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Sugar sweetened beverages: To drink or not to drink

by

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The eventual passage of Senate Bill No. 2987, which provides for the exemption from the value-added tax of raw sugar and raw cane sugar, will indeed be a victory for those in the sugar industry. However, this victory might be short lived as another tax measure is looming in the horizon that might dampen our holiday spirits especially for those lovers of soft drinks and other sugary drinks.

House Bill No. 3365, authored by Rep. Estrellita Suansing, seeks to impose an excise tax of ten pesos (P10) on **sugar sweetened beverages** (SSB) for every liter of volume capacity. The House Committee on Ways and Means, chaired by Rep. Miro Quimbo, has already approved said proposal and has filed a substitute bill for the same.

SSB refers to a non-alcoholic beverage that contains caloric sweeteners/added sugar or artificial/ noncaloric sweetener. It may be in liquid or solid mixture, syrup or concentrates that are added to water or other liquids to make a drink. This covers the following types of drinks:

- Carbonated drink or soft drinks;
- Fruit drinks;
- Ades, sports and energy drinks;
- Sweetened tea;
- Coffee; and
- All ready-to-drink non-alcoholic beverages in powder form with added natural or artificial sugar.

However, the following goods are not covered by this proposal:

- All 100% natural fruit and vegetable juices;
- Yogurt and fruit flavored beverages;
- Meal replacement drinks and weight loss products; and
- All milk products, infant formula, and milk alternatives such as soy or almond milk and including flavored milk such as chocolate.

Similar to the approach used in pushing for the Sin Tax law or RA 10351, this SSB bill is being presented primarily as a **health measure** and not as a revenue measure. The proposed measure aims to promote good health by encouraging Filipinos to avoid sugary beverages like soda, and instead choose healthier options like water or fresh juices. It is hoped that this measure will also minimize the incidence of obesity, and other non-communicable diseases such as diabetes that are linked to high sugar consumption.

Be that as it may, this proposed measure is expected to generate at least **P10.5 billion** in revenues during its first year of implementation according to the Department of Finance (DOF). The generated revenues shall be used to create a **Health Promotion Fund** wherein 50% of the total tax collection shall accrue to the General Fund, and the remaining 50% shall be distributed as follows:

- 10% to the Department of Health (DOH) for the provision of medicine and medical assistance to indigent diabetic patients;
- 10% to the Department of Education (DepEd) in providing access to potable water in public schools (water fountain), and sports facilities, and for community-based obesity, diabetes, dental cares prevention campaigns, and other diet-related health awareness programs;
- 23% to the Department of Interior and Local Government (DILG) for the provision of potable water supply under its *Sagana at Ligtas na Tubig sa Lahat* (SALINTUBIG) Program and *Grassroots Participatory Planning and Budgeting Priority LGUs;*
- 2% to the Food and Nutrition Research Institute;
- 2% to the BIR for tax administration; and
- 3% to the Food and Drug Administration.

Affected sectors such as beverage makers, led by the *Beverage Industry Association of the Philippines* (BIAP), are opposing this proposed tax; they argue that it will create a negative impact on the economy. According to the BIAP, instead of generating additional revenues for the government, the proposed tax will result in a net revenue loss of almost **P77.4 billion.** In addition to this, beverage makers will suffer a sales drop of up to P162.6 billion if this would be implemented. This substantial drop in sales will also cause retrenchment in the beverage industry (141,949 direct jobs) as well as in other related industries like packaging, trucking and retail (740,187 indirect jobs).

The proposed SSB tax has a lot of *pros* and *cons* as submitted by the advocates and oppositors of this bill. It is true that both sides gave valid arguments that deserve to be looked into considering its serious economic implications. As the bill is being presented as a health measure, it is only proper that their assertion that a direct correlation between high sugar consumption and the incidence of obesity as well as other health-related problems like diabetes or dental caries is substantiated by credible studies.

All soda lovers may breathe a sigh of relief since, as of this writing, there is no counterpart measure of this bill in the Senate. Thus, the chances of this bill being enacted into law during this Christmas/holiday season are very slim. So, hooray for the holidays for all those who are planning to include carbonated drinks and other sweetened beverages as part of their menus for this festive season!

by

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The coming holiday season is always filled with a lot of family gatherings, and reunions. As is customary, Filipinos always have something sweet to finish off every festive gathering. This can range from the traditional sweet delicacies such as buko salad or leche flan to the more elaborate and fancy cakes or pastries. It is no wonder that next to rice, sugar is one of the most essential basic commodities in a Filipino household.

