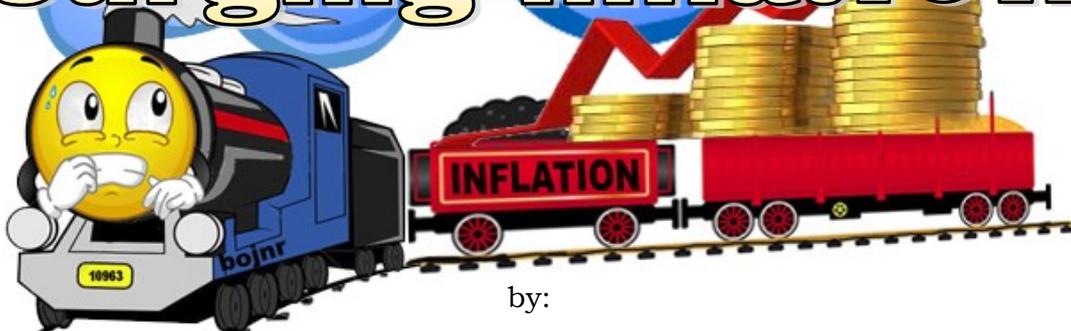




Breaching the mark: TRAIN Law and Surging Inflation



by:

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Whether it is purely coincidental or largely relative, consumer prices have been rising steadily since the start of implementation of Republic Act No. 10963 or the “Tax Reform for Acceleration and Inclusion (TRAIN)” in January this year. Heading off from a moderate annual rate of 2.9% in 2017, year-on-year headline inflation in 2018 rose to 3.4% in January; increased to 3.8% in February and accelerated further to 4.3% and 4.5% in March and April, respectively. It then surged to 4.6% in May and 5.25% in June and although it is within the recently adjusted 4.6% to 5.4% forecast of Bangko Sentral ng Pilipinas (BSP) for 2018, it is nevertheless the highest inflation rate since November 2011¹.

The recent rate in June showed notable annual increases in the indices of certain commodity groups, namely, alcoholic beverages and tobacco (20.8%); transport (7.18%); housing, water, electricity, gas and other fuels (4.6%); education (4.0%); and furnishing, household equipment and routine maintenance of the house (3.0%). Particularly in the food index,² annual mark-ups were significant in the indices of corn (14.1%); vegetables (8.6%); meat (5.0%) and rice (4.7%).²

The upward trend in prices of basic goods and services has started to become remarkable in March and April when their respective 4.3% and 4.5% annual rates both breached the 2%-4% target for 2018. This has prompted the Monetary Board in May to raise benchmark rates by 25 basis points and adjust the 2018 inflation forecast to 4.6 percent while maintaining its 2019 projection at 3.4 percent³.

The country’s economic cluster, however, maintains that the TRAIN law has very minimal impact on the surging prices of commodities. DOF Undersecretary Gil S. Beltran cited that the tax reform law has impacted directly the prices of a limited category of goods, non-alcoholic beverages, tobacco, electricity, gas and other fuels and transportation. He said that based on their assessment, the TRAIN law pushed up inflation merely by zero point four (0.4) percentage points and much of it was felt in 1st quarter of the current year.⁴

¹ <https://psa.gov.ph/price-indices/cpi-ir>

² Ibid

³ Chipongian, Lee, “BSP sets 5.4% inflation forecast for May”, May, 31, 2018, Manila Bulletin.

⁴ DOF statement during Public Hearing conducted jointly by the Committees on Economic Affairs and Ways and Means on May 9, 2018

Understanding Inflation⁵

Inflation is defined as a sustained increase in the general level of prices of commodities in a jurisdiction and is measured as an annual percentage change. Under the circumstances of inflation, the prices of goods and services increase over time. Viewed from another perspective, as inflation rises, the value of every peso shrinks, limiting its capacity to buy a smaller percentage of a good or service in the market. Thus, when prices rise and alternatively when the value of money falls, there is inflation.

The value of a peso or any unit of money is expressed in terms of its purchasing power. This is the amount of real, tangible goods or actual services that money can buy at a moment in time. When inflation goes up, there is a decline in the purchasing power of money. For instance, if the inflation rate is 2% annually, then theoretically a P1 pack of candy will cost P1.02 in a year. After inflation, the value of the peso contracts, effectively decreasing its ability to buy. In recent years, most developed countries have attempted to sustain an inflation rate of 2-3% by using monetary policy tools put to use by central banks. This general form of monetary policy is known as inflation targeting.

