STSR TAXBITS

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Screenshots courtesy of One Sports Youtube channel

Go for Gold!
Indeed, as Government runs after incentive donors

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The Philippines made its most impressive finish so far via the Olympic Games Tokyo 2020 held in Japan from July 23 to August 8, 2021 courtesy of Hidilyn Diaz's gold, Nesthy Petecio's silver, Carlo Paalam's silver, and Eumir Marcial's bronze medals. The gold medal won by Hidilyn Diaz in the 55-kilogram women's weightlifting category even has a historical significance since it is the first gold haul since the Philippines participated in the Olympics in 1924.

The collective pride that the national athletes has evoked in the hearts of Filipinos drove generous corporations and wealthy Filipinos to shower them with hefty cash and in-kind rewards and incentives, in addition to the cash incentives mandated under Republic Act No. 10699[1] or the National Athletes and Coaches Benefits and Incentives Act, to wit:

Incentives from the National Government Under RA 10699	Incentives/ Rewards/ Donations from the Private Sector, LGU			
	Gold **Hidilyn Diaz** **(Weightlifting)**	**Silver** **Nesthy Petecio** **(Boxing)**	**Silver** **Carlo Paalam** **(Boxing)**	**Bronze** **Eumir Marcial** **(Boxing)**
Gold Medal P10 million and Olympic Gold Medal of Valor for Summer Olympic and Winter Olympic Games **Plus** Presidential Medal of Merit, as announced by President Rodrigo Roa Duterte during Hidilyn Diaz's courtesy call **Silver Medal** P5 million for Summer Olympic and Winter Olympic Games **Bronze Medal** P2 million for Summer Olympic and Winter Olympic Games	P10 million – SMC President and CEO Ramon Ang P10 million – MVP Sports Foundation head Manny Pangilinan P3 million – 1-PACMAN Partylist Rep. Mikee Romero P2.5 million – Zamboanga City LGU P5 million cash and free fuel for life – Siklab Atleta Sports Foundation and Phoenix Petroleum chair Dennis Uy P3 million + house and lot in Zamboanga - President Rodrigo Roa Duterte P14-million residential condominium unit in Eastwood, Quezon City - Megaworld P4-million house and lot at any PHirst Park Homes community of her choice - Century Properties House and lot in Tagaytay – POC President Bambol Tolentino Lifetime free flights - AirAsia Philippines 80,000 Mabuhay miles per year for life - Philippine Airlines Van – Foton Philippines	P5 million – SMC President and CEO Ramon Ang P5 million – MVP Sports Foundation head Manny Pangilinan P2 million – 1-PACMAN Partylist Rep. Mikee Romero P2.5-million house and lot - Ovialand Residential condominium at Davao Park District – Suntrust developer Andrew Tan 60,000 Mabuhay Miles per year for life – Philippine Airlines	P5 million – SMC President and CEO Ramon Ang P5 million – MVP Sports Foundation head Manny Pangilinan P2 million – 1-PACMAN Partylist Rep. Mikee Romero P3 million - Phoenix Petroleum Philippines 25 domestic and short-haul flights – Cebu Pacific 60,000 Mabuhay Miles per year for life – Philippine Airlines	P2 million – SMC President and CEO Ramon Ang P2 million – MVP Sports Foundation head Manny Pangilinan P1 million – 1-PACMAN Partylist Rep. Mikee Romero

Abuzz within social media circles after the donors' pledges is the corresponding tax obligations of both the recipient national athletes and the incentive donors. This article seeks to shed light on the issue, and the initiatives of Congress to "snatch" and "jerk" the disparate views.

As a general rule, a citizen of the Philippines residing therein is taxable on all income derived from sources within and without the Philippines under Section 23(A) of the National Internal Revenue Code of 1997, as amended by RA 10963 (TRAIN law).

As an exception to the general rule, Section 32(B)(7)(d) of the Tax Code excludes from the ambit of taxation the cash incentives that winning national athletes are entitled to receive from the National Government, including those mandated under RA 10699. The Tax Code provision reads:

> "SEC. 32. *Gross Income*. –
>
> "(A) *General Definition*. – Except when otherwise provided in this Title, gross income means all income derived from whatever source, xxx
>
> "(B) *Exclusions from Gross Income*. – The following items shall not be included in gross income and shall be exempt from taxation under this Title:
>
> "xxx
>
> "(7) *Miscellaneous Items*. –
>
> "xxx
>
> **"(d) *Prizes and Awards in Sports Competitions*. – All prizes and awards granted to athletes in local and international sports competitions and tournaments whether held in the Philippines or abroad and sanctioned by their national sports associations.**
>
> "xxx" (underscoring supplied)

The other cash and non-cash rewards and property donations are considered as gifts which are also excluded from the recipient-athletes' gross income, and therefore exempt from income tax under Section 32(B)(3) of the Tax Code, viz.:

> "SEC. 32. *Gross Income*. –
>
> "(A) *General Definition*. – Except when otherwise provided in this Title, gross income means all income derived from whatever source, xxx
>
> "(B) *Exclusions from Gross Income*. – The following items shall not be included in gross income and shall be exempt from taxation under this Title:
>
> "xxx
>
> **"(3) *Gifts, Bequests, and Devises*. – The value of property acquired by gift, bequest, devise, or descent: Provided, however, That income from such property, as well as gift, bequest, devise, or descent of income from any property, in cases of transfers of divided interest, shall be included in gross income.** (underscoring supplied)
>
> "xxx"

While our sports heroes may indulge in their newfound wealth without being bothered by the tax man, the above-mentioned donors and sponsors of rewards shall be subject to the 6% donor's tax under Section 99(A) of the Tax Code, computed on the value of gifts in excess of the exempt threshold of P250,000. For the non-cash gifts, Section 102 of the Tax Code provides that the tax shall be based on the fair market value. The pertinent provisions read:

> "SEC. 99. – *Rates of Tax Payable by Donor*. –
>
> "(A) *In General*. – The tax for each calendar year shall be six percent (6%) computed on the basis of the total gifts in excess of Two hundred fifty thousand pesos (P250,000) exempt gift made during the calendar year."
>
> "SEC. 102. *Valuation of Gifts Made in Property*. – If the gift is made in property, the fair market value thereof at the time of the gift shall be considered the amount of the gift. In case of real property, the provisions of Section 88(B) shall apply to the valuation thereof." [Note: Section 88(B) pertains to the valuation of property at the time of death]

The present discussion on the taxability of donations made to winners in sports competition would have been moot and academic had the relevant tax provision under RA 7549[2] been retained in the Tax Code, to wit:

> "Section 1. All prizes and awards granted to athletes in local and international sports tournaments and competitions held in the Philippines or abroad and sanctioned by their respective national sports associations shall be exempt from income tax: *Provided*, That such prizes and awards given to said athletes shall be deductible in full from the gross income of the donor: *Provided, further*, **That the donors of said prizes and awards shall be exempt from the**

payment of donor's tax." (underscoring supplied)

However, with the enactment of RA 8424 [3] in 1997, the tax benefits accorded by RA 7549 to the donor were withdrawn, making the same taxable under Chapter II, Title III of the NIRC of 1997, as amended.

It may be of interest to note that in April 2000, Chess Grandmaster Rogelio M. Antonio, Jr. won the Millennium Chess Grand Prix with a prize stake of P1 million. During the awarding ceremonies, the Philippine Chess Federation awarded GM Antonio P800 thousand, net of a P200 thousand withholding tax computed at 20-percent of gross winnings. GM Antonio refused to accept the prize and asked the Bureau of Internal Revenue (BIR) for a ruling.

In response, the BIR issued Ruling No. 026-2000 stating that GM Antonio's P1 million purse is not tax-exempt because the Philippine Chess Federation (PCF) is not accredited by the Philippine Olympic Committee (POC) pursuant to Section 2 of RA 7549. Thus, GM Antonio is not within the purview of Section 32(B)(7)(d) of the Tax Code. [4] When the issue reached the Court of Tax Appeals, it ruled in favor of BIR, stating that the "xxx Court has no recourse but to apply the law". The legislative intent "that for sports winnings to be exempt from tax, the national sports association" (in this case, the PCF) should be "duly accredited by the Philippine Olympic Committee". [5]

Hence, it is heartwarming to note that the Samahang Weightlifting ng Pilipinas and the Association of Boxing Alliances in the Philippines are national sports associations that are accredited by the POC. Otherwise, Hidilyn, Nesthy, Carlo and Eumir will find themselves in the same footing as GM Antonio.

