreign port to Philippine port subject to five percent (5%) final withholding VAT?

A-29: The transaction is not subject to five percent (5%) final withholding VAT since the service was rendered outside the Philippines which service is VAT-exempt.

Q-30: When a Philippine overseas shipping company charters to an oil company doing business in the Philippines for use in the overseas trade, is the charter income subject to VAT?

A-30: The charter income derived by a Philippine overseas shipping company from the charter of a vessel used for overseas trade is subject to VAT.

Q-31: *What is the treatment for VAT purposes of the revenue derived from the charter of a vessel to a domestic shipping company where said vessel is used both for domestic operation and international operations?*

A-31: The charter revenue is subject to the 12% VAT. The portion of the charter fee relating to the international operations may be claimed as a refund because it is attributable to a zero-rated activity. The portion relating to domestic operations will give rise to a creditable input tax since the domestic operation is subject to 12% VAT.

Q-32: *When a Philippine shipping company whose vessel carries cargo from a foreign port to the Philippines and transships it on a domestic registered ship bound for another Philippine port, is the income derived therefrom subject to VAT?*

A-32: Only the portion where the cargo is carried by a domestic ship from one Philippine port to another Philippine port is subject to VAT which is assessed on and payable by the Philippine company/domestic shipping corporation.

Q-33: *What are the consequences if domestic common carriers failed to register as VAT taxpayers?*

A-33: Non-registration as VAT taxpayers does not exempt said companies from their output tax liability on their sales of service and other taxable transactions. However, in computing their VAT payable for the period, no input tax credits on their purchases of goods, properties or services prior to registration shall be allowed to be credited against their output tax liability.

Q-34: *Are commission incomes received by the local shipping agents from their foreign principals subject to VAT?*

A-34: The commission income or fees received by the local shipping agents for outbound freights/fares received by their foreign principals which are on-line international sea carriers (touching any port in the Philippines as part of their operation) shall be zero-rated pursuant to the provisions of Section 108(B)(4) of the Code. Said provision does not require that payments of the commission income or fees for "services rendered to persons engaged in international shipping operations, including leases of property for use thereof," be paid in acceptable foreign currency in order that such transaction may be zero-rated. On the other hand, commission income or fees received by the local shipping agents pertaining to inbound freights/fares received by their foreign principals/on-line

international sea carriers or pertaining to freights/fares received by off-line international sea carriers shall be subject to VAT at 12%.

Q-35: Are other income of domestic shipping companies earned on cancelled tickets subject to VAT?

A-35: All related income such as penalty or charges earned on the cancellation of tickets by the clients of domestic shipping companies are subject to VAT.

Q-36: Can a taxpayer whose main/principal line of business is subject to VAT and therefore VAT-registered, likewise register under the VAT its secondary lines of business which are exempt from VAT under Section 109 of the Tax Code?

A-36: Yes. Section 109(2) of the Tax Code provides – “A VAT-registered person may elect that Subsection (1) [referring to exempt transactions] not apply to its sale of goods or properties or services”. Perforce, if the main/principal line of business is subject to VAT and the taxpayer engaged thereon is VAT-registered, said taxpayer may elect that all his exempt transactions will be placed within the VAT system.

Q-37: Can an international shipping company which is engaged in other activities subject to VAT, i.e. leasing of properties, etc., elect that all its business activities be subject to VAT?

A-37: No. The main or principal business of an international shipping company is VAT-exempt because it is subject to the percentage tax under Title V of the Tax Code. Therefore, it can not elect that said principal exempt business be subject to VAT even if its secondary businesses are subject to VAT.

Q-38: How do we determine the main or principal business of a taxpayer who is engaged in mixed business activities?

A-38: In determining the main or principal business of a taxpayer, we apply the pre-dominance test. Under this test, if more than fifty percent (50%) of its gross selling price and/or gross receipts comes from its business/es subject to VAT, its main/principal business falls within the VAT system making its status as a VAT person. Otherwise, he can not be considered as a VAT person eligible for the election provided for under Section 109(2) of the Tax Code.

Q-39: How should the foreign international shipping line register as a taxpayer with the Bureau of Internal Revenue?

A-39: The domestic shipping agent shall apply for a Taxpayer Identification Number (TIN) for each principal it represents. Each principal is by itself a taxpayer separate and distinct from the agent and the other principals of the same agent. For purposes of

registration and securing the TIN of the principal/s, the shipping agent must submit the Agency Agreement between him and his principal/s which will suffice as the documentation requirement.

Q-40: How should the foreign international shipping line file its tax returns?

A-40: The shipping agent shall file the pertinent tax returns for each principal using the TIN and name of the particular principal. The shipping agent should not use its own TIN in filing the returns of the principal it represents.

Q-41: Should the foreign international shipping line issue "Receipts" and maintain "Books of Accounts" in its own name (meaning using the name and TIN of the principal)?

A-41: Yes. Whether the foreign international shipping line operates business on its own or through a shipping agent, it is required to issue receipts and maintain books of accounts in its own name being a taxpayer in itself.

Q-42: In the case of transport by a domestic carrier of passengers and/or cargoes from a domestic port to a foreign port but passing through another domestic port to load additional passengers and/or cargoes bound for foreign destination, will the entire journey be subject to a zero rate VAT?

A-42: Yes, the receipts from the entire journey from a domestic port to a foreign port shall be subject to zero rate VAT. However, if before proceeding to the foreign port the carrier loads passengers and/or cargoes from a domestic port and unloads them in another domestic port, the gross receipts therefrom (domestic port to another domestic port) shall be subject to 12% VAT.

Q-43: If the purchaser of the domestic sea ticket refused to voluntarily disclose the information that he is a VAT-registered person, will the seller of the domestic ticket be liable for non-indication in the official receipt of the required information prescribed under Sec. 113(a) and Sec. 237 of the Code?

A-43: If the purchaser is a regular customer, the seller has no valid excuse for not knowing whether the purchaser is VAT-registered or not. As such, it shall be liable for any omission of the prescribed information in the Receipt to be issued. Official receipts issued to VAT-registered purchasers that do not reflect the information prescribed under Sections 237 and 113 of the Code will not be allowed as sources of input tax credits on the part of the VAT-registered purchasers. However, for non-regular customers, the seller will not be held liable for such omissions.

Q. 44: If an international carrier issues a contract of carriage of goods from Davao to Los Angeles, USA but said carrier picks up the goods only in Manila and therefore sub-contracts to a domestic carrier the carriage service from Davao to Manila, what are the tax liabilities of the two (2) carriers in this continuing transaction?

A-44: In this scenario, the international carrier shall be liable to pay the Gross Philippine Billing Tax (Income Tax) and the common carrier tax based on freight from Davao to Los Angeles whereas the domestic carrier shall be liable for income tax on the freight or service income from Davao to Manila. However, said freight income of the domestic carrier shall be subject to VAT at zero percent (0%), it being service rendered to international carrier engaged in international transport operation.

All internal revenue officers and others concerned are hereby enjoined to strictly implement the provisions of this Circular.

(Original Signed)
LILIAN B. HEFTI

Commissioner of Internal Revenue

cc:

Secretary of Finance (DOF)
Association of International Shipping Lines
Philippine Interisland Shipping Association
Filipino Shipowners Association
Professional Customs Brokers Association of the Philippines
Philippine Ports Authority
Secretary of Trade and Industry (c/o Philippine Shippers' Bureau)
Maritime Industry Authority (MARINA)
Bureau of Customs (BOC)