

**AOTCA**

Bali 2022

# TRENDS ON DIGITAL TAXATION



# OUTLINE

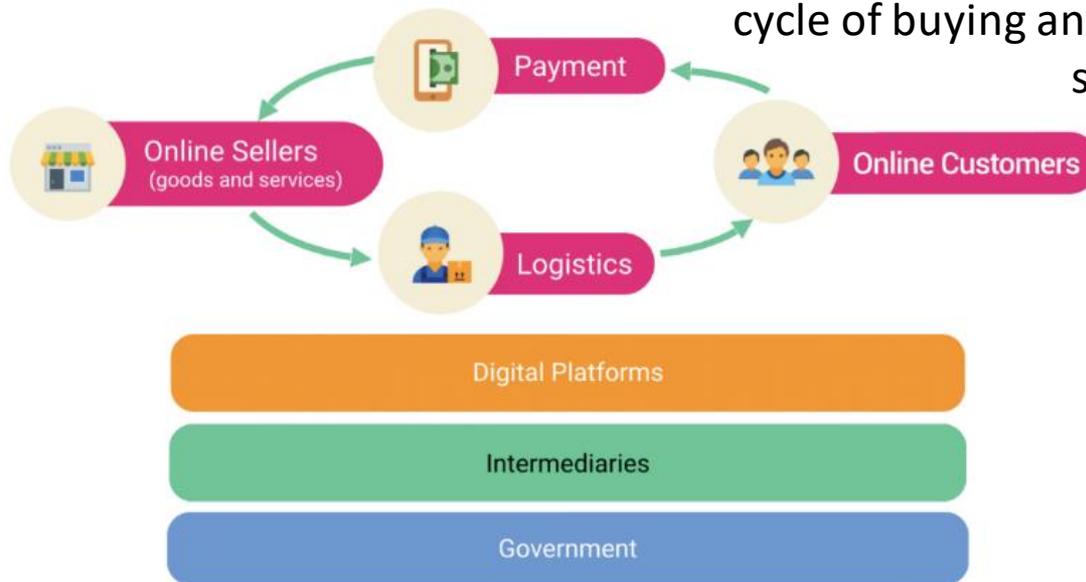
- I. E-Commerce in the Philippines
- II. Status of Taxation on Digitalization of the Economy
- III. Draft Legislations on VAT on Digital Transactions in the Philippines
- IV. Other Philippine Tax Provisions on e-Commerce or Digital Transactions



# I. E-commerce in the Philippines

## The Ecosystem

The **e-Commerce ecosystem** is a network of interconnected functions that comprise the full cycle of buying and selling of goods and services electronically.



Source: Philippine Department of Trade and Industry  
<https://ecommerce.dti.gov.ph/madali/thebasics.html#:~:text=The%20OECD%20defines%20online%20platforms,which%20are%20online%20sales%20channel>

