

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Eighteenth Congress
First Regular Session

HOUSE BILL NO. 6765



Introduced by **Representative JOEY SARTE SALCEDA**

**AN ACT ESTABLISHING A FISCAL REGIME FOR THE DIGITAL ECONOMY,
AMENDING FOR THE PURPOSE SECTIONS 57, 105, 108, AND 114 OF THE
NATIONAL INTERNAL REVENUE CODE, AND FOR OTHER PURPOSES**

EXPLANATORY NOTE

The digital economy is becoming a rising component of overall commerce. While it has brought convenience and efficient in many sectors where it is now becoming a competitor, if not the norm, it is also a largely untaxed segment of the economy. As the Philippine economy moves towards more digitization, so too must the tax regime, which, for the moment, is better suited to traditional brick-and-mortar methods of doing business than it is to digital transactions.

This proposal will effect five key changes to the way the digital economy is currently taxed, to better capture value created into the tax system.

First, it will make “network orchestrators” like Grab, Angkas, and other similar services that link customers and providers withholding agents for income taxes, to ease their partners of the burden of having to pay their own taxes, while also encouraging tax compliance.

Second, the bill will clarify that services rendered electronically in the course of trade or business are liable to Value-Added Tax (VAT). This will, once and for all, set a statutory clarification of a long-standing question of whether services rendered electronically can be subjected to VAT.

Third, the bill clarifies that such services as digital advertising by internet giants such as Google and Facebook and subscription-based services such as those of Netflix and Spotify, are subject to VAT.

Fourth, the bill will make network orchestrators for lease services such as AirBnB, and electronic commerce platforms such as Lazada and Shopee withholding agents for VAT, easing their partners of regulatory and tax compliance burden while improving overall tax compliance.

Fifth, the bill requires that those who render digital services must do so through a resident agent or a representative office in the Philippines. This addresses the issue of businesses having a significant presence in a country without having a physical establishment here that could be held liable for tax and regulatory purposes, improving our revenue intake while being better able to protect consumers from unfair trade practices.

Using conservative figures for estimation, we project that the proposed bill will yield about Php 29.1 billion in new revenues for the government.

Annual revenue estimates (in billions), sales estimates from Statista

Source	Tax base (2020)	Tax due	Assumptions
Improvement in tax compliance with network orchestrators as withholding agents for income tax	28.55	1.20	+50% in tax compliance
Digital advertising VAT	33.1	4.0	\$662 million in revenues
Other digital services (games and other digital media)	24.05	2.9	\$461 million in revenues
Subscription-based services VAT	18.2	2.2	
• <i>Music streaming (Spotify, etc.)</i>	2.7	0.3	\$53 million in revenues
• <i>Video streaming (Netflix, etc.)</i>	3.2	0.4	\$63 million in revenues
• <i>Electronic publishing (e-books)</i>	12.4	1.5	\$248 million in revenues
Network orchestrators as withholding agents for VAT	28.8	3.5	60,000 hosts at P40,000/month
E-commerce platforms as withholding agents for VAT	161.9	9.7	+50% in tax compliance
CIT from digital services	75.4	5.7	Sum of digital services, 30% profit margin
Annual incremental revenue estimate		29.1	

This bill responds to the increased urgency of finding new sources of revenue to fund the country's efforts to recover from the adverse impacts of COVID-19, and anticipates the increasing digitization of the country's economy.

In view of the foregoing, the approval of this bill is urgently sought.


JOEY SARTE SALCEDA

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Eighteenth Congress
First Regular Session

HOUSE BILL NO. 6765

Introduced by **Representative JOEY SARTE SALCEDA**

**AN ACT ESTABLISHING A FISCAL REGIME FOR THE DIGITAL ECONOMY,
AMENDING FOR THE PURPOSE SECTIONS 57, 105, 108, AND 114 OF THE
NATIONAL INTERNAL REVENUE CODE, AND FOR OTHER PURPOSES**

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

**CHAPTER I
GENERAL PROVISIONS**

Section 1. Short Title. – This Act shall be known as the “Digital Economy Taxation Act of 2020.”

SEC 2. Declaration of Policy. – It is hereby declared that the State shall promote fairness in taxation between goods and services rendered and sold by traditional, physical means, and good and services rendered and sold through virtual or electronic means. Recognizing that tax policy needs to be updated to reflect emerging realities in the ways consumers and providers of goods and services interact, the State shall also promote the most efficient means of collecting revenues from these new ways of buying and selling goods and rendering services.

