



by

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 Director III, Direct Taxes

The impeachment trial of Chief Justice Renato C. Corona brought to the fore one of the obligations of every State official and employee – the proper, accurate and timely filing of the Statement of Assets, Liabilities and Net Worth or SALN. The submission of the SALN is found in the following statutory provisions:

- a. Section 17, Article XI of the 1987 Constitution requires all public officers and employees to submit a declaration under oath of their assets, liabilities, and net worth upon assumption of office and as often thereafter as may be required by law. In the case of the President, Vice-President, members of the Cabinet, Congress, Supreme Court, Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.
- b. Section 8 of RA 6713, known as the "Code of Conduct and Ethical Standards for Public Officials and Employees" (approved February 20, 1989) requires all public officials and employees (except those who serve in an honorary capacity, laborers and casual or temporary workers) to file under oath their

Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

- c. Section 7 of RA 3019 or the "Anti-Graft And Corrupt Practices Act" (approved August 17, 1960) requires every public officer at specified periods to prepare and file with the office of the corresponding Department Head, or in the case of a Head of Department or chief of an independent office, with the Office of the President, or in the case of members of Congress and the officials and employees thereof, with the Office of the Secretary of the corresponding House, a true detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount

of income taxes paid for the next preceding calendar year.

The requirement to file a SALN is pursuant to the policy of the State to promote a high standard of ethics in public service such that public officials and employees shall at all times be accountable to the people, discharge their duties with utmost responsibility, integrity, competence, and loyalty, act with patriotism and justice, lead modest lives, and uphold public interest over personal interest.

The Civil Service Commission, as the central human resource institution of the government, approved the use of the new SALN form to be used beginning 2012 for information related to 2011. The CSC passed Resolution No. 1100902 on July 8, 2011 in its effort to properly effectuate the above constitutional and statutory provisions on public disclosure, and to establish a standard review and compliance procedure in the filing and submission of the SALN. The new SALN form is shown below:

STATEMENT OF ASSETS, LIABILITIES AND NET WORTH AND DISCLOSURE OF BUSINESS INTERESTS, FINANCIAL CONNECTIONS AND RELATIVE/S IN THE GOVERNMENT SERVICE
As of December 31, _____
(Required by R.A. Nos. 3019 and 6713)

(Note: Husband and Wife who are both public officials or employees may file the required statements jointly or separately.)
 Jointly filed. Separately filed.

Name (Surname) (First Name) (Middle Initial) _____ Position _____
Office _____
Address _____ Office Address _____

I am married. I am not married

Spouse (Surname) (First Name) (Middle Initial) _____ Position _____
Office _____
Office Address _____

Unmarried Children below 18 years of age living in his/her household: (use additional sheet/s, if necessary)

Name	Date of Birth
1. _____	_____
2. _____	_____
3. _____	_____

I have no children below 18 years of age living in my household.

ASSETS, LIABILITIES AND NET WORTH

I. ASSETS (including that of declarant's spouse and unmarried children below 18 years of age living in his/her household)

A. REAL PROPERTY/IES (use additional sheet/s, if necessary)

KIND (Res./Comm./Agr., etc.)	NATURE OF PROPERTY (Paraphernal, conjugal or community)	LOCATION	ACQUISITION		ASSESSED VALUE	FAIR MARKET VALUE	ACQUISITION COST*	
			MODE	YEAR			Land, Building, other	Improvements
TOTAL: _____								

B. PERSONAL PROPERTY/IES AND OTHER ASSETS (use additional sheet/s, if necessary)

TANGIBLE	ACQUISITION		ACQUISITION COST*
	MODE	YEAR	
TOTAL: _____			

*For computation purposes, use acquisition cost. Properties of unmarried children below 18 years of age living in his/her household shall be excluded as well as the paraphernal/exclusive properties of spouse, in case of separate filing.

TOTAL ASSETS (A+B) = _____

II. LIABILITIES (including that of declarant's spouse and unmarried children below 18 years of age living in his/her household)

NATURE	NAME OF CREDITOR/S	*OUTSTANDING BALANCE
TOTAL: _____		

(use additional sheet/s, if necessary)

*In the computation of outstanding balance, properties of unmarried children below 18 years of age living in his/her household shall be excluded as well as the paraphernal/exclusive properties of spouse, in case of separate filing.

III. NET WORTH (TOTAL ASSETS (II) LESS TOTAL LIABILITIES (II) = NET WORTH (III))

TOTAL NET WORTH: _____

1

AMOUNT AND SOURCES OF GROSS INCOME
(All amounts received from ALL sources for the preceding calendar year)

NATURE (Salary, income, business, etc.)	SOURCES	AMOUNT
TOTAL: _____		

(Additional sheet/s, if necessary)

AMOUNT OF PERSONAL AND FAMILY EXPENSES
(For the preceding calendar year)

PERSONAL EXPENSES	ESTIMATED AMOUNT	FAMILY EXPENSES	ESTIMATED AMOUNT
TOTAL: _____			

(Additional sheet/s, if necessary)

AMOUNT OF INCOME TAXES PAID
(For the preceding calendar year)

NATURE	AMOUNT
TOTAL: _____	

(Additional sheet/s, if necessary)

BUSINESS INTERESTS AND FINANCIAL CONNECTIONS
(Declarant/ Spouse/ Unmarried Children below 18 years of age living in the household of declarant)
(Use Additional sheet/s, if necessary)

We don't have any business interests and financial connections

Name of Entity/Business Enterprise	Business Address	Nature of Business Interest and/or Financial Connection	Date of Acquisition of Interest or Connection

RELATIVE/S IN THE GOVERNMENT
(Up to the 4th civil degree of relationship, either by consanguinity or affinity, including blood, in-law and blood-in-law)
(Use Additional Sheet/s, if necessary)

We don't know of any relative/s in Government.