It is perhaps for this reason that Congress has always included raw sugar or raw cane sugar as one of the commodities exempted from the payment of the value-added tax or VAT. A review of previous laws on this matter will clearly show that raw cane sugar has always been considered as VAT exempt, to wit:

1. **Section 1 of Executive Order (EO) No. 273**, issued on 25 July 1987, otherwise known as the original VAT Law, indicates the list of VAT-exempt transactions to include "the sale or importation in their original state of agricultural and marine food products". Food products are in their original state "even if they have undergone the simple processes of preparation or preservation for the market, such as freezing, drying, salting, smoking or stripping. Polished and/or husked rice, corn grits and raw cane sugar shall be considered in their original state";

2. **Republic Act (RA) No. 7716,** enacted on 5 May 1994, otherwise known as the *Expanded Value-Added Tax Law* (E-VAT), provides that "agricultural and marine food products in their original state" are those that "even if they have undergone the simple processes of preparation or preservation for the market, such as freezing, drying, salting, smoking or stripping. Polished and/or husked rice, corn grits, locally produced raw cane sugar and ordinary salt shall be considered in their original state"; and

3. **Section 109(A) of the National Internal Revenue Code (NIRC), as amended by RA 9337**, enacted on 24 May 2005, otherwise known as the *Reformed Value-Added Tax Law* (R-VAT), provides the VAT-exemption of the sale or importation of agricultural and marine food products in their original state. The second paragraph clarifies that raw cane sugar and molasses, as well as polished or husked rice, corn grits, ordinary salt and copra as products in their original state.

   Section 109(F) of the same Code, also grants the VAT exemption of services by agricultural contract growers and milling for others of sugar cane into raw sugar.

The Bureau of Internal Revenue (BIR), however, explored an ambiguity in our law and interpreted it in such a way that will authorize the Bureau to collect more taxes from the sugar industry. The ambiguity discovered by the BIR revolves around the definition of what is considered as *raw sugar* or *raw cane sugar*. The Bureau issued several regulations that limited the definition of *raw sugar* as provided under existing laws and by doing so, subjected this basic commodity to VAT liability. Under **Revenue Regulations No. 13-2013** (dated 20 September 2013), the BIR defined *raw sugar* as referring only to *muscovado* sugar. This means that all other types of sugar that underwent the centrifugal process of producing sugar are no longer exempt from VAT. This was followed by several revenue regulations, which likewise provided a myriad of definitions of what is considered *raw sugar* and *raw cane sugar*. The main objective of all these issuances was to remove the VAT exemption of this essential commodity. Further, the BIR adopted three criteria in classifying raw cane sugar for purposes of VAT exemption in **Revenue Regulations No. 8-2015** (dated 27 May 2015), and these are: (1) only one stage of filtering and centrifugal process; (2) color is greater than 800 ICU; and (3) a polarimeter reading of less than 99.5°.

Senate Bill No. 2987, under Committee Report No. 285, aims to remedy this controversy by establishing a **single criterion** in defining this basic commodity. The amendment contained in this bill will harmonize our law with international standards wherein only the **99.5° polarization standard** is used in defining raw sugar or raw cane sugar. This proposed measure seeks to amend Section 109 (A) of the NIRC by adding a new paragraph that will provide the following definition for *raw sugar* and *raw cane sugar*, to wit:

> **"FOR PURPOSES OF THIS SECTION, THE TERM 'RAW SUGAR' MEANS SUGAR WHOSE CONTENT OF SUCROSE BY WEIGHT, IN THE DRY STATE, CORRESPONDS TO A POLARIMETER READING OF LESS THAN 99.5° AND THE TERM 'RAW CANE SUGAR' REFERS TO PARTIALLY PURIFIED SUCROSE, WHICH IS CRYSTALLISED FROM PARTIALLY PURIFIED CANE JUICE, WITHOUT FURTHER PURIFICATION, BUT WHICH DOES NOT PRECLUDE CENTRIFUGATION OR DRYING, AND WHICH IS CHARACTERIZED BY SUCROSE CRYSTALS COVERED WITH A FILM OF CANE MOLASSES."**

The above bill has already been sponsored by the Hon. Sergio Osmeña on 4 November 2015 at the Senate Plenary session. The counterpart measure of this bill, House Bill No. 5713, was already passed and approved on third reading by the Lower House on 1 September 2015. It is hoped that the Senate will likewise prioritize the immediate passage of this bill so as to finally put to rest this issue. Verily, the loophole in the definition of raw sugar or raw cane sugar should be resolved so as to firmly establish their VAT exemption, and to leave no room for further interpretation.