It shall also be the policy of the State that the tax system shall continue to evolve and shall endeavor to anticipate new means and modes of transactions among buyers and sellers of goods and services, in order to preserve the revenue base, especially in view of its expanding needs arising out of the COVID-19 pandemic.

SEC 3. Definition of terms. – For purposes of this Act:

- (a) ***Digital advertising services*** shall refer to online advertisement services, any provision for digital advertising space, any other facility or service for the purpose of online advertisement;

- (b) *Electronic commerce platform* shall refer to persons, typically information technology companies, that act as intermediaries by connecting sellers and consumers, usually through an electronic means of transmission;
- (c) *Network orchestrator* shall refer to persons, typically aided by information technology, that act create a network of accredited service providers and service consumers, and that act as intermediaries that facilitate the matching of a consumer's service needs with a provider's available services.
- (d) *Services rendered electronically* shall refer to services rendered to a consumer through an electronic means of transmission, typically the internet.
- (e) *Subscription-based services* shall refer to products services rendered electronically in exchange for a regular subscription fee over the usage of the said product or service.

SEC 4. Section 57 of the National Internal Revenue Code, as amended, is further amended to read as follows:

SEC. 57. Withholding of Tax at Source. -

(A) Withholding of Final Tax on Certain Incomes. - Subject to rules and regulations the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24(B)(1), 24(B)(2), 24(C), 24(D)(1); 25(A)(2), 25(A)(3), 25(B), 25(C), 25(D), 25(E), 27(D)(1), 27(D)(2), 27(D)(3), 27(D)(5), 28 (A)(4), 28(A)(5), 28(A)(7)(a), 28(A)(7)(b), 28(A)(7)(c), 28(B)(1), 28(B)(2), 28(B)(3), 28(B)(4), 28(B)(5)(a), 28(B)(5)(b), 28(B)(5)(c); 33; and 282 of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code.

PROVIDED, THAT WHEN TAXABLE INCOME AND/OR REVENUE IS DERIVED THROUGH MEMBERSHIP IN A NETWORK ORCHESTRATOR SYSTEM, THE TAX IMPOSED UNDER SECTIONS 24(A) OF THIS CODE SHALL BE WITHHELD BY THE NETWORK ORCHESTRATOR.

SEC. 5. Section 105 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

SEC. 105. Persons Liable. - Any person who, in the course of trade or business, sells barter, exchanges, leases goods or properties, **INCLUDING THOSE DIGITAL OR ELECTRONIC IN NATURE**, renders services, **INCLUDING THOSE RENDERED ELECTRONICALLY**, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business.

SEC. 6. Section 108 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

(A) Rate and Base of Tax. - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) 10 of gross receipts derived from the sale or exchange of services, including the use or lease of properties: Provided, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:

(i) Value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent (2 4/5%); or

(ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 1/2%). [49]

The phrase "sale or exchange of services" means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, **WHETHER RENDERED ELECTRONICALLY OR OTHERWISE**, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs

and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire another domestic common carriers by land relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines; sales of electricity by generation companies, transmission, and distribution companies; services of franchise grantees of electric utilities, telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under section 119 of this Code, and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity, and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase "sale or exchange of services" shall likewise include:

(1) The lease or the use of or the right or privilege to use any copyright, patent, design or model, plan secret formula or process, goodwill, trademark, trade brand or other like property or right;

(2) The lease of the use of, or the right to use of any industrial, commercial or scientific equipment;

(3) The supply of scientific, technical, industrial or commercial knowledge or information;

(4) The supply of any assistance that is ancillary and subsidiary to and is furnished as a means of enabling the application or enjoyment of any such property, or right as is mentioned in subparagraph (2) or any such knowledge or information as is mentioned in subparagraph (3);

(5) The supply of services by a nonresident person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any brand, machinery or other apparatus purchased from such nonresident person.