Name of Relative	Relationship	Position	Name of Office/Address

1/ We hereby certify that these are my/our true and detailed assets, liabilities, net worth, amount and sources of income, and family expenses, amount of income taxes paid, business interests, and financial connections, including those of my spouse or/our children below 18 years of age living in my household, and the name/s of my relative/s in the Government, as of December _____, as required by and in accordance with Republic Act No. 3019 and 6713.

2/ We hereby authorize the Comptroller or his duly authorized representative to obtain and secure from all appropriate offices, including the Bureau of Internal Revenue, such documents that may show such assets, liabilities, net worth, business interests, and financial connections, including those of my spouse and my/our children below 18 years of age living in my household, for previous years, and if possible, including the year I/we first assumed office in Government.

3/ We further undertake to produce all supporting documents for each of the entries herein made when required.

Declarant's Signature: _____ Date: _____
Date: _____

(For Separate Filing) Spouse's Signature: _____ Date: _____

SUBSCRIBED AND SWORN TO before me on this _____ day of _____, 20____, at _____, officiating his/her/their tax identification number(s) _____ and employee number(s) _____

(Person Administering Oath)

2

In its Guidelines in the Use of the Revised SALN Form, the CSC expounded on the following salient features:

- The SALN shall contain a true and complete declaration of assets, liabilities and net worth, including disclosure of business interests, financial connections of the declarant, his/her spouse and unmarried children below 18 years of age living in his/her household. It shall also contain a disclosure of the declarant's relatives in the government service, amount and sources of gross income, amount of personal and family expenses, and amount of income taxes paid as of December 31 of the preceding calendar year.
- Assets include those within or outside the Philippines, whether real or personal, tangible or intangible, whether or not used in trade or business.
- Real properties shall be accompanied by a description of their kind (residential, commercial, agricultural, industrial), nature (paraphernal, conjugal, absolute community), exact location, acquisition mode and year, assessed value, fair market value, acquisition cost of land, building, etc. including improvement thereon. (Source document: Tax Declaration)
- For computation purposes of real properties, **acquisition cost** shall be used. (Source documents: Deed of Sale, Contract to Sell)
- Personal properties and other assets are categorized into tangible and intangible (e.g., stocks, bonds, franchise, promissory note) and shall include acquisition mode and year, and acquisition cost. (Source documents: Stock Certificate, Bond Certificate, Official Receipts, Contracts)
- Excluded from computation of real and personal properties are the properties of unmarried children below 18 years of age living in the declarant's household, as well as the paraphernal/exclusive properties of declarant's spouse, in case of separate filing.
- Assets, such as cash on hand and in bank, as well as stocks and the like, denominated in foreign currency shall be converted into

the corresponding Philippine currency equivalent, at the rate of exchange prevailing as of December 31 of the preceding calendar year.

- Under liabilities, nature of liability and name of creditors shall be indicated.
- All existing liabilities, secured or unsecured, whether or not incurred in trade or business, shall disclose the outstanding balance as of December 31 of the preceding calendar year.
- The declarant's total net worth, and that of his/her spouse, in case of joint filing, shall be the difference between the total assets (real and personal properties) and the total liabilities.
- In case of joint filing, the declarant and his/her spouse shall declare the amounts and **all** sources of their gross income, whether derived from practice of profession, business, and the like, for the preceding calendar year.

AMOUNT OF PERSONAL AND FAMILY EXPENSES (For the preceding calendar year)	
Personal Expenses	Estimated Amount
Food allowance	(P200x365) P73,000.00
Clothing allowance	P25,000.00
Travel allowance	(P100x365) P36,500.00
Toiletries	P25,000.00
Mobile plan	(P500x12) P6,000.00
TOTAL	P165,500.00

Family Expenses	Estimated Amount
Home mortgage	P 150,000.00
Annual electricity bill	P 24,000.00
Annual water bill	P 6,000.00
Tuition and allowances	P 150,000.00
Internet and cable services	P12,000.00.00
Food	P 75,000.00
Groceries (laundry soap, toiletries, etc.)	P 60,000.00
Family recreation	P 20,000.00
TOTAL	P 497,000.00

- In case of joint filing, the declarant and his/her spouse shall declare the estimated amounts of their personal and family expenses, for the preceding calendar year. (see box)
- In case of joint filing, the declarant and his/her spouse shall declare **all** the taxes paid for the preceding calendar year, whether taxes imposed on income or business.
- The declarant, including his/her spouse and unmarried children below 18 years of age living in declarant's household, shall declare their existing or connection in any business enterprise or entity, aside from income from government. They shall also indicate the business address, nature of business interest and/or financial connection, and date of acquisition of interest or connection.
- In case there are no existing business interests and financial connections in any business enterprise or entity, declarant shall tick the box provided for.
- In case of joint filing, the declarant and his/her spouse shall disclose their relatives in the government within the 4th civil degree of relationship, either by consanguinity or affinity. They shall also state their relationship with the relative, relative's position in the government, as well as the office name and address. (See Chart 1)
- In case the declarant and his/her spouse, for joint filing, do not know of any relative/s in the government, they shall tick the box provided for.
- In case of joint filing, the declarant and his/her spouse shall sign in the spaces provided for just below the certification.
- In case of separate filing, only the declarant shall sign in the space provided for, while the declarant's spouse shall sign in the space below.
- Additional sheets may be used, if necessary.
- All supporting documents, when required, shall be attached. Declarant should not make unnecessary markings on the form.