Another interesting fact on taxing prizes of winning athletes, the United States of America imposed the so-called **Victory Tax** on the monetary prizes received by their athletes who won in the Olympics. Our research shows that the United States Olympic & Paralympic Committee (USOPC) awards $37,500 to athletes winning gold, $22,500 for silver and $15,000 for bronze medals. The same amounts are awarded to those who win in the Olympic and Paralympic Games. **The Internal Revenue Service (IRS) considered these prizes as earned income, and therefore, taxable to the individual recipient**. (underscoring supplied)

In 2016, however, then-President Barack Obama signed the **United States Appreciation for Olympians and Paralympians Act of 2016** (Public Law 114–239) [6], which provided for the exclusion from gross income any prizes or awards won in competition in the Olympic Games or the Paralympic Games. Taxable income shall not also include the value of any medal. The specific proviso reads:

"SEC. 2. OLYMPIC AND PARALYMPIC MEDALS AND USOC PRIZE MONEY EXCLUDED FROM GROSS INCOME.

"(a) IN GENERAL. – Section 74 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"'(d) EXCEPTION FOR OLYMPIC AND PARALYMPIC MEDALS AND PRIZES. –

"(1) IN GENERAL. Gross income shall not include the value of any medal awarded in, or any prize money received from the United States Olympic Committee on account of, competition in the Olympic Games or Paralympic Games. (underscoring supplied)

"'(2) LIMITATION BASED ON ADJUSTED GROSS INCOME. -

"'(A) IN GENERAL. – Paragraph (1) shall not apply to any taxpayer for any taxable year if the adjusted gross income (determined without regard to this subsection) of such taxpayer for such taxable year exceeds $1,000,000 (half of such amount in the case of a married individual filing a separate return).

"Xxx"

Riding the spirit of jubilation, victory and gratitude, and recognizing the Bayanihan of the donors, several bills were filed in the House of Representatives and Senate to ensure that not only the winning athletes be able to enjoy the full benefits of their incentives and rewards tax-free, but that donors are exempt from tax as well. These bills are:

1. Senate Bill No. 2341, entitled "An Act Exempting Donations and Rewards in Favor of Olympic Medalists and their Coaches from Taxes, Amending for the Purpose Republic Act No. 10699", authored by Sen. Pia S. Cayetano;

2. Senate Bill No. 2352, entitled "An Act Exempting Donations and Rewards Given to National Athletes and Coaches from Taxes, Amending for the Purpose Section 4 of Republic Act No. 10699 or the 'National Athletes And Coaches Benefits and Incentives Act'", authored by Sen. Sonny Angara;

3. Senate Bill No. 2346, entitled "An Act Granting Distinctive Honors and Privileges to National Athletes, Creating a National Endowment Fund for Sports Heroes, and Appropriating Funds Therefor", authored by Sen. Joel Villanueva; and

4. House Bill No. 9891, entitled "An Act Exempting Monetary Donations and Rewards in Favor of National Athletes and Coaches from Taxes, Amending for the Purpose Section 4 of Republic Act No. 10699", authored by Rep. Joey Sarte Salceda.

References:

1 Entitled, "An Act Expanding the Coverage of Incentives Granted to National Athletes and Coaches, Appropriating Funds Therefor, Repealing for the Purpose Republic Act No. 9064, Also Known as the 'National Athletes, Coaches and Trainers Benefits and Incentives Act of 2001' or 'Sports Benefits and Incentives Act of 2001'", approved November 13, 2015.

2 Entitled, "An Act Exempting All Prizes and Awards Gained from Local And International Sports Tournaments and Competitions from the Payment of Income and Other Forms of Taxes and for Other Purposes", approved May 22, 1992.

3 Entitled, "An Act Amending the National Internal Revenue Code, as Amended, and for Other Purposes", approved on December 11, 1997.

4 Dascil, R. (2020). NIRC of the Philippines As Amended: Annotated, 6th edition.

5 Court of Tax Appeals Case No. 6157, promulgated July 9, 2001.

6 Entitled, "An Act to Amend the Internal Revenue Code of 1986 to Exclude from Gross Income any Prizes or Awards Won in Competition in the Olympic Games or the Paralympic Games"; effective after December 31, 2015.

Pandemic Preparedness Act: Prevention is Better than Cure

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For over a year, the COVID-19 has overwhelmed the world – the Philippines not exempted. And while the country is still grappling with the ongoing virus outbreak, disease epidemics and even pandemics are expected to become common occurrences due to a massive increase in globalization and connectivity. These enable a virus to spread from one side of the world to another in mere days or weeks.[1] As scary as it is, the key to the inevitable shall always be preparedness.

The enactment of Republic Act Nos. 11469 and 11494, widely known as the *Bayanihans* 1 and 2 have been helpful in reducing the harrowing effects of the pandemic. However, these laws are reactionary measures at best.


Former Sen. Miriam Defensor-Santiago
Photo by senate.gov.ph

During the Sixteenth Congress, the late Senator Miriam Defensor Santiago filed Senate Bill (SB) No. 1573 or the *Pandemics and All-Hazards Preparedness Bill* that intended to strengthen national preparedness and response to public health emergencies.[2] Now in the Eighteenth Congress, six (6) similar bills were filed providing more comprehensive and industry-centered measures than the precursor bill. These bills, *secondarily* referred to the Committee on Ways and Means, are the following:

- SB 1708 [Marcos] – "Healthcare Manufacturing and Pandemic Protection Act"
- SB 1759 [Pangilinan] – "Pandemic Protection Act of 2020"
- SB 1766 [Recto] – "Pandemic Protection Act of 2020"
- SB 1796 [Hontiveros & De Lima] – "Pandemic Readiness and Protection Act of 2020"
- SB 2183 [Revilla] – "Pandemic Health Emergencies Preparedness Act"
- SB 2311 [Angara] – "Pandemic Protection Act of 2021"

Basically, these bills seek to boost the healthcare industry by granting tax benefits. The proposal will also mandate that, in times of pandemic or public health emergencies, they be given preference by the government in the procurement of critical products and services. The provisions of the proposal shall cover domestic manufacturers or producers of critical products, providers of critical services, and the supply chain of critical products and services.

The tax provision in the bills provide exemptions from the following taxes:

- Custom Duties
- Value Added Tax (VAT)

- VAT on Local Sales
- Other Taxes and Fees

As the supply chain of critical products and services are covered by the bills, exemption from custom duties shall also cover importation of the capital equipment, spare parts and accessories, raw materials, packaging and its raw materials, or any articles needed in the supply chain of the critical products or services regardless of the country of origin.

The proposal also features the suspension of export requirements, and treatment for export enterprises. This means that upon declaration of a state of public health emergency, export enterprises that manufacture critical products or render critical services shall supply at least eighty percent (80%) of their daily production or service to government institutions, hospitals, and private establishments in the country for local or domestic use. Moreover, these local sales shall be treated as '*export sales*' to retain the exemption on duties, taxes and fees, and other incentives warranted under the existing laws governing export enterprises in special economic zones.

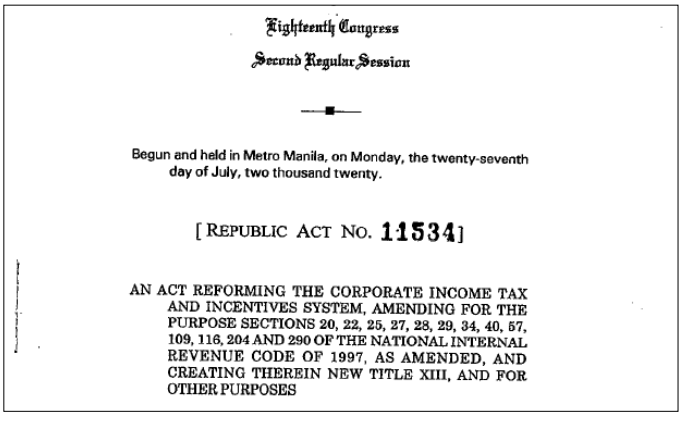
It is also important to note that tax exemptions under the proposal are to subsist for a period of three (3) years after the declaration by the World Health Organization that the pandemic has ended.

During the initial Joint Committee Hearing on July 22, 2021, the Bureau of Internal Revenue expressed its support to the bills as it appears that VAT exemptions provided are patterned after the CREATE Act. However, they recommended that the exemption shall only be applicable during a state of national health emergency and shall cease immediately when it is declared that the pandemic is over.[3]

The Department of Trade and Industry suggests providing specific incentives for the manufacture of vaccine and drugs, namely:

Activity	Income Tax Holiday	Reduced CIT
Bulk antigen and active pharma ingredients production	15 years	10% for 10 years
Formulation, fill and finish	12 years	10% for 10 years
Fill and finish subsector [4]	10 years	10% for 10 years
Other critical products and services	10 years	10% for 10 years [5]

The STSRO endorses the Pandemic Readiness bills and recommends that tax provisions expressly mention taxes and fees that are sought to be covered by the exemption. As such, it is recommended that the phrase "*other taxes and fees*" also be specified. On exemption from VAT and other taxes, it must be implemented considering the provisions of the TRAIN Law on Tax Expenditure Fund (TEF).