PROPOSED TARIFF MEASURES ON BALIKBAYAN BOXES

by

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The holiday season is fast approaching with it the spirit of giving cometh. Filipinos everywhere especially those abroad will be making their gift lists for their love ones as the influx of returning residents and Overseas Filipino Workers (OFWs) sojourning to the country increases. It is also at this time when *balikbayan boxes* pour into the country with noticeable frequency, as the Filipino culture and tradition of strengthening family ties is expressed in gift-giving.

Balikbayan boxes are packages of personal effects and/or *pasalubongs* sent by Filipinos residing or working abroad to their families or relatives in the Philippines.

Residents and OFWs sending balikbayan boxes

Under the current Tariff and Customs Code of the Philippines (TCCP), Filipinos and OFWs (including tourists) can send balikbayan boxes and/or bring home personal and household effects to their families not to exceed the dutiable value of Ten thousand pesos (P10,000.00).

The proposed Customs Modernization and Tariff Act (CMTA) (SB 2968, which passed on 2nd Reading by the Senate on December 14, 2015) aims to update said standards under Section 800(f-1) by increasing the dutiable value at One hundred fifty thousand pesos (P150,000.00), subject to the following conditions:

1. The boxes shall contain personal and household effects that shall neither be in commercial quantities nor intended for barter, sale or hire;
2. Filipino residents or OFWs can avail of the privilege up to three (3) times in a calendar year only; and
3. The Secretary of Finance, shall adjust the dutiable value every three (3) years after the effectivity of the Act using the Consumer Price Index (CPI) as published by the Philippine Statistics Authority (PSA).

Residents returning from abroad

For returning Filipino nationals who have stayed in a foreign country for a period of at least ten (10) years, the TCCP states that they can bring home personal and household effects such as but not limited to jewelry and other articles of luxury formally exported from the Philippines provided that said articles should neither be in commercial quantities, nor intended for barter, sale or hire and that the dutiable value must not exceed Ten thousand pesos (P10,000.00).

Under the proposed CMTA bill, the dutiable value is adjusted to Three hundred fifty thousand pesos (P350,000.00) upon compliance with the following conditions:

1. The boxes shall contain personal and household effects that shall neither be in commercial quantities nor intended for barter, sale or hire;
2. The returning resident has not availed of the privilege within Three hundred sixty-five (365) days prior to arrival in the country; and
3. The Secretary of Finance, shall adjust the dutiable value every three (3) years after the effectivity of the Act using the CPI as published by the PSA.

For returning residents who have stayed in a foreign country for at least five (5) years, the dutiable value for the articles which they can bring home is Two hundred fifty thousand pesos (P250,000.00);

Regarding OFWs, in addition to the privileges cited above they can also bring home tax and duty free appliances and other durables as long as they follow these conditions:

1. OFWs can bring home said appliances only once in a given calendar year accompanying them or within a reasonable time which in no case shall exceed sixty (60) days after their arrival; and
2. The dutiable value of the duty-free appliances or other personal and household effects is at One hundred fifty thousand pesos (P150,000.00).

Considering the magnitude of the flow of *balikbayan boxes* which according to the Bureau of Customs is estimated at 1,500 containers every month and translating to around 18,000 containers or roughly 7.2 million boxes a year, it is of paramount importance that the proposed CMTA bill be approved. The bill will align existing guidelines with changing conditions resulting in a more joyous atmosphere for Filipino families as more gifts will be placed inside the proverbial balikbayan boxes.


PHOTO FROM BALIKBAYAN CARGO SERVICES

TAX NEWS DIGEST

“PH ‘ease of doing business’ rankings slips. *Down to 103rd spot, officials assail WB methodology”*

“The Philippines’ ranking slipped in the World Bank’s latest report on the Ease of Doing Business globally—an oft-cited indicator by the government to illustrate progress—raising alarm bells for officials who immediately assailed the report’s reliability and predictability.

“Conditions continued to improve in the Philippines, making it marginally easier for small and medium enterprises to set up shop and compete in the country. However, the country’s standing relative to the rest of the world declined several spots.

“Government and private sector officials also placed part of the blame on changes in how scores were computed.

