



By

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Indirect Taxes Branch

On March 23, 2016, President Benigno S. Aquino III signed **Republic Act 10754**, “An Act Expanding the Benefits and Privileges of Persons With Disabilities” manifesting again the government’s ceaseless commitment to improve the lives of our brethren *persons with disabilities*.

RA 10754 legislative history

Before it became law, it was introduced as **Senate Bill No. 2890**, “An Act Expanding The Benefits And Privileges Of Persons With Disability (PWD), Amending For This Purpose Section 32 Of Republic Act No. 7277, Otherwise Known As The ‘Magna Carta For Persons With Disability,’ As Amended, And Section 35 (B) Of Republic Act No. 8424, Otherwise Known As The ‘National Internal Revenue Code Of 1997,’ As Amended”. Senator Juan Edgardo “Sonny” Angara delivered the sponsorship speech on August 5, 2015 underscoring the government efforts to improve the plight of *PWDs*. An excerpt of the speech reads:

“Tunay na nararapat lamang na bigyan ng ibayong atensiyon at tulong ng ating gobyerno ang mga kababayan nating may kapansanan. Ang mga tulong na ito ay hindi lamang sa pamamagitan ng direktang tulong pinansyal kung hindi pati na rin sa pagpasa ng mga panukalang batas na naglalayong mapagaan ang kanilang buhay.”

True to its intent of easing their burden, the law expands the benefits and privileges of *PWDs* by allowing persons who take care of them to claim them as dependents for income tax purposes. Exemption from VAT on the sale of certain goods and services for the exclusive use of *PWDs* is also granted. These VAT-exempt transactions include the following:

1. Purchases of medicines in all drugstores;
2. Payment of medical and dental fees including diagnostic and laboratory fees in hospitals and medical facilities;
3. Fare for domestic air and sea travel including public utility vehicles and railways;
4. Fees and charges on hotel and similar lodging establishments, restaurants and recreation centers; and
5. Admission fees to entertainment/cultural centers, including funeral and burial services.

It bears noting that the VAT exemption is in addition to the twenty percent (20%) discount for aforesaid goods and services. This benefit is aligned with **RA 9994** (February 15, 2010), "*Expanded Senior Citizens Act*" providing VAT exemption on top of the 20% discount on particular goods and services for the exclusive use of senior citizens;

On September 1, 2015, Senate Bill No. 2890 was consolidated with House Bill No. 1039 and was approved on Third Reading in the Senate. The *Conference Committee Report* was approved in the Senate on December 16, 2015 and in the House of Representatives on December 17, 2015.

Implementing Rules and Regulations (IRR)

Under the stewardship of the Department of Social Welfare and Development (DSWD) and the able assistance of the National Council on Disability Affairs (NCDA), Department of Finance (DOF) and non-governmental organizations (NGOs), the much-anticipated implementing rules and regulations (IRR) of RA 10754 was finally signed on December 1, 2016. As such, the procedures and guidelines for the envisioned proper implementation of the statute could proceed promptly.

Republic Act 10864

On June 10, 2016, **RA 10864**, entitled "*An Act Defining Raw Sugar or Raw Cane Sugar, Amending Section 109(A) and (F) of the National Internal Revenue Code, As Amended, And for Other Purposes*" lapsed into law.

Relative to this, **Article VI, Section 27(1) of the Constitution** provides that "*the President shall communicate his veto of any bill to the House where it originated within thirty (30) days after the date of*

receipt thereof; otherwise, it shall become a law as if he had signed it."

Previously, the Bureau of Internal Revenue issued Revenue Regulation (RR) No. 13-2013 (September 20, 2013) which effectively redefined *raw sugar* as provided in RR 13-2008 (September 19, 2008).

RR 13-2013 also clarified Art. 61 of **RA 6938**, "*Cooperative Code of the Philippines*" regarding concerned cooperatives registered under the Cooperative Development Authority (CDA) who are supposed to be enjoying exemptions from government taxes and fees.

RA 10864 legislative history

Before it became law, **RA 10864** was identified as **Senate Bill No. 2987**, "*An Act Amending Section 109 (A) And (F) Of The National Internal Revenue Code, As Amended By Republic Act No. 9337, And For Other Purposes*". It was introduced by Senator Sergio R. Osmeña III on May 5, 2015. The measure was approved on Third Reading on December 14, 2015. The *Conference Committee Report*, after consolidation with House Bill No. 5713, was then approved by the Senate and House of Representatives on February 2, 2016.

In sum, **RA 10754** extends to *PWDs* the privileges enjoyed by senior citizens. With its passage, the country also adheres to the following international treaties and commitments:

1. United Nations Commitment for Advancement of the Status of Persons with Disabilities;
2. United Nations Convention on the Rights of Person with Disabilities;
3. United Nations Millenium Development Goals; and
4. Manila Accessible Information and Communications Technologies (ICT) Design Recommendations.

The VAT exemption of raw sugar/raw cane sugar is established with the passage of **RA 10864** finally putting to rest the confusion caused by RR No. 13-2013.

