STSR TAXBITS

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TRAIN'S MONUMENTAL JOURNEY

by:

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Introduction

Taxation and tax reforms have been primarily used as policy instruments to achieve a set of economic and fiscal goals. According to Rao[1] (2014) tax reforms are generally undertaken to improve the efficiency of tax administration and to maximize the economic and social benefits that can be achieved through the tax system. He says that tax reform can reduce tax evasion and avoidance, and allow for more efficient and fair tax collection that can finance public goods and services. It can make revenue levels more sustainable, and promotes future independence from foreign aid and natural resource revenues. Lastly, he notes that it can improve economic growth and address issues of inequality through redistribution and behavior change.

In the local setting, Reside and Burns[2] (2016) highlight their observation that tax reforms in the Philippines have always been exercises colored by both the politics and the economics of the time period. They also emphasize that economics has usually provided the rationale for reform while politics has often shaped the outcomes. They further state that the frequency, pace, credibility and quality of recent tax reforms in the Philippines have often been shaped by the times, institutions and people implementing them.

In the Philippines, efforts to reform taxes or the taxation system have been of existence in every administration. In fact, history tells us that tax reforms have been an important component of every administration's quest of increasing government's revenues and duty to provide social benefits to its people. The Duterte administration is no exception.

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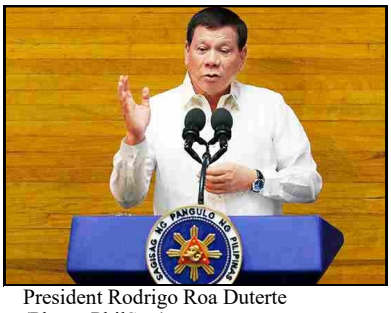
[1] Rao, S. (2014). *Tax reform: Topic guide.* Birmingham, UK: GSDRC, University of Birmingham

[2] Reside, R., Jr. and Burns, L. (2016). "Comprehensive Tax Reforms in the Philippines: Principles, History, and Recommendations," *University of the Philippines School of Economics Discussion Paper No. 2016-10*, Diliman, Quezon City. University of Sydney, Australia, September. Retrieved from http://www.econ.upd.edu.ph/dp/index.php/dp/article/view/1497/980


President Rodrigo Roa Duterte
(Photo: PhilStar)

The development and initiation of President Rodrigo Roa Duterte's tax reform program may be rooted during the campaign period wherein the then Davao City Mayor promised to exempt from paying income tax workers earning Php 20,000 and below.

After winning the elections and before his assumption into the office, President-elect Duterte and his economic team disclosed the incoming administration's Ten (10)-point Socio-economic Agenda. Number 2 in the agenda is taxation, which focuses on the institution of a progressive and more effective tax system, and the indexation of taxes to inflation. Number 4 in the agenda is the acceleration of annual infrastructure spending to account for 5% of GDP, with Public-Private Partnerships playing a key role.

The Department of Finance (DOF) explains that the Tax Reform for Acceleration and Inclusion or TRAIN is needed to redesign the tax system to be simpler, fairer and more efficient for all, while also raising the resources needed to invest in our infrastructure and our people. The goal is to correct our tax system's inequity. In the end, the tax reform seeks to lessen the overall tax burden of the poor and the middle class.

The proposed TRAIN law aims to generate additional revenues to fund the investment needs of the country, particularly in the areas of infrastructure, education and health.

For infrastructure, additional revenues would concretize 3,714 km. of national gravel roads; 10,473 km. of national asphalt roads; 30,209 km. of local gravel roads; irrigate 1.3 million hectares of land; and provide road access to 7,834 isolated barangays and 23,293 isolated sitios. Also, it would help provide funding for the projects of the Department of Public Works and Highways (DPWH) such as the Bonifacio Global City-Ortigas Center Link Road, Tacloban City By-Pass Road, and Cagayan De Oro Diversion Road, among others.

With regard to funding investments for education, it is the aim of the tax reform to achieve 100% enrollment and completion rates; build 113,553 more classrooms; and hire 181,980 teachers between 2017 and 2020.

Lastly, the tax reform is seen to finance healthcare by upgrading 704 local hospitals and establish 25 local hospitals; achieving 100% Philhealth coverage; upgrading and/or relocating 263 rural and urban health units to disaster-resilient facilities; building 15,988 new barangay health stations, and building 2,424 new rural health units and urban health centers; and hiring additional 176,922 health professionals between 2017 and 2022.