“Finance Secretary Cesar V. Purisima said this could have dire consequences on the Philippines’ ability to attract a higher level of much-needed investments.

“Erratic methodological changes year after year severely threatens the report’s credibility as a reliable global measure of competitiveness,” Secretary Purisima said in a statement.

“He likewise described World Bank officials as bureaucrats “*sitting in comfortable offices too far away to fully understand contexts and appreciate reforms being undertaken*.” (PDI, 29 October 2015)

“DBCC: Tax cut proposals pose risk to PH growth”

“Pending measures in Congress aimed at slashing taxes coupled with bills that, once enacted, would further increase expenditures, pose risks to the country’s economic growth, according to the Cabinet-level, interagency Development Budget Coordination Committee (DBCC).

“The DBCC said the government could not afford to lose almost half a trillion pesos in combined revenue from tax-reduction measures on top of potential additional budgetary requirements for next year.

Senator Loren Legarda, chair of the Finance Committee, talks to Budget Secretary Butch Abad (middle) and Finance Secretary Cesar Purisima (left) before the start of the Development Budget Coordination Committee (DBCC) briefing on the 2016 National Expenditure Program (NEP).

“A number of pending revenue measures and expenditure bills in both Houses of Congress would have a negative impact on the revenue and budget of the government. Without compensating revenue measures, the estimated revenue losses and budgetary requirements of P369.38 billion to P488.11 billion are equivalent to 2.40 to 3.17 percent of GDP (gross domestic product), posing a risk to the present economic momentum and fiscal stability,” the DBCC said in its fiscal risks statement for 2015-2016 released last week.

Based on the computation of the Department of Finance (DOF), the pending tax-reduction bills filed during the 16th Congress would result into foregone revenue of P23.66 billion to P37.36 billion or 0.15-0.24 percent of the projected 2016 GDP.

By: Clinton S. Martinez
- Photo by : Mr. Romy Bugante, www.cnnphilippines.com

"The additional budgetary requirements, meanwhile, would likely amount to a bigger P345.72 billion to P450.75 billion or 2.25-2.93 percent of next year's GDP. This would include a P150-billion capital infusion into the *Bangko Sentral ng Pilipinas* under the proposed BSP Charter amendment bill, the DBCC explained.

"In this regard, the DBCC said the tax system 'should be reviewed in a holistic and comprehensive manner to ensure that the country has sufficient resources to finance the much needed physical and social infrastructures.'

President Pro-Tempore Ralph Recto, Senate President Franklin Drilon and Senator Koko Pimentel attend the Development Budget Coordination Committee .. (www.senate.gov.ph)

"The DOF has been proposing a comprehensive tax reform package, which was being pitched to legislators as early as late last year, aimed at easing the burden of income taxpayers while also slapping new or higher taxes on consumption.

"To ensure that foregone revenues would be compensated for in case legislation aimed at bringing down income tax rates progresses, part of the DOF's comprehensive tax reform package proposal includes raising excise taxes on oil, vehicles, as well as expanding the VAT to 14 percent from 12 percent at present.

"One of the four objectives of the proposed comprehensive tax reform package was enhancing the Bureau of Internal Revenue (BIR) and the Bureau of Customs' (BOC) administrative capacity to collect taxes.

"To do so, the DOF was proposing enhancement of measures against base erosion and profit-sharing by repealing the Bank Secrecy Law for taxation purposes and the inclusion of tax evasion as predicate crime to money laundering, as well as providing for automatic exchange of information.

"DOF estimates showed that only about 400,000 of the 1.8 million self-employed in the country pay correct taxes. Self-employed individuals should have been paying P300 billion to P500 billion in taxes each year, but the BIR could only collect P15 billion.

"Also proposed by the DOF were enhancements of compliance provisions and strengthening of enforcement measures by increasing fines and penalties; mandatory use of the tax identification number or TIN in transacting with the government; exempting the BIR and the BOC from the Salary Standardization Law; and allowing the two biggest tax-collection agencies to retain a certain percentage of their collections as budget for modernization." (PDI, 2 November 2015)

"'Flawed' WB report a 'disservice' to PH"

"Finance Secretary Cesar V. Purisima raised "grave concerns" over the constant changes in the annual World Bank Doing Business Report, which he said was a "disservice" to countries like the Philippines obsessed with improving their competitiveness rankings.

