

REPUBLIC ACT NO. 9294

AN ACT RESTORING THE TAX EXEMPTION OF OFFSHORE BANKING UNITS (OBUs) AND FOREIGN CURRENCY DEPOSIT UNITS (FCDUs), AMENDING FOR THE PURPOSE SECTION 27 (D) AND SECTION 28, PARAGRAPHS (A) (4) AND (A) (7) (b) OF THE NATIONAL INTERNAL REVENUE CODE AS AMENDED.

Section 1. Sec. 27, paragraph (D) (3) of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"Sec. 27. Rates of Income Tax on Domestic Corporations. -

"(D) Rates of Tax on Certain Passive Incomes. -

"(3) Tax on Income Derived under the Expanded Foreign Currency Deposit System. - Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with nonresidents, offshore banking units in the Philippines, local commercial banks including branches of foreign banks that may be authorized by the Bangko Sentral ng Pilipinas (BSP) to transact business with foreign currency deposit system shall be exempt from all taxes, except net income from such transactions as may be specified by the Secretary of Finance, upon recommendation by the Monetary Board to be subject to the regular income tax payable by banks: Provided, however, That interest income from foreign currency loans granted by such depository banks under said expanded system to residents other than offshore banking units in the Philippines or other depository banks under the expanded system shall be subject to a final tax at the rate of ten percent (10%).

"Any income of nonresidents, whether individuals or corporations, from transactions with depository banks under the expanded system shall be exempt from income tax."

Sec. 2. Sec. 28, paragraph (A)(4) and (A)(7)(b) of the same Code are hereby amended to read as follows:

"Sec. 28. Rates of Income Tax on Foreign Corporations. -

"(A) Tax on Resident Foreign Corporations. -

"(1) In General.-Except as otherwise provided in this Code, a corporation organized, authorized, or existing under the laws of any foreign country, engaged in trade or business within the Philippines, shall be subject to an income tax

equivalent to thirty five percent (35%) of the taxable income derived in the preceding taxable year from all sources within the Philippines: Provided. That effective January 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%); and effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%).

"In the case of corporations adopting the fiscal-year accounting period the taxable income shall be computed without regard to the specific date when sales, purchases and other transactions occur. Their income and expenses for the fiscal year shall be deemed to have been earned and spent equally for each month of the period.

"The reduced corporate income tax rates shall be applied on the amount computed by multiplying the number of months covered by the new rates within the fiscal year by the taxable income of the corporation for the period, divided by twelve.

"Provided, however, That a resident foreign corporation shall be granted the option to be taxed at fifteen percent (15%) on gross income under the same conditions, as provided in Sec. 27(A).

"(2) Minimum Corporate Income Tax on Resident Foreign Corporations. - A minimum corporate income tax of two percent (2%) of gross income, as prescribed under Sec. 27(E) of this Code, shall be imposed, under the same conditions, on a resident foreign corporation taxable under paragraph (1) of this Sub Sec.

"(3) International Carrier. - An international carrier doing business in the Philippines shall pay a tax of two and one-half percent (2 1/2%) on this 'Gross Philippine Billings' as defined hereunder:

"(a) International Air Carrier. - 'Gross Philippine Billings' refers to the amount of gross revenue derived from carriage of persons, excess baggage, cargo and mail originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the ticket or passage document: Provided, That tickets revalidated, exchanged and/or indorsed to another international airline form part of the Gross Philippine Billings if the passenger boards a plane in a port or point in the Philippines: Provided, further, That for a flight which originates from the Philippines, but transshipment of passenger takes place at any port outside the Philippines on another airline, only the aliquot portion of the cost of the ticket corresponding to the leg flown from the Philippines to the point of transshipment shall form part of Gross Philippine Billings.

"(b) International Shipping. - 'Gross Philippine Billings' means gross revenue whether for passenger, cargo or mail originating from the Philippines up to final destination, regardless of the place of sale or payments of the passage or freight documents.

"(4) Offshore Banking Units. - The provisions of any law to the contrary notwithstanding, income derived by offshore banking units authorized by the Bangko Sentral ng Pilipinas (BSP), from foreign currency transactions with nonresidents, other offshore banking units, local commercial banks, including branches of foreign banks that may be authorized by the Bangko Sentral ng Pilipinas (BSP) to transact business with offshore banking units shall be exempt from all taxes except net income from such transactions as may be specified by the Secretary of Finance, upon recommendations of the Monetary Board which shall be subject to the regular income tax payable by banks: Provided, however, That any interest income derived from foreign currency loans granted to residents other than offshore banking units or local commercial banks, including local branches of foreign banks that may be authorized by the BSP to transact business with offshore banking units, shall be subject only to a final tax at the rate of ten percent (10%).

"Any income of nonresidents, whether individuals or corporations, from transactions with said offshore banking units shall be exempt from income tax.

"(5) Tax on Branch Profits Remittances. - Any profit remitted by a branch to its head office shall be subject to a tax of fifteen percent (15%) which shall be based on the total profits applied or earmarked for remittance without any deduction for the tax component thereof (except those activities which are registered with the Philippine Economic Zone Authority). The tax shall be collected and paid in the same manner as provided in Sec. 57 and 58 of this Code: Provided, That interests, dividends, rents, royalties, including remuneration for technical services, salaries, wages, premiums, annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits, income and capital gains received by a foreign corporation during each taxable year from all sources within the Philippines shall not be treated as branch profits unless the same are effectively connected with the conduct of its trade or business in the Philippines.