As Senator Sergio Osmeña III assured in support of **RA 10864**, "*any foregone revenue can be offset by the increased purchasing power of all households and businesses. The resulting cheaper production costs will then parlay to a more robust and equitable economy for the country.*"

**CMTA
CORNER****Updates on the Customs Modernization and Tariff Act
(RA 10863)**

by:

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Republic Act (RA) No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA), was signed into law on 30 May 2016 by former President Benigno Aquino III. The law amended the Tariff and Customs Code of the Philippines (TCCP) with the aim of simplifying, modernizing and aligning with global best practices the country's customs rules and procedures including import clearances and valuations, making the release of goods much faster, regardless of whether you are an individual citizen or a large corporation.

The new law also mandates the use of information and communications technology and other appropriate applications that speed up the systems of the Bureau of Customs (BoC) which may result to enhanced revenues. It will focus mostly on the development of computer-based systems, and ease of trade in order to facilitate trade, reduce opportunities for corruption, improve Customs service delivery and supply chain.

As part of the effort of the BoC and the Department of Finance (DoF) to implement the CMTA gradually through Customs Administrative Orders (CAOs), public consultations to solicit comments/position papers were held at the BoC since August 17, 2016. The DoF plans to consolidate the CAOs implemented from this process to draft the final version of the Implementing Rules and Regulations (IRR) of the CMTA. These include concerns on *de minimis* importations, alert orders, and risk management in customs control, the customs bonded warehousing system, post clearance audit, advance ruling system, and conditional tax- and duty-exempt importations for balikbayans, overseas Filipino workers (OFWs), and returning residents, among others.

On November 10, 2016, a public consultation regarding the draft CAO for Title VIII, Chapter I, Sec. 800 – Conditionally Tax and/or Duty-Exempt Importation of “Returning Residents” and Overseas Filipino Workers (OFWs) was held. As indicated in the draft Order, below are the tax and duty exemptions for “returning residents” or OFWs:

- P350,000.00 for those who have stayed in a foreign country for at least 10 years and have not availed of this privilege within 10 years prior to the returning resident’s or OFW’s arrival;
- P250,000.00 for those who have stayed in a foreign country for a period of at least 5 years but not more than 10 years and have not availed of this privilege within 5 years prior to the returning resident’s or OFW’s arrival; or
- P150,000.00 for those who have stayed in a foreign country for a period of less than 5 years and have not availed of this privilege within 6 months prior to the returning resident’s or OFW’s arrival;

The CMTA also raises the *de minimis* value, which refers to the value of tax and duty free goods, and the minimum cost of goods required to undergo formal Customs entry, from the present Php10.00 to PHP10,000.00, which means shipments valued at P10,000 or below will not be subjected to duties or taxes.

For its part, the Bureau will make sure that the personal or household effects brought in or sent by the qualified “returning residents” or OFW are entitled to duty and/or tax exemption pursuant to Sec. 800(f) Chapter I, Title VII of the CMTA. Any amount in excess of the allowable non-dutiable value shall be subject to the applicable duties and taxes.

The following CAOs were issued by the Bureau of Customs with the approval of the Department of Finance.:

1. **CAO No. 01-2016** on the subject: **Advance Cargo Declaration, Inward Foreign Manifest and Consolidated Cargo Manifest Rule.** (January 22, 2016)

Some stakeholders refer to CAO 01-2016 as the Philippine customs version of the 24-hour advance manifest rule already being implemented by the US, Japan, China and other customs authorities as far as timing and submission cut-off times are concerned but observed that there

are key mandatory requirements implemented by abovementioned customs authorities that are not part of CAO 1-2016, e.g., “Load” and “No Load” instructions.

2. **CAO No. 02-2016** entitled **Imported Goods With *De Minimis* Value Not Subject o Duties and Taxes.** (September 28, 2016)

Pursuant to the CAO No. 2-2016, imported goods valued at P10,000 and below are no longer subject to duties and taxes. The CAO implements the *de minimis* provision of RA10863. Importations at *de minimis* value shall be lodged and processed using a simplified and enabled electronic system to allow advance clearance and ensure proper customs monitoring and control to capture and preserve pertinent data on *de minimis* importation. The CAO also provides that based on internationally accepted customs administration risk management principles, customs examiners may physically inspect the imported goods.

3. **CAO 03-2016** on the subject: **Establishment of an Advance Ruling System for Valuation and Rules of Origin.** (October 3, 2016)

CAO 03-2016 covers requests for advance rulings concerning the tariff classification of goods filed with the Tariff Commission for determination, and requests for rulings on other matters related to importation or exportation of goods as provided under Section 113 of the CMTA, including exportation of goods from the Philippines.

The new law also sets tougher penalties against smuggling, with a maximum imprisonment of 20 to 40 years depending on the amount of goods illegally brought into the country.

At present, the DoF and BoC continue to encourage stakeholders to get involved in the drafting of the IRR of RA 10863 by submitting their position papers and participating in the upcoming public consultations on CMTA which can be found in their microsite www.dof.gov.ph/cmta_irr.

TAX NEWS DIGEST



“Lower income tax rate seen passed by January 2017”

The implementation of the proposed tax policy reform program to be pitched by the Duterte administration to Congress next month is targeted to generate P600 billion in additional revenues by 2019 while also fostering a simpler, fairer and more efficient system for taxpayers, documents obtained by the Inquirer showed.

“The program, aimed at augmenting the P1 trillion in priority investments needed by the administration over the next six years to sustain at least 7-percent economic growth until 2040 as well as slash the poverty rate to 17 percent by 2022 from 26 percent at present, will come in four main packages, the first of which will reduce personal income tax while raising consumption taxes by next year.

