

PWDs



by

Atty. Sherry Anne Calulo-Salazar
Director II, Indirect Taxes Branch

The United Nations Convention on the Rights of Persons with Disabilities states that *persons with disabilities* include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others¹. Under Republic Act No. 7277 or the Magna Carta for Disabled Persons, *disabled persons* are those suffering from restriction or different abilities, as a result of a mental, physical or sensory impairment, to perform an activity in the manner or within the range considered normal for a human being².

Philippine Congress has legislated several amendments to RA 7277 since its enactment on 24 March 1992. Among the most significant amendments is changing the nomenclature from being referred to as disabled persons to *persons with disabilities* by virtue of RA 9442 (2007). RA 9442 also introduced a new section³ that provided a twenty percent (20%) discount in favor of PWDs on certain goods and services such as:



¹ Refer to Article 1 – Purpose.
² Sec. 4(a) of RA 7277.
³ Section 32, Chapter 8 of RA 9442.

- The utilization of all services in hotels and similar lodging establishments, and restaurants or recreation centers;
- Admission fees in theaters, cinema houses, concert halls, circuses, carnivals and other similar places of culture, leisure and amusement;
- The purchase of medicines in all drugstores;
- Medical and dental services, including diagnostic and laboratory fees in all government facilities;
- Medical and dental services, including diagnostic and laboratory fees, and professional fees of attending doctors in all private hospitals and medical facilities;
- Fare for domestic air and sea travel; and
- Fare in public railways, skyways and in buses.

Aside from the above discounts, Section 32 also grants the following privileges to PWDs, to wit:

- Educational assistance;
- The continuance of the same benefits and privileges given by the Government Service Insurance System (GSIS), Social Security System (SSS), and PAG-IBIG;
- Special discounts in special programs for persons with disability on purchase of basic commodities; and
- Provision of express lanes for PWDs in all commercial and government establishments.

Pending before the Senate Committee on Ways and Means are several legislative bills aiming to amend the Magna Carta by granting PWDs exemption from the payment of the *value added tax* (VAT) on certain goods and services enumerated under Section 32 of RA 7277, as amended. These bills are Senate Bill No. 2483 (filed by *Sen. Ralph Recto*), 2713 and 2730⁴ (both filed by *Sen. Paolo Benigno "Bam" Aquino*). It is submitted that these proposals are made in order to align the PWD law with that of the *Expanded Senior Citizens Act of 2010* or RA 9994 wherein a VAT exemption is also given to senior citizens on top of their 20% discount on certain goods and services.

However, there are certain considerations that will show that PWDs and senior citizens do not actually stand on the same level; such that the grant of the same privilege to both will not necessarily create the same impact in terms of actual individuals benefitted.

For one thing, only those PWDs with purchasing power will be able to enjoy the proposed VAT exemption. As there is no data available as to the current number of PWDs who are employed or have the necessary purchasing power, it will be difficult to predict the extent of the benefit these proposed measures will have on the lives of the PWDs in our country.

It is also opined that the bills may cause some administrative concerns in their implementation. It is undeniable that the implementation of the proposed VAT exemption will cause more paperwork and therefore additional costs for both the government, and the private establishments concerned. Moreover, the additional costs may be too burdensome for small entrepreneurs operating only neighborhood convenience stores or pharmacies.

While it is recognized that our PWD sector deserves protection and assistance from the government either in the form of subsidies or effective laws, a careful analysis should always be made in order to determine whether a proposed legislation will really benefit majority, if not all, of the targeted beneficiaries. It is submitted that the concerned agencies should first prioritize the streamlining of the process in the application of the PWD ID. It appears that out of the **1.443 million** PWDs in the country, as per the 2010 Census of Population and Housing, only **348,766** PWDs have IDs as of June 2013. The huge disparity in these two figures speaks volumes in the lack of efficiency and accessibility in the application for the said ID. It should be noted that without the said ID, a PWD cannot avail of the 20% discount or any of the other privileges guaranteed under the law.

Another good proposal is that presented by the National Tax Research Center (NTRC) in its position paper dated 12 February 2015, which is to expand the discount privileges of PWDs to necessary services and items normally used by them in their day to day activities. The Tax Center states that items such as wheelchairs, crutches, and hearing aids are presently not covered by existing laws. Verily, this will yield a more direct benefit for PWDs since it will automatically lead to more savings for them especially since they usually purchase or avail of such services due to their disability.

On a final note, the grant of an additional VAT exemption to PWDs is a good proposal, however, a better alternative may be to explore the suggestion made by the NTRC, and for the concerned agencies to ensure that all PWDs will have an ID by 2016.