"In a five-page letter dated Nov. 5, Purisima told World Bank Group President Jim Yong Kim that the 2016 Doing Business Report 'again brings to the fore its most glaring flaws and inconsistencies, doing member-countries like the Philippines a great disservice by damaging investor perceptions while at the same time serving as an unhelpful and unreliable basis for further improvement.'

"The latest report showed the country slipped six spots to 103rd place from 97th last year.

"In the annual report, countries are being ranked by the World Bank based on several indicators such as starting a business, getting construction permits, registering properties and paying taxes—hence serving as a gauge for investors to determine the ease of doing business in a country.

"The Philippines is keen to use competitiveness studies as tools for improvement, but reports like the Doing Business Report lose their utility and value if methodologies change almost yearly, and if they are inconsistent with majority of the other reports gauging improvement across a variety of indicators, Purisima added." (PDI, 10 November 2015)

"Foreign investments in PH rose sharply in Aug. Net inflow hit $526M. *highest since December 2014, BSP data show*"

"Long-term foreign investments in the Philippines rose sharply in August to reach their highest monthly level for the year as multinationals pumped more cash into their local affiliates.

"August's increase in foreign direct investments (FDI) was indicative of sustained confidence in the Philippine economy, which has been one of the region's top performers this year.

"The increase lifted the country's eight month FDIs above the long-term historical average. Compared to neighbors in the region, the Philippines remains an underperformer in terms of attracting foreign investments.

"In August, net inflows of FDIs reached $526 million, the highest for any single month since December 2014, *Bangko Sentral ng Pilipinas* (BSP) data showed. This was an increase of 76.3 percent year-on-year.

"This is on account of the more than seven-fold increase in investments in debt instruments or inter-company borrowings from multinationals by subsidiaries or affiliates in the Philippines, the BSP said in a statement.

"The BSP said multinationals lent $431 million to local affiliates in August, up from last year's $59 million. This increased lending was more than enough to offset a decline in foreign equity investments, which declined 81.2 percent to $45 million." (PDI, 11 November 2015)

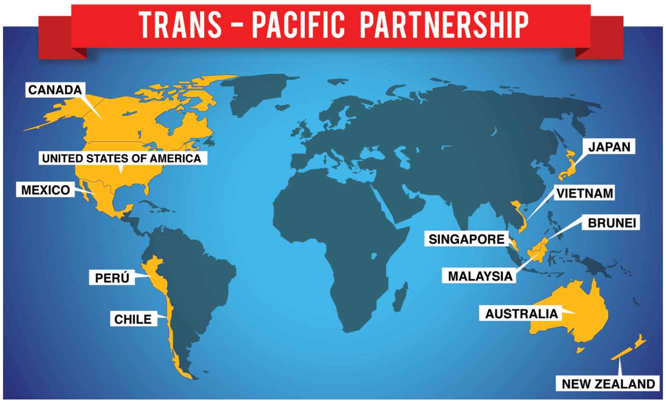
"Exports post steepest drop in 4 years. *Neda chief urges PH to explore TPP membership*"

"Merchandise exports posted their fastest decline in four years last September as the value of outbound shipments dropped 24.7 percent to $4.4 billion mainly due to weak global demand, the government reported on Tuesday.

"Economic Planning Secretary Arsenio M. Balisacan has thus urged that the Philippines "maximize the potential of free trade agreements" such as joining the United States-led Trans-Pacific Partnership (TPP) to expand export markets.

"The slide of almost a fourth in September—the fastest drop since September 2011 or at the height of the global recession—from $5.8 billion a year ago brought the total value of exports at the end of the first nine months to $43.7 billion, down 6.9 percent from almost $47 billion in end-September last year, preliminary Philippine Statistics Authority (PSA) data showed.

"Except for the month of March, exports have been declining year-on-year every month since December last year.



"This mirrors a still sluggish external demand due to weak global economic activity and depressed commodity prices, which continue to strain exports growth, the country's chief economist said in a statement." (PDI, 11 November 2015)

VISAYAS GEOTHERMAL POWER COMPANY (VGPC), Petitioner vs. COMMISSIONER OF INTERNAL REVENUE (CIR), Respondent (G.R. No. 197525; June 4, 2014)

Facts:

Petitioner filed an administrative claim for refund with the Bureau of Internal Revenue (BIR), Ormoc City District Office, "*x x x on the ground that it was entitled to recover excess and unutilized input VAT payments for the four quarters of taxable year 2005, pursuant to Republic Act (R.A.) No. 9136, which treated sales of generated power subject to VAT to a zero percent (0%) rate starting June 26, 2001.*" RA 9136 is the Electric Power Industry Reform Act of 2001 (EPIRA). Subsequently, while the above claim was pending, VGPC filed its judicial claim with the CTA.