“The proposed policy packages, all constituting a bill that balances trade-offs, will allow the government to raise P600 billion or 3 percent of gross domestic product (GDP) in 2019 prices, of which P400 billion or 2 percent of GDP will come from tax policy reform measures.

“The remaining P200 billion will be generated through tax administration reforms to be implemented at the bureaus of Customs and of Internal Revenue, including combatting smuggling and reducing compliance costs to increase taxpayer satisfaction, respectively.” (PDI, 25 August 2016)



“Angara pushes for lower estate tax to aid grieving kin”



“To ease heirs’ tax burden from their deceased relatives’ assets, the Senate ways and means committee plans to prioritize measures aimed at reducing estate tax, Senator Juan Edgardo “Sonny” Angara said Sunday.

“Angara, who chairs the committee, said in a statement that they also wanted to widen the coverage of tax-deductible expenses, including medical expenses incurred by the deceased.

“The end result is that a grieving family will be spared the further anguish of paying high estate taxes which often delay the distribution of the assets to the heirs,” Angara said.

“This tax hurdle, plus unfamiliarity with estate taxes and cultural avoidance to discuss death-related affairs, has led families to delay settling the estate, resulting in huge penalties and surcharges while use of assets is not maximized,” the senator added.

“Finance Secretary Carlos G. Dominguez III had said he wanted to see the estate tax rate of 20 percent be cut to as low as 6 percent of the value of the property being transferred.

“If passed by Congress and enacted into law, this lower estate tax rate would put it on a par with the tax level for capital gains, which, at present, is the preferred method of transferring assets from a property owner to his heirs.

“Angara earlier filed Senate Bill No. 980, which incorporated estate tax reforms.

“The estate tax regime should have rules that will be easy to comply with on top of affordable rates.

“Present estate tax rates, like those for income taxes, were pegged in 1997, so it is time to adjust them because some exemptions are ridiculously low,” Angara noted.

“Since adjusting estate tax rates would double the tax-exempt values, Angara was proposing a resetting of rates every three years, with inflation as basis.

“Also, the senator was pushing for an increase to P2 million from P1 million at present the standard deduction in the computation of estate tax, while a family home valued at P2 million will no longer be taxed, a tax-exemption threshold double the P1 million at present.

“Heirs can also charge to the estate medical expenses of up to P1 million and funeral expenses of up to P500,000 in recognition of the high cost of dying the country,” Angara said of his bill.

“If passed into law, an authorized heir or estate administrator will also be allowed to withdraw P200,000 from the deceased’s bank deposits.

“By lowering the compliance hurdle for what is essentially an inheritance tax, tax clearances, which are a requirement for a real property’s sale, will now be expedited, resulting in the asset’s commercial exploitation.” Angara explained.

“It will be good for the heirs because they can now enjoy the assets, good for the government because collections will increase, and good for the economy because assets will be freed for development,” he added.

“Citing Bureau of Internal Revenue data, Angara said just seven in every 100 deaths settle estate taxes, such that total payments accounted for a mere one-sixth of a percent of the BIR’s tax take.” (PDI, 22 August 2016)



“Flat tax rate eyed. Proposal aimed at raising collection from professionals, self-employed”

“The government’s tax research arm is pushing for the imposition of a flat rate on self-employed individuals and professionals to increase collections, a proposal that the Bureau of Internal Revenue (BIR) is looking into.

“In a report titled “Income Tax Profile of Self-Employed Individuals and Professionals,” the



National Tax Research Center (NTRC) noted that despite placing self-employed individuals and professionals under “stricter scrutiny” by the BIR—mainly through a name-and-shame campaign targeted at professions with low tax compliance, this group of taxpayers continued to account for a small share in the total individual income tax collection.

“In the last decade, self-employed individuals and professionals accounted for just 14 percent, including withholding tax at source, of total collection, whereas the bigger share of 86 percent came from compensation income earners.

“NTRC’s tax gap estimates in 2010-2014 showed that there was, on the average, a 55-percent tax leakage among this so-called ‘hard-to-tax’ group of taxpayers,” it added.

“Based on 2013 data reviewed by the NTRC, one of every three self-employed individuals and professionals who filed income tax returns that year incurred net loss or had zero net taxable income due to “excessive” claims of deductions as well as under declaration of incomes.

“The remaining two-thirds of self-employed individuals and professionals who reported net taxable income, meanwhile, “did not sufficiently contribute to tax collection as indicated by their low effective tax rates... also due to overstated deductions or understated income,” the NTRC said.

“In 2013, the effective tax rates, or the ratio of tax due to sales and receipts, stood at only 1.55 percent for single proprietors and 10.46 percent in the case of professionals.

“In this regard, the NTRC pitched the following reforms in the taxation of self-employed individuals and professionals, which had been filed in Congress: Imposition of a flat rate on small self-employed individuals and professionals, similar to those of corporations; or provision for an optional standard deduction that would no longer require such taxpayers to keep books of accounts.

“Also, attention should be focused on high profile self-employed individuals and professionals,” the NTRC added.

“Sought for comment, Internal Revenue Commissioner Caesar R. Dulay told the Inquirer that the NTRC’s proposals “will be studied” by the BIR, in coordination with the Department of Finance.” (PDI, 22 August 2016)



“10-point economic agenda backed”



Carlos G. Dominguez III
Finance Secretary

“Bilateral partners and multilateral agencies have pledged support to the Duterte administration’s 10-point socioeconomic agenda, committing involvement in projects in agriculture, infrastructure and rural development in the next six years.