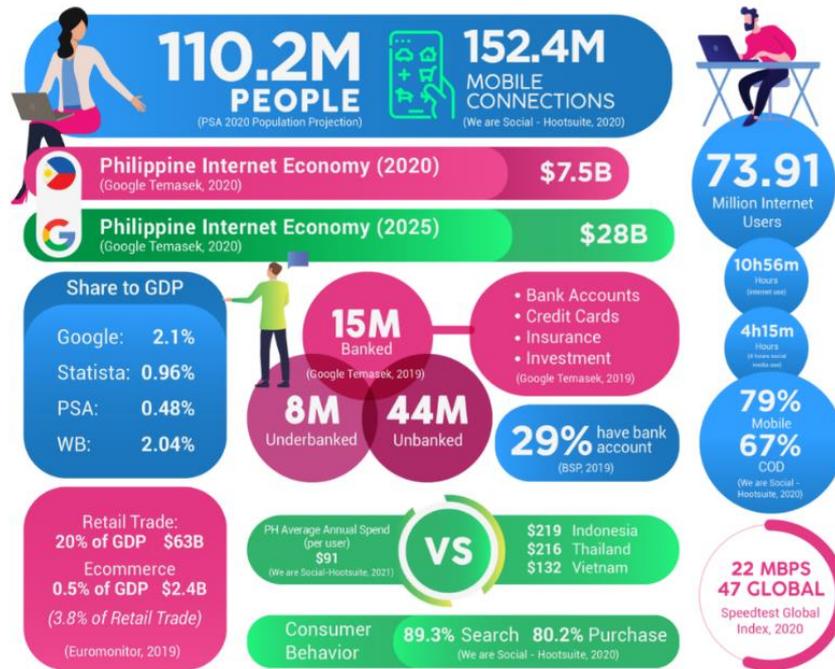


# I. E-commerce in the Philippines

- In a November 2021 survey, the Philippines is now the fastest growing internet economy in Southeast Asia, driven by e-commerce and food delivery services (*e-Conomy Southeast Asia Report, cf. Adobo Magazine, 2021 Nov 11, cited in SB 250*)



# I. E-commerce in the Philippines



Source: Philippine Department of Trade and Industry  
<https://ecommerce.dti.gov.ph/madali/crafting.html>



# I. E-commerce in the Philippines

## **Overview of the Philippine Market**

### **[by International Trade Administration]**

- Philippines eCommerce market sales in 2021: \$17 billion, largely contributed by 73 million online active users
- Projected to reach \$24 billion, with 17% growth through 2025
- COVID-19 pandemic increased the eCommerce demand, with Filipinos working and studying from home
- Top Philippine eCommerce platforms: Shopee, Lazada, Zalora, and BeautyMNL.



# I. E-commerce in the Philippines

## **Overview of the Philippine Market by International Trade Administration**

- Products from Asia-Pacific markets with free trade agreements with the Philippines are sold on these platforms
- The working population (25-44) actively access these platforms from their desktop and mobile phones.
- In 2021, smartphone household penetration reached 74.1%, a 2% increase from 2020.



# I. E-commerce in the Philippines

## **Huge GROWTH on digital economy is seen despite:**

- hindered by challenges, such as mobile and fixed broadband internet speeds
- 51% of Filipinos are unbanked and only 8% use credit cards.
- Most Filipinos prefer cash-on-delivery payments and often use partner payment centers such as large convenience stores and e-wallets such as GCash and PayMaya.



# I. E-commerce in the Philippines

- Hence, the Philippine legislature has anticipated a need to:
  - a. Improve the tax regime
  - b. Catch up with the trends
  - c. Make an all-out effort to strengthen the government's revenue-generating capability to aid economic recovery from the adverse impacts of COVID-19

*(Explanatory Notes, Senate Bill No. 250)*



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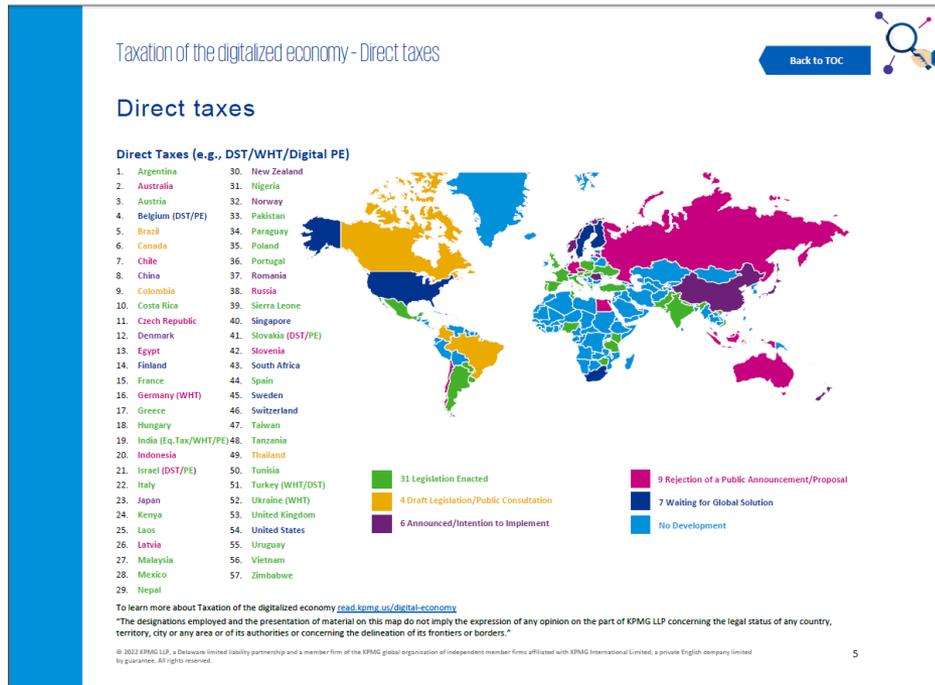


