STSR TAXBITS

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Tax Laws Enacted During the Duterte Administration and the Role of STSRO in the Law-making Process

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I. Introduction

Tax reform has been one of the centerpieces of the Duterte administration's economic reform program. It started during the campaign period in the 2016 Presidential election when then Davao City Mayor Duterte promised to exempt from paying income tax workers earning Php 20,000 and below. Before his assumption into office, President-elect Duterte and his economic team disclosed the incoming administration's Ten-point Socio-Economic Agenda. Number 2 in the agenda is taxation, which focuses on the institution of a progressive and more effective tax system, and the indexation of taxes to inflation. In his first State of the Nation Address (SONA), President Duterte laid down the foundation of his tax reform program by saying that "My administration will pursue tax reforms towards a simpler, more equitable and more efficient tax system that can foster investment and job creation. We will lower personal and corporate tax rates." This paved the way for the Comprehensive Tax Reform Program (CTRP) under the leadership of the President's childhood friend and classmate, Finance Secretary Carlos Dominguez III.

II. Tax Laws Enacted Under the Duterte Administration[1]

Tax Reform Packages Enacted into Law:

The CTRP has seven (7) major components. These are the following:

Package 1: Tax Reform for Acceleration and Inclusion (TRAIN); **Package 1B**: Tax Amnesty; **Package 2**: Corporate Recovery and Tax Incentives for Enterprises Act (CREATE); **Package 2+**: Sin Taxes; **Package 2+**: Mining; **Package 3**: Real Property Valuation Reform; and **Package 4**: Passive Income and Financial Intermediary and Taxation Act (PIFITA).

Four of the seven tax reform packages were already enacted into law. Finance Secretary Dominguez said that the passage of these laws is "among the key achievements of the Duterte presidency" and that "the Duterte administration has now accomplished eighty-five percent (85%) of what they have set out to do on the economic side."

The first tax law is **Package 1 or the TRAIN law** (**RA 1093)** which "seeks to correct a number of deficiencies in the tax system to make it simpler, fairer, and more efficient. It corrects the longstanding inequity of the tax system by reducing income taxes for 99 percent of individual income taxpayers, thereby giving them much-needed relief after 20 years of non-adjustment. The TRAIN Law had quite a journey in both Houses of Congress before it was finally signed into law on December 19, 2017.

Package 1B is the Tax Amnesty Act or RA 11213. It was enacted on February 14, 2019 to complement the TRAIN Law. It lets errant taxpayers affordably settle their outstanding tax liabilities, allowing for a "fresh start," while also providing the government with additional revenues for its priority infrastructure and social programs. At the same time, it signals the start of a more aggressive tax enforcement campaign by tax authorities.

Package 2+ is Sin Taxes. This tax reform package aims to increase taxes on tobacco, alcohol, and e-cigarette products to fund the universal health care (UHC) and to reduce the incidence of risks associated with the consumption of "sin" products.

To implement this package, two laws were enacted. First is **RA 11346** or the Tobacco Tax Law of 2019 which was enacted on July 25, 2019. It is a piece of legislation that will largely fund RA 11223 or the Universal Health Care Act. The law increased the excise tax on tobacco products and taxed heated tobacco and vapor products as well. The measure is viewed as an invaluable economic criterion that will not only save lives because of the expected decrease in the smoking rate; it will generate revenue as well.

Another law is **RA 11467** or the Sin Tax Reform on Alcohol and E-cigarette Products which was signed into law on January 22, 2020. It is a cost-effective health measure envisioned to reduce smoking and alcohol consumption among Filipinos. The law will not only positively impact on the utilization of our natural resources; it is also aligned with the Duterte administration's commitment to a better quality of life for every Filipino.

The fourth tax reform package is **RA 11534** or the **CREATE Law** which was enacted into law on March 26, 2021. It is said that it is "the largest fiscal stimulus for businesses in our recent history. It is estimated to provide private enterprises more than 1 trillion pesos worth of tax relief over the next 10 years." CREATE's passage is also said to benefit our MSMEs through the grant of the largest ever corporate income tax rate reduction in the country, from thirty percent (30%) to twenty percent (20%). Large corporations also enjoy an immediate reduction in the corporate income tax rate from thirty to twenty-five percent (30% to 25%)."

CREATE also provides for a generous and flexible tax incentive system that is performance-based, time-bound, targeted, and transparent. Efforts to rationalize the fiscal incentives in the country have been in existence for almost two (2) decades already. This tax reform proposal is present in the tax reform agenda of every administration since President Fidel V. Ramos but never reached its enactment until the law's passage in 2017. It is indeed a major accomplishment by the Duterte administration.

There are three remaining tax reform packages still pending in Congress – Package 2+ (Mining), Package 3, and Package 4- and as of this writing, we cannot ascertain their passage because Congress is currently in recess and when it resumes on May 23, it only has two (2) weeks left before it adjourns *Sine Die.* Grateful if we are to pass at least two (2) of the remaining packages where hearings were already conducted and the committee reports are being drafted such as Package 3 and 4. Let us wait and see.

Image by taxreform.dof.gov.ph

Other Enacted Tax Laws:

Considered as a “major win” for the country, Senator Pia S. Cayetano, the Chairperson of the Senate Committee on Ways and Means, heralded the passage of **RA 11590** or the tax on Philippine Offshore Gaming Operations (POGOs) on September 22, 2021. This law established the tax regime of POGOs and their employees.

The law imposes a 5% gaming tax on the entire gross gaming revenue (GGR) or receipts or the agreed predetermined minimum monthly revenue or receipts from gaming, whichever is higher, on all offshore gaming licensees, regardless whether they are Philippine or foreign-based. This gaming tax is in lieu of all other direct and indirect internal revenue taxes, and local taxes. Furthermore, it subjects alien individuals employed by offshore gaming and service providers to the 25% withholding tax rate considering they do not engage in trade or business within the country.

Just recently, the BIR reported that “despite the pandemic, from October 9, 2021 to December 31, 2021, the BIR has collected a total of P1.22 billion from offshore gaming licensees, their service providers, and their employees.” [2] Indeed, the passage of this law is a “major win” for the country as this translates to additional revenues for the government.

Another landmark legislation that has provided clarity on the tax regime of proprietary educational institutions is **RA 11635** which was enacted on December 10, 2021. Remember that prior to its passage, confusion arose when the BIR issued RR 5-2021 on April 7, 2021 to implement the provisions of **RA 11534** or the CREATE Law on the new corporate income tax rates. The BIR issuance, in effect, excluded for-profit proprietary educational institutions from availing of lower tax rates, and effectively increasing their tax rates from ten percent (10%) to the regular corporate income tax rate of twenty-five percent (25%). Never in our history that private schools were treated in the same footing as that of regular corporations. Educational institutions – for profit or non-profit- were always accorded special tax rates given their very nature. To make it worse, this was issued during the midst of the pandemic – where plenty of private schools closed and others struggled to survive. Thus, the enactment of this law not only gave clarity but relief to our severely affected proprietary educational institutions.

Given the conditions prevailing during this pandemic, **RA 11569** or ‘An Act Extending the Estate Tax Amnesty and for Other Purposes, Amending Section 6 of **RA 11213**, Otherwise Known as the “Tax Amnesty Act”’ was signed into law on June 30, 2021. Because of the countrywide lockdowns and quarantine protocols, availers were robbed off the time to avail of the estate tax amnesty. Thus, this piece of legislation became the solution as it extended the period of availment of the estate tax amnesty which was provided under RA 11213. Under the previous tax amnesty law, the estate tax amnesty can be availed of until June 14, 2021 only. Thus, RA 11569 provided immediate remedy as it extended the period of availment for two (2) years or up to June 14, 2023. This gives ample time for availers to comply with the requirements and actually avail of the amnesty for them to utilize the properties.

Last but definitely not the least among the tax laws enacted during President Duterte’s term is **RA 11256** or “An Act to Strengthen the Country’s Gross International Reserves (GIR), Amending for the Purpose Sections 32 and 151 of the National Internal Revenue Code, as Amended, and for Other Purposes” which was enacted into law on March 29, 2019. The law’s main objective is to exempt from income and excise taxes the golds that traders and registered small-scale miners sell to the Bangko Sentral ng Pilipinas (BSP). With this, “BSP was able to buy a total volume of 115,800 troy ounces (in 2020) as compared to the 10,207 troy ounces in 2019” [3] which “has a positive impact on our purchases.”

Photo by pna.gov.ph

Although these four (4) tax laws were not part of the Duterte administration or the DOF’s tax reform program, Congress was still able to push for their enactment by securing the nod of the President. After all, legislators have a crucial role not just in the passage of a proposed tax reform measure but also with the formulation of its substance. It is through the substance of the proposed tax measure that the level of independence and extent of power legislatures exercise over the executive can be exposed. This only shows that tax laws may still be enacted even if it is not the administration that initiated it. Congress, as the lawmaking body, still can exert its power in pushing for legislations that it deems necessary and for the good of the country with the support from the President and the bureaucracy.

The enactment of these tax laws can be explained by a myriad of political factors, such as presidential leadership, bureaucratic cooperation, and executive-legislative relations which indeed, shape the outcomes of tax reforms and measures.

History tells us that in any tax reform measure, the President is considered a major player in translating the policy proposal into actual pieces of legislation. In this case, President Duterte has displayed his leadership in ensuring that the tax reform program he brought in the policy agenda will be enacted into laws.

Enacting major and controversial tax laws is a difficult task, but his administration was able to do so. With strong cooperation from the bureaucracy, particularly the DOF, rallying and bannering the proposed measures to Congress and with his strong relationship with Congress, most of the tax reform packages that his administration pushed for became actual tax legislations- major and controversial ones at that.

STSRO: Working Behind-the-Scenes

In policymaking, most especially in legislation, a confluence of actors plays a crucial role in transforming legislative proposals into actual legislations. In the case of tax measures, it has been established throughout history that the President plays the lead role in ensuring that his administration's tax proposals will be supported by Congress. This is evident in how this present administration transformed its tax proposals into laws with the help of its work-horse on the ground, the DOF and other agencies concerned.