“The government, for its part, committed to fast-track projects aimed at significantly slashing poverty, as economic managers plan to work closely with the legislative and the judiciary in making sure that projects do not get delayed by differing rules.

“In a press conference following the two-day Philippines Development Forum, Finance Secretary Carlos G. Dominguez III said the inputs generated from the forum’s about 370 participants would be considered in the crafting of the 2018 national budget, which the Department of Budget and Management would start working on in the first quarter of next year, as well as the Philippine Development Plan for 2017-2022 to be released by state planning agency National Economic and Development Authority early next year.

“Dominguez told reporters that once the 2018 national budget was drafted, the Department of Finance would again convene development partners to present to them the specific projects and programs available for funding.” (PDI, 10 November 2016)



“PH eyes tax treaties with Asean peers”



“The Philippines is eyeing to seal tax treaties with all nine other Asean member-states, according to the Bureau of Internal Revenue (BIR).

“The country already has effective double taxation agreements (DTAs) with Indonesia, Malaysia, Singapore, Thailand and Vietnam, BIR Assistant Commissioner Marissa O. Cabreros noted in a presentation at last week’s Second International Tax Forum hosted by the Department of Finance.

“However, we do have a request from Indonesia for renegotiation to update the provisions of our DTA,” Cabreros said. In the case of Thailand, the updated DTA has yet to take effect pending the

ratification of the renegotiated version.

“Negotiations are ongoing with Brunei, while a second round of negotiation with Burma (Myanmar) was for scheduling, said Cabreros, who is also the BIR’s spokesperson.

“As for Cambodia, there was a request for negotiation from Phnom Penh. For Laos, Manila has requested for negotiations with Vientiane.

“The Philippines currently has 40 tax treaties—mostly DTAs and tax exchange information agreements—in force, while a tax treaty with Turkey will take effect in 2017.

“But Cabreros said: “Globally, the major concern is no longer the case of double taxation; the more pressing issue is double non-taxation.”

“With the interplay of international agreements and domestic tax laws, multinational enterprises, by design of their transactions, were able to shift profit away from tax jurisdiction, eroding taxable base. Thus, both developed and developing countries are now vulnerable to capital flight as well as erosion of tax revenue base,” she said.

“In response to this, the focus now is toward entering into tax treaty negotiations to improve coordination and cooperation with tax administration to address tax avoidance and tax evasion. This is mostly achieved through exchange of information,” she said.” (PDI, 2 November 2016)



“Renminbi now part of PH forex reserves”



“In line with the Duterte administration’s pivot to China, monetary authorities have included the Chinese renminbi in the Bangko Sentral ng Pilipinas’ official international reserves.

“In a statement Monday, BSP Governor Amando Tetangco Jr. said the policy-making Monetary Board approved the inclusion of the Chinese currency in its gross international reserves (GIR) effective Oct. 13.

“The BSP may hold renminbi as part of its GIR to ensure that the currency is available to the banking system when needed,” he said.

Before the inclusion of the renminbi, the country’s GIR was mainly held in the US dollar, gold

and the International Monetary Fund's special drawing rights (SDR).

"In deciding to make the renminbi Philippine reserve-eligible, the Monetary Board took into consideration the inclusion of the renminbi effective Oct. 1 in the basket of reserve currencies that determine the value of the IMF SDR and the rising economic and financial importance of China that is expected to increase the use of the currency," Tetangco explained." (PDI, 25 October 2016)



"BIR to expand compromise settlement plan"



Comm. Caesar R. Dulay

"The Bureau of Internal Revenue will expand its compromise settlement program for delinquent taxpayers.

"In terms of raising revenue, we are reviewing a lot of options. For example, since the mandate of the agency is to raise revenue, we'd rather encourage taxpayers to compromise, as long as it is within the law, whatever pending assessments they have," Revenue Commissioner Caesar R. Dulay told reporters last week.

"We also have a number of cases with the Court of Tax Appeals (CTA)—those were the assessments often being questioned, and my instruction to our legal department is to try to work out compromise and mediation, because litigation takes a long time, and it does not help the taxpayer or the government in raising revenue," Dulay added.

"Dulay said cases pending at the CTA would be enjoined to undergo court-supervised mediation.

"In a presentation at a recent tax reform forum organized by the Financial Executives Institute of the Philippines, BIR Assistant Commissioner Marissa O. Cabreros said an ongoing and continuing study was being conducted to eventually adopt an expanded compromise program.

"On its website, the BIR explained that the current compromise settlement program "affords delinquent taxpayers the opportunity to settle their outstanding tax liabilities and disputed tax assessments, in observance of the provisions of Section 204 of the Tax Code." (PDI, 17 October 2016)

"Cash aid to shield poor from higher excise taxes"



Usec. Karl Kendrick T. Chua

"In a presentation at a tax reform forum organized by the Financial Executives Institute of the Philippines last week, Finance Undersecretary Karl Kendrick T. Chua said the DOF was looking at giving away unconditional cash transfers of P200-500

per month to fully protect the poorest 50 percent of the population from a looming increase in fuel prices once Congress approves higher excise under the proposed tax policy reform program. Higher fuel prices are expected to also jack up transportation costs as well as prices of basic goods and services.