Where to File

Section 8 of RA 6713 states that the SALN and Disclosure of Business Interests and Financial Connections shall be filed by:

- Constitutional and national elective officials – with the national office of the Ombudsman;
- Senators and Congressmen – with the Secretaries of the Senate and the House of Representatives, respectively;
- Justices – with the Clerk of Court of the Supreme Court;
- Judges – with the Court Administrator;
- All national executive officials such as members of the Cabinet, Undersecretaries and Assistant Secretaries, including the foreign service and heads of government-owned and controlled corporations (GOCCs) with original charters and their subsidiaries, and state universities and colleges (SUCs) – with the Office of the President;
- Regional and local officials and employees both appointive and elective, including other officials and employees of GOCCs and their subsidiaries and SUCs – with the Deputy Ombudsman in their respective regions;
- Officers of the armed forces from the rank of colonel or naval captain – with the Office of the President;
- Officers of the armed forces with ranks below those stated above – with the Deputy Ombudsman in their respective regions; and
- All other public officials and employees – with the Civil Service Commission.

A copy of said statements shall also be filed with their respective departments, offices or agencies.

When to File

Section 8 of RA 6713 states that the SALN must be filed within 30 days after assumption of office; on or before April 30 of every year

thereafter; and within 30 days after separation from the service.

Waiver in Favor of the Ombudsman

The declarant, upon affixing his/her signature to the SALN form, also authorizes the Ombudsman to obtain from all appropriate government agencies, including the Bureau of Internal Revenue, such documents as may show his/her assets, liabilities, net worth, and business interests and financial connections in previous years, including, if possible, the year when he/she first assumed any office in the Government. This requirement finds basis under Section 8 of RA 6713.

Duties of the Chief/ Head of the Personnel/ Administrative Division or Unit/ HRMO

Under Section 2 of Rule VIII of the Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees, as amended by CSC Resolution No. 06-0231 dated February 1, 2006, upon receiving the SALN forms, the Chief/ Head of the Personnel/Administrative Division or Unit/ HRMO shall **evaluate** the same to determine whether said statements have been properly accomplished. A SALN is deemed properly accomplished when **all** applicable information or details required therein are provided by the filer.

Also, the Chief/ Head of the Personnel/ Administrative Division or Unit/ HRMO shall **submit a list** of employees in alphabetical order, who: (a) filed their SALNs with **complete** data; b) filed their SALNs but with **incomplete** data, and c) **did not file** their SALNs, to the head of office, copy furnished the CSC, on or before May 15 of every year.

Ministerial Duty of the Head of Office to Issue Compliance Order

Section 3 of Rule VIII of the same Rules states that immediately upon receipt of the aforementioned list and recommendations, it shall be the ministerial duty of the Head of Office to issue an order requiring those who have incomplete data in their SALN to correct/ supply the desired information and those who did not file/ submit their SALNs to comply within a non-extendible period of three (3) days from receipt of said order.

Part B of the 2012 Guidelines provides that a Review and Compliance Committee composed of two (2) Members and a Chairman shall evaluate the

submitted SALN form to determine whether it was submitted on time, accomplished completely and proper in form.

In Case A Filer Forgets to Declare

Assets and/or properties acquired, donated or transferred in the name of the filer for a particular year, or relatives in government, but were not declared in his/her SALN for that year, as the same came to his/her knowledge only after he/she has filed, corrected and/or submitted his/her SALN, must be declared or reflected in the filer's next or succeeding SALN.

Sanctions for Failure to Comply with Section 3

Section 4 of Rule VIII of the same Rules states that failure of an official or employee to correct/ submit his/her SALN in accordance with the procedure and within the given period pursuant to the directive in Section 3 shall be a ground for disciplinary action. The Head of Office shall issue a show-cause order directing the official or employee concerned to submit his/her comment or counter-affidavit, and if the evidence so warrants, proceed with the conduct of the administrative proceedings pursuant to the Uniform Rules on Administrative Cases in the Civil Service.

