

# DIGITAL SERVICES TAX

## Understanding the VAT on Digital Services

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## What does the Digital Services Tax hope to address?

- ✓ Leveled playing field for local and international digital platforms
- ✓ Ensuring VAT collection on digital services
- ✓ Empower the BIR to impose penalties upon non-compliant nonresident digital service providers



## Overview of Digital Service Taxes in Asia Pacific

Country	Indirect Tax Measure	Direct Tax Measure
Australia	GST on digital services (Netflix Tax) has been in place since 2015	No Corporate Income Tax unless a PE
China	VAT is withheld by the Chinese service recipient if they are a business; not withheld if they are a consumer.	No Corporate Income Tax unless a PE.
India	GST applicable on supply of online information and database access or retrieval services.	Equalisation levy (6% on provision of online/digital advertising, 2% on e-commerce supply or services).
Indonesia	Digital VAT regime	Electronic Transaction Tax contemplated.
Malaysia	Service Tax on Digital Services applicable where the value exceeds RM500,000 for a period of 12 months.	No Corporate Income Tax unless a PE.
Singapore	GST on digital services and purchases of remote services	No Corporate Income Tax unless a PE.
South Korea	VAT on the provision of digital, advertising and cloud computing services.	No Corporate Income Tax unless a PE.
Thailand	VAT collected from non-tax-registered foreign supplies that provide e-services from abroad.	No Corporate Income Tax unless a PE.
Vietnam	Introduced a digital services tax from 1 Jan 2022 for VAT (2-5%).	Introduced a digital services tax from 1 Jan 2022 for CIT (1-10%).



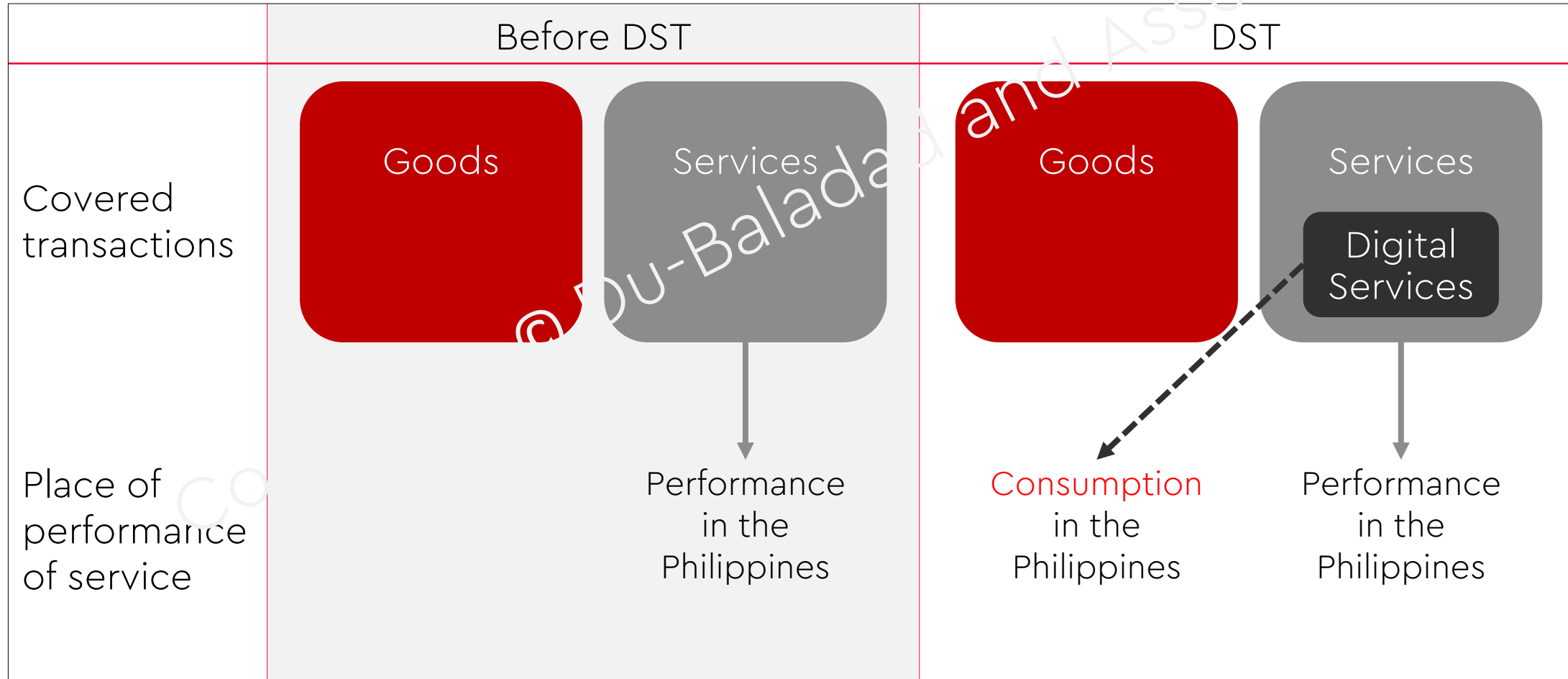
## Salient Features of the Digital Services Tax