"As for the working and commuting class, they would be protected through cash cards and discounts they could use when riding public utility vehicles, said Chua, who is also the DOF's chief economist.

"The middle class, meanwhile, would get to offset the higher fuel costs via the lower personal income tax they would soon be enjoying, according to Chua.

"From four main packages initially, the Duterte administration's tax policy reform program would now have six packages. A bill for the first one was already submitted to both houses of Congress last month.

"The first of the six tax policy packages would adjust tax brackets to correct "income creeping"; reduce the maximum personal income tax rate to 25 percent over time, save for the "ultra-rich" who would be slapped a higher 35 percent; and shift to a simpler modified gross system.

"As lower personal income taxes would result in foregone revenues estimated at P180.3 billion by 2019, the DOF plans to offset this by collecting P377.3 billion via an increase in the excise slapped on all oil products and indexing them to inflation; expanding the value-added tax (VAT) base by limiting exemptions to raw food, education and health products and services; as well as jacking up excise on automobiles.

"The government stands to generate a net revenue gain of P197 billion from the first package by 2019.

"Based on the DOF's computations, those considered subsistence poor, poor and near poor would lose P489-883 from their annual take home pay by 2019 once the higher oil excise tax and reduced VAT exemptions take effect.

"Informal and minimum wage workers, meanwhile, are expected to lose P192-409 a year.

"Chief executives and top taxpayers belonging to the ultra-rich would lose bigger amounts, ranging from over P76,000 to more than P2.1 million annually.

"Above minimum wage workers, professionals, the middle class and executives stand to gain from the lower income taxes despite higher levy to be slapped on consumption, as they would take home an additional pay of between P3,000 and P86,125 per year.

"The first package of the tax policy reform program would also include tax administration reform measures, including legislation to relax the bank secrecy laws for tax fraud cases, as well as including tax evasion as a predicate crime to money laundering.

"The second package, which the DOF had said would likely be introduced in 2018 or after the Sin Tax Reform Law matures next year, would levy taxes indexed to inflation on sweetened drinks, as well as further hike the excise tax slapped on alcohol and tobacco products." (PDI, 10 October 2016)



"Angara measure would grant taxpayers a bill of rights"



Sen. Sonny Angara

"Sen. Juan Edgardo Angara is pushing for the creation of an Office of the National Taxpayer Advocate, an independent body tasked with promoting and protecting the rights of Filipino taxpayers.

"In a statement yesterday, Angara, who chairs the Senate ways and means committee, said a "Taxpayer's Bill of Rights" is needed—especially as the Duterte administration plans to embark on a comprehensive tax reform—aimed at making the tax system simpler, fairer and more efficient.

"Three categories -

"In Senate Bill No. 308, Angara said a taxpayer had three categories of rights: Basic rights, rights in civil cases and rights in criminal cases.

"SB 308 states that the basic rights include the right "to available information and prompt and accurate responses to questions and requests for tax assistance."

"Other rights include the speedy and impartial disposition of a case wherever it may be filed and in a manner devoid of any publicity while the proceeding is pending, Angara said.

"The bill provides that "the taxpayer's tax information must be kept confidential unless otherwise specified by law."

"Angara is also pushing for "the right to fair and consistent application of the tax laws, the right to have assistance of counsel, the right to expeditious tax audits, and the right to request for installment payment of liabilities under any compromise settlement."

"SB 308 "also confers upon the taxpayer the right to be refunded for excess payments or have penalties cancelled when there are errors in assessment," Angara said, adding that "in civil cases, among the rights of the taxpayer is the opportunity to have the case amicably settled if warranted."

"Collection actions -

"The Angara bill would guarantee that taxpayers are informed of "impending collection actions which require sale or seizure of property or freezing of assets, except jeopardy assessments."

"Taxpayer rights in criminal tax cases begin with the right to be knowledgeable, intelligently and timely informed of the charges... This includes the right to be served all the necessary documents on time," the senator said.

"I have also included a provision mandating that in all dealings, the taxpayer has the right to be treated in a professional manner by any revenue personnel. All encounters between the taxman and the taxpayer must be pleasant," said Angara." (PDI, 3 October 2016)



"Gov't sets tax drive vs self-employed. 'One time, big time' tax amnesty readied"

"The tax policy reform program that the Department of Finance (DOF) will pitch to Congress this month will address the prevailing unfair system where wage earners carry the burden of income tax while the self-employed account for only a small portion of the tax take.



“The government nonetheless plans to give delinquent taxpayers a chance to settle past obligations through a legislated tax amnesty.

“Revenue collections from professionals and self-employed individuals account for only 20 percent of the total personal income taxes collected by the government despite the high tax rates, while wage earners continue to carry the bulk of the burden, or 80 percent of revenues produced from income tax,” DOF spokesperson Paola Alvarez said in a statement.

“We have high tax rates for self-employed and professionals, yet we have a very narrow base among them. The Bureau of Internal Revenue (BIR), however, cannot fully audit them because of existing bank secrecy laws,” Alvarez said.

“A recent report of state-run tax think tank National Tax Research Center (NTRC) titled ‘Income Tax Profile of Self-Employed Individuals and Professionals’ noted that despite self-employed individuals and professionals being placed under ‘stricter scrutiny’ by the BIR of late—mainly through a name-and-shame campaign targeted at professions with low tax compliance—this group of taxpayers continued to account for a smaller share to the total individual income tax collection.