## II. Status of Taxation on Digitalizat of the Economy - Philippines

- The landmark agreement reached on October 8, 2021 on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (the Statement) has been joined by 137 members of the OECD/G20 Inclusive Framework on BEPS (the Inclusive Framework).
- The Philippines was not part of the 137 member of the OECD/G20 as of Nov. 4, 2021.



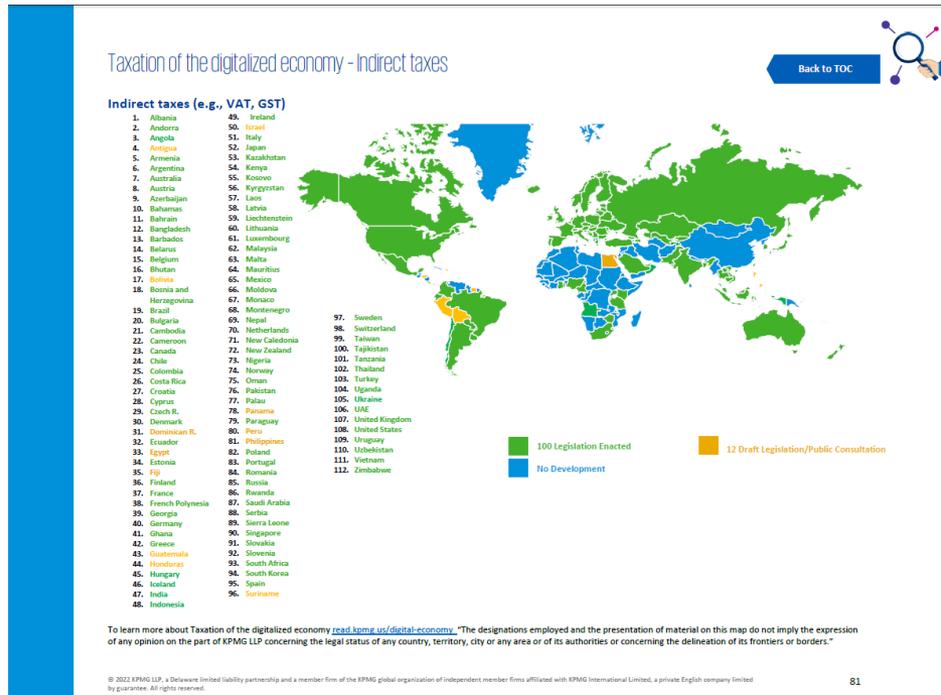
## II. Status of Taxation on Digitalizat of the Economy - Philippines



- Philippines has no tax provisions on direct taxes in digitalized economy

<https://tax.kpmg.us/content/dam/tax/en/pdfs/2022/digitalized-economy-taxation-developments-summary.pdf>

## II. Status of Taxation on Digitalizat of the Economy - Philippines



- The Philippines has draft legislations on indirect taxes in digitalized economy

<https://tax.kpmg.us/content/dam/tax/en/pdfs/2022/digitalized-economy-taxation-developments-summary.pdf>

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### III. Draft Legislation on VAT on Digital Transactions in the Philippines

**(1) House of Representatives approved House Bill No. 4122 on Nov. 14, 2022; transmitted to the Senate of the Philippines on Nov. 15, 2022**

#### Salient Features

1. Imposes 12% VAT on the sale, barter, exchange, lease goods or properties, including those that are digital or electronic in nature, renders services, including those rendered electronically.



