Based on the arguments cited in the Circular, it is apparent that the fees, per diems, honoraria or allowances being given to a director of a corporation as such cannot be considered as derived from an economic or commercial activity that have been pursued “in the course of trade or business”. Rather, said director’s fees are remunerations paid in the exercise of a right of an owner in the management of a corporation. Thus, not “in the course of trade or business” as contemplated under Section 105 of the Tax Code. Such fees, per diems, allowances and other income received by the director as such, are therefore exempt from the imposition of the 12% VAT or 3% Percentage Tax, notwithstanding that the said payments are not among those enumerated under Section 109 of the said Code.

In view thereof, the penultimate paragraph of RMC No. 34-2008 stating that directors receiving fees, per diems, allowances, and the like, from corporations of which they are directors but are not employees thereof “fall under the category of sellers of services under Title IV of the Code who are liable to pay the 12% VAT on their gross receipts pursuant to Section 108 thereof, or to the 3% Percentage Tax imposed under Section 116, should they fail to meet the VAT threshold,” is repealed by the Circular.