TRAIN's First Stop: The House of Representatives

In September 2016, almost three (3) months after the assumption into the office of President Duterte, the DOF submitted to the House of Representatives (HOR) a draft bill covering Package 1 of the comprehensive tax reform program entitled "Tax Reform for Acceleration and Inclusion (TRAIN)".

There were fifty-four (54) related bills that were filed in the HOR. Most notable of the bills is House Bill No. 4774 filed by Representative Cua. The bill was a result of the revisions made from the DOF original version submitted to Congress in September 2016.

After the numerous hearings and meetings, the HOR Committee on Ways and Means came out with HB No. 5636. It is the substitute bill that consolidated HB No. 4774 with fifty-three (53) other tax reform bills. Caraballo (2017) reports that according to DOF Usec. Karl Kendrick Chua, the substitute bill hews closely to the version endorsed by the DOF and contains "moderate revisions."

On May 31 which was also the last day before Congress adjourns its first regular session, the HOR overwhelmingly passed on third reading HB No. 5636 with two hundred forty-six (246) affirmative votes, nine (9) negative votes, and one (1) abstention. The approved bill was transmitted to the Senate on July 11.

TRAIN's Second Stop: Senate of the Philippines

In the Senate, there were thirty-one (31) bills that deal with tax reform. Most notable among the bills is SB No. 1408 authored by Senate President Aquilino "Koko" Pimentel III. This bill mirrors the DOF-initiated bill with minor revisions.

The Senate Committee on Ways and Means, headed by Sen. Sonny Angara, has conducted twenty (20) public hearings, two (2) technical working group (TWG) meetings, and three (3) consultative meetings. These public engagements tackled the areas covered by the proposed tax reform, namely, Income Tax, State and Donor's Taxes, Value-Added Tax (VAT), Excise Taxes, and Administrative provisions.

For personal income tax, three (3) public hearings were conducted. The resource persons who provided insights and recommendations came from the Philippine Competition Commission (PCC), National Anti-poverty Commission (NAPC), Tax Management Association of the Philippines (TMAP), Management Association of the Philippines (MAP), Australian-New Zealand Chamber of Commerce, Federation of Filipino-Chinese Chambers of Commerce and Industry, Inc. (FFCCCII), Federation of Indian Chambers of Commerce (FICC), Philippine Retailers Association, and Deloitte Philippines, among others.

Bicameral Conference Committee Meeting on "Tax Reform for Acceleration and Inclusion" TRAIN Bills (HBN 5636 and SBN 1592)

Estate tax and donor's tax were also discussed in five (5) public hearings and one (1) technical working group meeting. Among the resource persons who provided inputs include the representatives of TMAP, Financial Executives of the Philippines (FINEX), Land Registration Authority (LRA), Philippine Association of Local Treasurers and Assessors (PHALTRA), Philippine Life Insurance Association (PLIA), League of Provinces of the Philippines (LPP), and P&A Grant Thornton.

For the proposals to restructure the excise taxes on automobiles, the Committee conducted two (2) public hearings and one (1) consultative meeting. Among the resource persons were representatives of the Chamber of Automotive Manufacturers of the Philippines, Inc. (CAMPI), Electric Vehicles Association of the Philippines (EVAP), Philippine Parts Maker Association, Inc. (PPMA), Philippine National Taxi Operators Association, Inc. (PNTOA), Automobile Association of the Philippines (AAP), Toyota Motors Philippines, Ford Philippines, Jaguar Land Rover Philippines, Chevrolet Philippines, Mitsubishi Motors Philippines, Honda Cars Philippines, Asian Carmakers Corporation, Ssangyong Berjaya Motor Philippines, and Grab Philippines, among others.

Regarding sugar-sweetened beverages (SSB), two (2) public hearings were conducted. Among the resource persons whose views were elicited came from the Beverage Industry Association of the Philippines (BIAP), Philippine Association of Sugar Refiners, Luzon Federation of Sugarcane Growers' Association, Inc., Philippine Association of Stores and Carinderia Owners (PASCO), Philippine Chamber of Food Manufacturers Inc., Sugar Alliance of the Philippines, Philippine Coalition for the Prevention and Control of Non-Communicable Diseases, Diabetes Philippines, Philippine College of Physicians Foundation, Philippine Dental Association, Philippine Pediatric Dental Society, Philippine Amalgamated Supermarkets Association, and Philippine Retailers Association.