Eighteenth Congress
Second Regular Session

Begun and held in Metro Manila, on Monday, the twenty-seventh day of July, two thousand twenty.

[REPUBLIC ACT NO. 11534]

AN ACT REFORMING THE CORPORATE INCOME TAX AND INCENTIVES SYSTEM, AMENDING FOR THE PURPOSE SECTIONS 20, 22, 25, 27, 28, 29, 34, 40, 57, 109, 116, 204 AND 290 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND CREATING THEREIN NEW TITLE XIII, AND FOR OTHER PURPOSES

Keeping the policy on tax exemptions in mind, it is also recommended to provide an explicit provision regarding the validity for the proposed tax exemptions. With different periods of validity for tax exemptions provided under the bills, it is submitted that in the consolidated version, it would be best if the provisions under SBN 1766 are adopted wherein each specific tax exemption provides that the same shall terminate once the President has declared that the public emergency has ceased to exist. The period therein provided is more than enough time for the proposed bill to achieve its intended purpose. This will ensure that tax incentives are time-bound, within reason and will prevent abuse – in accordance with the intention of the CREATE law to rationalize incentives given to enterprises.

And while it is true that some of the provisions are not actually aligned with CREATE, it is submitted that these bills have a specific purpose, which is to cater to the demands of the pandemic.

The Pandemic Preparedness Act or Pandemic Readiness Act, whichever it shall be called does not matter. What matters most is the wisdom it is built upon – which in time of public health emergencies – an old maxim states that "*an ounce of prevention is worth a pound of cure*".

References:

1 Five reasons why pandemics like COVID-19 are becoming more likely. Retrieved from https://www.gavi.org/vaccineswork/5-reasons-why-pandemics-like-covid-19-are-becoming-more-likely on August 5, 2021.

2 SBN 1573. Sixteenth Congress. Retrieved from http://legacy.senate.gov.ph/lisdata/1767514896!.pdf on August 5, 2021.

3 TSN Committee Hearing of the Committee on Health and Demography, July 22, 2021.

4 Ibid. *Provided that the enterprise shall set up and operate the facility within three years from the effectivity of the law.*

5 Ibid. *Unless otherwise determined as highly critical by the BOI. In which case, the incentives for 15 years may apply.*

UNBOXED

Exemption of Medicines and Other Products for Identified Illnesses from Value-Added Tax (BIR RMC 81-2021)

Elsie T. Jesalva, SLSO II, Indirect Taxes Branch*

To address the risk of an economic breakdown which is brought about by a number of deficiencies in our tax system, the Department of Finance crafted the Comprehensive Tax Reform Program (CTRP) at the beginning of the Duterte administration. The Program's first package, otherwise known as Tax Reform for Acceleration and Inclusion (TRAIN) law or Republic Act (RA) No. 10963 was enacted on December 19, 2017 and became effective on January 1, 2018. TRAIN law exempts the sale of drugs and medicines prescribed for diabetes, high cholesterol, and hypertension beginning January 1, 2019.

On September 13, 2019, the House of Representatives approved on Third and final reading House Bill No. (HBN) 4157, otherwise known as the Corporate Income Tax and Incentives Rationalization Act or CITIRA. Upon transmittal to the Senate on September 16, 2019, the economic team of the Duterte administration proposed several amendments to the Senate. Unfortunately, despite two (2) public hearings conducted by the Committee on Ways and Means last September 17 and 24, 2019 CITIRA was not considered for deliberation.

On February 19, 2020 Senate Bill No. (SBN) 1357 or the Corporate Income Tax and Incentives Reform Act (CITIRA) was sponsored by Sen. Pia S. Cayetano, Chair of the Senate Ways and Means Committee and was certified as urgent by President Duterte on March 9, 2020. On March 26, 2021 the President signed into law RA 11534 or the CREATE Act, which is the reconciled version of the Bicameral Conference Committee. It settled the disagreeing provisions of HBN 4157 and SBN 1357. The law took effect on April 11, 2021.

Included in the salient features of the CREATE Act (RA 11534) is the exemption from VAT of medicines and other products for identified illnesses.

Table 1
VAT-Exempt Medicines and Products under the CREATE Act

VAT-Exempt Transactions	Before CREATE Law	Under the CREATE Law	Effectivity
Sale and importation of prescription drugs on cancer, mental illness, tuberculosis, and kidney-related diseases	12%	Exempt	Starting January 1, 2021
Sale and importation of capital equipment and raw materials for PPE production	12%	Exempt	Starting January 1, 2021 until December 31, 2023
Sale and importation of all prescription drugs, medical supplies, devices, and equipment for COVID-19	12%	Exempt	Starting January 1, 2021 until December 31, 2023
Sale or importation of vaccines for COVID-19	12%	Exempt	Starting January 1, 2021 until December 31, 2023

Some of these VAT-exempt products include: Amlodipine (for high blood pressure or hypertension, coronary artery disease, and angina), Losartan (for high blood pressure), Metoprolol (for angina or chest pain, and hypertension), Propranolol (for tremors, angina, hypertension, heart rhythm disorders, and other heart or circulatory conditions), and Valsartan (treatment of high blood pressure and heart failure). The complete list of VAT-exempt products can be accessed in the following websites:

a. Bureau of Internal Revenue (www.bir.gov.ph);
b. Department of Health (www.doh.gov.ph); and,
c. Food and Drug Administration (www.fda.gov.ph).

*with research from Geralde Johne C. Palisoc, Intern, FEU Political Science

The Constitution ensures every Filipino's right to health and declares that "the State shall protect and promote the health of the people and instill health consciousness among them" (Article II, Section 15).

As stated in the position paper of the Drug Stores Association of the Philippines (DSAP), "as taxes to medicines clearly account for a substantial share in medicine prices, these proposed tax exemption laws and policies will lessen the financial burden on patients with these conditions. Reducing and/ removing these taxes on medicines may reduce prices and increase access of the general public".

Revenue Memorandum Circular (RMC) 81-2021

Pursuant to the provisions on Value-Added Tax (VAT) exemptions under the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act, the Bureau of Internal Revenue (BIR) issued Revenue Memorandum Circular (RMC) 81-2021 to inform the public regarding the updated and consolidated list of VAT-exempt approved drugs, medicines, vaccines and medical devices communicated by the Food and Drug Administration (FDA), including the following:

a. Medicines for diabetes, high cholesterol and hypertension beginning January 1, 2020

b. Medicines for cancer, mental illness, tuberculosis and kidney diseases beginning January 1, 2021;

c. Drugs and vaccines prescribed and directly used for coronavirus disease (COVID-19) treatment beginning January 1, 2021 until December 31, 2023; and,

d. Medical devices directly used for COVID-19 treatment beginning January 1, 2021 until December 31, 2023.

RMC 81-2021 amends the previously circularized lists through RMC Nos. 4-2019, 62-2020 and 101 -2020, following the implementation of RA 10963 or the TRAIN law.

Table 2 and Table 3 below show the VAT treatment of similar products in other countries, viz.:

Table 2
VAT Practices on Medicines and Other Products in Other Asian Countries

Particulars	Zero-rated	Exempt	Reduced Rate	Taxable	Date/ Year Implemented
China					
HIV/AIDS medicines		Exempt			2011
India					
COVID-19 medicines		Exempt			2020
Medicines and medical supplies			5% GST reduction		2019
Indonesia					
Raw material to produce vaccines and/or medicines for handling COVID -19		Exempt			December 30, 2020
Japan					
Medical treatments provided under public medical insurance law		Exempt			2019
Laos					
Medical tools and equipment for hospitals and health centers		Exempt			2018
Malaysia					
Medicines and medical supplies		Exempt			2020
Mongolia					
COVID-19 diagnostic kits, drugs, medical devices, equipment, disinfectants, and masks		Exempt			February 1, 2020
Pakistan					
Various medical and other related items regarding COVID-19 outbreak		Exempt			March 30, 2020

Particulars	Zero-rated	Exempt	Reduced Rate	Taxable	Date/ Year Implemented
Sri Lanka					
COVID-19 medicines and medical supplies		Exempt			2020
Thailand					
COVID-19 medicines		Exempt			2020
Vietnam					
Medicines and medical supplies		Exempt	5% VAT reduction		2009

Table 3
VAT Practices in Other Jurisdictions

Particulars	Zero-rated	Exempt	Reduced Rate	Taxable	Date/ Year Implemented
Georgia					
COVID-19 medicines		Exempt			April 1, 2020
United Kingdom					
COVID-19 medicines		Exempt			July 4, 2020
Diabetes	0%				1994
Mental illness	0%				1994
Kidney diseases	0%				1994
Heart diseases	0%				1994
South Africa					
COVID-19 medicines		Exempt			March 27, 2020
Switzerland					
COVID-19 medicines		Exempt			January 27, 2021
Norway					
COVID-19 medicines		Exempt			March 2020
Russia					
Sale and import of medical devices, instruments, equipment, tools, medical kits, devices and apparatus, hand-operated vehicles equipment, etc.		Exempt			September 30, 2015
Medical products to prevent the spread of novel corona virus infection (COVID-19 tests, mask, face shield, goggles, PPE, gloves, respirators, etc.) and drugs used in the treatment of COVID-19		Exempt			September 30, 2015
Italy					
COVID-19 medicines/tools		Exempt			2020