### III. Draft Legislation on VAT on Digital Transactions in the Philippines

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#### Salient Features

2. Requires nonresident digital service provider (**DSP**) to assess, collect and remit VAT on transactions that go through its platform
3. No creditable input tax shall be claimed by nonresident DSPs
4. Simplifies invoicing and registration requirements for VAT-registered nonresident DSPs



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#### Salient Features

5. Imposes a 5% VAT to registered nonresident DSPs providing services to the government, otherwise a 12 % VAT is imposed
6. Requires nonresident DSPs to register for VAT if gross sales or receipts for the past year have exceeded Php 3million



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#### Salient Features

7. Provides a transition period of 180 days from the effectivity of the Act to enable the Bureau of Internal Revenue to establish implementation systems before VAT is imposed on DSPS
8. Requires nonresident digital service providers to designate a representative office or agent which shall be a resident corporation registered under Philippine law to assist in the compliance of the provisions of the Code



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## Salient Features

9. The Commissioner of Internal Revenue may suspend business operations in the Philippines of a digital service provider for failure to register as VAT taxpayer in the Philippines
10. VAT Exempt services:
  - Educational services including online courses and webinars
  - Sale of online subscription-based services to educational institutions



### III. Draft Legislation on VAT on Digital Transactions in the Philippines

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#### Salient Features

9. Consequence for failure of non-resident DSP to register with BIR: temporary closure of establishment of not less than five (5) days
10. The “temporary closure” shall include **suspension of business operations in the Philippines of a digital service provider**



### III. Draft Legislations on VAT on Digital Transactions in the Philippines

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#### Digital Service Provider

- a service provider of a digital service or good to a buyer
- operating an online platform
- buying and selling of goods or services or by making transactions for the provision of digital services on behalf of any person



### III. Draft Legislation on VAT on Digital Transactions in the Philippines

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- Digital service provider may be:
  - *A third party*
  - *A platform provider*
  - *A host of online auctions conducted through the internet*
  - *A supplier of digital services*
  - *A supplier of goods or electronic and online services*



### III. Draft Legislation on VAT on Digital Transactions in the Philippines

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- *Buyer*
  - Any person who resides or consumes taxable digital services in the Philippines from a digital service provided either for personal consumption, or for trade or business purposes.



### III. Draft Legislation on VAT on Digital Transactions in the Philippines

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- *Digital Service*
  - any service
  - delivered or subscribed over the internet or other electronic network
  - cannot be obtained without the use of information technology
  - delivery of the service may be automated



### III. Draft Legislation on VAT on Digital Transactions in the Philippines

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- *Digital Service* includes:
  - online licensing of software, updates, and add-ons, website filters and firewalls;
  - mobile applications, video games, and online games;
  - webcast and webinars;
  - provision of digital content such as music, files, images, text and information;
  - advertisement platform such as provision of online advertising space on intangible media platform;



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- Digital Service includes:
  - online platform such as electronic marketplaces or networks for the sale, display, and comparison of prices of trade products or services; search engine services;
  - social networks;
  - database and hosting such as website hosting, online data warehousing, file sharing and cloud storage services;
  - internet-based telecommunication;



### III. Draft Legislation on VAT on Digital Transactions in the Philippines

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- Digital Service includes:
  - online training such as provision of distance teaching, e-learning, online courses and webinars;
  - online newspapers and journal subscription; and
  - payment processing services





### III. Draft Legislation on VAT on Digital Transactions in the Philippines

#### **(2) Senate Bill No. 250, filed on July 11, 2022**

- Essentially the same provisions as HB 4122
- Ongoing deliberations with the Senate Ways and Means Committee



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## IV. Relevant Philippine Tax Provisions on e-Commerce or Digital Transactions

### **(1) Republic Act No. 8792 – Electronic Commerce Act (June 14, 2005)**

- Government use of electronic data messages, electronic documents and electronic signatures
- Promotes the use of electronic documents or electronic data messages in government and to the general public



## IV. Relevant Philippine Tax Provisions on e-Commerce or Digital Transactions

### (1) Republic Act No. 8792 – Electronic Commerce Act (June 14, 2005)

- ***Neutral Tax Treatment***
  - transactions conducted using electronic commerce should receive neutral tax treatment in comparison to transactions using non-electronic means and taxation of electronic commerce shall be administered in the least burdensome manner