After the numerous hearings and technical working group meetings, the Committee on Ways and Means came out with a substitute bill on TRAIN, Senate Bill No. 1592. It was sponsored in plenary by Senator Angara on September 20. Thereafter, Senators Poe, Sotto, Aquino, Recto, Gatchalian, Drilon, Ejercito, Villanueva, Lacson, Hontiveros, Pangilinan, Pacquiao, and Pimentel interpellated and clarified some issues on the different provisions of TRAIN. On November 28, SB No. 1592 was passed on Third Reading with seventeen (17) Senators voting in the affirmative and only one (1) voting in the negative.

TRAIN's Third Stop: Bicameral Conference Committee

Conference committees have long been known as "the third house of Congress." In a bicameral legislature like the Philippine Congress, they are usually the principal forum for reconciling major bills passed in dissimilar form by the two Houses. These bicameral units often write the final version of major measures that both chambers will vote upon. As one US Senator said, conferences are "where the final touches are put on legislation which constitutes the laws of the country." Or as a congressional scholar put it, in "the legislative process, all roads lead to the conference committee." (Oleszek, n.d.)

Five (5) bicameral conference committee meetings, some of which lasted up to the wee hours of the morning, were convened to reconcile the disagreeing provisions of the Senate and House versions of TRAIN. While the technical staff are not privy to all the discussions of the Conferees, we believe that their mutually acceptable agreements reflect and redound to the best interest of our country and people.

On December 13, 2017 both Houses of Congress ratified the Bicameral Conference Committee Report. Final TRAIN stop -- Office of the President.

We, at the Senate Tax Study and Research Office (STSRO) headed by Director General Rodelio T. Dascil, are honored to have actively participated in the journey of the TRAIN through the conduct of in-depth researches covering the various proposals, and the provision of efficient technical backstopping and administrative support to the Committee on Ways and Means and the Bicameral Conference Committee.

COMMISSIONER OF INTERNAL REVENUE [CIR], Petitioner, v. TOLEDO POWER COMPANY [TPC], Respondent, GR No. 195175, August 10, 2015

and

TPC, Petitioner, v. CIR, Respondent, GR No. 199645, August 10, 2015, (Sereno, *C.J.*)

FACTS:

Presented before the Supreme Court (SC) are two (2) [consolidated] Petitions for review on certiorari questioning the Decisions of the Court of Tax Appeals (CTA) *En Banc* (EB) dated September 15, 2010 and July 7, 2011 and Resolutions dated January 12, 2011 and December 7, 2011. CTA EB 589 and 708.

TPC is engaged in the business of power generation and sale. Its customers include: National Power Corporation (NPC); Cebu Electric Cooperative III (CEBECO); Atlas Mining; and, Atlas Fertilizer.

Under the Electric Power Industry Reform Act (EPIRA – RA 9136), value-added tax (VAT) on sales of power generated by generation companies, are zero-rated.

First Case (CTA EB 589):

TPC filed with the Bureau of Internal Revenue (BIR), Revenue District Office (RDO) 83 a claim for refund, for alleged unutilized input VAT for the four quarters of 2004 amounting to P17,443,855.22. This was elevated to the CTA (No. 7471) on April 24, 2006.

By: Dir. Clinton S. Martinez, Legal and Tariff Branch

The CTA First Division, in partly granting the Petition, ordered the refund of P17,443,855.22, covering four (4) quarters.

The CIR filed a Motion for Reconsideration (MR), stipulating the failure of TPC to submit the required documents. This was denied by the CTA *En Banc*.

Second Case (CTA EB 708):

TPC filed with BIR RDO 83 an administrative claim for refund for alleged unutilized input VAT for the four (4) quarters of 2003 in the amount of P15,838,539.48, on December 23, 2004.

The first Petition (7233) of TPC for the refund of unutilized input VAT in the amount of P3,907,783.80 for the first quarter of 2003, was filed on April 22, 2005.

On July 22, 2005 TPC filed another Petition (7294) for refund of alleged unutilized input VAT for the second quarter of 2003 amounting to P2,124,847.14.

The above Petitions were consolidated, and on December 15, 2009 the CTA's First Division partly granted the refund, in the amount of P185,395.11.

Both parties filed their MRs. On December 1, 2010 the Special First Division rendered an Amended Decision setting aside the original decision and granting the MR of the CIR. The Division ruled that it had no jurisdiction over TPCs Petitions and thus dismissed the same.

The appeal of TPC to the CTA *En Banc* was likewise dismissed stating that 7233 was prematurely filed and 7294 was filed late, citing the case of *Aichi*.

Issue:

"The Petitions raise the common issue of whether TPC is entitled to the refund of its alleged unutilized input VAT for the first and the second quarters of taxable year 2003, as well as for the four quarters of taxable year 2004."