- ✓ Digital services as VATable transactions
- ✓ Liability of persons providing digital services
- ✓ Invoicing and accounting requirements
- ✓ Power to suspend business operations



Draft IRR already circulated for public consultation

## Digital Services as VATable transactions



## Digital Services as VATable transactions

Digital services refer to any service that is:



supplied over the internet or other electronic network with the use of IT

and



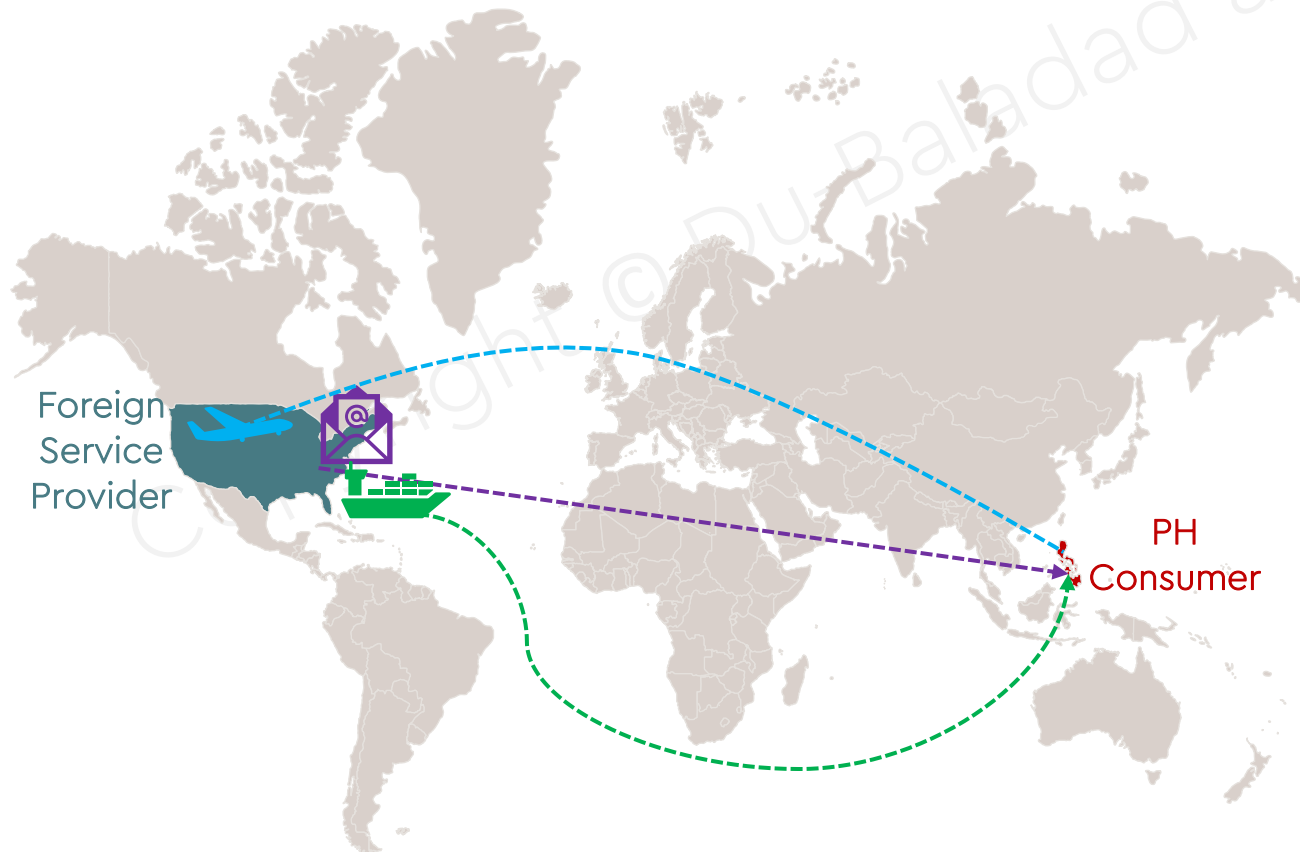
where the supply is essentially automated



