



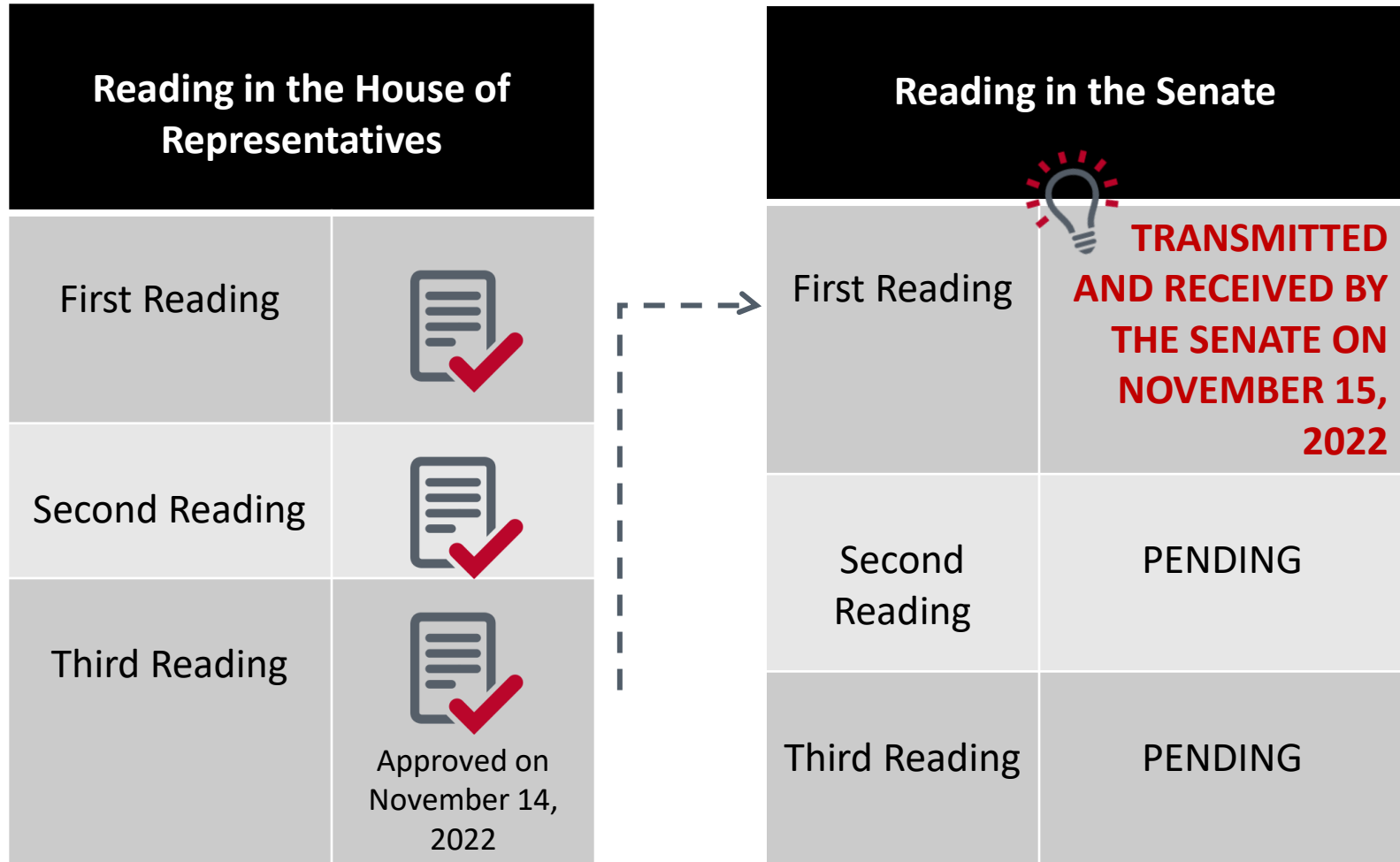
DIGITAL TAX WATCH PHILIPPINES

BDB Law
DU-BALADAD AND ASSOCIATES

**VOL.2 HOUSE BILL NO. 4122
Amendments to the Imposition
of VAT for Digital Transactions**

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Legislative Process: Where are we and what is next?



Contents of House Bill No. 4122

I. Persons Liable

Any person who, in the course of trade or business:

1. Sells, barter, exchanges, leases goods or properties, including those that are digital or electronic in nature;
2. Renders services, including those rendered electronically.