Held:

The Supreme Court (SC) decided the case relying on Section 112 (Refunds or Tax Credits of Input Tax) of the National Internal Revenue Code (NIRC), as amended. According to the SC, to claim for a refund, the requisites are:

"1) The taxpayer-claimant is VAT registered;
"2) The taxpayer-claimant is engaged in zero - rated or effectively zero-rated sales;
"3) There are creditable input taxes due or paid attributable to the zero-rated or effectively zero-rated sales;
"4) This input tax has not been applied against the output tax; and
"5) The application and the claim for a refund have been filed within the prescribed period."

The SC ruled that the observance of the 120+30 day period is mandatory and jurisdictional. The High Court enumerated the rules:

"*(1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.*

"*(2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.*

"*(3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.*

"*(4) All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods.*"

The SC decided on the two cases, viz: GR 195175:

In deciding that TPC is guilty of late filing, the SC ruled:

"*Unlike San Roque and Taganito, Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. Philex filed its judicial claim long* after *the expiration of the 120-day period, in fact 426 days after the lapse of the 120-day period. In any event, whether governed by jurisprudence before, during, or after the Atlas case, Philex's judicial claim*

will have to be rejected because of late filing. Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the Atlas doctrine, or from the close of the taxable quarter when the sales attributable to the input VAT were made following the *Mirant* and *Aichi* doctrines, Philex's judicial claim was indisputably filed late.

"*The Atlas doctrine cannot save Philex from the late filing of its judicial claim. The* **inaction** *of the Commissioner on Philex's claim during the 120-day period is, by express provision of law, "deemed a denial" of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the "deemed a denial" decision of the Commissioner final and in appealable. The right to appeal to the CTA from a decision or "deemed a denial" decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise. Philex failed to comply with the statutory conditions and must thus bear the consequences.*

"*Philex's situation is not a case of premature filing of its judicial claim but of late filing, indeed very late filing. 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. Philex cannot claim the benefit of BIR Ruling No. DA -489-03 because Philex did not file its judicial claim prematurely but filed it long after the lapse of the 30-day period following the expiration of the 120-day period. In fact, Philex filed its judicial claim 426 days after the lapse of the 30-day period.*

"*TPC lost its right to claim a refund or credit of its alleged excess input VAT attributable to zero-rated or effectively zero-rated sales for taxable year 2004 by virtue of its own failure to observe the prescriptive periods.*"

GR 199645:

In the other case, the High Court proclaimed:

"In accordance with San Roque, TPC cannot rely on *Atlas* and *Mirant*, since these cases were promulgated only on 8 June 2007 and 12 September 2008, respectively, three to four years after TPC had filed its administrative and judicial claims. More important, *Atlas* and *Mirant* referred only to the reckoning of the prescriptive period of administrative claims. 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. On the other hand, the *Mirant* doctrine counts the two-year prescriptive period from the "close of the taxable quarter when the sales were made" as expressly stated in the law, which means the last day of the taxable quarter. Verily, *Atlas* and *Mirant* are not material to the claim of TPC for a refund, since its administrative claim is well within the period prescribed by the NIRC.

"With regard to TPC'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.

"Philex is likewise applicable to the Petition filed in C.T.A. Case No. 7294. As earlier discussed, TPC had until 22 May 2005 to file its appeal with the court since there was, on the part of the CIR, an inaction deemed to be a denial of the claim. The judicial claim though, was filed only on 22 July 2005, which was 61 days late. Again, TPC lost it right to claim a refund of its unutilized input VAT attributable to zero -rated or effectively zero-rated sales for the second quarter of 2003."

Finally, the SC ruled that the CTA has jurisdiction over the TPC Petition only in Case 7233. The case was remanded because the CTA First Division did not separate the computation of the refundable amount of input VAT for 1st and 2nd quarters of 2003. The SC cannot determine the actual amount.

CE LUZON GEOTHERMAL POWER COMPANY, INC., Petitioner, *v.* **COMMISSIONER OF INTERNAL REVENUE**, Respondent, **G.R. No. 200841-42, August 26, 2015, (PERLAS-BERNABE, J.)**

Facts:

Petitioner, a power generation firm, filed an administrative claim for refund of its unutilized input value-added tax (VAT) in the amount of P20,546,004.87 (overpayment) with the Bureau of Internal Revenue (BIR), on November 30, 2006. Subsequently on January 3, 2007, it filed a judicial claim for refund with the Court of Tax Appeals (CTA), via Petition for Review (Case 7558).

Respondent Commissioner of Internal Revenue (CIR) alleged that the claim of CE Luzon was not properly documented and that it was prematurely filed. The same should be denied.