In Congress, the lead roles go to the Chairpersons of the Committee on Ways and Means. They are the ones who spearhead the conduct of public hearings and technical working group meetings, draft the Committee Reports, sponsor, defend them in the plenary, and lead the bicameral conference committee meetings, if necessary. They head every legislative process and are involved in every step in the legislative journey of every tax measure.

In the first three (3) years of the Duterte administration covering the 17th Congress, Senator Sonny Angara headed the Senate Committee on Ways and Means while Representative Dakila Carlo E. Cua was his counterpart in the House of Representatives. In the 18th Congress, Senator Pia S. Cayetano chaired this Committee while Representative Joey Sarte Salceda is her counterpart in the Lower House.

Considered the supporting actors and actresses are the men and women of the Committee of Ways and Means in both Houses of Congress. In the Senate, the Senate Tax Study and Research Office (STSRO) acts as the Secretariat or the technical arm of the Committee. This is STSRO's mandate when it was created on May 5, 1989 pursuant to Senate Resolution No. 52.

Among STSRO's important functions are the following: 1) Renders technical assistance on tax proposals and other tax concerns to the Chairperson and Members of the Committee on Ways and Means and other Senators; 2) Assists in the drafting of legislative bills on taxation; 3) Conducts studies and formulates reform proposals on tax-related and customs administration issues; 4) Gathers information on tax systems of other countries, and statistics on tax revenues and other fiscal matters; 5) Prepares estimates on the impact of tax measures on government revenue; and 6) Analyzes the effects of proposed tax, fiscal and non-fiscal incentives for investment and their implication on welfare, health, environment, among others.

In all of the tax measures that were enacted during President Duterte's administration, STSRO has always been there in almost every step of the journey. From the conduct of public hearings, to the drafting and filing of Committee Reports, sponsorship, interpellation, amendments, bicameral conference committee meetings, ratification, engrossment, and review of the enrolled bill.

In each step lies a multitude of preparation, rigorous research, technical writing, analysis, and coordination with our Chairperson and their staff, other Senators, government agencies, stakeholders, and our counterpart in the Lower House.

In the case of the TRAIN Law, the STSRO assisted in the conduct of twenty (20) public hearings, three (3) working group meetings, and five (5) bicameral conference committee meetings, not to mention the time spent during the period of interpellations. During that time, the TRAIN bill proposed major changes in the Tax Code. Thus, briefings were conducted by the STSRO for our Senators such as Senators Angara, Drilon, Gatchalian, and Aquino, among others to explain to them the proposal and its possible impact. Truly, briefings and meetings conducted in the TRAIN Law are quite above the "average" compared with the other measures that ran the normal track in the legislative process.

Sen. Sonny Angara and DG Rodelio Dascil during the TRAIN bill public hearing

Another controversial tax measure that went on a rough and tough road is the CREATE Law, which is formerly called TRABAHO in the 17th Congress and CITIRA in the early part of the 18th Congress. There were two (2) briefings conducted for Senators and four (4) for their technical staff to explain the changes proposed to be made and to solicit their comments and suggestions. A lot of briefers, comments, and matrices were also sent to the Senators for their ready reference.

In all of the measures that came out from the Committee on Ways and Means, the STSRO also assisted in the checking of format and substance of the bill as they are being drafted for Second and Third Reading, and for enrollment. Even after the enactment of these tax laws, we still monitor even their implementation, including the issuances of implementing rules, revenue regulations, and administrative orders.

The enactment of all these tax laws is proof of our work in the STSRO. All of these were made possible with the leadership of our hardworking and very competent Director General, Atty. Rodelio T. Dascil, who pushes each one of us to strive for excellence and to love what we do.

Collaboration within and among the branches of the STSRO - Direct Taxes, Indirect Taxes, Tax Policy and Administration, Legal and Tariff Branch, and Office of the Director General is also key in delivering the expected output from our end.

Legislation is indeed a cumulative work. The enactment of these tax laws is definitely a product of hard work and dedication of all the players in the legislative process. We, the men and women of STSRO, are just honored and proud to have been part of this process. I can say and attest that we are one of those who work tirelessly, even without recognition, and even without the spotlight pointing on us.

We work behind the scenes and we are fully content with it. It is enough that we know that we have contributed, in our capacity, to the betterment of the country and to the improvement in someone else's life. Be it a reduction in a person's income tax which means more money for food, and other necessities or helping the government generate additional revenues to build more roads and hospitals, and so on and so forth. These are all enough reasons to make us look forward to come to the Senate each day and do everything all over again, day in and day out.

Footnotes:

1 These are tax laws whose bills were referred to and which were spearheaded by the Senate Committee on Ways and Means. All other laws with tax provisions and implications from other Committees were not included in this write-up.

2 Caravallo, M. (2022, February 14). Gov't earns P1.22B from POGO tax – BIR. *The Manila Times.* https://www.manilatimes.net/2022/02/14/business/top-business/govt-earns-p122b-from-pogo-tax-bir/1832857

3 Villanueva, J. (2021, October 8). Authorities eye more refinements in BSP's gold buying policies. *Philippine News Agency.* https://pna.gov.ph/articles/1156022

CREATE Act's Repealing and Amendatory Clause Series: Tax Incentives Management

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Robynne Ann Albaniel, LSO IV, Legal and Tariff Branch

In the last issue, the repealing and amendatory clauses covered provisions of law inconsistent with the rationalized fiscal incentives ushered by Republic Act No. 11534, or the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act. This is the third and last installment of the CREATE Act's Repealing and Amendatory Clause Series.

With the intention of rationalizing fiscal incentives, the CREATE Act expanded the powers of the Fiscal Incentives Review Board (FIRB), streamlined the menu of tax exemptions and tax holidays, and established the Strategic Investment Priority Plan (SIPP). The reform also repealed and amended several legal provisions that are inconsistent with the rationalized set of fiscal incentives.

Aside from those, RA 11534 Chapter V contains provisions pertaining to Tax Incentives Management and Transparency. The chapter introduced the following regulations:

- Filing of tax returns and submission of tax incentive reports (Section 305);
- Monitoring, Evaluation, and Reporting of Tax Incentives (Section 306);
- Conduct of Impact Evaluation on Tax Incentives (Section 307); and
- Penalties for Noncompliance with Filing and Reportorial Requirements (Section 308);

To remove inconsistencies from Chapter V, CREATE law repealed Sections 4, 5, 6 and 7 of Republic Act No. 10708, or "*The Tax Incentives Management and Transparency Act*" (TIMTA).

Repealing Section 4 of TIMTA reinforces the rationalized incentives enumerated in Section 294 of the CREATE law as the basis for the annual tax incentives report of the income-based tax incentives, VAT exemptions and zero-rating, customs duty exemptions, deductions, credits or exclusions from the income tax base, and exemptions from local taxes.

On monitoring, evaluation, and reporting of tax incentives, Section 5 of TIMTA is repealed to give the Fiscal Incentives Review Board (FIRB) the mandate to collect and store all tax incentives and benefit data from the Department of Finance (DOF), investment promotion agencies (IPA), and other government agencies administering tax incentives. The FIRB is also tasked to evaluate and assess the impact of incentives granted to firms to determine whether agreed performance targets and outcomes are met. Evaluation may be done through a cost-benefit analysis (CBA), and it shall be published by the FIRB. Moreover, the CBA shall be submitted to the President and Congress annually.

It should also be noted that the last paragraph on Section 5 of TIMTA was completely removed in the CREATE Act. The said paragraph stated that the TIMTA shall never diminish or limit the amount of incentives granted by the IPAs. This is also to further solidify the intent of the law to streamline fiscal incentives and benefits granted to registered business enterprises.

Section 6 of TIMTA mandates the National Economic Development Authority (NEDA) to conduct CBA on investment incentives. With the CREATE Act transferring the task of impact evaluation to the FIRB, Section 6 is likewise repealed. IPAs are now also not required to submit their aggregate tax incentives to NEDA. However, the FIRB may request other government institutions to conduct its impact evaluation on the incentives or to peer review the FIRB study. Moreover, impact evaluation of granted incentives is not anymore limited to conducting CBA.

As for the penalties for noncompliance with filing and reportorial requirements, Section 7 of the TIMTA was likewise repealed and replaced by Section 308. Cash penalties for noncompliance remained at [a] P100,000 for the first violation; [b] P500,000 for the second violation; and [c] cancellation of registration for the third violation.

The provisions also stated that if the failure to comply is not due to the fault of the registered business enterprise, it should not be a ground for suspending the availment of tax incentives. Moreover, collection from penalties shall accrue to the general fund.

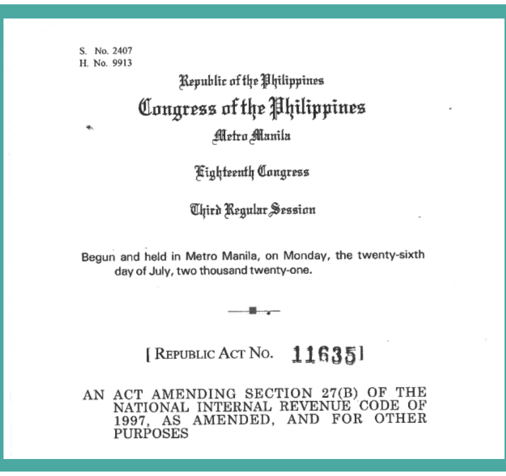
Section 308 also provided for the penalty of any government official or employee who fails without justifiable reason in providing the required tax incentives report or data required. The penalties shall be, after due process, a fine equivalent to the official's or employee's basic salary for a period of one (1) month to six (6) months, or by suspension from government service for not more than one (1) year, or both, in addition to any criminal and administrative penalties imposable under existing laws.

CREATE also repealed Article 7(11) of Executive Order No. 226, series of 1987 entitled: The Omnibus Investments Code Act of 1987 which gave the Board of Investments the power to require registered enterprises to list their shares of stock in any accredited stock exchange or directly offer a portion of their capital stock to the public and/or their employees. This is also to transfer to the FIRB all necessary or incidental powers and functions to attain the purposes of the CREATE Act.