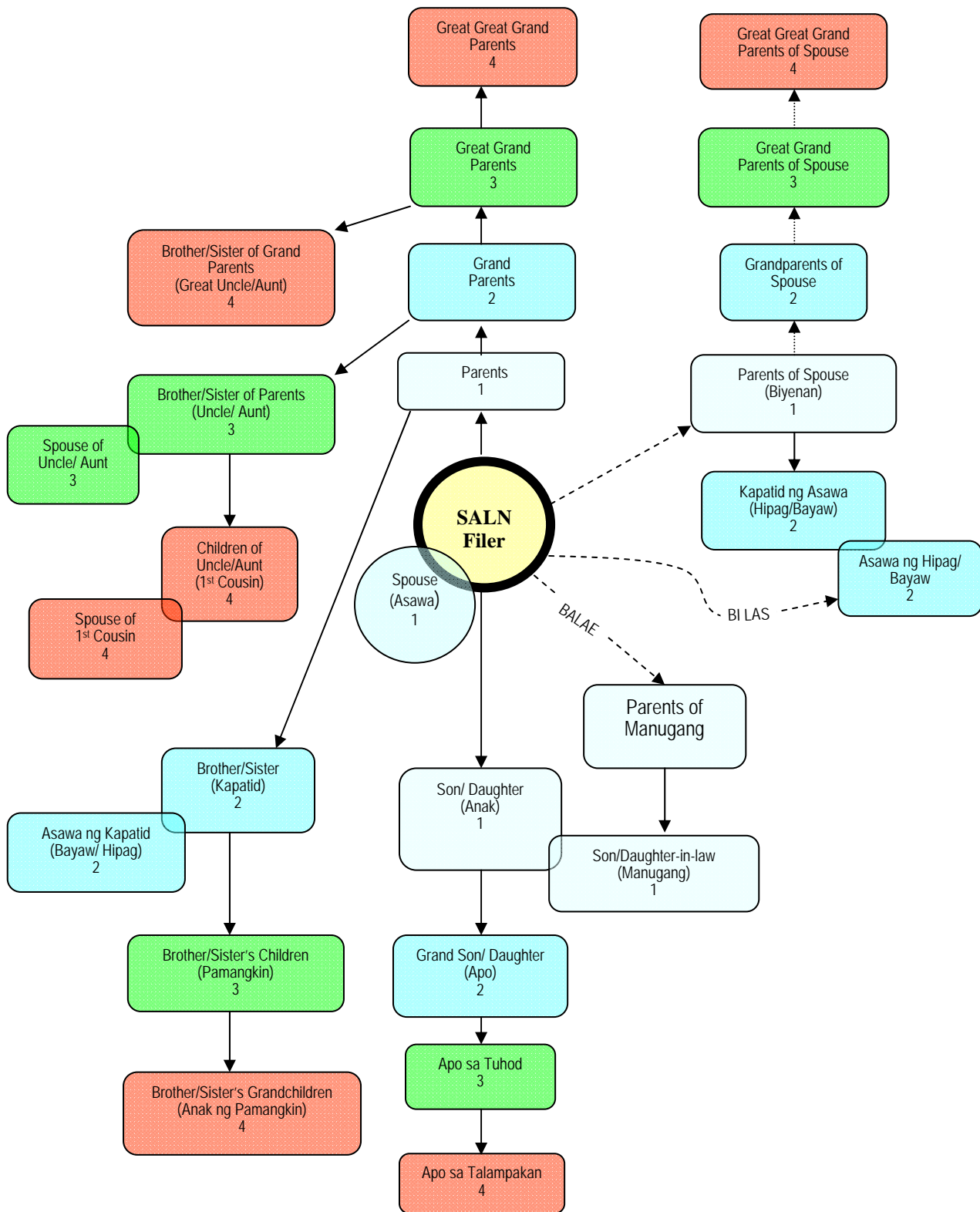
Sanctions for Failure to Submit SALN

Failure of an official or employee to submit his/her SALN is punishable under Section 52 (B) (8), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, with the following penalties:

- 1st Offense - Suspension for one (1) month and one (1) day to six (6) months.
- 2nd Offense - Dismissal from the service.

On February 9, 2012, Senator Koko Pimentel filed P. S. Resolution No. 10 directing the proper Senate Committee to conduct an inquiry, in aid of legislation, on whether or not the new SALN form conforms to existing laws. On February 14, 2012 the Resolution was referred to the Committee on Civil Service and Government Reorganization.

Chart 1
CIVIL DEGREES OF CONSANGUINITY AND AFFINITY



Note : "Inso" refers to the wife of an older brother or older male cousin



Where have the tourists gone?

by

Atty. EMMANUEL M. ALONZO

Director III, Legal & Tariff

Declining Air Carrier Operations

International air carriers are cancelling connecting flights to the Philippines because such connections have become unprofitable. For example, Qatar Airways which has direct flights to Cebu since 2004 has stopped direct operations effective March 24, 2012. The United States has three airlines operating in the Philippines, namely Delta Airlines, Hawaiian Airlines, and Continental Airlines. United Airlines left in 1997, while Delta Airlines cut its frequency of service to the Philippines by about 50% over a decade. As far as Europe is concerned, all European Airlines stopped their Philippine operations, except for KLM Airlines.

As a result of the mass stoppage of connecting flights to the Philippines, long haul air travels have become more expensive. Long haul flights to and from the Philippines would mean connecting flights with other countries. Such expensive mode of travel deters foreign tourists from considering the Philippines as a viable tourist destination.

The imposition of the Common Carriers Tax (CCT) and the Gross Philippine Billings Tax (GPBT) made connectivity flights to the Philippines financially unviable for foreign air carriers. The CCT (Section 118, NIRC) imposes a tax of 3% based on gross income, while the GPBT (Section 28, NIRC) imposes a tax of 2 ½% also based on gross income.