⁴ Additionally the bills filed by Sen. Aquino also propose to grant PWDs who are living independently and are engaged in substantial gainful business or occupation an additional personal tax exemption of P25,000. Further, the two measures also propose to allow *benefactors* of PWDs to declare the latter as their dependents for purposes of claiming the additional personal tax exemption under the National Internal Revenue Code, as amended.



1. “BIR taps into taxpayers’ sense of nationalism”

“After naming and shaming those who allegedly have not been paying the correct taxes, the Bureau of Internal Revenue (BIR) will now tap into the nationalistic fervor of taxpayers in its bid to shore up revenue collection.

“The BIR yesterday launched its nationwide public awareness campaign dubbed “Angat Pa, Pinas,” a follow through to last year’s “Register, File and Pay” initiative.

“According to Internal Revenue Commissioner Kim S. Jacinto-Henares, paying taxes should not feel as if the government was “extorting” money from its citizens.

“When paying taxes, we should feel that it is our contribution to nation-building,” she said.

“According to Henares, the actions of the BIR wherein it named and shamed alleged tax-deficient personalities as well as firms had been a success as the rate of increase in the number of self-employed who registered with the agency reached a bigger 16 percent last year from just almost 10 percent in 2013.” (PDI, February 4, 2015)



* This ‘Tax News Digest’ shall endeavor to provide the reader the latest information and events relevant to taxation and appurtenant issues, as published in leading daily newspapers and other pertinent sources. Compiled by Clinton S. Martinez, Indirect Taxes Branch.



2. “Foreign investments likely to exceed \$6B”

“The Department of Trade and Industry expects the country’s net foreign direct investments (FDIs) to have exceeded \$6 billion in 2014 as the country was able to sustain heightened investor interest in domestic business opportunities.

“Trade Secretary Gregory L. Domingo made the forecast as he noted that the country’s FDIs already stood at \$5.3 billion as of end-October last year, up 64 percent from \$3.2 billion in the same period in 2013. This was despite the 24-percent decline seen in the value of investment commitments approved by the Board of Investments and the marginal 1.2-percent increase in the value of pledges approved by the Philippine Economic Zone Authority (PEZA) last year.

“Domingo added that the Philippines continued to enjoy a rosy economic picture, which he said he hoped would be enough to convince representatives from international debt watcher Fitch Ratings to raise the rating given to the country back in 2013.

“The Philippines is rated by Fitch at its minimum investment grade or a notch behind the ratings given the country last year by the two other major rating agencies, Moody’s Investor Service and Standard & Poor’s.” (PDI, February 4, 2015)

3. “Gov’t ends 2014 with slightly higher outstanding debt of P5.735T”

“The government’s outstanding debt inched up by 1 percent to P5.735 trillion at the end of last year, the Bureau of the Treasury (BTr) reported last Friday.

“In a statement posted on its website, the BTr attributed the slightly higher debt figure to the additional issuance of domestic debt paper. The agency also noted that foreign debt declined last year.

“Last year, domestic debt rose to P3.821 trillion—up 2.3 percent from the P3.733 trillion seen in 2013. The end-December figure was 0.8-percent higher than November’s P3.789 trillion. The share of outstanding debt from domestic sources also increased to 66.6 percent of the 2014 total, from 65.7 percent in 2013.

“External debt, meanwhile, reached P1.915 trillion in 2014—down 1.7 percent from the P1.948 trillion posted in 2013. The December figure was 0.6 percent lower than the P1.927 trillion seen in November. The BTr attributed the lower foreign debt to “revaluation caused by adjustments in third currencies.” (PDI, February 9, 2015)



DIGEST OF SUPREME COURT CASES IN TAXATION



1. COMMISSIONER OF INTERNAL REVENUE (CIR), Petitioner vs. MINDANAO II GEOTHERMAL PARTNERSHIP, Respondent, (G.R. No. 191498, January 15, 2014)

Facts:

“On 6 October 2005, Mindanao II filed with the Bureau of Internal Revenue (BIR) an application for the refund or credit of accumulated unutilized creditable input taxes. In support of the administrative claim for refund or credit, Mindanao II alleged, among others, that it is registered with the BIR as a value-added taxpayer and all its sales are zero-rated under the EPIRA law. It further stated that for the second, third, and fourth quarters of taxable year 2004, it paid input VAT in the aggregate amount of P7,167,005.84, which were directly attributable to the zero-rated sales. The input taxes had not been applied against output tax.”

Under the Tax Code [Sec. 112(D), 1997], the CIR has a period of 120 days to act on the claim. The administrative claim remained unresolved up to a certain period of time. Pursuant to said proviso, Mindanao II could not treat the inaction as a denial of its claim, in which case the former would have 30 days to file an appeal to the CTA (March 5, 2006). Mindanao did not file an appeal within the 30-day period.