RA 11534's repealing and amending clauses prove to be an additional vehicle to properly address the call to develop a more responsive and globally-competitive tax incentives regime that is performance-based, targeted, time-bound, and transparent. It is hoped that with the clear language of the repealing and amendatory clauses, the implementation of the provisions of RA 11534 will not give rise to possible legal conflicts that may obscure the very purpose for which this law has been legislated.

Footnote:

The first and second parts of this article series can be found at the STSRO Publications tab of the Senate website: http://legacy.senate.gov.ph/publications/stsro_publications.asp


S. No. 2407
H. No. 9913

Republic of the Philippines
Congress of the Philippines
Metro Manila

Eighteenth Congress

Third Regular Session

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

[REPUBLIC ACT NO. 11635]

AN ACT AMENDING SECTION 27(B) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES

RA 11635 on the Taxation of Non-Profit Hospitals and Proprietary Educational Institutions

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I. Term of Reference

Implication of Republic Act (RA) 11635, *"An Act Amending Section 27(B) of the National Internal Revenue Code of 1997, As Amended, and for Other Purposes"* on the income taxation of *Non-Profit Hospitals and Proprietary Educational Institutions*.

II. Before the CREATE Law

Before **RA 11534**, *"Corporate Recovery and Tax Incentives for Enterprises Act"* or *"CREATE Law"* was enacted, Supreme Court Jurisprudence held the taxation of proprietary educational institutions and non-profit hospitals as follows:

1. **Commissioner of Internal Revenue vs. De La Salle University, Inc.**
   a. G.R. No. 196596, November 9, 2016,
   b. G.R. No. 198841, November 9, 2016, and
   c. G.R. No. 198941, November 9, 2016.

   "*xxx The Constitution treats non-stock, non-profit educational institutions differently from proprietary educational institutions cannot be doubted. The privilege granted to the former is conditioned only on the actual, direct and exclusive use of their revenues and assets for educational purposes. In clear contrast, the tax privilege granted to the latter may be subject to limitations imposed by law.*

   "While a non-stock, non-profit educational institution is classified as a tax-exempt entity under Section 30 (Exemptions from Tax on Corporations) of the Tax Code, a proprietary educational institution is covered by Section 27 (Rates of Income Tax on Domestic Corporations). By the Tax Code's clear terms, a proprietary educational institution is entitled only to the reduced rate of 10% corporate income tax. The reduced rate is applicable only if:

   "a. The proprietary educational institution is nonprofit, and

   "b. Its gross income from unrelated trade, business or activity does not exceed 50% of its total gross income." xxx

2. **Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc.**
   a. G.R. No. 195909, September 26, 2012; and
   b. G.R. No. 195960, September 26, 2012.

   "*xxx Section 27(B) of the NIRC imposes a 10% preferential tax rate on the income of (1) proprietary non-profit educational institutions and (2) proprietary non-profit hospitals. The only qualifications for hospitals are that they must be proprietary and non-profit. "Proprietary" means private, following the definition of a "proprietary educational institution" as "any private school maintained and administered by private individuals or groups" with a government permit. "Non-profit" means no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted not for profit. xxx"*; and

   "*xxx Even if the charitable institution must be "organized and operated exclusively" for charitable purposes, it is nevertheless allowed to engage in "activities conducted for profit" without losing its tax exempt status for its not-for-profit activities. The only consequence is that the "income of whatever kind and character" of a charitable institution "from any of its activities conducted for profit, regardless of the disposition made of such income, shall be subject to tax." Prior to the introduction of Section 27(B), the tax rate on such income from for-profit activities was the ordinary corporate rate under Section 27 (A). With the introduction of Section 27(B), the tax rate is now 10%.*

   "*A tax exemption is effectively a social subsidy granted by the State because an exempt institution is spared from sharing in the expenses of government and yet benefits from them. Tax exemptions for charitable institutions should therefore be limited to institutions beneficial to the public and those which improve social welfare. A profit-making entity should not be allowed to exploit this subsidy to the detriment of the government and other taxpayers. xxx*"

III. Implication of CREATE Law

The CREATE Law was passed on March 26, 2021 with the overall intention of granting tax relief to corporations aside from the reduction of the special corporate income tax on *"proprietary educational institutions and hospitals that are non-profit"* from 10% to 1% under Section 27(B) of our National Internal Revenue Code (NIRC), As Amended, for a period of three (3) years from July 1, 2020 to June 30, 2023.

Surprisingly, the Bureau of Internal Revenue (BIR) issued Revenue Regulation (RR) No. 5-2021, *implementing the law on April 8, 2021, providing that the* income tax of proprietary educational institutions would be increased to 25% from the current 10%.

Faced with the prospect of mass closure of private schools with the industries dependent on them and/or the exponential increase of tuition and other school fees to be shouldered by parents of students, umbrella organizations petitioned the BIR to reconsider RR 5-2021, to no avail. The BIR opined that the income tax exemption and the preferential tax rate of 10% which was dropped to 1% under the CREATE Law, were intended only for nonstock and nonprofit schools; that there were no inconsistencies between RR 5-2021 and the CREATE Law.

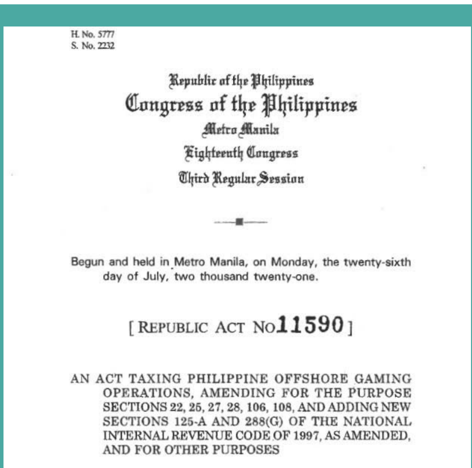
Enter the champions of Congress in the Senate led by Sen. Sonny Angara and the House of Representatives led by Rep. Joey S. Salceda who promptly acted to address the confusion that unfolded.

IV. RA 11635 to the Rescue

RA 11635, *"An Act Amending Section 27(B) of the National Internal Revenue Code of 1997, As Amended, and for Other Purposes"* (December 10, 2021), was enacted for purposes of avoiding private school closures; not to mention the dreadful impact on teachers and traders dependent on school operations like school buses, food vendors and school uniform contractors.

The law in clarifying and reinforcing the intention of the CREATE Law to afford tax relief to private schools by further amending Section 27(B) of the Tax Code of 1997, provided that non-profit hospitals and proprietary educational institutions shall pay a 10% tax on their taxable income. However, beginning July 1, 2020 until June 30, 2023, the tax rate shall be 1% as long as the gross income from unrelated trade, business or other activity does not exceed 50% of the total gross income derived by such educational institution or hospital from all sources.

To date, the BIR has issued Revenue Memorandum Circular (RMC) No. 13-2022 on January 24, 2022, circularizing RA 11635 for the information and guidance of all internal revenue officials, employees and other concerned.


H. No. 5777
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[REPUBLIC ACT NO. 11590]

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

POGO Tax Regime

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As a backgrounder, Offshore Gaming Operator may be defined as an entity that deals and participates in offshore gaming services by offering games to players, taking bets, and paying the winners. Offshore gaming activities refer to online games of chance, through the internet, using a software and network, exclusively for offshore-authorized players who have registered and established an online gaming license with Philippine Amusement and Gaming Corporation (PAGCOR) or Investment Promotion Agencies (IPAs). Licensed entities are categorized into Philippine-based operator or Offshore-based operator.

Photo by pagcor.ph

The Philippine Offshore Gaming Operations (POGOs) have been discovered to be operating in our country as early as 2003, but it was only in 2016 when the PAGCOR clearly defined the concepts, components, operations, and regulations, among others, of offshore gaming. Profits and fast growth of POGOs had caught the attention of the taxman that later paved the way for the issuance of Revenue Memorandum Circular (RMC) 102-2017 and RMC 78-2018, which provide the rules on the taxability of offshore gaming operations in the Philippines. Even so, nowhere can these policies be expressly found in the Tax Code.

As part of government's effort to regulate all forms of gambling and ban illegal gambling operations, on 22 September 2021, President Rodrigo Duterte has signed into law RA 11590 or An Act Taxing Philippine Offshore Gaming Operations (POGOs). Relative to this, the Bureau of Internal Revenue (BIR) has issued Revenue Regulation 20-2021 on 25 November 2021 to implement RA 11590.

The said law introduced new provisions to the National Internal Revenue Code (NIRC) of 1997, as amended, pertaining to the taxation of offshore gaming licensees, their respective service providers and alien employees, as summarized below:

Taxpayer	Tax Rate	Tax Base
Offshore Gaming Licensees	Gaming Revenues: • 5% Gaming Tax in lieu of all other direct and indirect national and local taxes (due on or before 20 days following the end of each month) • Philippine Amusement and Gaming Corporation (PAGCOR) or any special economic zone, tourism or freeport authority may also impose regulatory fees not exceeding 2% of the gross gaming revenue or receipts	Gross gaming revenue/receipts or agreed predetermined minimum monthly revenue/receipts from gaming whichever is higher
	Non-Gaming Revenues: • 25% of the Taxable Income	If offshore gaming licensee is Philippine-based: Taxable income from all sources within and without the Philippines If offshore gaming licensee is foreign-based: Taxable income derived within the Philippines
Service Providers	• Regular Income Tax	Net Taxable Income
Alien individual employed and assigned in the Philippines by an offshore gaming licensees or their respective service providers, regardless of residency, term and class of working permit or visa *Note: Philippine Tax Identification Number (TIN) is required and in case of non-compliance, a fine of Php20,000 for every foreign national employed without TIN shall be imposed on the offshore gaming licensees and service providers)*	• 25% Final Withholding Tax (FWT), provided that the minimum FWT due for any taxable month shall not be lower than Php12,500.	Gross Income
Furthermore, subject to zero (0%) VAT are the following: • Sales of goods and properties to offshore gaming licensees subject to Gaming Tax • Services rendered to offshore gaming licensees subject to Gaming Tax, by service providers, including accredited service providers.		