There is a need to clarify these elements to exclude traditional services transmitted electronically

## Digital Services as VATable transactions

Digital services supplied over the internet or other electronic network with the use of IT



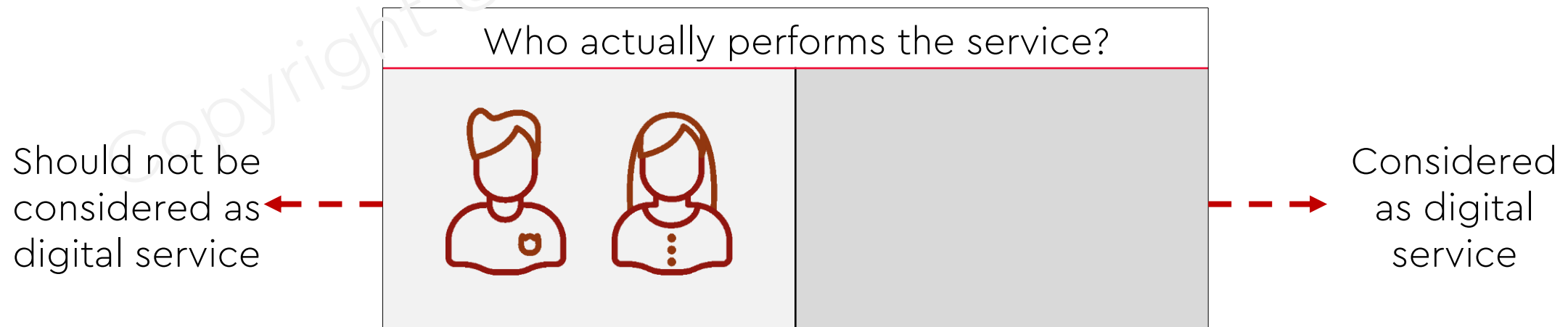
Not to be treated as digital service if:

- ✗ The service may be supplied without the use of the internet or other network; or
- ✗ The internet or other network is merely used as a form of communication.

## Digital Services as VATable transactions

Digital services wherein the supply must be **essentially automated**

- ✓ Requires minimal or no human intervention
- ✓ Service provider does not have to interfere, carry, or perform any activity but the consumer will still be able to acquire the digital service





## Digital Services as VATable transactions

Digital services shall include:

Online search engine

Online media and advertising

Online/e-marketplace

Online platform

Cloud service

Digital goods

## VAT-exempt Digital Services

The following digital services are now considered VAT-exempt:

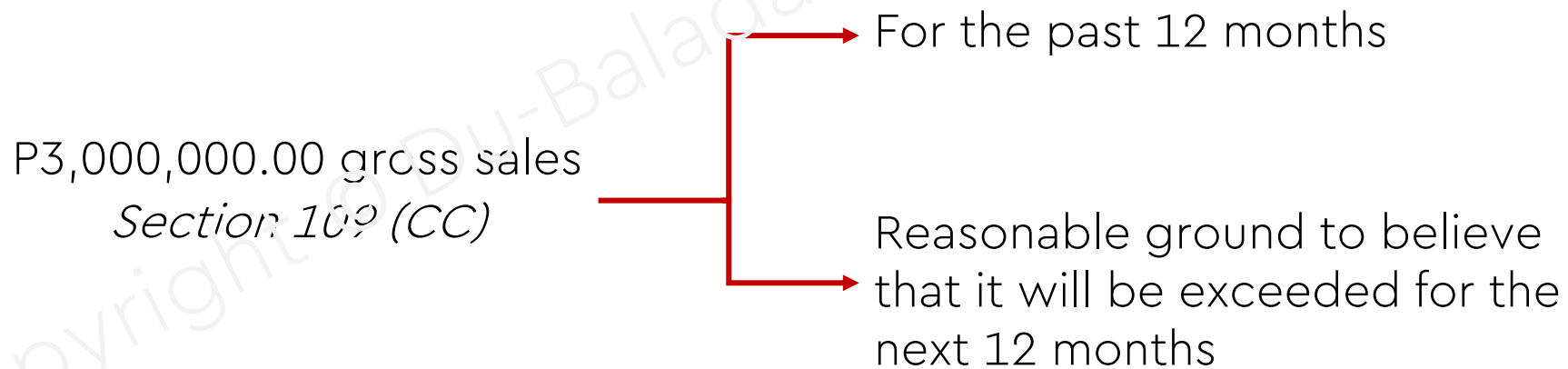
Online courses, seminars, and trainings rendered by DepEd/TESDA/CHED-accredited private educational institutions or government educational institutions