## IV. Relevant Philippine Tax Provisions on e-Commerce or Digital Transactions

### **(2) Revenue Memorandum Circular No. 44-2005 (September 1, 2005)**

- Guidelines for the taxation of computer software payments, which includes both digital and physical purchases
- Made distinctions for classifications as to royalties vs. business income vs. rental income



## IV. Relevant Philippine Tax Provisions on e-Commerce or Digital Transactions

### (2) Revenue Memorandum Circular No. 44-2005 (September 1, 2005)

#### Payments subject to VAT

- Royalty payments for the use of a copyright over a software
- Payments made to resellers/distributors/retailers who are engaged in the trade or business of distributing or selling software
- Payments for services rendered in the Philippines in connection with software purchased



## IV. Relevant Philippine Tax Provisions on e-Commerce or Digital Transactions

### (3) Revenue Memorandum Circular No. 55-2013 (August 5, 2013)

- Reiterates taxpayers' obligations in relation to the following online business transactions:
  - 1. Business to Consumer ("B2C")**
    - online stores selling goods and services to final consumers;
  - 2. Consumer to Consumer ("C2C")**
  - 3. Business to Business ("B2B")**
    - job recruitment, online advertising, credit, sales, market research, technical support, procurement and different types of training.
- Covers taxpayers doing business in the Philippines



## IV. Relevant Philippine Tax Provisions on e-Commerce or Digital Transactions

### **(3) Revenue Memorandum Circular No. 55-2013 (August 5, 2013)**

- Reiterates obligations of persons who conduct Online Business Transaction
  1. Register the business with BIR
  2. Secure the required invoices/receipts and register books of accounts for use in business
  3. Issue registered invoice or receipt
  4. Withhold required creditable/expanded withholding tax, final tax, tax on compensation of employees, and other withholding taxes
  5. File applicable tax returns on or before the due dates, pay correct internal revenue taxes, and submit information returns and other tax compliance reports
  6. Keep books of accounts and other business/accounting records within the time prescribed by law



## IV. Relevant Philippine Tax Provisions on e-Commerce or Digital Transactions

### **(4) Revenue Memorandum Circular No. 70-2015 (October 29, 2015)**

- Deals with the tax incidence of the business of land transportation, particularly transport network companies (TNCs), such as but not limited to the likes of UBER, GRAB TAXI, their Partners/Suppliers and similar arrangements.
- The existing tax laws and revenue issuances on the tax treatment of purchases (local or imported) and sale (local or international) of goods (tangible or intangible) or services shall be equally applied with no distinction on whether or not the marketing channel is the internet/digital media or the typical and customary physical medium.



# IV. Relevant Philippine Tax Provisions on e-Commerce or Digital Transactions

## **(4) Revenue Memorandum Circular No. 70-2015 (October 29, 2015)**

- Obligations of persons who conduct Online Business Transaction
  1. Register the business with BIR
  2. Secure the required invoices/receipts and register books of accounts for use in business
  3. Issue registered invoice or receipt
  4. Withhold required creditable/expanded withholding tax, final tax, tax on compensation of employees, and other withholding taxes
  5. File applicable tax returns on or before the due dates, pay correct internal revenue taxes, and submit information returns and other tax compliance reports
  6. Keep books of accounts and other business/accounting records within the time prescribed by law



## IV. Relevant Philippine Tax Provisions on e-Commerce or Digital Transactions

### (5) Revenue Memorandum Circular No. 60-2020 (June 1, 2020)

- Gives due notice to those who are into digital transactions through the use of any electronic platforms and media, and other digital means, to ensure that their businesses are registered and that they are tax compliant.
- Includes not only partner sellers/merchants, but also other stakeholders involved such as the payment gateways, delivery channels, internet service providers, and other facilitators.



## IV. Relevant Philippine Tax Provisions on e-Commerce or Digital Transactions

### Conclusion:

- The current tax laws and rules and regulations governing digital economy all adhere to *neutral tax treatment*.
- But the Philippines is taking one small step at a time in catching up with the trends in an increasingly digital age and the appropriate tax regime therefore.



**Thank you!**