Particulars	Zero-rated	Exempt	Reduced Rate	Taxable	Date/ Year Implemented
Canada					
Medical and assistive tools/devices particularly for diabetes, respiratory, heart, kidney, mental diseases, as well as mental and physical in capabilities	0%				1995
Ireland					
Medicines and treatment administered by health professionals to patients		Exempt			1994
Argentina					
Medical care and medicines		Exempt			March 18, 2020
Greece					
Medical and hospital services		Exempt			1987
France					
COVID-19 vaccines and tests	0%				October 15, 2020 until December 31, 2022
Masks & hand sanitizers			2.1%		until December 31, 2021
Non-reimbursed pharmaceutical products, namely pharmacy and pharmaceutical drugs or products for use in human medicine			10%		2020
Reimbursed pharmaceutical products, namely medicines, drugs or pharmaceutical products			2.1%		2020

Advantages and Disadvantages of VAT Exemption

Some of the advantages of VAT exemption are:

- VAT exemption will lessen the financial burden on patients with these conditions;
- In times of crisis, this will likely benefit those seeking to expand the possibilities of digital medical care;
- It will provide a better and cheaper access to the tools needed to detect, prevent or combat the corona virus and other diseases;
- Supports the improvement of the public health or the benefits being enjoyed by the public; and
- Speedy procurement and administration of the COVID-19 vaccines to all.

On the other hand, the exemption may result to distortion of the tax system and may lead to a price increase for the ultimate consumer due to non-availability of input tax credit benefits to suppliers.[1]

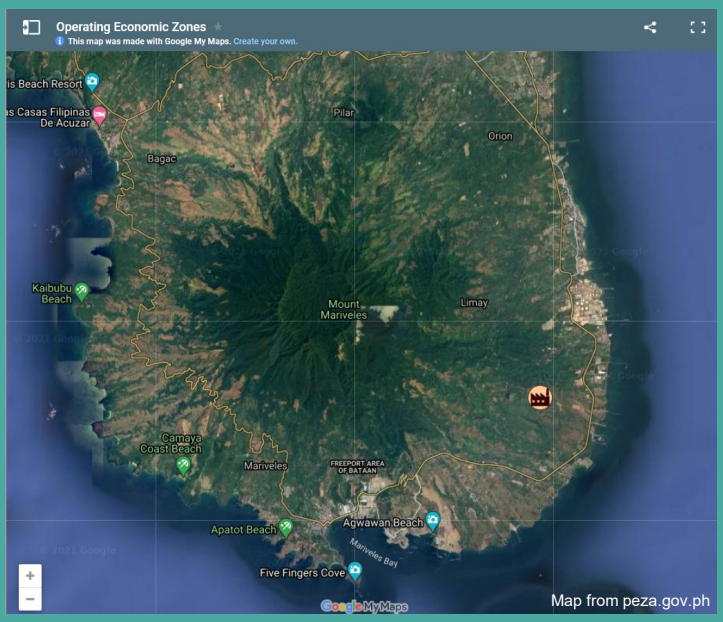
Majority of the countries nowadays are focusing their efforts on fighting the spread of COVID-19 while keeping their economies afloat, whereas others are starting to find ways to improve the economy and protect the general welfare. Those in the tourism, leisure, and hospitality are the hard-hit sectors in this scenario, reason why governments implement VAT rate reductions or rate cuts in order to provide assistance or to lessen their burden.

This crisis has clearly produced both unforeseen suffering and anxiety, resulting to a fundamental rethinking of many aspects of the daily lives of people around the world. On a positive side, this could reinforce both policymakers and businesses to promote beneficial change throughout society.

Taxation has a vital role in this difficult time and from a VAT viewpoint, government may take this chance to improve the impartiality, equality, practical administration, and security of VAT for the betterment of the people and of the economy.

Reference:

1 Professor N Ramalingam, Gulati Institute of Finance and Taxation (GIFT), Thiruvananthapuram. https://www.thehindubusinessline.com/economy/best-not-to-recommend-tax-exemption-for-covid-19-medicine/article34649181.ece. Accessed on 31 July 2021



SPECIAL DEFENSE ECONOMIC ZONE: A PROPOSAL

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Economic zones are created and operated under special laws. They play an indispensable role in facilitating the country's economic development. Benefitting from decades of investments, the Philippine government is supportive of building special economic zones as an impetus to promote economic activity.

In June 2021, Senate Bill No. 2284 or Special Defense Economic Zone (SpeDEZ) Act of 2019 has been filed. The main objective of this legislation is to boost investment opportunities inside the economic zone, alongside intensifying the nation's fiscal and defense capabilities. Its salient features include the conversion of the current Government Arsenal of the Philippines located in Camp General Antonio Luna, Lamao, Municipality of Limay, Province of Bataan into a Special Defense Economic Zone (SpeDEZ). Similarly, the establishment of the Special Defense Economic Zone Authority (SpeDEZA), which shall manage, maintain, and operate the SpeDEZ, reinforces the mandate of the Armed Forces of the Philippines as specified in Republic Act No. 7898, otherwise known as the AFP Modernization Act.

In the pursuit to attract investors, the bill provides for the grant of investor's visa particularly for *any foreign national who invests an amount of at least Two Hundred Thousand US Dollars (US$200,000.00), either in cash and/or equipment, in a registered enterprise, subject to conditions and qualifications.*

Moreover, the bill grants various fiscal incentives to registered enterprises of the SpeDEZ, namely:

1. *Entitlement to existing pertinent fiscal incentives as provided for under RA No. 7916, as amended by RA No. 8748, also known as the "Special Economic Zone Act of 1995," or those provided under Executive Order No. 226, as amended, otherwise known as the "Omnibus Investment Code of 1987"; and/or those that may be further granted as the need and necessity arises by the appropriate government department, agency or office (Section 14);*

2. *Tax Rate of Five Percent (5%) on Gross Income Earned, in lieu of all taxes, local and national, with the proceeds from such final tax be shared by instrumentalities of the government in accordance with the following percentages: a) Three per centum (3%) to the National Government, particularly to the DND-AFP Modernization Program; b) One-half per centum (0.5%) to the Province of Bataan; c) One half per centum (0.5%) to the Treasurer's Office of the Municipality of Limay; d) Three-fourth per centum (0.75%) to the SpeDEZA: e) One-fourth per centum (0.25%) to the Defense Research Fund; and f) For enterprises registered with the SpeDEZA but located in the territory of another investment promotion agency pursuant to a mutually beneficial economic defense relation established with such promotion agency in accordance with Section 5(c) of this Act, the one per centum (1%) share from the five per centum (5%) final tax on gross income earned shall be equally divided between the SpeDEZA and the investment promotion agency concerned;*

3. *Income Tax Holiday (ITH); and*

4. *Net Operating Loss Carry-Over (NOLCO).*

Aside from the aforementioned incentives, SpeDEZ enterprises deemed as priority investments – as may be determined by the SpeDEZA and with the exception of those included in the negative list drawn up as provided for in Section 5(i) of this Act – may generate up to one hundred percent (100%) of their income from sources within the customs territory but without loss of eligibility to avail of the incentives in this Act, subject to Section 5(f) of this Act.

With the current economic disruption brought forth by the COVID-19 pandemic, it has become even more compelling for the government to uphold good governance, accountability and efficiency particularly in justifying the passage of the bill.

It is humbly suggested that the deliberation of this measure should take into consideration, if not adopt, the more encompassing provisions of RA No. 11534 or the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act, especially in the grant and administration of incentives. The law has restructured and rationalized the grant of investment incentives and has either repealed or amended various incentives in multiple statutes. This include *RA No. 8748, or the "Special Economic Zone Act of 1995,"* and *EO No. 226, as amended, otherwise known as the "Omnibus Investment Code of 1987"* – the legal bases of some of the incentive provisions in the proposed bill. Aligning the subject measure's incentives provisions with that of CREATE shall guarantee that it does not run counter with the thrust of promoting fiscal prudence in the allocation of government's resources and thus, embody the common intents of the Executive, Congress, and critical stakeholders to install an incentives regime that is targeted, time-bound, transparent and performance-based.

SBN 2284 is primarily referred to the Committee on Economic Affairs and secondarily referred to the Committees on National Defense and Security, Peace, Unification and Reconciliation; Ways and Means; and Finance.