"(6) Regional or Area Headquarters and Regional Operating Headquarters of Multinational Companies. -

"(a) Regional or area headquarters as defined in Sec. 22(DD) shall not be subject to income tax.

"(b) Regional operating headquarters as defined in Sec. 22 (EE) shall pay a tax of ten percent (10%) of their taxable income.

"(7) Tax on Certain Incomes Received by a Resident Foreign Corporation. -

"(a) Interest from Deposits and Yield or any other Monetary Benefit from Deposits Substitutes, Trust Funds and Similar Arrangements and Royalties. - Interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements and royalties derived from sources within the Philippines shall be subject to a final income tax at the rate of twenty percent (20%) of such interest: Provided, however, That interest income derived by a resident foreign corporation from a depository bank under the expanded foreign currency deposit system shall be subject to a final income tax at the rate of seven and one-half percent (7 1/2%) of such interest income.

"(b) Income Derived under the Expanded Foreign Currency Deposit System. - Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with nonresidents, offshore banking units in the Philippines, local commercial banks including branches of foreign banks that may be authorized by the Bangko Sentral ng Pilipinas (BSP) to transact business with foreign currency deposit system units and other depository banks under the expanded foreign currency deposit system shall be exempt from all taxes, except net income from such transactions as may be specified by the secretary of Finance, upon recommendation by the Monetary Board to be subject to the regular tax payable by banks: Provided, however, That interest income from foreign currency loans granted by such depository banks under said expanded system to residents other than offshore banking units in the Philippines or other depository banks under the expanded system shall be subject to a final tax at the rate of ten percent (10%).

"Any income of nonresidents, whether individuals or corporations, from transactions with depository banks under the expanded system shall be exempt from income tax.

"(c) Capital Gains from Sales of Shares of Stock Not Traded in the Stock Exchange. - A final tax at the rates prescribed below is hereby imposed upon the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation except shares sold or disposed of through the stock exchange:

Not over P100,000 - 5%

Or any amount in excess of P100,000 - 10%

"(d) Intercorporate Dividends. - Dividends received by a resident foreign corporation from a domestic corporation liable to tax under this Code shall not be subject to tax under this Title.

"(B) Tax on Nonresident Foreign Corporation. -

"(1) In General. - Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraphs 5 (c) and (d); Provided, That effective January 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%); and, effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%).

"(2) Nonresident Cinematographic Film Owner Lessor or Distributor. - A cinematographic film owner, lessor, or distributor shall pay a tax of twenty-five percent (25%) of its gross income from all sources within the Philippines.

"(3) Nonresident Owner or Lessor of Vessels Charactered by Philippine Nationals. - A nonresident owner or lessor of vessels shall be subject to a tax of four and one-half percent (4 1/2%) of gross rentals, lease or charter fees from leases or charters to Filipino citizens or corporations, as approved by the Maritime Industry Authority.

"(4) Nonresident Owner or Lessor of Aircraft, Machineries and Other Equipment. - Rentals, charter and other fees derived by a nonresident lessor of aircraft, machineries and other equipment shall be subject to a tax of seven and one-half percent (7 1/2%) of gross rentals or fees.

"(5) Tax on Certain Incomes Received by a Nonresident Foreign Corporation. -

"(a) Interest on Foreign Loans. - A final withholding tax at the rate of twenty percent (20%) is hereby imposed on the amount of interest on foreign loans contracted on or after August 1, 1996;

"(b) Intercorporate Dividends. - A final withholding tax at the rate of fifteen percent (15%) is hereby imposed on the amount of cash and/or property dividends received from a domestic corporation which shall be collected and paid as provided in Sec. 57(A) Of this Code, subject to the condition that the country in which the nonresident foreign corporation is domiciled, shall allow a credit against the tax due from the nonresident foreign corporation taxes deemed to have been paid in the Philippines equivalent to twenty percent (20%) for 1997,

nineteen percent (19%) for 1998, eighteen percent (18%) for 1999, and seventeen percent (17%) thereafter, which represents the difference between the regular income tax of thirty-five percent (35%) in 1997, thirty-four percent (34%) in 1998, thirty-three percent (33%) in 1999, and thirty-two percent (32%) thereafter on corporations and the fifteen percent (15%) tax on dividends as provided in this subparagraph;

"(c) Capital Gains from Sale of Shares of Stock not Traded in the Stock Exchange. - A final tax at the rates prescribed below is hereby imposed upon the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation, except shares sold, or disposed sold, or disposed of through the stock exchange;

Not over P 100,000 - 5%

On any amount in excess of P10,000 - 10%"

Sec. 3. Separability Clause. - If any part or provision of this Act shall be held unconstitutional or invalid, other provisions hereof which are not affected thereby shall continue to be in full force and effect.

Sec. 4. Repealing Clause. - All laws, decrees, orders, rules and regulations and other issuances or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

Sec. 5. Effectivity. - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in two (2) newspapers of general circulation.

Approved: April 28, 2004