“During the last decade, self-employed individuals and professionals accounted for only 14 percent of collections, including withholding tax at source, whereas the bigger share of 86 percent was comprised of compensation income earners’ payments, the NTRC report showed.” (PDI, 19 September 2016)



“DOF holds consultations on comprehensive tax reforms”



Sec. Carlos G. Dominguez III

“The national government is conducting consultations with various sectors to fine-tune its comprehensive tax reform plan prior to its submission to the Congress, the Department of Finance (DOF) said.

“In a statement, Finance Secretary Carlos G. Dominguez III said that the proposed tax plan, which ‘balances policy trade-offs,’ is part of the Duterte administration’s broader reform program for inclusive growth comprising seven components.

“These components include reforms at the government’s two main tax agencies; governance and budget; businesses’ level playing field; business regulations; secure property rights; food security promotion; and, traffic, crime and vice.” (MB, 18 September 2016)



“Gov’t readies P1-T railway projects. 5 road maps seen boosting PH infra system”



Pres. Rodrigo R. Duterte

“The Duterte administration has unveiled a P1-trillion nationwide pipeline of railway projects, most of which will be located in Luzon and Metro Manila where traffic congestion was at its worst, apart from

urban centers in Cebu and Mindanao.

“The administration also committed to ‘redouble’ infrastructure improvement such that the government plans to roll out five more road maps aimed at sustaining economic development, Socioeconomic Planning Secretary Ernesto M. Pernia said Wednesday.

“The plan was included in the Department of Transportation’s (DOTr) detailed submission to Sen. Grace Poe, who is heading the committee on public services, in line with the government’s request for special powers to combat the traffic crisis in the capital district.

“All told, 14 train projects valued at P1.07 trillion were named in the 64-page document.



“Some of these, like the Light Rail Transit Line 1 extension to Cavite and capacity expansion at the Metro Rail Transit Line 3, have been bid out by the previous Aquino administration. However, a good deal more have yet to be implemented or rolled out.” (PDI, 8 September 2016)





PHILIPPINE NATIONAL BANK, *Petitioner*, v. COMMISSIONER OF INTERNAL REVENUE, *Respondent*, G.R. No. 206019, March 18, 2015 (Velasco, Jr., J)

Facts:



This case focuses on the propriety of the refund being sought by petitioner Philippine National Bank (PNB) with the Commissioner of Internal Revenue (CIR). Said allegation of PNB stemmed from the consolidation of its ownership of a property put up as collateral by a borrower (Gotesco). The case involves the refund of excess creditable withholding tax which PNB allegedly erroneously paid the CIR in the amount of Twelve Million Four Hundred Thousand Four Pesos and Seventy-One Centavos (P12,400,004.71).

The Supreme Court (SC) elucidated:

“As it prepared for the consolidation of its ownership over the foreclosed property, PNB paid the BIR Eighteen Million Six Hundred Fifteen Thousand Pesos (P18,615,000) as documentary stamp tax (DST) on October 31, 2003. PNB also withheld and remitted to the BIR withholding taxes equivalent to six percent (6%) of the bid price of One Billion Two Hundred Forty Million Four Hundred Sixty-Nine Pesos and Eighty-Two Centavos (P1,240,000,469.82) or Seventy-Four Million Four Hundred Thousand and Twenty-Eight Pesos and Forty-Nine Centavos (P74,400,028.49) on October 31, 2003 and November 11, 2003.

“Pending the issuance of the Certificate Authorizing Registration (CAR), the BIR informed PNB that it is imposing interests, penalties and surcharges of Sixty-One Million Six Hundred Seventy-Eight Thousand Four Hundred Ninety Pesos and Twenty-Eight Centavos (Php61,678,490.28) on capital gains tax and Fifteen Million Four Hundred Ninety-Four Thousand and Sixty-Five Pesos (Php15,494,065) on DST. To facilitate the release of the CAR, petitioner paid all the surcharges, interests and penalties assessed against it in the total amount of Seventy-Seven Million One

Hundred Seventy-Two Thousand Five Hundred Fifty-Five Pesos and Twenty-Eight Centavos (Php77,172,555.28) on April 5, 2005.

“On the claim that what it paid the BIR was not entirely due, PNB lost no time in instituting the necessary actions. Thus, on October 27, 2005, it filed an administrative claim for the refund of excess withholding taxes with the BIR. A day after, or on October 28, 2005, it filed its petition for review before the tax court, docketed thereat as CTA Case No. 7355.

“In its claim for refund, PNB explained that it inadvertently applied the six percent (6%) creditable withholding tax rate on the sale of real property classified as ordinary asset, when it should have applied the five percent (5%) creditable withholding tax rate on the sale of ordinary asset, as provided in Section 2.57.2 (J)(B) of Revenue Regulation (RR) No. 2-98 as amended by RR No. 6-01, considering that Gotesco is primarily engaged in the real estate business. The applicable creditable withholding tax rate of five percent (5%) of the bid price is equivalent to the amount of Sixty-Two Million Twenty-Three Pesos and Forty-Nine Centavos (Php62,000,023.49). Therefore, PNB claimed that it erroneously withheld and remitted to the BIR excess taxes of Twelve Million Four Hundred Thousand and Four Pesos and Seventy-One Centavos (Php12,400,004.71).