Before RA 11590, it will be recalled that the PAGCOR and the IPAs like Cagayan Economic Zone Authority (CEZA), Authority of Freeport Area of Bataan (AFAB) and Aurora Pacific Economic Zone and Freeport Authority (APECO) were separately licensing and regulating POGOs. They administered fees, charges and taxes different from each other. Likewise, the provision on mandatory revenue sharing with the national government and the host Local Government Units (LGUs) was included in their respective Charters. Unquestionably, IPAs maintain their functions under the laws governing them, except to the extent modified by RA 11534 or the CREATE law, which has repealed the incentives provisions of their Charters.

Worth mentioning under the POGO Tax Regime, firstly, the APECO is not anymore allowed to issue offshore gaming licenses. Existing licenses issued by it shall be transferred to, regulated and monitored by the PAGCOR. Secondly, the gross gaming revenue shall be bound to the provisions of the NIRC. In the case of CEZA and AFAB registered POGOs, their gross gaming revenues from offshore gaming will not form part of the gross income subject to 5% GIE entailed to revenue sharing system among the national government, host LGUs and the IPAs. Thirdly, Section 8 of RA 11590 imposes 5% of tax in lieu of all direct and indirect internal revenue taxes and local taxes and that the said 5% tax shall be remitted directly to the BIR. Thus, considering aforesaid Section, the law is clear that the LGUs hosting the POGOs will have no share in the 5% tax and that the LGUs cannot impose local taxes on POGOs. With that, there are potential effects perhaps on locally sourced LGU revenues, resulting in declining collections. Such income could have been used for the delivery of basic services and to fund local government priority projects and programs for social, economic and the general public. Another thing, the centralization of revenue collection to the BIR will possibly change the revenue performance of POGO-hosting IPAs.

Additionally, in view of the new law, the PAGCOR or any special economic zones, tourism zones or freeport authority shall engage the services of third-party audit platform that would determine the taxable gross gaming revenues or receipts of each offshore gaming licensee subject to the 5% gaming tax. For Offshore Gaming Licensees (OGLs) monitored by PAGCOR, they are observing the third-party audit system. While it is recommended for the OGLs monitored by IPAs (i.e., CEZA and AFAB) to also engage the services of third-party auditors. This will ensure that POGO entities are making accurate declarations as regards their financial conducts. On the other hand, nothing will prevent the BIR and the Commission on Audit (COA) from undertaking a post-audit of the gross gaming revenues determined by the third-party auditor.

RA 11590 even contains proviso for the disposition of government earnings from POGOs. Of this, 60% is to be spent on the implementation of the Universal Health Care Act, 20% for the Health Facilities Enhancement Program of the Department of Health, while the remaining 20% will be used to promote Sustainable Development Goals determined by the National Economic and Development Authority (NEDA).

In general, the establishment of a POGO Tax Regime signals proper and appropriate taxation guidelines. With its advent, the existence of POGO activities in the country will clearly be recognized. Succeeding its implementation, it will strengthen the power of the BIR to collect taxes from POGOs, which will certainly increase the country's tax revenue.

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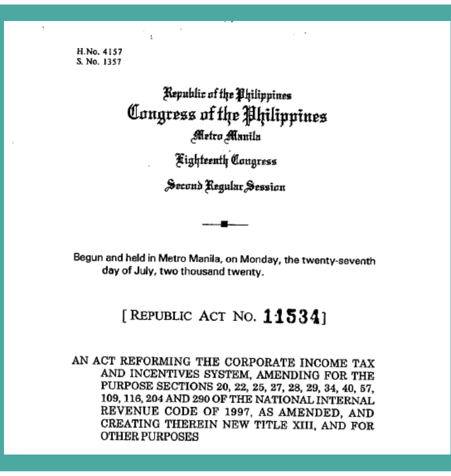

H.No. 4157
S. No. 1357

Republic of the Philippines
Congress of the Philippines
Metro Manila
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

Administrative Challenges of a Single Investment Menu under RA 11534 (CREATE Law)

Atty. Rachel L. Yuayan
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The Philippines has a rich supply of human resources. This is evident in the millions of contract workers that our government has been sending in many parts of the world to work in industries such as health care, construction, engineering, architecture, manufacturing, information technology, domestic work, maritime, and teaching the English language. While it is good for the economy, this mass departure may result in a brain drain in the country in the long run. This situation is one of the reasons the government created the Special Economic Zones ("ecozones") and Economic Zone Authorities [1] to promote the flow of foreign and local investments, which would generate employment opportunities.

For more than two decades, the Philippine legislature tried to enact a law that would streamline and modernize the grant of investment incentives. Hence, the passage of Republic Act (RA) No. 11534, otherwise known as the "*Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act"* after 26 years is regarded as one of President Rodrigo Duterte's landmark laws. Not only did it amend several outdated provisions of the *National Internal Revenue Code of 1997 (NIRC)*, but it was also a timely response to the COVID-19 pandemic by providing fiscal relief to domestic and foreign corporations doing business in the Philippines.

Signed into law on March 26, 2021 with several vetoed provisions, the CREATE Act significantly lowered the corporate income tax (CIT) rate and rationalized fiscal incentives to attract more investments in the country, especially in our ecozones. As enclaves of commercial and industrial activities, these ecozones are expected to contribute more to the country's economic growth as they are preferred by foreign corporations and local export-oriented enterprises due to various tax incentives and regulatory perks that would otherwise apply in non-ecozone areas.

Before the enactment of the CREATE Act, provisions of Executive Order (EO) 226, or the *"Omnibus Investments Code of 1987",* were used as basis for the Investment Priority Plan (IPP). What is the difference?

- Under E.O. 226, the IPP only applied to those who registered with the Bureau of Investments (BOI), and as stated in Article 28, the criteria in priority determination are economic soundness, contribution to a developmental goal, comparative advantage, measured capacity, the market and technical aspects and considerations of the activity proposed to be included, after thorough investigation and analysis by the BOI.

- Under the CREATE Act, the listed priority activities will be the basis for all acceptance of applications for registration with the IPAs. Activities may only be included in the SIPP if covered by the Philippine Development Program or similar government program, and have complied with any of the requirements under Sec. 300 [2] such as substantial amount of investments; considerable generation of employment, especially towards less developed areas; considerable amount of net exports; use of modern, advance or new technology, processes and innovations; market competitiveness, among others. Hence, it is now more focused and systematized.

The transition to a single, unified and simplified investment menu, i.e. the CREATE Act, from what used to be a smorgasbord of investments statutes [3] applicable to various IPAs has been the turning point in pushing for the kind of economic stimulus that the government has envisioned for decades. Since the CREATE Act only took effect on April 11, 2021, the Investment Promotion Agencies (IPAs), which administer the grant of incentives, and investors alike are currently experiencing some administrative birth pains that always accompany a major change or innovation. These administrative challenges include the following:

A. <u>Potential Loss of opportunities brought by the delay in the release of approved industry classification under the Strategic Investment Priority Plan (SIPP)</u>. This three-tiered framework classification aims to propel the Philippines' competitive edge in the world market, thereby attracting more high-value, labor-intensive investments that will create more jobs. Pending the finalization of the SIPP and its approval by the President, the government is still adopting the 2020 Investment Priorities Plan of the BOI. Since the SIPP is the basis in determining if enterprises fall under the categories of industries qualified for incentives, potential investors are facing some uncertainties. While many of them have already expressed their intention to invest in the country, there are also those who accordingly have given up as they are yet to be included in the definitions [4] provided in the existing framework.

- Under Rule 4, Section 4 of the Implementing Rules and Regulations [5] (IRR), the SIPP shall define the coverage of the tiers and provide the conditions for qualifying the activities. The following activities constitute Tiers 1 to 3:

  ◊ Tier 1 - Those that (a) have high potential for job creation; (b) take place in sectors with market failures resulting in underprovision of basic goods and services; (c) generate value creation through innovation, upgrading or moving up the value chain; (d) provide essential support for sectors that are critical to industrial development; or (e) are emerging owing to potential comparative advantage.

  ◊ Tier II – Those that produce supplies, parts and components, and intermediate services that are not locally produced but are critical to industrial development and import-substituting activities, including crude oil refining.

  ◊ Tier III - Includes (a) research and development that result in demonstrably significant value-added, higher productivity, improved efficiency, breakthroughs in science and health, and high-paying jobs; (b) generation of new knowledge and intellectual property registered and/or licensed in the Philippines; (c) commercialization of patents, industrial designs, copyrights and utility models owned or co-owned by a registered business enterprise; (d) highly technical manufacturing; or (e) are critical to the structural transformation of the economy and require substantial catch-up efforts.

- In the technical working group meetings and consultations conducted by the Department of Trade and Industry (DTI) [6] with the various IPAs, it was established that the previous incentives regime conflict with the CREATE Act. It appeared that the IPAs have registered and provided incentives to a diverse list of activities that included retail shops and establishments under the old incentives menu. With the new requirements under the CREATE Act, the other IPAs are experiencing difficulties in adopting the new requirements of providing incentives and the use of SIPP. Hence, the DTI stressed that "*all activities that the IPAs would propose to include in the SIPP should comply with the requirements under Section 300 of the CREATE Act and should be consistent with the definition of Registered Business Enterprises (RBE) under Section 293(M)*" [7].

- The differences in the old investments menu and the CREATE Act contributed to the delay in the finalization of the SIPP. According to DTI, the increase in the scope of the SIPP to include other IPAs has made its formulation difficult. Previously, the BOI uses its own database established since 2003, including national accounts as categorized by their sectors or activities, as basis for an activity's inclusion in the IPP. Under the CREATE Act, the BOI had difficulties securing data from other IPAs since they have no prior experience in using their data to justify the inclusion of their registered projects and enterprises in a priority investment list.