Effects of Removal of CCT and GPBT

The total loss in government revenue from the combined elimination of the CCT and the GPBT is 2.6 billion pesos, broken down to 1.6 billion pesos for the CCT, and 1.0 billion pesos for the GPBT. The loss in government revenue due to the elimination of both the CCT and GPBT will be more than compensated by the increase in tourist arrival. It has been estimated by the Department of Tourism, that every tourist arrival would create an equal number of employment for a period of one year, provided that such tourist will stay in the country for a period of 3 days, spending a thousand dollars per day. Furthermore, the removal of the tax impositions would immediately mean 70,000 new tourist arrivals. Note that the estimated number of tourist arrival for the year 2016 will be around 10 million.

If both the CCT and GPBT are abolished, cargo traffic will increase by one billion pesos. From 2006 to 2010, import air cargo tonnage increased by 7.6%, but exports decreased by 1.2%. If there are more airlines operating in the Philippines, there would be more cargo space for Philippine exports, which in turn could lower air transportation costs for Philippine exports.

Tourist Destinations

Except for China, international tourists prefer Europe for their destination. The top ten destinations are as follows:¹

1. France – 78 million
2. United States – 58 million
3. Spain – 57 million
4. China – 53 million
5. Italy – 43 million
6. United Kingdom – 30 million
7. Ukraine – 25 million
8. Turkey – 25 million
9. Germany – 25 million
10. Russia – 24 million

The choice destinations in the ASEAN region are as follows:

1. Malaysia – 25 million
2. Thailand – 14.5 million
3. Singapore – 8 million
4. Indonesia – 6 million
5. Vietnam – 4 million
6. **Philippines – 3 million**
7. Cambodia – 2 million
8. Laos – 1.3 million

9. Brunei - 0.23 million
10. Burma – 0.19 million
11. Papua New Guinea – 0.11 million

Tapping the Overseas Filipino Workers (OFWs) Market

President Aquino signed Proclamation No. 181 on June 3, 2011 declaring the years 2011 to 2016 as the *Pinoy Homecoming Years*. The Proclamation mandates the Secretary of Tourism to call upon any department, agency, office or corporation of the government to assist in any efforts in order to attain the objectives of the Proclamation.

There are 8 to 10 million OFWs worldwide, a viable target market for tourist arrivals, domestic investments, and retirement possibilities. The Proclamation reinforces the *Balikbayan Program* of 1989 granting special privileges to OFWs, former citizens, contract workers and those who have been continuously away from the Philippines for a year². The privileges under the Balikbayan Program include travel tax exemptions, visa-free entry for a year for former citizens, and Duty Free shopping privileges up to \$2,000 to be consumed within two days from arrival.

In 2009, only 197,921, out of the total 10 million OFWs visited the Philippines. Clearly, there is a huge market potential to be tapped in this area.

From the 2009 data, the non-OFWs tourist arrivals are as follows:

1. East Asia – 1,202,995
2. North America – 682,696 (United States – 585,5370)
3. Southeast Asia – 255,586
4. Australasia/Pacific – 185,014
5. Northern Europe – 138,950
6. Western Europe – 138,946
7. South Asia – 46,960
8. Middle East – 46,811 (Saudi Arabia and the UAE – 19,101)
9. Southern Europe – 29,281
10. Eastern Europe – 16,522

Factors Deterring the Arrival of Foreign Tourists

- 1 **Common Carriers Tax (CCT)** - The National Internal Revenue Code (NIRC) of the Philippines imposes a 3% common carriers tax. From the point of view of taxation, the CCT is considered a business tax³. The problem is that tax treaties⁴

1 <http://www.nationmaster.com/graph/ecotouarr-economy-tourist-arrivals>.

2 <http://www.philippinenews.com/top-of-the-news/2569—cg-encourage-overseas-filipinos-filipinos-to-visit-their-home-country>.

3 Section 118, Percentage Tax on Common Carriers, The National Internal Revenue Code of the Philippines.

4 The Philippines have tax treaties with the following countries: (1) Brazil, (2) Canada, (3) China, (4) Czech Republic, (5) Denmark, (6) Finland, (7) France, (8) Germany, (9) Hungary, (10) India, (11) Indonesia, (12) Israel, (13) Italy, (14) Japan, (15) Korea, (16) Poland, (17) Romania, (18) Russia, (19) Singapore, (20) Spain, (21) Sweden, (22) Switzerland, (23) Thailand, (24) United Arab Emirates, (25) United Kingdom of Great Britain and Northern Ireland, (26) United States of America, (27) Vietnam, (28) Malaysia, (29) Netherlands, (30) New Zealand, (31) Norway, (32) Pakistan, (33) Australia, (34) Austria, (35) Bahrain, (36) Bangladesh, and (37) Belgium.

signed between the Philippines and other countries stipulate that the tax to be imposed on common carriers shall only be **income tax**. As a consequence, international carriers want that the CCT to be abolished considering only the Philippines imposes the CCT as a business tax. International carriers consider the imposition to be “heavy” because it is 3% of gross receipts. Furthermore, the Philippines imposes income tax based on gross receipts.

- 2 **Income Tax** - Section 28(A)(3) of the NIRC imposes a Gross Philippines Billings Tax (GPBT) equivalent to 2 ½% based on gross revenue. The effect is that the CCT and GPB have similar tax base. Combining the CCT and GPBT, the total imposition will amount to 5 ½% based on gross billings. The Philippines is the only country that imposes both the CCT and GPBT.

The GBPT, an income tax, is covered by the tax treaties entered into by the Philippines with other countries. The GBPT therefore complies with the international treaties regarding the imposition of income tax on common carriers.