The CTA *En Banc* decided that the filing of a judicial claim for refund must be made within thirty (30) days, to be computed from either: (a) the receipt of the CIR's decision; or (b) after expiration of the 120-day period for the CIR to decide. It ruled that the claim must be dismissed for being filed prematurely.

The motion for reconsideration of CE Luzon was denied.

Issue:

"*The core issue in this case is whether or not the CTA En Banc correctly ordered the outright dismissal of CE Luzon's claims for tax refund of unutilized input VAT on the ground of prematurity.*"

Held:

CE Luzon's procedural objection (second motion for reconsideration on the part of CIR) was dismissed, for the reason that the June 24, 2009 (motion for partial reconsideration) and January 19, 2010 (motion for partial reconsideration of the January 19, 2010 Amended Decision) are separate and distinct decisions.

On the substantive issue, the Supreme Court (SC) partly granted the petition. It ruled that the order of dismissal of CE Luzon's claim for tax refund of unutilized input VAT on the ground of prematurity is misplaced. The High Court referred to Section 112 of the National Internal Revenue Code (NIRC), as amended, viz:

"*SEC. 112. Refunds or Tax Credits of Input Tax. –*

"(A) Zero-rated or Effectively Zero-rated Sales. - any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x.

"X x x.

"(C) Period within which Refund or Tax Credit of Input Taxes shall be Made. - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

"In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day – period, appeal the decision or the unacted claim with the Court of Tax Appeals."

The SC placed in a nutshell its previous rulings:

*"Reconciling the pronouncements in the Aichi and San Roque cases, the rule must therefore, be that **during the period December 10, 2003** (when BIR Ruling No. DA-489-03 was issued) **to October 6, 2010** (when the Aichi case was promulgated), **taxpayers-claimants need not observe the 120-day period** before it could file a judicial claim for refund of excess input VAT before the CTA. **Before and after the aforementioned period (i.e, December 10, 2003 to October 6, 2010), the observance of the 120-dav period is mandatory and jurisdictional to the filing of such claim.***
(Emphases and underscoring supplied).

Finally, the SC remanded the case to the CTA *En Banc* for its resolution on the merits, stating that:

"*This notwithstanding, the Court is not wont to instantly grant CE Luzon's refund claim in the amount of P20,546,004.87 which allegedly represented unutilized input VAT for the year 2005. This is because the determination of CE Luzon's entitlement to such claim, if any, would necessarily involve factual issues and, thus, are evidentiary in nature which are beyond the pale of judicial review under a Rule 45 petition where only pure questions of law, not of fact, may be resolved. Accordingly, the prudent course of action is to remand the case to the CTA En Banc for resolution on the merits, consistent with the Court's ruling in Panay Power Corporation v. CIR."*

STSRO CORNER

Congratulations !!

Dir. Clinton S. Martinez!!

For having been recognized as
the 2016 Most Outstanding Senate Secretariat Employee!!
November 27, 2017

PARLIAMENTARY CONFERENCE ON THE WTO 2017

Atty. Rodelio T. Dascil represented the Philippine Senate as an Observer
in the opening session of Parliamentary Conference on the WTO 2017,
at the Palace of the Argentine National Congress, Buenos Aires, Argentina
December 9 - 10, 2017

11th World Trade Organization (WTO)

Ministerial Conference 2017
Buenos Aires, Argentina

One of the delegates of the Philippine delegation to the 11th World Trade Organization (WTO) Ministerial Conference, Buenos Aires, from December 10 to 13, 2017 with more than 3,000 delegates representing 164 countries.
December 11, 2017

With head of delegation DTI Secretary Ramon Lopez and DG of IPOPhil Josephine Santiago and DG of STSRO, Atty. Rodelio T. Dascil

With DA Secretary Manny Pinol; Tariff Commissioner Albano; NFA Administrator Aquino and DFA Asst Secretary Leo Herrera Lim

3 DGs Tariff Commission Director General Mendoza; STSRO DG Dascil; and IPOPhil DG Santiago

Team Philippines WTO Advocacies 1) Philippine interest for farmers' welfare 2) ssm 3) enhanced ssg 4) msmes 5) fish rules 6) inclusive globalization
December 13, 2017

STSRO CORNER

T.E.A.M. STSRO
(Together Everybody Achieves More)

Annual Thanksgiving Mass & Christmas Luncheon Celebration 2017 of STSRO Family, inspite of busy schedule due to TRAIN Bills (Tax Reform for Acceleration and Inclusion)
December 4, 2017

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