The CTA Second Division partially granted the petition, reducing the amount to the one that was substantiated. The CTA *En Banc* reversed and set aside the decision and resolution and dismissed the original petition for review for having been filed prematurely.

Issue/s:

I

The CTA En Banc erred in finding that the 120-day and 30-day periods prescribed under Section 112(D) of the 1997 Tax Code are jurisdictional and mandatory in the filing of the judicial claim for refund. The CTA-Division should take cognizance of the judicial appeal as long as it is filed with the two-year prescriptive period under Section 229 of the 1997 Tax Code.

II

The CTA En Banc erred in finding that Aichi prevails over and/or overturned the doctrine in Atlas, which upheld the primacy of the two-year period under Section 229 of the Tax Code. The law and jurisprudence have long established the doctrine that the taxpayer is duty-bound to observe the two-year period under Section 229 of the Tax Code when filing its claim for refund of excess and unutilized VAT.

III

The CTA En Banc erred in finding that Respondent CIR is not estopped from questioning the jurisdiction of the CTA. Respondent CIR, by her actions and pronouncements, should have been precluded from questioning the jurisdiction of the CTA-Division.

IV

The CTA En Banc erred in applying Aichi to Petitioner VGPC's claim for refund. The novel interpretation of the law in Aichi should not be made to apply to the present case for being contrary to existing jurisprudence at the time Petitioner VGPC filed its administrative and judicial claims for refund.

Held:

1. Judicial claim is not premature. –

"It has been definitively settled in the recent En Banc case of CIR v. San Roque Power Corporation (San Roque), that it is Section 112 of the NIRC which applies to claims for tax credit certificates and tax refunds arising from sales of VAT-registered persons that are zero-rated or effectively zero-rated, which are, simply put, claims for unutilized creditable input VAT.

"Thus, under Section 112(A), the taxpayer may, within 2 years after the close of the taxable quarter when the sales were made, via an administrative claim with the CIR, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Under Section 112(D), the CIR must then act on the claim within 120 days from the submission of the taxpayer's complete documents. In case of (a) a full or partial denial by the CIR of the claim, or (b) the CIR's failure to act on the claim within 120 days, the taxpayer may file a judicial claim via an appeal with the CTA of the CIR decision or unacted claim, within 30 days (a) from receipt of the decision; or (b) after the expiration of the 120-day period.

***"The 2-year period under Section 229 does not apply to appeals before the CTA in relation to claims for a refund or tax credit for unutilized creditable input VAT**. Section 229 pertains to the recovery of taxes erroneously, illegally, or excessively collected. San Roque stressed that "input VAT is not 'excessively' collected as understood under Section 229 because, at the time the input VAT is collected, the amount paid is correct and proper." It is, therefore, Section 112 which applies specifically with regard to claiming a refund or tax credit for unutilized creditable input VAT."*

2. Atlas doctrine has no relevance to the 120+30 day period for filing judicial claim. –

"Although the core issue of prematurity of filing has already been resolved, the Court deems it proper to discuss the petitioner's argument that the doctrine in Atlas, which allegedly upheld the primacy of the 2-year prescriptive period under Section 229, should prevail over the ruling in Aichi regarding the mandatory and jurisdictional nature of the 120+30 day period in Section 112.

"In this regard, it was thoroughly explained in San Roque that the Atlas doctrine only pertains to the reckoning point of the 2-year prescriptive period from the date of payment of the output VAT under Section 229, and has no relevance to the 120+30 day period under Section 112, to wit:

*"The Atlas doctrine, which held that claims for refund or credit of input VAT must comply with the two-year prescriptive period under Section 229, should be **effective only from its promulgation on 8 June 2007 until its abandonment on 12 September 2008 in Mirant.** The Atlas doctrine was limited to the reckoning of the two-year prescriptive period from the date of payment of the output VAT. Prior to the Atlas doctrine, the two-year prescriptive period for claiming refund or credit of input VAT should be governed by Section 112(A) following the verba legis rule. The Mirant ruling, which abandoned the Atlas doctrine,*

adopted the verba legis rule, thus applying Section 112(A) in computing the two-year prescriptive period in claiming refund or credit of input VAT.