“On March 22, 2007, PNB filed another claim for refund claiming erroneous assessment and payment of the surcharges, penalties and interests. Petitioner filed its corresponding Petition for Review on March 30, 2007, docketed as CTA Case No. 7588.

“Upon motion of petitioner, CTA Case Nos. 7355 and 7588 were consolidated. The consolidated cases were set for pre-trial conference which CIR failed to attend despite several resetting. On September 21, 2007, CIR was declared to be in default.”

Issue:

“Whether or not PNB is entitled to the refund of creditable withholding taxes erroneously paid to the BIR. Subsumed in this main issue is the evidentiary value under the premises of BIR Form No. 2307.”

Held:

The SC decided in favor of petitioner PNB. The High Court said:

“Although PNB was not able to submit Gotesco’s BIR Form No. 2307, the Court is persuaded and so declares that PNB submitted evidence sufficiently showing Gotesco’s non-utilization of the taxes withheld subject of the refund.

“First, Gotesco’s Audited Financial Statements for year 2003, which it subsequently filed with the BIR in 2004, still included the foreclosed Ever Ortigas Commercial Complex, in the Asset account “Property and Equipment.” This was explained on page 8, Note 5 of Gotesco’s 2003 Audited Financial Statements:

“Commercial complex and improvements pertain to the Ever Pasig Mall. As discussed in Notes 1 and 7, the land and the mall, which were used as collaterals for the Company’s bank loans, were foreclosed by the lender banks in 1999. However, the lender banks have not been able to consolidate the ownership and take possession of these properties pending decision of the case by the Court of Appeals. Accordingly, the properties are still carried in the books of the Company. As of April 21, 2004, the Company continues to operate the said mall. Based on the December 11, 2003 report of an independent appraiser, the fair market value of the land, improvements and machinery and equipment would amount to about P2.9 billion.

“Land pertains to the Company’s properties in Pasig City where the Ever Pasig Mall is situated.

“It is clear that as of year-end 2003, Gotesco had continued to assert ownership over the Ever Ortigas Commercial Complex as evidenced by the following: (a) it persistently challenged the validity of the foreclosure sale which was the transaction subject to the P74,400,028.49 creditable withholding tax; and (b) its 2003 Audited Financial Statements declared said complex as one of its properties. Thus, it is reasonable to conclude that since Gotesco vehemently refused to recognize the validity of the foreclosure sale, it stands to reason that it also refused to recognize the payment of the creditable withholding tax that was due

on the sale and most especially, claim the same as a tax credit.

“Certainly, Gotesco’s relentless refusal to transfer registered ownership of the Ever Ortigas Commercial Complex to PNB constitutes proof enough that Gotesco will not do any act inconsistent with its claim of ownership over the foreclosed asset, including claiming the creditable tax imposed on the foreclosure sale as tax credit and utilizing such amount to offset its tax liabilities. To do such would run roughshod over Gotesco’s firm stance that PNB’s foreclosure on the mortgage was invalid and that it remained the owner of the subject property.”

Furthermore, the Court ruled:

“All in all, the evidence presented by petitioner sufficiently proved its entitlement to the claimed refund. There is no need for PNB to present Gotesco’s BIR Form No. 2307, as insisted by the First Division, because the information contained in the said form may be very well gathered from other documents already presented by PNB. Thus, the presentation of BIR Form No. 2307 would be in the final analysis a superfluity, of little or no value.

“In claims for excess and unutilized creditable withholding tax, the submission of BIR Forms 2307 is to prove the fact of withholding of the excess creditable withholding tax being claimed for refund. This is clear in the provision of Section 58.3, RR 2-98, as amended, and in various rulings of the Court. In the words of Section 2.58.3, RR 2-98, “That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom.”

“Hence, the probative value of BIR Form 2307, which is basically a statement showing the amount paid for the subject transaction and the amount of tax withheld therefrom, is to establish only the fact of withholding of the claimed creditable withholding tax. There is nothing in BIR Form No. 2307 which would establish either utilization or non-utilization, as the case may be, of the creditable withholding tax.

“It must be noted that PNB had already presented the Withholding Tax Remittance Returns (BIR Form No. 1606) relevant to the transaction. The said forms show that the amount of P74,400,028.49 was withheld and paid by PNB in the year 2003. It contains, among other data, the name of the payor and the payee, the description of the property subject of the transaction, and the determination of the taxable base, and the tax rate applied. These are the very same key information that would be gathered from BIR Form No. 2307.

“While perhaps it may be necessary to prove that the taxpayer did not use the claimed creditable withholding tax to pay for his/its tax liabilities, there is no basis in law or jurisprudence to say that BIR Form No. 2307 is the only evidence that may be adduced to prove such non-use.”

The SC ordered respondent CIR to refund to petitioner PNB the amount of Twelve Million Four Hundred Thousand and Four Pesos and Seventy-One Centavos (Php12,400,004.71), representing excess creditable withholding taxes withheld and paid for the year 2003.



EASTERN TELECOMMUNICATIONS PHILIPPINES, INC., *Petitioner,* **v. COMMISSIONER OF INTERNAL REVENUE,** *Respondent,*
G.R. No. 183531, March 25, 2015 (Reyes, J.)