Sale of online subscription-based services DepEd, TESDA, CHED, and recognized educational institutions

Services of banks, non-bank financial intermediaries performing quasi-banking functions, and other non-bank financial institutions rendered through digital platforms

## VAT Registration of Digital Service Providers

- ✓ Digital service providers shall be liable to register, either electronically or manually, if any of the thresholds are exceeded:



- ✓ Simplified automated registration system for nonresident digital service providers

## Liability of Persons Providing Digital Services

- ☑ GENERAL RULE: DSPs are liable for assessing, collecting, and remitting VAT
- ☑ SPECIAL RULES FOR NDSPs:

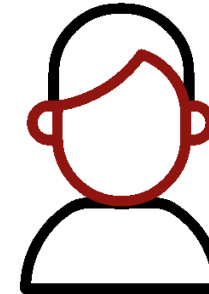
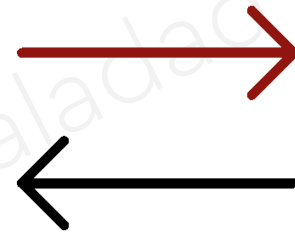
VAT Remittance	R.A. No. 12023 (DST)	DST Draft IRR
NDSP liable for remittance	For non-VAT consumers	For consumers <u>not</u> engaged in business in the PH ( <b>B2C</b> )
Reverse charge mechanism	For VAT consumers	For consumers engaged in business in the PH ( <b>B2B</b> )

## Liability of Persons Providing Digital Services

- ✓ How to determine being engaged in business?



DSP



PH  
consumer

- ✓ Contracting parties are required to determine whether the other is engaged in business based on submitted documents --- what kind of documents are acceptable?
- ✓ If the DSP is unable to establish the status of the consumer despite acting in good faith and reasonable effort --- customer is presumed to not be engaged in business and DSP is liable to pay the VAT



## Liability of Persons Providing Digital Services

- ☑ Special rules for DSPs that are also online/e-marketplaces with nonresident merchants:

Type of DSP	R.A. No. 12023 (DST)	DST Draft IRR
Resident DSP that is also an e-marketplace	Withholding VAT applies	Withholding VAT applies
Nonresident DSP that has control over key aspect of the supply and either: <ul style="list-style-type: none"> <li>☑ sets the terms and conditions of the supply of digital services; or</li> <li>☑ involved in the ordering or delivery of the digital service</li> </ul>	NDSP liable for remittance	NDSP liable for remittance

## NDSP Registration *vis-à-vis* Liability for Payment/Remittance

NDSP Status	Consumer Status	VAT Payment
VAT-Registered	B2B	Reverse charge mechanism
	B2C	NDSP liable for remittance
Not VAT-Registered	B2B	Reverse charge mechanism (How can PH-based consumers know if the NDSP breached the P3Million Gross Sales threshold?)
	B2C	No rules provided Tax leak?

## Reverse Charge Mechanism

The Reverse Charge Mechanism (RCM) to be implemented in the Digital Services Tax may be **different from that being implemented in other jurisdictions**

VAT Return	RCM in PH (under DST)	RCM in other jurisdictions
In the period of the sale of digital service	Output VAT Withheld P1,000,000.00	Output VAT Withheld P1,000,000.00
	Input VAT Recovery -	Input VAT Recovery P(1,000,000.00)
	Payable (Excess) for the Period P1,000,000.00	Payable (Excess) for the Period -
In the subsequent period		
NET EFFECT	-	-

## Invoicing and Accounting Requirements

### Invoicing

- › NDSPs shall issue invoices containing the ff:
  - › Date of the transaction
  - › Transaction reference number
  - › Identification of the customer
  - › Description of the transaction
  - › Total amount with VAT
  - › Breakdown between taxable, zero-rated, and exempt amounts

### Accounting

- › NDSPs are not required to maintain regular accounting records and subsidiary journals

## Power to Suspend Business Operations

May be imposed upon the DSP for failure to:

Register its business; or

Comply with the regulations (e.g. failure to correctly declare gross sales)

Any discrepancy should be settled immediately?  
No LOA necessary?



## Implementing Rules and Regulations and Transitory Provision

Issuance of IRR: 90 days from effectivity of  
R.A. No. 12023  
(January 16, 2025)

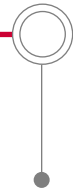
Immediate imposition of VAT to NDSPs  
Within 120 days from effectivity of the IRR



Effectivity: October 18, 2024  
(Publication: October 3, 2024)



Registration of all NDSPs  
Within 60 days from effectivity of the IRR



Locally rooted – Globally connected