"The Atlas doctrine has no relevance to the 120+30 day periods under Section 112 (C) because the application of the 120+30 day periods was not in issue in Atlas. The application of the 120+30 day periods was first raised in Aichi, which adopted the verba legis rule in holding that the 120+30 day periods are mandatory and jurisdictional. The language of Section 112 (C) is plain, clear, and unambiguous. When Section 112(C) states that "the Commissioner shall grant a refund or issue the tax credit within one hundred twenty (120) days from the date of submission of complete documents," the law clearly gives the Commissioner 120 days within which to decide the taxpayer's claim. Resort to the courts prior to the expiration of the 120-day period is a patent violation of the doctrine of exhaustion of administrative remedies, a ground for dismissing the judicial suit due to prematurity. Philippine jurisprudence is awash with cases affirming and reiterating the doctrine of exhaustion of administrative remedies. Such doctrine is basic and elementary.

3. Aichi not applied prospectively. –

"Petitioner VGPC also argues that Aichi should be applied prospectively and, therefore, should not be applied to the present case. This position cannot be given consideration.

"Article 8 of the Civil Code provides that judicial decisions applying or interpreting the law shall form part of the legal system of the Philippines and shall have the force of law. The interpretation placed upon a law by a competent court establishes the contemporaneous legislative intent of the law. Thus, such interpretation constitutes a part of the law as of the date the statute is enacted. It is only when a prior ruling of the Court is overruled, and a different view adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith.

"Considering that the nature of the 120+30 day period was first settled in Aichi, the interpretation by the Court of its being mandatory and jurisdictional in nature retroacts to the date the NIRC was enacted. It cannot be applied prospectively as no old doctrine was overturned.

"The petitioner cannot rely either on the alleged jurisprudence prevailing at the time it filed its judicial claim. The Court notes that the jurisprudence relied upon by the petitioner consists of CTA cases. It is elementary that CTA decisions do not constitute precedent and do not bind this Court or the public. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system."

4. CIR not stopped. –

"It is a well-settled rule that the government cannot be estopped by the mistakes, errors or omissions of its agents. It has been specifically held that estoppel does not apply to the government, especially on matters of taxation. Taxes are the nation's lifeblood through which government agencies continue to operate and with which the State discharges its functions for the welfare of its constituents. Thus, the government cannot be estopped from collecting taxes by the mistake, negligence, or omission of its agents. Upon taxation depends the ability of the government to serve the people for whose benefit taxes are collected. To safeguard such interest, neglect or omission of government officials entrusted with the collection of taxes should not be allowed to bring harm or detriment to the people."

The decision of the CTA Former Second Division of April 17, 2009 is reinstated. Hence, the CIR is hereby:

*"**ORDERED TO REFUND** or, in the alternative, **TO ISSUE A TAX CREDIT CERTIFICATE**, in favor of the petitioner the amount of SEVEN MILLION SIX HUNDRED NINETY NINE THOUSAND THREE HUNDRED SIXTY SIX PESOS AND 37/100 (P7,699,366.37) representing unutilized input VAT paid on domestic purchases of non-capital goods and services, services rendered by non-residents, and importations of non-capital goods for the first to fourth quarters of taxable year 2005."*

COMMISSIONER OF INTERNAL REVENUE (CIR), Petitioner, vs. THE INSULAR LIFE ASSURANCE CO. LTD., Respondent, G.R. No. 197192.

Facts:

Respondent was assessed for deficiency documentary stamp taxes (DST) on its premiums on direct business/sums assured for calendar year 2002, in the amount P92,934,359.21.

The CIR maintains that since Insular is not registered with the Cooperative Development Authority (CDA), it should not be considered as a cooperative company that is exempt under Section 199(a) of the Tax Code, as amended.

Issue:

"*WHETHER OR NOT THE CTA EN BANC ERRED IN RULING THAT RESPONDENT IS A COOPERATIVE AND THUS EXEMPT FROM DOCUMENTARY STAMP TAX*."

Held:

The SC gave the following explanation:

"First, the NIRC of 1997 does not require registration with the CDA. No tax provision requires a mutual life insurance company to register with that agency in order to enjoy exemption from both percentage and DST. Although a provision of Section 8 of the Revenue Memorandum Circular (RMC) No. 48-91 requires the submission of the Certificate of Registration with the CDA before the issuance of a tax exemption certificate, that provision cannot prevail over the clear absence of an equivalent requirement under the Tax Code.