The **nonresident digital service provider** is liable for assessing, collecting, and remitting the VAT on the transactions that go through its platform.

Definition of Terms:

Digital Service Provider (DSP) – a service provider of digital service or goods to buyers through operating an online platform or by making transactions for provision of digital services on behalf of any person. It may be a:

- a. Third party seller of goods and services who, through information-based technology or the internet, sells multiple products for its own account, or who acts as an intermediary between a supplier and buyer of goods and services collecting or receiving payment from a buyer in behalf of the supplier and receives a commission thereon;

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- b. Platform provider for promotion using the internet to deliver marketing messages;
- c. Host of online auctions through the internet;
- d. Supplier of digital services for a regular subscription fee; and
- e. Supplier of electronic and online services delivered through an information technology (IT) infrastructure, such as the internet.

Buyer – any person residing in the Philippines and acquires taxable digital services in the Philippines from a DSP for personal consumption or for trade or business.

Digital Service – any service delivered or subscribed over the internet or other electronic network and cannot be obtained without use of IT and delivery of service may be automated. It shall include:

- a. Online licensing of software, updates, and add-ons, website filters and firewalls;
- b. Mobile applications, video games, and online games;
- c. Webcast and webinars;
- d. Provision of digital content such as music, files, images, text and information;
- e. Advertisement platform;
- f. Online platform such as electronic marketplaces or networks for the sale, display, and comparison of prices of trade products/services;

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- g. Search engine services;
- h. Social networks;
- i. Database and hosting such as website hosting, online data warehousing, file sharing and cloud storage services;
- j. Internet-based telecommunication;
- k. Online training such as provision of distance teaching, e-learning and online courses and webinars;
- l. Online newspapers and journal subscription; and
- m. Payment processing services.

NB. House Bill 4122 included 'search engine services' in the concept of digital service.

II. Sale or Exchange of Services

It includes performance of all kinds of services in the Philippines, whether rendered electronically or otherwise. In addition to those expressly stated under the Tax Code, as amended, the sale or exchange of services subject to value-added tax shall include:

Supply by any resident or nonresident of digital services (*i.e.* online advertisement services, provision of digital advertising space, etc.)

Supply by any resident or nonresident of digital services in exchange for regular subscription fee over the usage of the product or service

Supply of electronic and online services delivered through IT infrastructure (*i.e.* internet)

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III. Exempt Transactions

In addition to those expressly stated under the Tax Code, as amended, the transactions exempt from value-added tax shall include:

Educational services including online courses and webinars of private institutions from VAT and the sale of online subscription-based services to educational institutions recognized by the Department of Education, Commission on Higher Education, and state universities and colleges.

NB. House Bill 4122 removed electronic or online sale, importation, printing, or publication of books and newspapers, magazines, and others which is not principally devoted to paid advertisements as an exempt transaction.

IV. Creditable Input Tax

No creditable input tax shall be claimed by nonresident DSPs.

V. Invoicing Requirements

A VAT-registered nonresident DSP may issue an electronic invoice or receipt, subject to prescribed rules and regulations.

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VI. Withholding of Value-Added Tax

If duly registered with the BIR, Nonresident Digital Service Provider is liable for 5% creditable withholding VAT for the services it rendered to the government. Otherwise, it shall be subject to 12% withholding tax at the time of payment

VII. Value-Added Tax Registration

Nonresident DSPs engaged in the sale or exchange of digital services is liable to register for value-added tax if:

- a. Gross sales/receipts for past twelve (12) months before date of filing for VAT return, other than those considered as exempt, exceeded P3 Million; or
- b. Reasonable grounds to believe that gross sales/receipts for next 12 months from date of filing VAT return, other than those considered as exempt, will exceed P3 Million

The registration requirement for nonresident DSP is conditioned on the establishment by the BIR of a **simplified automated registration system**.

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VIII. Disposition of Incremental Revenues

5% of the incremental revenue from the imposition of VAT on DSP shall be allocated to and used exclusively for the Creative Industries Development Fund.

NB. This is a new provision introduced by House Bill 4122.

IX. Designation of Representative Office for Nonresident Digital Service Providers

It shall designate a representative office or agent, which shall be a resident corporation registered under Philippine Law, which shall assist only in compliance with the provisions of the NIRC of 1997, as amended.

NB. This is a new provision introduced by House Bill 4122.

X. Transitory Provisions

Non-resident DSP shall be immediately subject to VAT after **one hundred eighty (180) days** from effectivity of HB No. 4122.

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