The tax treaties have an expanded definition of “income” which includes (1) income from real property, (2) business profits, (3) shipping and air transport, (4) dividends, (5) interest income from securities, bonds and debentures and the like, (6) royalties, (7) gains from alienation of property, (8) personal services, (9) director’s fees (board of directors of a company), (10) artists and athletes, (11) pensions and annuities, (12) government service, (14) teachers and researchers (remuneration). Fortunately, not all income enumerated by the tax treaties are applicable to common carriers.

The point of departure between the GBPT and the tax treaties lies in the difference in the tax rate. The treaties provide for **1 ½% of the gross revenues** derived from sources in the Philippines. However, Section 28(A)(3) of the NIRC provides for an income tax rate of 2 ½% on gross Philippine billings.

- 3 **Value Added Tax (VAT)** – The foreign airline flying direct from Manila to Europe, the KLM Airlines, says that there is a discrimination against foreign airlines in the Philippines. According to the KLM, foreign airlines must pay both the GPBT and CCT, while domestic airlines pay the regular income tax and their operations (the domestic airlines) are VAT zero rated (0%). Formerly, Alitalia, Air France, British Airways, Lufthansa, Swiss Air, and Egypt Air had flights in the Philippines. The Bureau of Internal Revenue (BIR) clarified that the equivalent of the VAT for local

airlines is the CCT for foreign airlines.

Since 2006, the KLM applied for VAT coverage citing the following provisions of the NIRC:

“Section 236. Registration Requirements.-

... (H) Optional Registration for Value Added Tax of Exempt Person. –

(3) Any person who is not required to register for value added tax under Subsection(G) hereof may elect to register for value added tax by registering with the Revenue District Office that has jurisdiction over the head office of that person, and paying the annual registration fee...

(4) Any person who elects to register under this Subsection shall not be entitled to cancel his registration under Subsection (F) (2) for the next three (3) years...”

During the public hearing of the Ways and Means Committee on February 2, 2012, the possibility of replacing the CCT with the VAT was considered.

- 4 **Travel bans** – On August 23, 2010, Capt. Rolando Mendoza, a former member of the Manila police force held hostage a group of Hong Kong tourists, killing 8 and injuring the rest. As a consequence, the Hong Kong Government issued a travel ban on the Philippines.

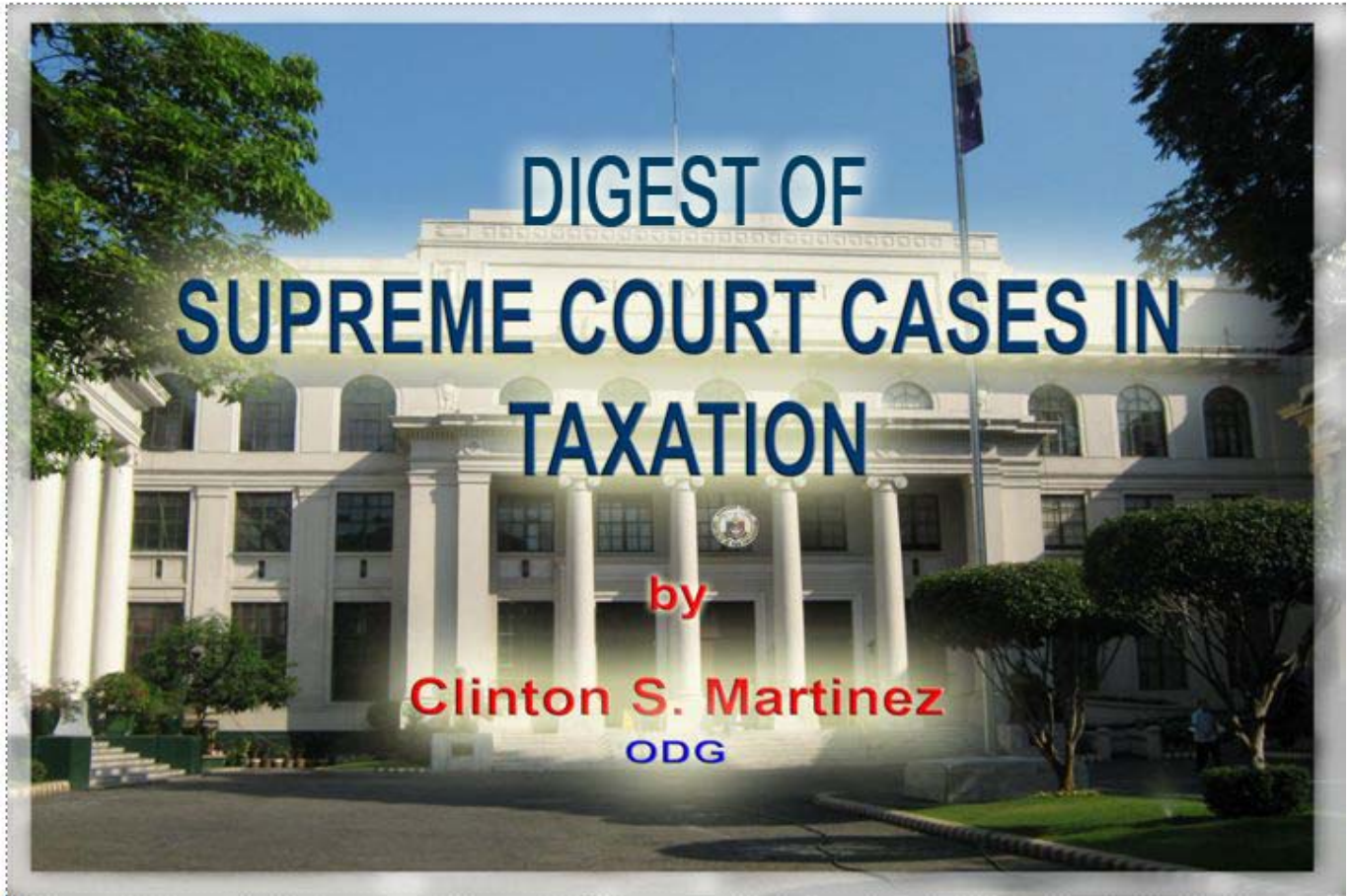
England and Australia⁵ likewise issued a travel advisory.