(6) The supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme;

(7) THE SUPPLY BY ANY RESIDENT OR NONRESIDENT PERSON OF DIGITAL ADVERTISING SERVICES SUCH AS ONLINE ADVERTISEMENT SERVICES, ANY PROVISION FOR DIGITAL ADVERTISING SPACE, ANY OTHER FACILITY OR SERVICE FOR THE PURPOSE OF ONLINE ADVERTISEMENT;

(8) THE SUPPLY BY ANY RESIDENT OR NONRESIDENT PERSON OF SUBSCRIPTION-BASED SERVICES, OR SERVICES RENDERED ELECTRONICALLY IN EXCHANGE FOR A REGULAR SUBSCRIPTION FEE OVER THE USAGE OF THE SAID PRODUCT OR SERVICE;

(9) THE SUPPLY OF SERVICES THAT CAN BE DELIVERED THROUGH AN INFORMATION INFRASTRUCTURE, SUCH AS THE INTERNET;

(~~[7]~~10) The lease of motion picture films, films, tapes and discs; and

(~~[8]~~11) The lease or the use of or the right to use radio, television, satellite transmission and cable television time.

Lease of properties shall be subject to the tax herein imposed irrespective of the place where the contract of lease or licensing agreement was executed if the property is leased or used in the Philippines.

The term "gross receipts" means 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 deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

SEC 7. Section 114 of the National Internal Revenue Code, as amended, is further amended to read as follows:

SEC. 114. Return and Payment of Value-Added Tax. -

(A) In General. - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.

Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: Provided, That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches.

(B) Where to File the Return and Pay the Tax. - Except as the Commissioner otherwise permits, the return shall be filed with and the tax paid to an authorized agent bank, Revenue Collection Officer or duly authorized city or municipal Treasurer in the Philippines located within the revenue district where the taxpayer is registered or required to register.

(C) Withholding of Value-added Tax. - The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof: Provided, That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For purposes of this Section, the payor or person in control of the payment shall be considered as the withholding agent.

The value-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made.

(D) WHERE PROCEEDS FROM THE SALE OF GOODS AND SERVICES WHICH ARE SUBJECT TO THE VALUE-ADDED TAX IMPOSED IN SECTIONS 106 AND 108 OF THIS CODE ARE DERIVED THROUGH MEMBERSHIP IN A NETWORK ORCHESTRATOR SYSTEM OR AN ELECTRONIC COMMERCE PLATFORM, AND WHERE THE PROCEEDS REFERED HEREUNTO ARE PAID THROUGH A NETWORK ORCHESTRATOR SYSTEM OR AN ELECTRONIC COMMERCE PLATFORM, THE NETWORK ORCHESTRATOR OR THE ELECTRONIC COMMERCE PLATFORM, WHICHEVER IS APPLICABLE, SHALL DEDUCT AND WITHHOLD FROM THE SELLER THE VALUE-ADDED TAX DUE UNDER SECTIONS 106 AND 108 OF THIS CODE.

THE VALUE-ADDED TAX WITHHELD UNDER THIS SECTION SHALL BE REMITTED WITHIN TEN (10) DAYS FOLLOWING THE END OF THE MONTH THE WITHHOLDING WAS MADE.

SEC. 8. Resident representative offices or agents of suppliers of digital services. – A non-resident person shall have the privilege of rendering digital advertising services such as online advertisement services, any provision for digital advertising space, any other facility or service for the purpose of online advertisement; subscription-based services; or other similar services as may be defined by the Commissioner of Internal Revenue to resident persons exclusively through a

representative office or an agent which shall be a resident corporation in the Philippines. Revenues derived from the aforesaid services shall, for tax purposes, be revenues generated by the representative office or agent.

SEC. 9. Resident representative offices or agents of network orchestrators or electronic commerce platforms. – A non-resident person shall have the privilege of doing business in the Philippines as a network orchestrator and/or as an electronic commerce platform exclusively through a representative office or an agent which shall be a resident corporation in the Philippines. Revenues derived from the aforesaid services shall, for tax purposes, be revenues generated by the representative office or agent.

SEC. 10. Exclusive power of Interpretation by the Commissioner of Internal Revenue. – The power to interpret the provisions of this Act shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Act is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

SEC. 11. Separability Clause. – If, for any reason or reasons, any part or provision of this Act shall be declared as unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

SEC. 12. Repealing Clause. – All provisions of existing laws, orders, rules and regulations or parts thereof which are in conflict or inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SEC. 13. Effectivity. – This Act shall take effect immediately upon its publication in the Official Gazette or in at least two (2) newspapers of general circulation in the Philippines.

Approved,