- Furthermore, the IPAs' databases are also developed with different format and fields making it difficult to consolidate all the IPAs' databases to use for data analytics[8]. This limitation may not be able to capture new and emerging industries which may mean lost opportunities for the Philippines.

B. <u>Delay in upgrading of tax incentives for the more generous packages under the CREATE Act</u>. As proposed by the BOI and approved by the Fiscal Incentives Review Board (FIRB), activities under the 2020 IPP may be eligible for incentives under the Tier I classification, without prejudice to upgrade to Tiers II or III if qualified under the new SIPP. Considering that the 2020 IPP is still being used as the transitional SIPP, the incentives provided by the CREATE Act have yet to be availed of in full by the concerned investors.

C. <u>Delay in the implementation of a One-Stop-Shop for investor-locators on the part of some IPAs</u>. With the enactment of the CREATE Act, the IPAs have an ongoing systems upgrade to meet the new requirements of the law. Taking into consideration the previous lockdowns to curb COVID-19 transmission and the government's strict adherence to health protocols, this entire process of technical and procedural recalibrations also contributes to the delay in implementing the provisions of the CREATE Act. This involved the following:

- On the technical aspect, there is a need for additional personnel who are technically-adept to conduct highly technical evaluations such as cost-benefit analysis, data analytics, among others, to determine the impact of tax incentives on the Philippine economy. The IPAs have been conducting technical trainings for their staff but they admit that it may take them about six (6) months to achieve the level of technical expertise that is required by the new law.

- On the procedural aspect, there is a need to reconcile the timelines and targets of the requirements under the CREATE Act vis-à-vis other existing laws and other government-issued policies such as RA 11032[9], otherwise known as the "*Ease of Doing Business and Efficient Government Service Delivery Act of 2018";* and the 2020 *Citizen's Charter* of the Civil Service Commission.

As of this writing, consultations are ongoing among stakeholders from the private and public sectors, led by the FIRB, in order to thresh out issues and formulate a final and reconciled SIPP. Once approved by the FIRB and BOI, it shall be submitted to the President for his approval. Considering that the CREATE Act is the country's biggest fiscal stimulus package to date, stakeholders are positive that they will overcome these challenges in no time. Indeed, 2022 is a year of bright beginnings as we lead off to recover the enormous losses incurred in the last two years of the COVID-19 pandemic and finally realize the expected economic boost.

Footnotes:

1 Republic Act 7916, or "*The Special Economic Zone Act of 1995*" was signed into law on February 24, 1995 by President Fidel V. Ramos.

2 Section 300 of the CREATE Act provides for the requirements of the Strategic Investment Priority Plan (SIPP).

3 Aside from the NIRC and EO 226, fiscal incentives under RA 7916, as amended by RA 8748, also known as "*The Special Economic Zone Act of 1995*" are also adopted.

4 The crafting of the "Definition of Terms" also proved to be challenging in formulating the SIPP in accordance with Section 293(M) of the CREATE Act. The definition provides exclusions of service enterprises such as trucking or forwarding services, consumers' cooperatives, consultancy services, retail enterprises, among others.

5 IRR of Title XIII of RA 8424, otherwise known as the "*National Revenue Code of 1997*", as amended by RA 11534, or the "*Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act*" was signed on June 21, 2021 by Finance Secretary Carlos Dominguez III and Trade and Industry Secretary Ramon Lopez.

6 Under CREATE, the Secretary of DTI Co-Chairs the Fiscal Incentives Review Board.

7 Section 293(M) of CREATE states that "Registered business enterprise refers to any individual, partnership, corporation, Philippine branch of a foreign corporation, or other entity organized and existing under Philippine laws and registered with an Investment Promotion Agency excluding service enterprises such as those engaged in customs brokerage, trucking or forwarding services, janitorial services, security services, insurance, banking, and other financial services, consumers' cooperatives, credit unions, consultancy services, retail enterprises, restaurants, or such other similar services, as may be determined by the Fiscal Incentives Review Board, irrespective of location, whether inside or outside the zones, duly accredited or licensed by any of the Investment Promotion Agencies and whose income delivered within the economic zones shall be subject to taxes under the National Internal Revenue Code of 1997, as amended";

8 Data analytics refers to the process of examining raw data and uncover patterns in order to draw conclusions and form valuable insights on the information contained therein.

9 RA 11032, which was signed into law on 28 May 2018, amended RA 9485 or the "*Anti-Red Tape Act of 2007".*

Simple is Beautiful

The PIFITA Law and the Implications of its Non-passage

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House Bill No. 304 (HBN 304), or the "*Passive Income and Financial Intermediary Taxation Act*" (PIFITA) is a comprehensive tax package aimed to simplify and standardize market taxes. This is the fourth tranche of the Duterte administration's tax reform program that involves the streamlining of an otherwise complex system for capital income tax. According to the Department of Finance, the PIFITA complements the Tax Reform for Acceleration and Inclusion Act (TRAIN) by making "passive income and financial intermediary taxes simpler, fairer, more efficient, and more competitive regionally." PIFITA aims to reduce the number of tax rates from 80 to 36 and will harmonize the tax rates on interest, dividends, and capital gains, and the business taxes imposed on financial intermediaries. PIFITA will likewise rationalize the documentary stamp taxes (DST) imposed on transactions.

The House of Representatives passed and approved on third reading *HBN 304* on 09 September 2019 and was sent on the same day to the Senate of the Philippines for its concurrence. The Senate, on its part, conducted committee hearings on 05 and 12 February 2020, a month before the coronavirus disease 2019 (COVID-19) pandemic struck.

According to Rep. Joey S. Salceda, HBN 304's purpose was to contribute to the economy by financing large-scale investment to government projects like the "Build, Build, Build" programs. It likewise seeks to address our complicated tax structure, its susceptibility to arbitrage, the uneven playing field, inequitable distribution of tax burden, an uncompetitive tax system, and high administrative and compliance costs.

Some of the salient features of the PIFITA bill are the following:

1. Interest income shall be subject to a final tax rate of 15%, from 20%;

2. Cash and/ or property dividends received by an individual and nonresident foreign corporations are subject to a Final Tax of 15%. An addition to those subject to dividend tax are the distribution of profits from collective investment schemes (CISs). Under HBN 304, a CIS is any arrangement whereby funds are solicited from the investing public and pooled together for the purpose of investing, reinvesting, and/or trading in securities or other assets or different classes as allowed under the law, which may either have a corporate (investment company) or contractual structure (unit investment trust fund or similar structures);

3. The tax rate of capital gains derived by nonresident corporations from sale, exchange, transfer, barter, and disposition of non-listed of shares of stock not traded in the stock exchange or organized marketplace will be aligned with the capital gains derived by individuals and domestic corporations. A similar tax rate is imposed on gains derived from debt instruments and other securities not traded in the stock exchange or organized marketplace;

4. Gains from the sale, exchange, barter and disposition of shares of stock traded in the stock exchange or organized marketplace is now treated as an income tax. The tax shall be based on the presumptive gain of such sale, exchange, barter, and disposition of the shares of stock. Moreover, PIFITA proposes a scheduled reduction of rate until 2024, diminishing 1/10 year-on-year. As proposed under House Bill No. 304, the tax rate shall be 1/10 of 1% of the gross selling price or gross value in money by 2024;

5. A single rate of 5% gross receipts tax (GRT) shall be imposed for all financial intermediaries for income from interest, commissions, and discounts from lending activities, as well as income from financial leasing, royalties, rentals of property whether real or personal, profits from sale or exchange including gains derived from sale or transfer of real properties, net trading gains within the taxable year of foreign currency, debt instruments, and all other items treated as gross income under Section 32 of the Tax Code;

6. HBN 304 likewise removed the distinction on tax rate based on the length of maturity period of the instrument. Dividends and equity shares and net income of subsidiaries of such financial

intermediaries remain at 0%;

7. The bill proposes to reduce the premium tax rate of pre-need, life, and HMO insurance from 5% to 2%. Under PIFITA, a 5% premium tax rate shall be imposed on nonlife insurance transactions. PIFITA likewise provides that, in variable insurance contracts, the amount in excess of the insurance costs is not subject to premium tax, gross receipts tax, or value-added tax (VAT).

8. Under PIFITA, the percentage tax imposed on shares of stock sold or exchanged through initial public offering was removed; and

9. On the rationalization of DST, it was proposed to be pegged at 0.75% of the par value, a slight decrease from the current rate of P2.00 per P200.00 of the par value.

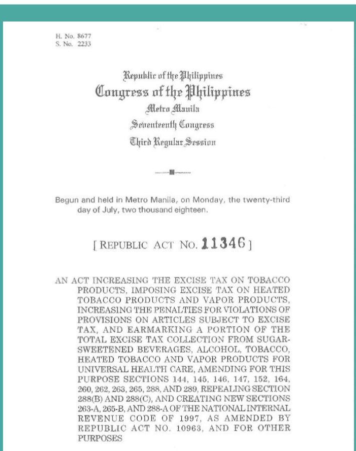
With the proposed PIFITA, the Philippines aims to get closer to the same competitiveness of our neighbors like India and China, both of which have relaxed many of their cross-border restrictions for a more efficient inflow of investments. India introduced a series of measures that include rolling back the enhanced surcharge on capital gains tax on equities and the withdrawal of buy-back tax in certain listed shares. On 07 November 2018, China's Ministry of Finance and the State Administration of Taxation jointly issued Circular 108, which gives a 3-year exemption from corporate income withholding tax and VAT for China-sourced bond interest by overseas institutional investors.

The importance of the PIFITA cannot be overemphasized, but we see no light at the end of the tunnel, so to speak, with the prioritization of the passage of COVID-19 response measures in the stead of other previously prioritized bills, the PIFITA included.

From an old tax regime with multiple tax rates and bases that make the structure complicated, PIFITA will reduce the number of these unique rates and bases. A uniform 15% tax rate on passive income will simplify tax structure and may give the Philippines a reputation as a place with ease of doing business. It likewise removes administrative burdens on non-resident investors seeking double taxation relief on their Philippine income. With the proposed reduction of taxes on stock transactions, the PIFITA can ensure that the Philippine stock market can be competitive with other markets. Further, the PIFITA equalizes the tax treatment for all financial institutions, with gross receipts of banks, quasi-banks, and non-bank financial intermediaries to be levied a uniform rate of 5%.