"The respondent correctly pointed out that in other provisions of the NIRC, registration with the CDA is expressly required in order to avail of certain tax exemptions or preferential tax treatment - a requirement which is noticeably absent in Section 199 of the NIRC. Quoted below are examples of cooperatives which are expressly mandated by law to be registered with the CDA before their transactions could be considered as exempted from value added tax:

"Sec. 109. Exempt Transactions. – The following shall be exempt from the value-added tax:

"x x x

*"(r) Sales by **agricultural cooperatives duly registered with the Cooperative Development Authority** to their members as well as sale of their produce, whether in its original state or processed form, to non-members; their importation of direct farm inputs, machineries and equipment, including spare parts thereof, to be used directly and exclusively in the production and/or processing of their produce;*

*"(s) Sales by **electric cooperatives duly registered with the Cooperative Development Authority** or National Electrification Administration, relative to the generation and distribution of electricity as well as their importation of machineries and equipment, including spare parts, which shall be directly used in the generation and distribution of electricity;*

*"(t) Gross receipts from lending activities by **credit or multi-purpose cooperatives duly registered with the Cooperative Development Authority** whose lending operation is limited to their members;*

*"(u) Sales by **non-agricultural, non-electric and non-credit cooperatives duly registered with the Cooperative Development Authority**: Provided, That the share capital contribution of each member does not exceed Fifteen thousand pesos (P15,000) and regardless of the aggregate capital and net surplus ratably distributed among the members;*

"x x x

"This absence of the registration requirement under Section 199 clearly manifests the intention of the Legislative branch of the government to do away with registration before the CDA for a cooperative to benefit from the DST exemption under this particular section.

"Second, the provisions of the Cooperative Code of the Philippines do not apply. The history of the Cooperative Code was amply discussed in Sunlife where it was noted that cooperatives under the old law, Presidential Decree (P.D.) No. 175 "referred only to an organization composed primarily of small producers and consumers who voluntarily joined to form a business enterprise that they themselves owned, controlled, and patronized. The Bureau of Cooperatives Development — under the Department of Local Government and Community Development (later Ministry of Agriculture) — had the authority to register, regulate and supervise only the following cooperatives: (1) barrio associations involved in the issuance of certificates of land transfer; (2) local or primary cooperatives composed of natural persons and/or barrio associations; (3) federations composed of cooperatives that may or may not perform business activities; and (4) unions of cooperatives that did not perform any business activities. Respondent does not fall under any of the abovementioned types of cooperatives required to be registered under [P.D. No.] 175.

"Thus, when the subsequent law, R.A. No. 6939, concerning cooperatives was enacted, the respondent was not covered by said law and was not required to be registered, viz:

> ***"When the Cooperative Code was enacted years later, all cooperatives that were registered under PD 175 and previous laws were also deemed registered with the CDA. Since respondent was not required to be registered under the old law on cooperatives, it followed that it was not required to be registered even under the new law**.*
>
> *"x x x **Only cooperatives to be formed or organized under the Cooperative Code needed registration with the CDA**. x x x.*

"The distinguishing feature of a cooperative enterprise is the mutuality of cooperation among its member-policyholders united for that purpose. So long as respondent meets this essential feature, it does not even have to use and carry the name of a cooperative to operate its mutual life insurance business. Gratia argumenti that registration is mandatory, it cannot deprive respondent of its tax exemption privilege merely because it failed to register. The nature of its operations is clear; its purpose well-defined. Exemption when granted cannot prevail over administrative convenience.

"Third, the Insurance Code does not require registration with the CDA. "The provisions of this Code primarily govern insurance contracts; only if a particular matter in question is not specifically provided for shall the provisions of the Civil Code on contracts and special laws govern."

The CTA *En Banc* decision was affirmed.

STSRO CORNER

TRICK OR TREAT SA SENADO

Christmas Mass & STSRO Thanksgiving

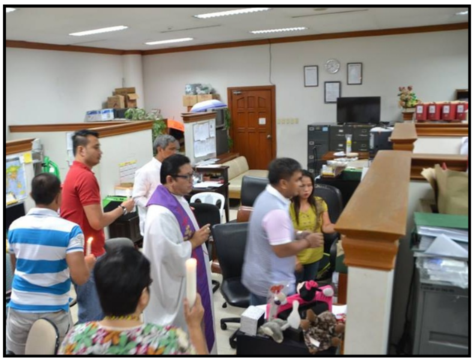
December 16, 2015







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