"Mindanao II believed that a judicial claim must be filed within the two-year prescriptive period provided under Section 112(A) and that such time frame was to be reckoned from the filing of its Quarterly VAT Returns for the second, third, and fourth quarters of taxable year 2004, that is, from 26 July 2004, 22 October 2004, and 25 January 2005, respectively. Thus, on 21 July 2006, Mindanao II, claiming inaction on the part of the CIR and that the two-year prescriptive period was about to expire, filed a Petition for Review with the CTA docketed as CTA Case No. 6133.

"On 8 June 2007, while the application for refund or credit of unutilized input VAT of Mindanao II was pending before the CTA Second Division, this Court promulgated *Atlas Consolidated Mining and Development Corporation v. CIR (Atlas)*. Atlas held that the two-year prescriptive period for the filing of a claim for an input VAT refund or credit is to be reckoned from the date of filing of the corresponding quarterly VAT return and payment of the tax.

"On 12 August 2008, the CTA Second Division rendered a Decision ordering the CIR to grant a refund or a tax credit certificate, but only in the reduced amount of P6,791,845.24, representing unutilized input VAT incurred for the second, third and fourth quarters of taxable year 2004."

Issues:

"The resolution of this case hinges on the question of compliance with the following time requirements for the grant of a claim for refund or credit of unutilized input VAT: (1) the two-year prescriptive period for filing an application for refund or credit of unutilized input VAT; and (2) the 120+30 day period for filing an appeal with the CTA."

Held:

The Court denied respondent's claim for tax refund or credit in the amount of P6,791,845.24.

The SC submitted the following ruling regarding the proper interpretation of the periods found under Section 112, in relation to Section 229 and 230, of the National Internal Revenue Code (NIRC), as amended:

"A. Two-Year Prescriptive Period

- "1. It is only the administrative claim that must be filed within the two-year prescriptive period.
- "2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made.

- "3. The only other rule is the Atlas ruling, which applied only from 8 June 2007 to 12 September 2008. Said ruling states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of filing of the VAT return and payment of the tax.

"B. 120+30 Day Period

- "1. The taxpayer can file the judicial appeal in one of two ways: (1) within thirty (30) days after the CIR denies the claim within the 120-day period; or (2) within thirty (30) days from the lapse of the 120-day period, if the CIR does not act within the 120-day period.
- "2. The thirty (30)-day period always applies, whether it is denied or there is inaction of the CIR.
- "3. The thirty (30)-day period to appeal is both mandatory and jurisdictional, as a general rule.
- "4. As an exception to the general rule, premature filing is allowed only if filed between December 10, 2003 and October 5, 2010, when BIR Ruling No. DA-489-03 was still in force.
- "5. Late filing is prohibited, even during the time when the above Ruling was in force."



2. CBK POWER COMPANY LIMITED, Petitioner vs. COMMISSIONER OF INTERNAL REVENUE (CIR), Respondent, (G.R. No. 189729-30, January 15, 2014)

Facts:

"Petitioner filed its administrative claims for the issuance of tax credit certificates for its alleged unutilized input taxes on its purchase of capital goods and alleged unutilized input taxes on its local purchases and/or importation of goods and services, other than capital goods, pursuant to Sections 112(A)

and (B) of the NIRC of 1997, as amended, with BIR Revenue District Office (RDO) No. 55 of Laguna, as follows:

Period Covered	Date Of Filing
1st quarter of 2005	30-Jun-05
2nd quarter of 2005	15-Sep-05
3rd quarter of 2005	28-Oct-05

“Alleging inaction of the Commissioner of Internal Revenue (CIR), petitioner filed a Petition for Review with the CTA on 18 April 2007.”

The CTA En Banc decided that petitioner’s judicial claim for the 1st, 2nd, and 3rd quarters of 2005 were filed late.

Issue:

“Petitioner’s assigned errors boil down to the principal issue of the applicable prescriptive period on its claim for refund of unutilized input VAT for the first to third quarters of 2005.”

Held:

The SC pronounced that petitioner’s sales to NPC are effectively subject to zero percent (0%) VAT.