On the rationalization of the DST, this is seen as beneficial to Filipinos as it accelerates financial inclusion. By exempting all types of deposits from the DST, Filipinos will be encouraged to deposit their extra cash in banks and in turn help control the inflation rate of the country. With globalization and the resulting cross-border contracts, the need to make international payments has increased and DST payments for money transfers are an unnecessary friction cost that may affect our competitiveness in the global market.

At a time when we have realized that simplicity, coupled with the right knowledge of the needs of one's constituents, is crucial in crafting policies to survive a problem like COVID-19, we now have PIFITA as an opportunity to rebuild the Philippine economy and sustain its growth. Simpler taxes that are at par with our neighbors will allow capital market to flourish and hence, generate long-term revenue for the government. Should we fail to shepherd PIFITA to its fruition in the 18th Congress which adjourns on 03 June 2022 due to time constraints, the next Congress offers another chance for us to redesign our financial sector taxation system to be simple, swift, fair, equitable, and competitive. It is therefore imperative upon Congress to act with prompt and re-consider this measure, with the end in view of attracting more capital and investments.



H. No. 8677
S. No. 2233

Republic of the Philippines
Congress of the Philippines
Metro Manila
Seventeenth Congress
Third Regular Session

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

[REPUBLIC ACT NO. 11346]

AN ACT INCREASING THE EXCISE TAX ON TOBACCO PRODUCTS, IMPOSING EXCISE TAX ON HEATED TOBACCO PRODUCTS AND VAPOR PRODUCTS, INCREASING THE PENALTIES FOR VIOLATIONS OF PROVISIONS ON ARTICLES SUBJECT TO EXCISE TAX, AND EARMARKING A PORTION OF THE TOTAL EXCISE TAX COLLECTION FROM SUGAR-SWEETENED BEVERAGES, ALCOHOL, TOBACCO, HEATED TOBACCO AND VAPOR PRODUCTS FOR UNIVERSAL HEALTH CARE, AMENDING FOR THIS PURPOSE SECTIONS 144, 145, 146, 147, 152, 164, 260, 262, 263, 265, 288, AND 289, REPEALING SECTION 288(B) AND 288(C), AND CREATING NEW SECTIONS 263-A, 265-B, AND 288-A OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED BY REPUBLIC ACT NO. 10963, AND FOR OTHER PURPOSES

Assessment of RA 11346 and RA 11467 in Relation to Sin Tax

Elsie T. Jesalva
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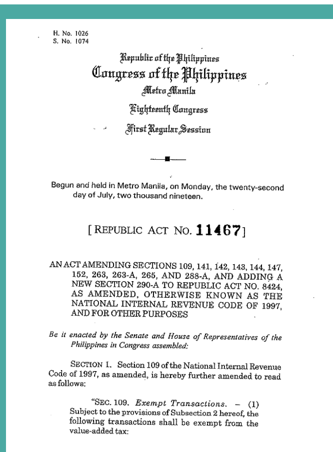


H. No. 1026
S. No. 1074

Republic of the Philippines
Congress of the Philippines
Metro Manila
Eighteenth Congress
First Regular Session

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

[REPUBLIC ACT NO. 11467]

AN ACT AMENDING SECTIONS 109, 141, 142, 143, 144, 147, 152, 263, 263-A, 265, AND 288-A, AND ADDING A NEW SECTION 290-A TO REPUBLIC ACT NO. 8424, AS AMENDED, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section 109 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"SEC. 109. *Exempt Transactions.* – (1) Subject to the provisions of Subsection 2 hereof, the following transactions shall be exempt from the value-added tax:

The significance of taxation in a country's development is critical. It is largely a source of revenue for the government's budget, and is typically utilized to meet the needs and welfare of citizens. Some of these funds should be used to develop public infrastructure; establish schools, roads, and highways; strengthen healthcare systems; and empower the nation's agriculture, among other things.

However, not all taxes are intended to generate revenue; some, such as Republic Act 10351, also known as the "Sin Tax Reform Law," were enacted to control the demand for distilled spirits, wines, fermented liquor, cigars, and cigarettes, with the end in view of addressing the various public health issues that these products cause

Tax Reforms on Sin Tax Products under President Duterte's Administration

The Duterte Administration orchestrated a tax regime that not only recalibrates our tax rates but likewise reforms our healthcare system in order to protect our citizens from the ill effects of these sin tax products.

On December 19, 2017, President Rodrigo R. Duterte signed into law Package 1 of the Comprehensive Tax Reform Program (CTRP), otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN) or Republic Act (RA) No. 10963. The law took effect on January 1, 2018.

Tax Rate Increase on Cigarette Products Based on RA 10963

Cigarette products	Date of effectivity				
	Jan. 1, 2018	**July 1, 2018**	**Jan. 1, 2020**	**Jan. 2022**	**Jan. 1, 2024 & onwards**
Cigarettes packed by hand (20 pcs.)	Php 32.50 per pack	Php 35.00 per pack	Php 37.50 per pack	Php 40.00 per pack	4% increase every year
Cigarettes packed by machine (20 pcs.)	Php 32.50 per pack	Php 35.00 per pack	Php 37.50 per pack	Php 40.00 per pack	

Source: https://www.officialgazette.gov.ph/2017/12/27/republic-act-no-10963/

On July 25, 2019, RA 11346 otherwise known as the "Tobacco Tax Law of 2018" was enacted. RA 11346 introduced two (2) new classifications of tobacco-related products that are to be taxed: (1) "heated tobacco products" and (2) "vapor products." Heated-tobacco products (HTPs) are to be taxed at Php10.00 per pack of 20 pieces, with an increase of 5% for each succeeding year starting January 1, 2021.

Tax Rate Increase on Vapor Products Based on RA 11346

Quantity (ml.)	Tax rate
0.00 - 10.00	Php10.00
10.01 - 20.00	Php20.00
20.01 - 30.00	Php30.00
30.01 - 40.00	Php40.00
40.01 - 50.00	Php50.00
More than 50.00 ml	Php50.00 + Php10.00 for every additional 10.00 ml
Starting January 21, 2021, there would be a 5% increase to the tax rate every year	

Source: https://www.officialgazette.gov.ph/2019/07/25/republic-act-no-11346/

For cigars, it would have a tax rate of 20% *ad valorem* of the NRP. [1] Adding to that, it would have an additional Php5.00 specific tax per piece of cigar. These tax rates will be increased to 5% on January 1, 2024 onwards.

Tax Rate Increase on Cigarette Products Based on RA 11346

Cigarette products	Date of effectivity				
	Jan. 1, 2020	**July 1, 2021**	**Jan. 1, 2022**	**Jan. 2023**	**Jan. 1, 2024 & onwards**
Cigarettes packed by hand (20 pcs.)	Php 45.00 per pack	Php 50.00 per pack	Php 55.00 per pack	Php 60.00 per pack	5% increase every year
Cigarettes packed by machine (20 pcs.)	Php 45.00 per pack	Php 50.00 per pack	Php 55.00 per pack	Php 60.00 per pack	
• Manufacturers/ importers shall be liable for additional excise tax equivalent to the difference between the understated suggested NRP and the actual NRP, should the understatement be as much as 15% of the actual NRP.					

- Selling of tobacco products at a price lower than the combined excise and value-added taxes is prohibited. The punishment is a fine of not less than 10 times the amount of these taxes due but not less than Php200,000 nor more than Php500,000, and imprisonment of not less than 4 years but not more than 6 years.
- The BIR is mandated to issue an RR prescribing the cigarette floor price or the minimum cigarette price taking into account the excise and value-added taxes.

Source: https://www.officialgazette.gov.ph/2019/07/25/republic-act-no-11346/

However, even before the implementation of RA 11346, the signing into law of Republic Act No. 11467 (RA 11467) on January 22, 2020 modified the above tax rates. RA 11467 increases the excise taxes on alcohol products, electronic cigarettes (e-cigarettes), and HTPs. Apart from the imposition of additional excise tax on certain sin products, the law also extends the list of Value Added Tax (VAT) exempt transactions contained in the NIRC. Certain medicines for common illnesses such as high cholesterol, hypertension, and diabetes are now VAT exempt subject to certain conditions, a feature that bolsters the laws' primordial purpose that is the improvement of public health. Prescription drugs and medicines for cancer, mental illness, tuberculosis, and kidney disease shall be VAT exempt starting January 1, 2023.

Increase in Excise Tax on Alcohol Products Under RA 11467

Distilled spirits

Tax Type	Tax rate					
	2020	2021	2022	2023	2024	2025
Ad valorem	22% of the net retail price (NRP) per proof					
plus						
Specific (per proof liter)	Php42.00	Php47.00	Php52.00	Php59.00	Php66.00	Php66.00 increased by 6% annually

- Understatement of the net retail price by as much as 15% of the actual net retail price shall render the manufacturer or importer liable for additional excise tax equivalent to tax due and difference between the understated suggested NRP and the actual NRP.
- Spirits introduced after 01 January 2020 shall be initially taxed according to the suggested NRP, which will be validated by the BIR at the end of the 3 months from product launch

Wines

Year	Specific
2020 2021 onwards	Php50.00 per liter 6% increase every year

Fermented Liquors

Tax Type	Tax rate					
	2020	2021	2022	2023	2024	2025
Specific (per liter)	Php35.00	Php37.00	Php39.00	Php41.00	Php43.00	Php43.00 increased by 6% annually

Source: https://www.officialgazette.gov.ph/2020/01/22/republic-act-no-11467/

Increase in Excise Tax on Tobacco Products Under RA 11467

Heated Tobacco Products

Tax Type	Tax Rate				
	2020	2021	2022	2023	2024 onwards
Specific (per pack or combination of 20s)	Php25.00	Php27.50	Php30.00	Php32.50	Php32.50 increased by 5% annually

- The Food and Drug Administration (FDA) shall periodically determine and regulate, consistent with evolving medical and scientific studies, the manufacture, importation, sale, packaging, advertising, and distribution of heated tobacco products, including banning the sale to nonsmokers or persons below 21 years old.