Photo by Mike Gonzalez (commons.wikimedia.org)

Digest of Supreme Court Cases in Taxation

Clinton S. Martinez
Director II, Legal and Tariff Branch

DRUGSTORES ASSOCIATION OF THE PHILIPPINES, INC. AND NORTHERN LUZON DRUG CORPORATION, *Petitioners*, *v.* **NATIONAL COUNCIL ON DISABILITY AFFAIRS; DEPARTMENT OF HEALTH; DEPARTMENT OF FINANCE; BUREAU OF INTERNAL REVENUE; DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT; AND DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT**, *Respondent*. [**G.R. No. 194561, September 14, 2016 - PERALTA, *J.***]

Facts:

On March 24, 1992 Republic Act (RA) No. 7277, the "*Magna Carta for Disabled Persons*", was passed. On April 30, 2007 RA No. 9442 was enacted amending RA No. 7277. The Title of RA No. 7277 was amended to read as "*Magna Carta for Persons with Disability*" and all references on the law to "*disabled persons*" were amended to read as "*persons with disability*" (*PWD*). Specifically, RA No. 9442 granted the PWDs a twenty percent (20%) discount on the purchase of medicine. A tax deduction formula was adopted wherein covered establishments may deduct the discount granted from gross income based on the net cost of goods sold or services rendered.

The implementation of RA No. 7277 (1992 - Magna Carta for Disabled Persons), RA No. 9257 (2004 – Expanded Senior Citizens Act), and RA No.

9442 (2007 – Amending RA No. 7277) is now being questioned by Petitioners based mainly on the grant of 20% discount on the purchase of medicine of PWDs.

Petitioners contend that the same is unconstitutional and an invalid exercise of the power of eminent domain because it fails to provide just compensation to Petitioners and other similarly situated drugstores. They likewise allege that it violated the due process clause of the Constitution because the definitions of disabilities are vague and ambiguous.

Petitioners likewise forward that the mandated PWD discount violated the equal protection clause of the 1987 Constitution.

Issue:

Is the grant of the privilege to PWDs constitutional?

Held:

The Supreme Court (SC) declared that the Court of Appeals (CA) was correct in its ruling holding the constitutionality of the laws granting discount to PWDs. It is a valid exercise of police power. Citing a previous case, the SC said:

> *"The law is a legitimate exercise of police power which, similar to the power of eminent domain, has general welfare for its object. Police power is not capable of an exact definition, but has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances, thus assuring the greatest benefits. Accordingly, it has been described as the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs. It is [t]he power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same.*
>
> *"For this reason, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare.*
>
> *"Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor."*

A constitutional basis was given:

> *"Section 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged, sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers."* (Social Justice and Human Rights, Article XIII, Social Justice and Human Rights)

Further elaborating, the High Court stressed:

> *"Hence, the PWD mandatory discount on the purchase of medicine is supported by a valid objective or purpose as aforementioned. It has a valid subject considering that the concept of public use is no longer confined to the traditional notion of use by the public, but held synonymous with public interest, public benefit, public welfare, and public convenience. As in the case of senior citizens, the discount privilege to which the PWDs are entitled is actually a benefit enjoyed by the general public to which these citizens belong. The means employed in invoking the active participation of the private sector, in order to achieve the purpose or objective of the law, is reasonably and directly related. Also, the means employed to provide a fair, just and quality health care to PWDs are reasonably related to its accomplishment, and are not oppressive, considering that as a form of reimbursement, the discount extended to PWDs in the purchase of medicine can be claimed by the establishments as allowable tax deductions pursuant to Section 32 of R.A. No. 9442 as implemented in Section 4 of DOF Revenue Regulations No. 1-2009. Otherwise stated, the discount reduces taxable income upon which the tax liability of the establishments is computed."*

The SC further commented:

> "*Petitioners' insistence that Part IV (D) of NCDA Administrative Order No. 1 is void because it allows allegedly non-competent persons like teachers, head of*

establishments and heads of Non-Governmental Organizations (NGOs) to confirm the medical condition of the applicant is misplaced. X x x.

"*We agree with the Office of the Solicitor General's (OSG) ratiocination that teachers, heads of business establishments and heads of NGOs can validly confirm the medical condition of their students/ employees with apparent disability for obvious reasons as compared to non-apparent disability which can only be determined by licensed physicians. Under the Labor Code,* ***disabled persons are eligible as apprentices or learners*** *provided that their handicap are not as much as to effectively impede the performance of their job. We find that heads of business establishments can validly issue certificates of disability of their employees because aside from the fact that they can obviously validate the disability, they also have* ***medical records*** *of the employees as a* ***pre-requisite in the hiring*** *of employees. Hence, Part IV (D) of NCDA AO No. 1 is logical and valid*."

In answering Petitioner's last assertion that the equal protection clause of the Constitution was violated, the High Court said:

"The guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the State. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman and child should be affected alike by a statute. Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. ***The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that are different. It does not prohibit legislation which is limited either in the object to which it is directed*** *or by the territory within which it is to operate.*

"The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. ***All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences, that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.***

"*In the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion. It is not necessary that the classification be based on scientific or marked differences of things or in their relation. Neither is it necessary that the classification be made with mathematical nicety. Hence, legislative classification may in many cases properly rest on narrow distinctions, for the equal protection guaranty does not preclude the legislature from recognizing degrees of evil or harm, and legislation is addressed to evils as they may appear."*

It is a tenet in constitutional law that "*The burden of proof is on him who claims that a statute is unconstitutional. Petitioners failed to discharge such burden of proof."*

Petition is denied.

Image by 123rf.com

HARTE-HANKS PHILIPPINES, INC., *Petitioner*, ***v.*** **COMMISSIONER OF INTERNAL REVENUE,** *Respondent*. [**G.R. No. 205721, September 14, 2016 - REYES, *J.***]

Facts:

Petitioner (HHPI) is a domestic corporation doing business of providing outsourcing customer relationship management solutions through inbound and outbound call. As such, it pays value-added tax (VAT) to the Bureau of Internal Revenue (BIR) using

the calendar year (CY) system.

In the first quarter (January to March) of CY 2008, it received income for services rendered for customers abroad. On April 25, 2008 it filed its *original* Quarterly VAT Return with the BIR through the BIR Electronic Filing and Payment System. The same was *amended* on May 29, 2008 showing that HHPI had no output VAT liability for the first quarter of CY 2008 as it had no local sales subject to 12% VAT, but has unutilized input VAT of P3,167,402.34 on its domestic purchases of goods and services on its zero-rated sales of services.

On March 23, 2010 it filed a claim for refund of its unutilized input VAT with the BIR. On March 30, 2010 alleging that there was inaction on the part of the Commissioner of Internal Revenue (CIR) and in order to toll the running of the two-year period prescribed by law, HHPI elevated its claim to the Court of Tax Appeals (CTA).

On May 25, 2010 the CIR asked for the dismissal of HHPI's claim due to the prematurity of the appeal. According to the Tax Court, the 120-day period under Section 112(C) [Refunds or Tax Credits of Input Tax] of the Tax Code for the CIR to act on the case has not yet lapsed. Hence, Petitioner failed to exhaust its administered remedies prior to its resort to the court.

On July 14, 2010 Petitioner HHPI filed its comment seeking for the denial of the motion to dismiss for the reason that: "*(1) it was procedurally infirm for having been addressed to the Clerk of Court instead of the party litigant; (2) it lacked basis that HHPI failed to exhaust administrative remedies; (3) the two-year prescriptive period under Section 229 of the 1997 NIRC was not applicable; (4) the duty imposed in Section 112(C) of the 1997 NIRC was upon the CIR and not upon HHPI; (5) the motion was violative of HHPI's right to seek refund within the two-year period; and (6) HHPI failed to take action on its administrative claim*."

The CTA 3rd Division granted the Motion to Dismiss due to the prematurity of the petition. The Division said that the mandatory 120-day period under Section 112(D) of the 1997 NIRC reckoned from the date of submission of the complete documents in support of the application for refund, and the 30-day period to appeal to be reckoned either from the lapse of the 120-day period without any decision rendered by the CIR on the application or, upon receipt of the CIR's decision before or after the 120-day period has expired. It likewise stressed that the two-year period refers to the period for the filing of the claim before the CIR and was never intended to include the period for filing the judicial claim.

Petitioner's Motion for Reconsideration (MR) was denied on March 14, 2011. It's appeal to the CTA *En Banc* was also denied and affirmed the CTA 3rd Division decision. The MR to the *En Banc* ruling was likewise a failure.