Administrative Claim. -

“Pursuant to Section 112(A), petitioner’s administrative claims were filed well within the two-year period from the close of the taxable quarter when the effectively zero-rated sales were made, to wit:

Period Covered	Close of the Taxable Quarter	Last day to File Administrative Claim	Date of Filing
1st quarter 2005	31-Mar-05	31-Mar-07	30-Jun-05
2nd quarter 2005	30-Jun-05	30-Jun-07	15-Sep-05
3rd quarter 2005	30-Sep-05	30-Sep-07	28-Oct-05

Judicial Claim. –

“Likewise, while petitioner filed its administrative and judicial claims during the period of applicability of BIR Ruling No. DA-489-03, it cannot claim the benefit of the exception period as it did not file its judicial claim prematurely, but did so long after the lapse of the 30-day period following the expiration of the 120-day period. Again, BIR Ruling No. DA-489-03 allowed premature filing of a judicial claim, which means non-exhaustion of the 120-day period for the Commissioner to act on an administrative claim, but not its late filing.

“As this Court enunciated in *San Roque*, petitioner cannot rely on *Atlas* either, since the latter case was promulgated only on 8 June 2007. Moreover, the doctrine in *Atlas* which reckons the two-year period from the date of filing of the return and payment of the tax, does not interpret expressly or impliedly the 120+30 day periods. Simply stated, *Atlas* referred only to the reckoning of the prescriptive period for filing an administrative claim.

“For failure of petitioner to comply with the 120+30 day mandatory and jurisdictional period, petitioner lost its right to claim a refund or credit of its alleged excess input VAT.

“With regard to petitioner’s argument that *Aichi* should not be applied retroactively, we reiterate that even without that ruling, the law is explicit on the mandatory and jurisdictional nature of the 120+30 day period.”

As a final note, the SC stressed:

“X x x, equity, which has been aptly described as “a justice outside legality,” is applied only in the absence of, and never against, statutory law or judicial rules of procedure. Section 112 is a positive rule that should preempt and prevail over all abstract arguments based only on equity. Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. The burden is on the taxpayer to show strict compliance with the conditions for the grant of the tax refund or credit.”

The Petition was denied by the SC.





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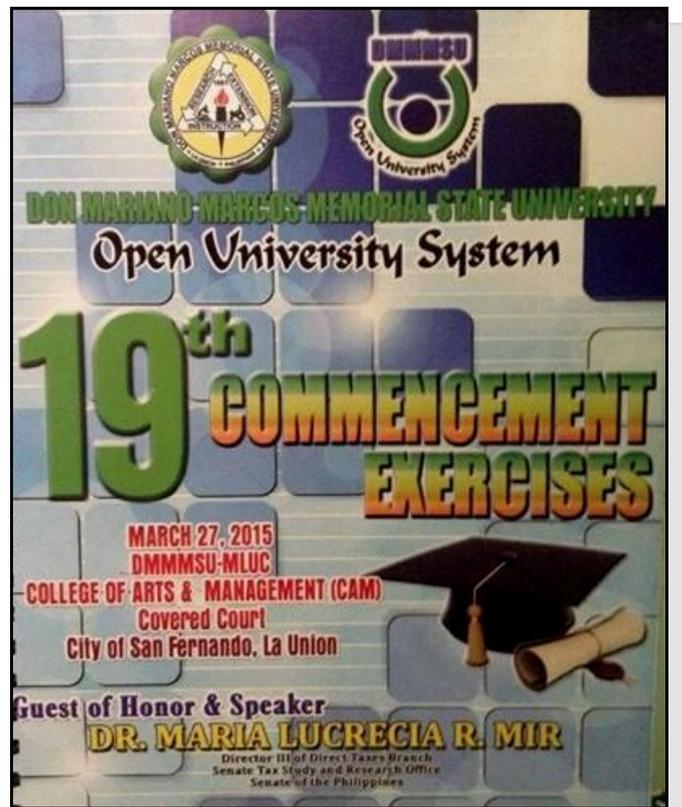
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Website : <http://www.senate.gov.ph>
 Email : ststro1989@gmail.com
 Facebook : <https://www.facebook.com/ststro.ststro>
 Telefax No. : 552-6850; Local 5506, 5508

Editors and Contributing Writers

Atty. RODELIO T. DASCIL, MNSA
 Director General

Atty. EMMANUEL M. ALONZO
 Director III, Legal & Tariff

RECHILDA B. GASCON, MNSA
 Director III, Tax Policy & Admin

MARIA LUCRECIA R. MIR, PhD DA, MNSA
 Director III, Direct Taxes

VIVIAN A. CABILING
 Director III, Indirect Taxes

JULIETA M. FONTIVEROS
 Director II, Legal & Tariff

NORBERTO M. VILLANUEVA
 Director II, Tax Policy & Admin

ELVIRA P. CRUDO
 Director II, Direct Taxes

Atty. SHERRY ANNE C. SALAZAR
 Director II, Indirect Taxes

BONIFACIO R. JOSON
 LSA-III, ODG - Layout Artist

CLINTON S. MARTINEZ
 SLSO II, Indirect Taxes

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