- Selling of heated tobacco products to persons below 21 years old will be fined Php10,000.00 and 30-day imprisonment.
- Manufacturers, distributors, importers and sellers of heated tobacco products are given a period of 18 months from the effectivity of the implementing rules and regulations (IRR) of RA 11467 to comply with such requirements under said IRR.
- The BIR is mandated to issue the floor price or the minimum price of heated tobacco products taking into account the excise and value-added taxes.
- Selling of heated tobacco products at a price lower than the combined excise and value-added taxes shall be punished with a fine of 10 times the amount of excise plus value-added taxes but not less than Php200,000 nor more than Php500,000, and imprisonment of not less than 4 years but not more than 6 years.

Source: https://www.officialgazette.gov.ph/2020/01/22/republic-act-no-11467/

Type of Vapor	Vapor Products					
	Tax Type	Tax Rate				
		2020	2021	2022	2023	2024 onwards
Nicotine salts or salt nicotine	Specific (per milliliter or a fraction thereof)	Php37.00	Php42.00	Php47.00	Php52.00	Php52.00 increased by 5% annually
Conventional freebase or classic nicotine	Specific (per 10 ml or a fraction thereof)	Php45.00	Php50.00	Php55.00	Php60.00	Php60.00 increased by 5% annually

- The FDA shall periodically determine and regulate, consistent with evolving medical and scientific studies, the manufacture, importation, sale, packaging, advertising, and distribution of vapor products, including banning the sale to nonsmokers or persons below 21 years old, and flavorings.
- Vapor products which exceed 65mg/ml of nicotine in liquid or gel, or which does not exceed this limit but seeks to make health claims, shall be subject to additional requirements as the DOH and the FDA may impose; the regulatory power of the FDA is not diminished regardless of the nicotine content of the vapor product.
- Selling vapor products to persons below 21 years old shall be prohibited and shall be punished with a fine of Php10,000.00 and imprisonment of 30 days.
- The manufacture, importation, sale and distribution of vapor products with flavorings other than plain tobacco or plain menthol is prohibited.
- Manufacturers, distributors, importers and sellers of vapor products are given a period of 18 months from the effectivity of the implementing rules and regulations (IRR) of RA 11467 to comply with such requirements under said IRR.
- The BIR is mandated to issue the floor price or the minimum price of vapor products taking into account the excise and value-added taxes.
- Selling of heated tobacco products at a price lower than the combined excise and value-added taxes shall be punished with a fine of 10 times the amount of excise plus value-added taxes but not less than Php200,000 nor more than Php500,000, and imprisonment of not less than 4 years but not more than 6 years.

Source: https://www.officialgazette.gov.ph/2020/01/22/republic-act-no-11467/

Definition of Cigars, Cigarettes, HTPs, and vapor products

Considering the innovation of different tobacco products in the market, our sin tax laws have defined the following:

- **Cigars –** shall mean all rolls of tobacco or any substitute thereof, wrapped in leaf tobacco that are consumed via combustion of the tobacco;

- **Cigarettes –** shall mean all rolls of finely-cut leaf tobacco, or any substitute therefor, wrapped in paper or in any other material that are consumed via combustion of the tobacco;

- **Heated Tobacco Products –** shall refer to tobacco products that may be consumed through heating tobacco, either electrically or through other means sufficiently to release an aerosol that can be inhaled, without burning or any combustion of the tobacco. HTPs include liquid solutions and gels that are part of the product and are heated to generate an aerosol; and

- **Vapor products –** shall mean electronic nicotine and non-nicotine delivery systems, which are a combination of (a) a liquid or gel, that transform into aerosol without combustion through the employment of mechanical or electronic heating element, batter or circuit that can be used to heat such solution or gel, and includes, but is not limited to; (b) a cartridge; (c) a tank; and (d) the device without a cartridge or tank. It is commonly known as nicotine salt/salt nicotine; and conventional 'freebase' or 'classic; nicotine, and other similar products: Provided, that all vapor products shall be covered by this law regardless of its nicotine content.

RA 11346 redefined cigars and cigarettes and provided for the meaning of vapor products. Meanwhile, RA 11467 redefined vapor products and deleted the individual meaning of ENDS/ ENNDS [2] provided by RA 11346. [3]

Bureau of Internal Revenue Issuances in Relation to RAs 11346 and 11467

- **RR 7-2021** – Prescribes the rules and regulations to implement the provisions of RA Nos. 11346 and 11467, relative to excise tax on alcohol products, tobacco products, heated tobacco products, vapor products, and disposition of Excise Tax collection (May 18, 2021)
- **RMC No. 24-2020** – Provides the transitory procedures for compliance with the Administrative Requirements in implementing the excise tax on alcohol and tobacco products provisions of RA 11346, as further amended by RA 10963 and for other purposes, as further amended by RA 11467 (March 6, 2020)
- **RMC No. 65-2020** – Circularizes the effectivity date of Republic Act (RA) No. 11467 entitled "An Act Amending Sections 109, 141, 142, 143, 144, 147, 152, 263, 263-A, 265 and 288-A, and Adding a New Section 290-A to RA No. 8424 as Amended, Otherwise Known as the National Internal Revenue Code of 1997, and for Other Purposes" (June 30, 2020)
- **RMC No. 128-2020** – Circularizes Joint Memorandum Circular (JMC) No. 003.2020 (Implementing Rules and Regulations of Heated Tobacco Products and Vapor Products as Prescribed by Republic Act Nos. 11346 and 11467) (December 7, 2020)

Enforcement and Implementation

The excise tax provisions were operationalized through the BIR's issuance of Revenue Memorandum Circular (RMC) No. 24-2020 on February 21, 2020, which provides transitory procedures for all taxpayers affected by the rules set forth in RA Nos. 10963 and 11346, as further amended by RA No. 11467.

The law also empowers the Food and Drug Administration (FDA) to regulate the production, importation, sale, packaging, advertising, and distribution of heated tobacco and vapor products.

The President vetoed the requirement of a court warrant before the BIR can enter any house, building, or place to investigate and search places where tobacco products are kept in order to efficiently enforce the provisions of RA No. 11467. He feels that the phrase "upon order of the Court" is superfluous since it limits the search and seizure powers of the BIR.

Persons who own imported products for which the applicable excise taxes have not been paid will have an additional penalty of not less than Php100,000.00 but not more than Php200,000.00 and imprisonment of not less than 60 days but not more than 100 days under Section 263 of the NIRC. Penalties will also be imposed to those sellers of heated tobacco products and vapor products at a price lower than the combined excise taxes and VAT.

Lastly, because there may be grounds to argue that RA No. 11467's effectivity should be retroactive to January 1, 2020, despite the fact that it was only signed into law by the President on January 22, 2020, the Department of Finance, through the BIR or Bureau of Customs, must issue rules on how to properly claim a refund under this law for taxpayers/importers who may have paid VAT in obtaining these medicines.

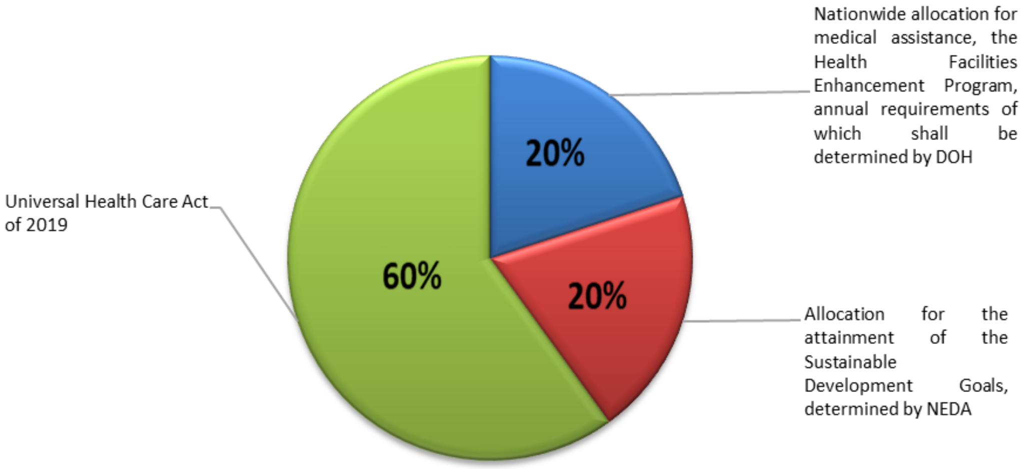
Allocations to National Health Care System

Previously approved tax measures, such as the Sin Tax Reform Act of 2012, RAs 11346, and 11467, as implemented by RR 7-2021, are designed to urge people to be healthier by restricting our intake of alcohol and tobacco, including vapes. The hope is that they will effectively address public health issues, as an increase in excise taxes on tobacco and alcohol goods will result in a proportionate increase in pricing, reducing demand for and usage of these products. The law intends for us to feel the weight of paying more in order to deter us from continuing to engage in our vices. Notably, the country's best-selling cigarette brand is now priced at P124 each pack.

Excise taxes will give more revenue to the government even if demand for these "sin" products declines. Tobacco and alcohol goods generated P149 billion and P77 billion in excise taxes in 2020, respectively. In 2021, BIR collected P82 billion from alcohol products and P172 billion from tobacco products. For 2022, the BIR' is expected to generate P346 billion in excise taxes, of which P199 billion will come from tobacco products and P94 billion from alcohol products, according to the latest Budget of Expenditures and Sources of Financing (BESF). [4]

In support to the national healthcare system, 60% of the expected revenue from the law will be allotted to the continuity of projects under the Universal Health Care Act signed last year. The remaining 40% will be divided equally for (1) nationwide medical assistance – the Health Facilities Program of the Department of Health (DOH), and (2) the attainment of the Sustainable Development Goals determined by the National Economic and Development Authority.