Observations and Conclusions

The abolition of the CCT is supported for the following reasons:

- 1 The tax treaties of the Philippines cover only income tax. The CCT (Section 118, NIRC) is a business tax, therefore in the event the CCT is abolished, no treaty will be adversely affected;
- 2 Although the Philippines is allowed by the tax treaties to impose an income tax on foreign carriers, the tax rate should be reduced accordingly in order to comply with the mandate of the treaties; and
- 3 The projected loss in revenues as a result of the abolition of the CCT will be compensated by the increase in tourist arrivals in the Philippines.

5 <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/asia-oceania/philippines>.



1. SILICON PHILIPPINES, INC., (Formerly INTEL PHILIPPINES MANUFACTURING, INC.), *Petitioner*, vs. COMMISSIONER OF INTERNAL REVENUE, *Respondent*, G.R. No. 172378, January 17, 2011, Del Castillo, J.

Facts:

This is a petition for review on Certiorari, pursuant to Rule 45 of the Rules of Court, seeking to set aside the Decision of the Court of Tax Appeals (CTA) rendered on 30 September 2005 and its April 20, 2006 Resolution *En Banc*.

Petitioner Silicon Philippines, Inc. (SPI) is a corporation authorized to conduct business in the Philippines. It is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) entity and is a preferred pioneer enterprise with the Board of Investments (BOI).

SPI, on May 21, 1991, filed with the Commissioner of Internal Revenue (CIR) via the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (DOF) an application for refund/credit, of *unutilized input VAT* spanning October 1, 1998 up to December 31, 1998 totaling P31,902,507.50, detailed in this manner:

Tax Paid on Imported/Locally Purchased Capital Equipment	P15,170,082.00
Total VAT paid on Purchases per Invoice Received during the Period it was filed	P16,732,425.50
Amount of Tax Credit/Refund Applied for	<u>P31,902,507.50</u>

Because of the inaction of the CIR, SPI on December 27, 2000, filed a Petition for Review with the CTA alleging it paid input VAT in the above mentioned amount "x x x" which have not been applied to any output VAT."

In its Answer, respondent CIR alleged the ensuing special and affirmative defenses, viz:

- A *“The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded/credited were actually paid;*
- B *“It is incumbent upon herein petitioner to show that it complied with the provisions of Section 229 of the Tax Code as amended;*
- C *“Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes x x x;*
- D *One who claims to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute x x x;*
- E *“In an action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for refund. Furthermore, as pointed out in the case of William Li Yao vs. Collector (L-11875, December 28, 1963), amounts sought to be recovered or credited should be shown to be taxes which are erroneously or illegally collected; that is to say, their payment was an independent single act of voluntary payment of a tax believed to be due and collectible and accepted by the government, which had therefor become part of the State moneys subject to expenditure and perhaps already spent or appropriated; and*
- F *“Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence not refundable.”*

Issues:

(A) *“whether the CTA En Banc erred in denying petitioner’s claim for credit/refund of input VAT attributable to its zero-rated sales in the amount of P16,732,425.00 due to its failure:*

- (1) *“to show that it secured an ATP*

from the BIR and to indicate the same in its export sales invoices; and

- (2) *“to print the word ‘zero-rated’ in its export sales invoices.*

(B) *“whether the CTA En Banc erred in ruling that only the amount of P9,898,867.00 can be classified as input VAT paid on capital goods.”*

Held:

The Supreme Court (SC) denied the petition of SPI and it conformed partially with the pronouncements of the CTA.

The SC ruled that:

“It has been settled x x x that the ATP¹ need not be reflected or indicated in the invoices or receipts because there is no law or regulation requiring it. Thus, in the absence of such law or regulation, failure to print the ATP on the invoices or receipts should not result in the outright denial of a claim or the invalidation of the invoices or receipts for purposes of claiming a refund.

“But while there is no law requiring the ATP to be printed on the invoices or receipts, Section 238² of the NIRC expressly requires persons engaged in business to secure an ATP from the BIR prior to printing invoices or receipts. Failure to do so makes the person liable under Section 264³ of the NIRC.”

The SC likewise ruled that “X x x a claimant for unutilized input VAT on zero-rated sales is required to present proof that it has secured an ATP from the BIR prior to the printing of its invoices or receipts.”

The Court underscored that:

“It bears reiterating that while the pertinent provisions of the Tax Code and the rules and regulations implementing them require entities engaged in business to secure a BIR authority to print invoices or receipts and to issue duly registered invoices or receipts, it is not specifically required that the BIR authority to print be reflected or indicated therein. Indeed, what is important with respect to the BIR authority to print is that it has been

¹ Authority to Print Receipts.