Issues:

1. In *CIR v. San Roque Power Corporation*, the Court held that taxpayers who filed their judicial claims after the issuance of BIR Ruling No. DA-489-03 but before *Aichi* cannot be faulted for filing such claims prematurely;

2. The failure to comply with the 120-day period under Section 112(C) of the 1997 NIRC is not jurisdictional;

3. CIR's motion to dismiss was fatally defective and should have been disregarded; and

4. Sections 112 and 229 of the 1997 NIRC should be reconciled.

Held:

The Supreme Court (SC) dismissed the appeal. The SC noted that the petition was filed with the CTA on March 30, 2010 or just seven (7) days after the administrative claim for refund was filed before the BIR on March 23, 2010. Petitioner failed to wait for the lapse of the 120-day period stipulated under the NIRC of 1997, as amended.

It has been held that compliance with the 120-day waiting period is mandatory and jurisdictional. "*The waiting period, originally fixed at 60 days only, was part of the provisions of the first VAT law, Executive Order No. 273, which took effect on January 1, 1988. The waiting period was extended to 120 days effective January 1, 1998 under Republic Act No. 8424 or the Tax Reform Act of 1997. The 120-day period under Section 112(C) has been in the statute books for more than 15 years before respondent x x x filed its judicial claim*"

It was mentioned that: "*failure to comply with the prescribed 120-day waiting period would render the petition premature and is violative of the principle on exhaustion of administrative remedies*". The CTA does not acquire jurisdiction over the case. Hence, "*when a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the [CIR], there is no 'decision' of the [CIR] to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal*".

Finally, the SC proclaimed:

> *"Tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. A refund is not a matter of right by the mere fact that a taxpayer has undisputed excess input VAT or that such tax was admittedly illegally, erroneously or excessively collected. Corollarily, a taxpayer's non-compliance with the mandatory 120-day period is fatal to the petition even if the CIR does not assail the numerical correctness of the tax sought to be refunded. Otherwise, the*

mandatory and jurisdictional conditions impressed by law would be rendered useless.

"Additionally, the 30-day appeal period to the CTA was adopted precisely to do away with the old rule, so that under the VAT System the taxpayer will always have 30 days to file the judicial claim even if the CIR acts only on the 120th day, or does not act at all during the 120-day period. In effect, the taxpayer should wait for the 120th day before the 30-day prescriptive period to appeal can be availed of. Hence, the non-observance of the 120-day period is fatal to the filing of a judicial claim to the CTA, the non-observance of which will result in the dismissal of the same due to prematurity. In fine, the premature filing of the judicial claim for refund x x x warrants a dismissal of the petition because the latter acquired no jurisdiction over the same."

Photo by the Court of Tax Appeals (http://cta.judiciary.gov.ph/)

CTA Tax Case Digest

Johann Francis A. Guevarra
LSO III, Legal and Tariff Branch

Digest of CTA Case No. 9913
Promulgated: July 29, 2021

PHILIPPINE AIRLINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE

Facts:

On June 11, 1987 Petitioner was granted a franchise to operate air transport services domestically and internationally by virtue of **Presidential Decree (PD) No. 1590** (June 11, 1978), otherwise known as *"An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Between the Philippines and Other Countries".*

From October 2012 to March 2013, Petitioner imported various liquors and wines, as part of its in-flight and commissary supplies. As a result, the Bureau of Customs (BOC) in separate letters dated April 17, 2013 and June 25, 2013 ordered the collection of excise taxes from Petitioner in the amounts of P2,139,699.098 and P2,352,544.349 for its importation of alcohol and tobacco products.

On August 26, 2016 Petitioner paid under protest excise taxes on its cigarette and alcohol importations in the total amount of P4,492,243.43; thereafter Petitioner filed an administrative claim for refund before the office of Respondent on August 23, 2018.

Petitioner filed a Petition for Review on August 28, 2018. PAL argued that its importation of commissary and catering supplies is exempt from all taxes pursuant to its franchise considering that Republic Act (RA) No. 9334 (December 21, 2004), did not repeal PD No. 1590.

Respondent contends that Section 131 of the NIRC of 1997, as amended by RA No. 9334, expressly withdrew the conditional tax exemption granted to Petitioner; that the letter of the law should prevail over rules of construction. Petitioner also failed to prove that the commissary supplies are not locally available in reasonable quantity, quality and price; and that the exemption granted to Petitioner is not absolute. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation. Petitioner fell short of proving the merit and veracity of its claim for refund.

Issue:

Whether or not Petitioner PAL is entitled to the refund of excise taxes paid for various importations amounting to Four Million Four Hundred Ninety-Two Thousand Two Hundred Forty-Three Pesos and 43/100 centavos (P4,492,243.43) for its importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption.

Ruling:

1. **Governing provisions for refund claims.**

Sections 204(C) and 229 of the NIRC of 1997 read:

> *"Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional, and the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. xxx"*

The foregoing provisions allow the recovery of taxes erroneously or illegally collected. However, for the instant claim for refund to prosper, Petitioner must not only establish that it has timely filed its refund claim; it must likewise prove that the subject excise taxes paid are "erroneous or illegal".

2. Petitioner timely filed its administrative and judicial claims.

Petitioner had until August 26, 2018 to file its administrative and judicial claims for refund. Clearly, Petitioner's administrative claim for refund filed on August 23, 2018 before Respondent, and the judicial claim for refund filed before the CTA on August 28, 2018, which is the next working day after August 26, 2018, both fell within the two-year prescriptive period.

3. Petitioner failed to prove that there was an erroneous or illegal excise tax which was collected by the government.

The Supreme Court, in a number of cases, has already specifically ruled that the tax privilege of Petitioner under Section 13 of PD No. 1590 has not been revoked by Section 131 of the NIRC of 1997, as amended by Section 6 of RA No. 9334, subject to certain conditions. Despite the enactment and effectivity of RA No. 9334, amending Section 131 of the NIRC of 1997, Petitioner's tax exemptions subsist. Petitioner remains exempt from taxes, duties, royalties, registrations, licenses, and other fees and charges, provided it pays corporate income tax as granted in its franchise agreement, the payment of which shall be in lieu of all other taxes, except VAT, and subject to certain conditions provided in its Charter.

On the basis of jurisprudence and the foregoing, the following conditions must be fulfilled by Petitioner for it to be exempt from excise tax on its importation of tobacco and alcohol products, *to wit*: (1) payment of the corporate income tax; (2) the said supplies are imported for the use of the franchisee in its transport/non-transport operations and other incidental activities; and (3) they are not locally available in reasonable quantity, quality or price. (emphasis supplied)

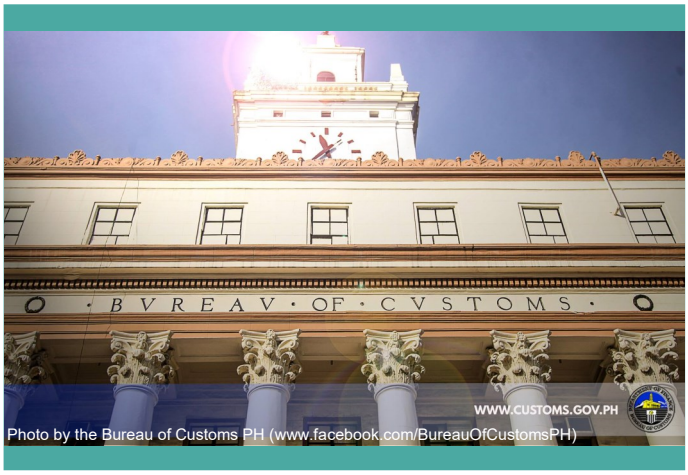
Petitioner proved payment of its corporate income tax by submitting in evidence its Amended Annual Income Tax Return for fiscal year ending March 31, 2013. Petitioner also proved that the importations of alcohol and tobacco products are for its transport operations, fulfilling the second condition.

With regard to the third condition, i.e., the non-availability of the subject imported alcohol products at reasonable quantity, quality or price in the local market, Petitioner fell short of proving compliance therewith. The Petitioner only submitted evidence proving the price lists of *Absolute Sales Corporation* and *Future Trade International* as representative of the local market prices for alcohol products in 2013 *vis-a-vis* the totality of local suppliers engaged in selling similar products in the same year.

Petitioner failed to present sufficient and convincing evidence to prove that the imported tobacco and alcohol products were not locally available in reasonable quantity, quality, or price, at the time of importation. Such being the case, Petitioner has not fulfilled all conditions to be entitled to the tax exemption granted under Section 13 of PD No. 1590. Thus, CTA finds no erroneous or illegal excise taxes that are refundable in favor of Petitioner.

Tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same. Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.

Wherefore, Petition for Review is denied for lack of merit.



In This Corner:

CAO-1-2021
Security to Guarantee Payment of Duties and Taxes and Other Obligations

Romeo E. Regacho
LSO III, Legal and Tariff Branch

The Bureau of Customs (BOC) has issued Customs Administrative Order (CAO) No. 1 – 2021, which implements Sections 1506 and 1507, Chapter 2 of Title XV, other related provisions of Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA), and all other pertinent laws, rules and regulations.