Revenues from Excise Tax on Alcohol, Tobacco and Vapor Products



Impact of the Sin Tax Laws

Despite the fact that tobacco and alcohol consumptions are known to be damaging to one's health and the environment, these products are still widely consumed throughout the country and the world.

As years pass, people get more innovative, developing a wide range of tobacco consuming methods and practices. E-cigarette businesses have expanded the appeal of their products by improving nicotine delivery efficiency and utilizing flavorings, all while continuing to aggressively sell and promote their goods.

During the COVID-19 pandemic, people have significantly changed drinking habits, shifting places of consumption from bars and restaurants to their own homes. For many people, alcohol is part of their social life, a life that has been significantly disrupted by COVID-19. Overall, most people did not change how much they drank but, among those who did, a larger proportion of people drank more. Alcohol sales in bars, pubs, restaurants and nightclubs plummeted because of the lockdowns and liquor bans. But alcohol consumption increased at home, with a significant increase in sales in retail or online stores.

Higher taxes encourage criminal groups to engage in tobacco and alcohol smuggling or illicit commerce, resulting in cheaper, untaxed contraband products becoming available to smokers and alcohol drinkers.

Reported Tobacco Smuggling, 2014 - 2021

Year, Place	Estimated Value	Remarks	Source Report
2016 nationwide	P16 B	2016 estimate	Philstar, Feb. 12, 2017
2014 2015 2018	P19.9 B P17.9 B P20.25 B	UA&P est. 2015 NCIPR – IPO est. 2018	"Special Report: Government cracks down…" by Mary Grace Padin, Philstar, March 4, 2019
2019			
Sulu Nationwide	P300 M P2.67B	From Malaysia Counterfeits	ABS-CBN, Oct. 29, 2019 DOF, Jan. 27, 2020
2020			
Cabiao, Nueva Ecija Davao, Manila Ports Naguilan, Isabela Nationwide (May 28 - July 15)	P1 B P235 M P1.3 B P2.2 B	Arrested 20 Chinese July alone Equipment, fake stamps Cigarette making machines	ABS-CBN, January 18, 2020 Philstar, July 27, 2020 DOF, Business Word, Aug. 17, 2020 PhilStar, August 18, 2020
Nationwide	P3 B+	January – August	MT, September 2, 2020
Zamboanga Port, Basilan Sulu, Tawi-Tawi (BaSulTa)	P195 M P350 M P1 B+	Fake cigarettes Materials cigarette making Fake tax stamps	BOC, GMA News, Sept. 12, 2020
Cebu Port Davao Port Zamboanga Port	P236 M P96.6 M P1.5 B+	August - Sept. alone P50 M destroyed Value destroyed	Sunstar, Oct. 20, 2020

Year, Place	Estimated Value	Remarks	Source Report
2020			
Visayas-Mindanao	P2 B+	Sept. 2019 to present	Iloilo News, Oct. 21, 2020
Nationwide	P 16-P18 B/yr	Foregone taxes	Philstart, Oct. 29, 2020
Cebu Port	P374 M	July – Sept. from China	Cebu Daily News, PDI, Nov. 10, 2020
Nationwide	P5.22 B	BOC seizures 2020	PDI Jan. 18, 2021; Jan. 19, 2021
2021			
Nationwide	P30 B a year	Cong. Salceda est.	PDI, GMA, March 1, 2021
Mabalacat, Pampanga	P300 M	Wender criminal group	PNA, June 25, 2021
San Simon, Pampanga	P1.0 B	Cigarette-making machines	

Source: https://www.bworldonline.com/tobacco-taxes-and-smuggling-in-the-philippines/

Lessons and Conclusions

The Philippines has implemented a number of legislation relating to tobacco and alcohol taxation. The goal is to limit consumption and avoid a growth in smokers and alcohol drinkers in the country while keeping government income at a set level. However, various sectors were impacted by the adoption of these rules, including alcohol and tobacco farmers/ growers, manufacturers manufacturers/processors, and end consumers.

Our laws should support farmers' welfare by providing production inputs, training, and financial assistance, particularly for those who abandon tobacco growing. Producers and farmers should be supported by tax policies that shield them from the negative health effects that come with farming.

The COVID-19 pandemic also changed people's lifestyles, including their drinking and smoking habits. It made some 40 percent of Filipino adults turn to alcohol, while 15 percent smoke tobacco, according to a survey of the Department of Health (DOH) that revealed unhealthy lifestyle habits among Filipinos.

Thus, long-term studies will be required to determine the full health effects of these initiatives. RA 11346 and RA 11467 are novel laws that would need time to implement and from which data on its efficacy as a public health measure can be gauged. Quoting Sir Austin Bradford Hill's landmark paper on environment and disease: "All scientific work is incomplete – whether it be observational or experimental. All scientific work is liable to be upset or modified by advancing knowledge. That does not confer on us a freedom to ignore the knowledge we already have, or to postpone the action that it appears to demand at a given time" (Hill 1965, p. 300). We will discover more in the coming years if these sin tax laws have fulfilled their objectives as a public health measure.

Footnotes:

1 Net Retail Price (NRP) is the retail price net of the value-added and excise taxes. The retail price is the price at which distilled spirits is sold in at least 5 major supermarkets or retail outlets. The initial retail price shall be provided by the manufacturer through a sworn statement and validated by the Bureau of Internal Revenue (BIR). The retail price shall be determined by the BIR through a biannual price survey under oath.

2 Electronic nicotine and non-nicotine delivery systems (ENDS/ ENNDS), which are combinations of non-tobacco containing e-liquids or refills which can contain up to 65 milligrams per milliliter of nicotine in the e-liquid or refill and an electronic delivery device to produce an aerosol, mist or vapor that users inhale by mimicking the act of smoking.

3 Tax Implications of Republic Act Nos. 11346 and 11467, Vol. XXXII, 4 July – August 2020. Accessed on 07 February 2022.

4 Department of Budget and Management - Budget of Expenditures and Sources of Financing FY 2022.

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Photo by the Bureau of Customs PH (www.facebook.com/BureauOfCustomsPH)

In This Corner:

Customs Issuances and Tax Laws Passed in the 18th Congress

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The 18th Congress produced several tax laws that involved operations of the Bureau of Customs, thus necessitating the issuance of certain orders or circulars regarding these enactments. The table below shows the tax laws passed during the 18th Congress and the Customs issuances relating to the same, to wit:

TAX LAW	CUSTOMS ISSUANCE
RA 11467 – Sin Tax Law of 2020	**MISTG Memo No. 01-2021** (January 4, 2021) • This memo is regarding the implementation of RA 11467; • It states that the updating of the excise taxes rates for the products covered by RA 11467 has been implemented in the E2M System effective 5 January 2021. • The importation of the covered products shall comply with the proper importation procedure as prescribed by the BOC including the presentation of the *Authority to Release Imported Goods* (ATRIG) by the BIR pursuant to RMO No. 35-2022, and circularized in CMO No. 34-2019, and subject to the payment of the corresponding excise taxes, VAT, customs duties, as may be applicable.
RA 11469 – Bayanihan Act 1 **RA 11519 – Bayanihan Act 2**	1. **CAO 7-2020** (March 30, 2020): *Tax and Duty-Exempt Importations under Section 4(o) of "Bayanihan to Heal as One Act"* • It shall cover importations of supplies and equipment provided in Section 4, paragraph (o) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal as One Act." • Manufacturers included in the Master List of the Department of Trade in Industry and other incentive granting bodies of the National Government may avail of the tax and duty exemption provided under Section 4(o) of the Act for their importation of materials necessary for the production of health equipment and supplies deemed as critical or needed to carry out the objective of the Act. (Sec. 5) 2. **CAO 12-2020** (September 18, 2020): *Implementing Rules and Regulations for Section 4(S), 4(CC), 4(ZZZZ), and Section 18 of "Bayanihan to Heal as One Act"* • It covers importations of health products, equipment, or supplies in Section 4, paragraphs (s), (cc), and (zzz) and Section 18 of Republic Act No. 11469, otherwise known as "Bayanihan to Recover as One Act". • To establish an informed compliance regime for importers and/or manufacturers entitled to exemption from import taxes, duties and fees under RA 11469.

TAX LAW	CUSTOMS ISSUANCE
RA 11469 – Bayanihan Act 1 **RA 11519 – Bayanihan Act 2**	• To facilitate speedy customs clearance of such tax and/or duty exempt importations, without sacrificing the Bureau's other core functions of revenue collection and border security through application of risk management techniques and Information and Communication Technology (ICT) enabled monitoring and control system. (Sec. 1) 3. **CMO 10-2020** (April 8, 2020) • This provided for the rules re summary abandonment proceedings during Enhanced Community Quarantine pursuant to *Section 1, Rule X of the Joint Administrative Order No. 20-01.* This aims to prevent congestion at the ports which may unduly cause disruption in the supply chain and impede availability of basic necessities and essential goods.
RA 11534 – CREATE Law	**CMC 131-2021** (June 17, 2021): *FDA's Updates & List of VAT-Exempt Products/Medicines under BIR Revenue Regulations No. 04-2021* • This is regarding the list of VAT-exempt products/medicines pursuant to item (aa) Section 2 of the BIR Revenue Regulations No. 4-2021. • This is in line with the enactment of RA 11534 or the CREATE law. • The list includes medicines for hypertension, cancer, mental illnesses, tuberculosis, kidney diseases, diabetes, and high cholesterol; and medicines and medical devices for COVID-19.

Customs issuances are a necessary step in the proper implementation of laws that involve importation and other matters under the mandate of the BOC. These issuances intend to inform Customs officials and those dealing with them regarding the changes, and new procedures or system brought about by the new law. Without these issuances, conflicts and possible delay in the different customs processes may result, which in turn may hinder the economy and hamper the release of vital supplies and other resources.

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As an innovation for the daily Work-From-Home attendance, the officers and staff have been submitting photos or videos at around 6:00pm based on the selected topic such as events, memories, or activities. We call the same "GV GV" or Good Vibes.

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