Facts:

Petitioner Eastern Telecommunications Philippines, Inc. (ETPI) seeks the refund of its unutilized input value-added tax (VAT) in the amount of P9,265,913.42 allegedly attributable to its zero-rated sales of services to non-resident foreign corporation for the taxable year 1998.

The antecedent facts, in the words of the SC:

“ETPI seasonably filed its Quarterly VAT Returns for the year 1998 which were, however, simultaneously amended on February 22, 2001 to correct its input VAT on domestic purchases of goods and services and on importation of goods and to reflect its zero-rated and exempt sales for said year.

“On January 25, 2000, ETPI filed an administrative claim with the BIR for the refund of the amount of P9,265,913.42 representing excess input tax attributable to its effectively zero-rated sales in 1998 pursuant to Section 112 of the Republic Act (R.A.) No. 8424, also known as the National Internal Revenue Code of 1997 (NIRC), as implemented by Revenue Regulations (RR) No. 5-87 and as amended by RR No. 7-95.

“Pending review by the BIR, ETPI filed a Petition for Review before the CTA on February 21, 2000 in order to toll the two-year reglementary period under Section 229 of the NIRC. The case was docketed as C.T.A. Case No. 6019. The BIR Commissioner opposed the petition and averred that no judicial action can be instituted by a taxpayer unless a claim has been duly filed before it. Considering the importance of such procedural requirement, the BIR stressed that ETPI did not file a formal/written claim for refund but merely submitted a quarterly VAT return for the 4th quarter of 1998 contrary to what Section 229 of the NIRC prescribes.

“In a Decision dated November 19, 2003, the CTA denied the petition because the VAT official receipts presented by ETPI to support its claim failed to imprint the word “zero-rated” on its face in violation of the invoicing requirements under Section 4.108-1 of RR No. 7-95 which reads:

“Sec. 4.108-1. Invoicing Requirements.
– All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of seller;

2. date of transaction;

3. quantity, unit cost and description of merchandise or nature of service;

4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;

5. **the word “zero-rated” imprinted on the invoice covering zero-rated sales;** and

6. the invoice value or consideration. x x x”

Petitioner failed to imprint the words “zero-rated” on its invoice covering its zero-rated sales. The Tax Court declared that said omission is fatal to its case. Hence, ETPI appealed to the Supreme Court.

Issue:

“Whether or not the CTA erred in denying ETPI’s claim for refund of input taxes resulting from its zero-rated sales.”

Held:

The Supreme Court (SC) ruled in favor of respondent Commissioner of Internal Revenue (CIR). The SC said:

“An applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements. Consequently, the old CTA, as affirmed by the CTA en banc, correctly ruled that a claim for the refund of creditable input taxes must be evidenced by a VAT invoice or official receipt in accordance with Section 110(A)(1) of the NIRC. Sections 237 and 238 of the same Code as well as Section 4.108-1 of RR No. 7-95 provide for the invoicing requirements that all VAT-registered taxpayers should observe, such as: (a) the BIR Permit to Print; (b) the Tax Identification Number of the VAT-registered purchaser; and (c) the word “zero-rated” imprinted thereon. Thus, the failure to indicate the words “zero-rated” on the invoices and receipts issued by a taxpayer would result in the denial of the claim for refund or tax credit. Revenue Memorandum Circular No. 42-2003 on this point reads:

“A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.

“If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g. failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer.

“In this respect, the Court has consistently ruled on the denial of a claim for refund or tax credit whenever the word “zero-rated” has been omitted on the invoices or sale receipts of the taxpayer-claimant as pronounced in Panasonic Communications Imaging Corporation of the Philippines v. CIR wherein it was ratiocinated, viz:

“Section 4.108-1 of RR 7-95 proceeds from the rule-making authority granted to the Secretary of Finance under Section 245 of the 1977 NIRC (Presidential Decree 1158) for the efficient enforcement of the tax code and of course its amendments. The requirement is reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services. As aptly explained by the CTA’s First Division, the appearance of the word “zero-rated” on the face of invoices covering zero-rated sales prevents buyers from falsely claiming input VAT from their purchases when no VAT was actually paid. If, absent such word, a successful claim for input VAT is made, the government would be refunding money it did not collect.

“Further, the printing of the word “zero-rated” on the invoice helps segregate sales that are subject to 10% (now 12%) VAT from those sales that are zero-rated. Unable to submit the proper invoices, petitioner Panasonic has been unable to substantiate its claim for refund.”

The High Court added:

“ETPI failed to discharge its burden to prove its claim. Tax refunds, being in the nature of tax exemptions, are construed in strictissimi juris against the taxpayer and liberally in favor of the government. Accordingly, it is a claimant’s burden to prove the factual basis of a claim for refund or tax credit. Considering that ETPI is engaged in mixed transactions that cover its zero-rated sales, taxable and exempt sales, it is only appropriate and reasonable for it to present competent evidence to validate all entries in its returns in order to properly determine which transactions are zero-rated and which are taxable. Clearly, compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory. A claim for unutilized input taxes attributable to zero-rated sales will be given due course; otherwise, the claim should be struck off for failure to do so, such as what ETPI did in the present case.”

The SC sided with the Court of Tax Appeals as it ruled that *“the Decision dated April 30, 2008 and Resolution dated July 2, 2008 of the Court of Tax Appeals en banc in C.T.A. EB No. 327 are AFFIRMED.”*



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