The following are the CAO highlights:

Objectives:

- Provide guidelines in the posting and utilization of security to guarantee the payment of duties and taxes, and other obligations provided for under the CMTA and other existing rules and regulations. (Sec. 2.1)

- Ensure that the interests of the government are amply protected with the securities posted. (Sec. 2.2)

- Provide a mechanism for the monitoring, accounting, enforcement and prompt settlement of bonded obligations. (Sec. 2.3)

- Establish and implement a security management and control system making full use of Information and Communications Technology (ICT). (Sec. 2.4)

Some notable definitions in Section 3:

- **Authorized Agent Bank (AAB) -** shall refer to commercial banks authorized by the Bureau to accept payment of duties and taxes;

- **Irrevocable Letter of Credit -** shall refer to a letter of credit in which the specified payment is guaranteed by the AAB if all terms and conditions are met by the drawee and which cannot be revoked without joint agreement of both the buyer and the seller;

- **Security -** shall refer to any form of guaranty such as surety bond, cash bond, Standby Letter of Credit or Irrevocable Letter of Credit which ensures the satisfaction of an obligation to the Bureau; and

- **Standby Letter of Credit -** shall refer to any arrangement, however named or described, whereby the AAB, acting at the request and on the instructions of the importer/exporter to make a payment to or to the order of the Bureau or authorizes another bank to effect such payment, provided that the terms and conditions of the credit are complied with;

Forms of Security:

Unless specifically prescribed under this Order or other existing rules and regulations, any party required to provide security to guaranty the payment of duties and taxes, and other obligations, shall have the option to choose from any of the following forms of security:

- Cash bond;
- Standby Letter of Credit or Irrevocable Letter of Credit;
- Surety bond; and
- Any other acceptable forms of security such as written commitment in case of low risk and/or low value goods. (Sec. 4.1)

Unless otherwise provided under this CAO or other existing rules and regulations, the required amount of Security shall be the lowest possible and shall not exceed the imposable duties, taxes, and other charges. (Sec. 4.2)

In cases where securities are required to be given, the District Collector may accept a one-time general security extending over such period of time and covering such transactions of the party in question, instead of requiring separate special securities for the same. (Sec. 4.3)

In cases where request for extension to re-export or pay duties taxes and other charges is allowed under Section 800 paragraphs (b), (h), (j), (k) and (z) of the CMTA, and other laws, rules and regulations, the application must be received by the Bureau at least three (3) working days prior to the expiration of the original period to re-export. Provided, that the security required to cover the extended period shall be attached to the application. Provided further, that the extended period shall retroact to the day immediately after the expiration of the original period. (Sec. 4.6)

All final payments of additional duties and taxes and other charges shall be receipted and remitted to the General Fund of the Bureau of Treasury through authorized government banks following the accounting and auditing rules and regulations on revenue collections. (Sec. 4.8)

When is security required:

Section 5 provides for the instances when security is required, to wit:

1. Release of shipment under Provisional Goods Declaration;
2. Release of Goods Pending Ascertainment of the Accuracy of the declared value and classification;
3. Express Shipment;
4. Shipment under Warehousing entries;
5. Carrier's Security;
6. Transit of Goods under Co-loading Act;
7. Release of Conditionally Tax and/or Duty Free Importations;
8. Conditional Release of Shipments of Returning Resident or returning OFW arriving in Advance; and
9. Release of Traveler's Accompanied Baggage with Dutiable Goods.

Goods under Provisional Goods Declaration may be released upon posting of the required security equivalent to the amount ascertained to be the applicable duties and taxes. (Sec. 5.1)

Express shipments of accredited air express cargo operators may be released prior to the payment of the duty, tax and other charges upon posting of a sufficient security. (Sec. 5.4)

For goods declared in the entry for warehousing in customs bonded warehouses, the District Collector shall require the importer to post a sufficient security equivalent to the computed duties and taxes and other charges conditioned upon the withdrawal of the goods within the period prescribed under Section 811 of the CMTA or the payment of the duties and taxes and other charges and compliance with all the importation requirements. (Sec. 5.5)

Dutiable goods in accompanied baggage brought in by Travelers through the airports which are intended for re-exportation may be allowed release upon posting of cash bond amounting to one hundred percent (100%) of the assessed duties and taxes or

may be temporarily deposited for safekeeping in the deposit facility subject to re-exportation which shall conform to the date of departure but which shall not exceed three (3) months from the date of the acceptance of the goods. (Sec. 5.10)

Cash bonds:

- Cash bonds shall be deposited immediately not later than the day following the date when received in a Trust Fund Account to be managed by the Bureau of Customs. (Sec. 6.1.1)

- The Bureau shall institute and implement internal control mechanisms for the maintenance and disposition of cash bonds and submit monthly periodic reports to the Office of the Commissioner on the status thereof. (Sec. 6.2.2)

Letter of Credit:

- Only AABs shall be allowed to issue Standby Letter of Credit (LoC) or Irrevocable LoC. (Sec. 7.1)

Surety companies:

- Only surety companies granted *Authority to Transact Business as Surety* (ATBAS) by the Bureau shall be allowed to issue surety bonds. (Sec. 8.1)

    ◊ Applications or renewal of surety companies shall be filed with and processed by the Bonds Division of the port where the surety companies wish to be accredited (Sec. 8.1.1).

    ◊ Only surety companies in good standing with the Bureau shall qualify for ATBAS (Sec. 8.1.2).

    ◊ Note that, the period of validity of ATBAS shall be good and effective for a period of one quarter, renewable every quarter thereafter. (Sec. 8.1.5)

- No bonds shall be honored or accepted by any port unless issued by a surety company accredited in accordance with this CAO and other relevant rules and regulations, covering transactions falling within the jurisdiction of the collection district of the port where it is accredited, and within the period covered by its accreditation. (Sec. 8.1.1)

- The computation of twenty percent (20%) shall apply only to the current matured accounts as of the preceding quarter. (Sec. 8.1.3)

- Penalties for breach of warehousing bonds shall be governed by the CAO on Customs Bonded Warehouses (CBWs). (Sec. 8.3.2)

- Upon failure to settle the bonded obligations despite issuance of demand letters, the Chief of the Bonds Division, or its equivalent unit through the District Collector concerned, shall recommend the immediate issuance of Order of Forfeiture of the Bonds to the Commissioner of Customs through the Director of Legal Service. (Sec. 8.6)

Pending full automation of a bonds management system that will effectively monitor the status of bonds from their posting up to their cancellation and expedite the settlement or collection of due and demandable bonds, the Bureau shall, as far as practicable and as existing processes may reasonably allow, implement the provisions of this CAO. (Sec. 9)

Laban o Bawi: The Tax on Proprietary Educational Institutions*

As a student of Legal Management at the University of Santo Tomas, I have become aware of the confusion as to the taxation of educational institutions which are stock, proprietary, for non-profit, or for profit since the Bureau of Internal Revenue (BIR) has implemented Revenue Regulations (RR) No. 5-2021, which is the general regulations implementing the corporate income tax provisions of Republic Act (RA) No. 11534, or the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act. The overarching rationale of CREATE is to *grant tax relief* for companies in financial need and provide transparent tax provisions.

Standing out in RR 5-2021 is the tax on proprietary educational institutions. While under RA 11534 the general income tax rate for domestic corporations was reduced from 30-percent to 25-percent, the tax rate for proprietary educational institutions under RR 5-2021 was increased from the historical 10-percent to a striking 25-percent, technically nullifying even the 1-percent limited-period-rate as provided in the law.[1] How was that, I thought.

Under RR 5-2021, the BIR has defined "proprietary educational institutions" to be private schools which are "nonprofit".

The definition provided by the BIR has caused an uproar among private schools and has been a subject of debate as it gave rise to an erroneous interpretation that all private educational institutions which are for profit, are unable to avail of the 10-percent

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preferential income tax rate and the 1-percent reduced rate for a limited period. Instead, they are to be subject to the regular corporate income tax rate of 25-percent – a rate that is significantly higher than the 10-percent tax that they currently (and historically) avail of and enjoy.

In 2021, the Department of Education (DepEd) reported that more than 700 private schools suspended their operations due to the COVID-19 pandemic.[2] Worse, there may be a potential rise in the number of private schools that will suspend their operations or permanently close down because of an apparent misinterpretation of the law.

Reading the many newspaper articles about the issue, I found out that the BIR has partly relied on the textual content of Section 27(B) of the Tax Code, as amended by RA 11534, rather than its legislative intent.[3] The provision reads:

> "SECTION 27. *Rates of Income Tax on Domestic Corporations*. –
>
> "xxx
>
> "(B) *Proprietary Educational Institutions and Hospitals*. – **Proprietary educational institutions and hospitals which are non-profit** shall pay a tax of ten percent (10%) on their taxable income except those covered by Subsection (D) hereof."