² Sec. 238. Printing of Receipts or Sales or Commercial Invoices. All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same. X X x.

³ Sec. 264. Failure or Refusal to Issue Receipts or Sales or Commercial Invoices, Violations Related to the Printing of such Receipts or Invoices and Other Violations.

secured or obtained by the taxpayer, and that invoices or receipts are duly registered.”

“Similarly, failure to print the word “zero-rated” on the sales invoices or receipts is fatal to a claim for credit/refund of input VAT on zero-rated sales.

“X x x. We explained that compliance with Section 4.108-1 of RR 7-95, requiring the printing of the word “zero-rated” on the invoice covering zero-rated sales, is essential as this regulation proceeds from the rule-making authority of the Secretary of Finance under Section 244⁴ of the NIRC.”

Finally, the SC discussed the claim for refund of input VAT on capital goods under Section 112(B) of the Tax Code, as amended. The important requisites are: (a) “the claimant must be a VAT registered person”; (b) “the input taxes claimed must have been paid on capital goods”; (c) “the input taxes must not have been applied against any output tax liability”; and (d) “the administrative claim for refund must have been filed within two (2) years after the close of the taxable quarter when the importation or purchase was made.”

The SC cited Section 4.106-1 of RR 7-95 which defines capital goods in this wise:

“Capital goods or properties” refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29(f), used directly or indirectly in the production or sale of taxable goods or services.

“Based on the foregoing definition, we find no reason to deviate from the findings of the CTA that training materials, office supplies, posters, banners, T-shirts, books, and other similar items reflected in petitioner’s Summary of Importation of Goods are not capital goods. A reduction in the refundable input VAT on capital goods from P15,170,082.00 to P9,898,867.00 is therefore in order.”

The petition was denied. The SC ruled in favor of respondent CIR.

2. COMMISSIONER OF INTERNAL REVENUE, Petitioner, vs. ASIAN TRANSMISSION CORPORATION, Respondent, G.R. No. 179617, January 19, 2011, Mendoza, J.

Facts:

This is a petition for review under Rule 45 (Certiorari) of the Philippine Rules of Court filed by the

Commissioner of Internal Revenue (CIR), seeking to set aside and reverse the decision [July 16, 2007] of the Court of Tax Appeals *En Banc* (CTA-*En Banc* No. 205) and the September 11, 2007 Resolution which denied its Motion for Reconsideration (MR).

The petitioner was ordered to refund or issue a tax credit certificate in favor of respondent Asian Transmission Corporation (ATC) representing unutilized creditable withholding taxes for the year 2001.

Respondent is a domestic corporation engrossed in the manufacture of automotive parts.

ATC points out that it has established its claim for refund of the amount of P27,325,856.58 for the year 2001.

The petitioner avers that ATC has not proven its case. It propounds that “X x x while the certificates of withholding taxes and the annual income tax returns for the years 2000 and 2001 submitted by ATC may prove the inclusion of income payments which were the bases of the withholding taxes and the fact of withholding, they are not sufficient to prove entitlement to the tax refund requested.”

Issue:

“Whether or not respondent is entitled to refund in the amount of P27,325,856.58 representing the alleged unutilized creditable withholding taxes for the taxable year 2001”

Held:

The Supreme Court (SC) denied the petition of the CIR. The SC said:

“It should be pointed out that the arguments raised by the CIR in support of its position have already been thoroughly discussed both by the CTA-First Division and the CTA-*En Banc*. Notwithstanding, the CIR comes to this Court insisting that the same be once again reviewed. Oft-repeated is the rule that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority. X x x.

“At any rate, the CIR is correct in stating that the taxpayer bears the burden of proof to establish not only that a refund is justified under the law but also that the amount that should be

4 Sec. 244. Authority of Secretary of Finance to Promulgate Rules and Regulations.

refunded is correct. In this case, however, the CTA-First Division and the CTA-En Banc uniformly found that from the evidence submitted, ATC has established its claim for refund or issuance of a tax credit certificate for unutilized creditable withholding taxes for the taxable year 2001 in the amount of P27,325,856.58. The Court finds no cogent reason to rule differently. X x x.”

The SC finally stressed that:

“The documentary evidence presented were sufficient to establish that respondent was withheld taxes and that there was an excess which remain unutilized and now subject of refund.

“With respect to the losses incurred by the ATC, it is true that the taxpayer bears the burden to establish the losses, but it is quite clear from the evidence presented that ATC has fulfilled its duty. Moreover, other than the bare assertion that ATC must establish its losses, the CIR fails to point to any circumstance or evidence that

would cast doubt on ATC’s sworn declaration that it incurred losses in 2000 and 2001. Curiously, in its petition, the CIR further adds that ATC cannot claim a cash refund or tax credit for the unutilized withholding tax for the year 2000 as this would be violative of Section 76 of the Tax Code. This matter, however, was already acted upon in favor of the CIR, when the CTA-First Division only partially granted ATC’s petition by disallowing its claim for cash refund or tax credit for the unutilized withholding tax for the year 2000. This reiteration by the CIR of this argument despite the fact that it has already been acted favorably by the tax court below, only shows that the appeal has not been thoroughly studied.”

The Petition of the CIR was denied.



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