From the above text, the phrase "proprietary educational institutions and hospitals which are non-profit" could lead to different interpretations depending on the reader. One may interpret it to mean both non-profit proprietary educational institutions and non-profit proprietary hospitals (as RR 5-2021 did), or for-profit proprietary educational institutions and non-profit proprietary hospitals (as stakeholders believe, and legislators intend). At this point, one may surmise that the law may seem to be confusing and vague.

However, a scrutiny of Section 27(B) of the Tax Code and an analysis of its legislative history, and the legislators' intent would show that the provision does not refer to non-profit proprietary educational institutions. Instead, it refers to educational institutions which are "proprietary", hence, are for profit. The term "which are not for profit" refers to "hospitals" only and not to "proprietary educational institutions".

Section 27(B) of the Tax Code, thus, speaks of two different institutions: proprietary educational institutions, with permits from CHED, DepEd, and TESDA, and hospitals which are non-profit.

It is worthy of note that an institution that is proprietary is generally a stock corporation which is for profit while non-profit means they are non-stock. It is therefore erroneous for the BIR to attach the term "proprietary educational institution" with the term "non-profit" as both terms are opposing with one another. "Non-profit proprietary educational institutions" or "Proprietary educational institutions which are non-profit" sounds contradictory.

In light with the confusion as to the taxation of educational institutions, proprietary educational institutions and lawmakers urged the BIR to revoke that portion of RR 5-2021 that hiked the tax on private schools.

For one, President of the Asia-Oceana Tax Consultants' Association, Atty. Euney Marie Mata-Perez stated that subjecting proprietary educational institutions to the significantly higher tax of 25-percent as they have been enjoying 10-percent special income tax rate defeats the purpose of the CREATE Act, which is to give reprieve to taxpayers who are financially burdened because of the COVID-19 pandemic.[4]

Congress has also rallied behind private schools. In the House of Representatives the following proposals were filed: HBN 9573, HBN 9577, HBN 9596, and House Resolution 1877. In the Senate, SBN 2272 was filed and jointly authored by Senators Angara, Villanueva, Recto, Zubiri, Binay, Gatchalian, Poe, Gordon, Pangilinan, Hontiveros, Pacquiao, Revilla Jr., Villar, and De Lima. In separate statements, Senators Binay, Recto, Villanueva and Gatchalian said the new tax rule goes against the objective of the CREATE Act to cushion the pandemic's impact on businesses struggling to stay afloat.[5]

During the public hearing conducted by the Senate Committee on Ways and Means chaired by Sen. Pia S. Cayetano on June 24, 2021, the Coordinating Council of Private Educational Associations or COCOPEA stated that the "unintended consequence of RR 5-2021 is to impose a very heavy burden on the private education sector at a time when schools are already struggling to survive as a result of first, the K-to-12 Act, and now the pandemic. The immediate impact will be seen in a sharp reduction of investments in classroom capacity and scholarships. The longer-term impact of RR 5-2021 would be that faculty and personnel are at greater risk of losing their jobs, and even the communities and small businesses built around schools (e.g., dormitories, janitorial and security services, uniform sewers, carinderias, sari-sari stores and school bus services) will be significantly affected." The COCOPEA also filed a case with the Court of Tax Appeals for the immediate rectification of RR 5-2021.

Reacting to these moves, the BIR issued RR No. 14-2021 on July 28, 2021 suspending certain provisions of RR 5-2021 which increased the corporate income tax for proprietary educational institutions pending legislation that would finally resolve the issue.[6]

In this way, maybe the BIR could re-examine its position with respect to its interpretation of Section 27(B) of the Tax Code and the taxation of "proprietary educational institutions", because, although tax ex-

emptions are strictly construed against taxpayers, they should be interpreted taking into consideration the intent of the law and not only to its textual content, with due consideration to legislative history. [7]

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Snippets of the Enrolled Bill on the Proposed Tax Regime for Philippine Offshore Gaming Operations

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Finally, the Enrolled Bill proposing to establish the tax regime for the Philippine Offshore Gaming Operations (POGOs) is making the rounds of signatures before it finds its way to Malacañang Palace for President Rodrigo Roa Duterte's signature.

On July 28, 2021, the House of Representatives, through Secretary General Mark Llandro Mendoza, informed the Senate that it has "adopted Senate Bill No. 2232 as an amendment to House Bill No. 5777, entitled 'An Act Taxing Philippine Offshore Gaming Operations, Amending for the Purpose Sections 22, 25, 27, 28, 106, 108, and Adding New Sections 125-A and 288(G) of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes'".

Below are the most prominent features of the Enrolled Bill:

Tax on POGO Employees

Alien individuals regardless of residency and who are employed and assigned in the Philippines, regardless of term and class of working or employment permit or visa, by an offshore gaming licensee or its service provider shall pay a final withholding tax of 25-percent on their gross income. The minimum final withholding tax due for any taxable month from said employees shall not be lower than P12,500.00 (amending Section 25, NIRC of 1997, as amended).

Tax on Offshore Gaming Licensees

Philippine-based offshore gaming licensees that are duly licensed by Philippine Amusement and Gaming Corporation (PAGCOR) or any special economic zone authority or tourism zone authority or freeport authority shall be subject to corporate income tax equivalent to 25% of the taxable income derived during each taxable year from non-gaming revenues from all sources within and without the Philippines (amending Section 27 of the NIRC of 1997, as amended).

Foreign-based offshore gaming licensees that are duly licensed by PAGCOR or any special economic zone authority or tourism zone authority or freeport authority shall be subject to corporate income tax equivalent to 25% of the taxable income derived during each taxable year from non-gaming revenues from sources within the Philippines (amending Section 28 of the NIRC of 1997, as amended).

The entire gross gaming revenue or receipts or the agreed predetermined minimum monthly revenue or receipts from gaming of all offshore gaming licensees shall be levied, assessed, and collected a gaming tax equivalent to 5%, in lieu of all other direct and indirect internal revenue taxes, and local taxes (inserting a new Section 125-A to the NIRC of 1997, as amended).

PAGCOR or any special economic zone authority or tourism zone authority or freeport authority may impose regulatory fees on offshore gaming licensees which shall not cumulatively exceed 2% of the gross gaming revenue or receipts derived from gaming operations and similar related activities of all offshore gaming licensees or a predetermined minimum guaranteed fee, whichever is higher.

Gross gaming revenue or receipts shall mean gross wagers less payouts. The taking of wagers made in the Philippines and the grave failure to cooperate with the third-party auditor shall result in the revocation of the license of the offshore gaming licensee.

Tax on Accredited POGO Service Providers

Accredited POGO Service Providers shall not be subject to the gaming tax imposed by Section 125-A but shall pay either 20% or 25% of taxable income

from sources within and without the Philippines, and shall be subject to all other applicable local and national taxes (amending Section 27 of the NIRC of 1997, as amended).

Sales of goods and properties by VAT-registered persons to offshore gaming licensees subject to gaming tax shall be subject to zero-percent (0%) VAT (amending Section 106 of the NIRC of 1997, as amended).

Services rendered by VAT-registered persons to offshore gaming licensees subject to gaming tax by service providers, including accredited service providers, shall be subject to 0% VAT (amending Section 108 of the NIRC of 1997, as amended).

Third Party Auditor

PAGCOR or any special economic zone authority or tourism zone authority or freeport authority shall engage the services of a third-party audit platform that would determine the gross gaming revenues or receipts of offshore gaming licensees. To ensure that the proper taxes and regulatory fees are levied, periodic reports about the results of the operation showing, among others, the gross gaming revenue or receipts of each offshore gaming licensee shall be submitted to the BIR by PAGCOR or any special economic zone authority or tourism zone authority or freeport authority as certified by their third-party auditor.

The third-party auditor shall be independent, reputable, internationally-known, and duly accredited as such by an accrediting or similar agency recognized by industry experts (inserting a new Section 125 -A to the NIRC of 1997, as amended).

Disposition of Incremental Revenues from the 5% Gaming Tax

Sixty percent (60%) of the total revenue collected from the gaming tax imposed on offshore gaming licensees shall be allocated and used exclusively in the following manner:

(1) 60% for the implementation of Republic Act No. 11223, otherwise known as the "Universal Health Care Act";

(2) 20% for the Health Facilities Enhancement Program (HFEP), the annual requirements of which shall be determined by the Department of Health; and

(3) 20% for the attainment of the Sustainable Development Goals (SDGs) where the specific SDG targets shall be determined by the National Economic and Development Authority (amending Section 288(G) of the NIRC of 1997, as amended).

Oversight and Review

Within 3 months from the effectivity of the Act and every 3 months thereafter, the BIR shall submit a report to Congress, containing all pertinent information, including but not limited to, reports by the third-party auditors and collection performance data of all offshore gaming licensees, for review of the same for possible adjustment of rates or any other matter pertinent to the taxation of Philippine Offshore Gaming Operations.

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