1. Commonly Accepted Causes of Inflation:

- a) **Demand-Pull Inflation** – Inflation is caused by the overall increase in demand for goods and services, which bids up their prices. This theory can be summarized as "too much money chasing too few goods". In other words, if demand is growing faster than supply, prices will increase. This usually occurs in rapidly growing economies.
- b) **Cost-Push Inflation** – Inflation is caused when companies' costs of production go up. When this happens, they need to increase prices to maintain their profit margins. Increased costs can include things such as wages, taxes, or increased costs of natural resources or imports.
- c) **Monetary Inflation** – Inflation is caused by an oversupply of money in the economy. Just like any other commodity, the prices of things are determined by their supply and demand. If there is too much supply, the price of that thing goes down. If that thing is money, and too much supply of money makes its value go down, the result is that the prices of everything else priced in peso go up.

2. Positive Effects of Inflation

- a) **Better Savings Account Rates.** Investors with short-term goals might invest in a high-interest savings account if they think they would need access to their funds in the near future. It enables short-term savings to

get a boost because increasing inflation often prompts the BSP to raise interest rates.

- b) **Offsets Negative Effects of Deflation.** The opposite of inflation is deflation, which results in lower prices on many things, like grocery items. Deflation might sound good on the surface because it increases the value of your money. In reality, however, deflation leads to sluggish sales for the grocers and retailers, which in turn impacts the share price of these companies, part of our overall stock market and economy.
- c) **Higher Wages.** As inflation pushes the price of goods and services higher, it's also positively correlated with higher wages. A tight job market might lead to wage growth, which is seen as one of the causes of inflation.
- d) **Cost-of-Living Adjustments.** Recipients of Social Security and Supplemental Security Income could see an increase in their monthly payments when the Consumer Price Index, one of the inflation measures, goes up. This is called a cost-of-living adjustment, and it means you'll have a few more peso to cover your monthly budget.

3. Negative Effects of Inflation

- a) **Higher Costs of Goods.** With inflation, prices of almost everything start to rise and unless salaries are adjusted at least as much as the inflation rate, it would be hard to pay for the increased costs of items on the same income⁶.
- b) **Borrowing Money Is More Expensive.** When inflation rises, the BSP might take it as a cue to increase rates for banks. These increased rates are then passed on to individual and business borrowers. The bottom line is that higher inflation means higher interest rates on the money you borrow — and less money in your pocket.
- c) **Adjustable-Rate Mortgage Rates Might Go Up.** Borrowers who have an adjustable-rate mortgage might find that an uncomfortable effect of inflation is a higher interest rate when their mortgage is "adjusted." This is because ARMs are usually priced according to the 10-year Treasury bill. The rates for these long-term T-bills usually rise and fall with short-term rates set by the BSP. And that higher rate means higher ARM mortgage payments, too.
- d) **Hoarding is Imminent.** People have a tendency to hoard goods especially during periods of hyperinflation. This is because the monetary value of goods might be more tomorrow than it is today, so consumers want to buy up as much as they can afford at

⁵ Hayes, Adam, "What Is Inflation?", Investopedia, <https://www.investopedia.com/university/inflation/inflation1.asp>, accessed June 28, 2018

⁶ Hyperinflation occurs when very high rates of inflation spiral out of control. Also keep an eye out for the phrase "core inflation," which is an inflation measurement that excludes certain volatile markets like energy and food. On the other hand, if you see the term "all-items Consumer Price Index," note that it's a measure of economy-wide inflation. The current inflation rate as represented by the June 2016 all-items CPI is 1 percent higher than it was in June 2015, based on reports from the U.S. Department of Agriculture's Research Service, according to the High Plains/Midwest Ag Journal.

today's prices before the prices rise. Hoarding might then cause immediate shortages in food and household goods.

- e) Long-Term Savings Might Erode. For investors who count long-term, conservative investments as a significant part of their net assets, inflation is undesirable. This is because these traditionally safe investments like bonds often require investors to lock into a guaranteed rate for a long time. Inflation creates a situation where these long-term investments that pay a low interest rate have decreased buying power because inflation pushes up the price of goods and services.

TRAIN Law Provisions with Inflationary Impact

On December 19, 2017, the President signed into law Republic Act No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN)". Known as Package 1 of the Duterte administration's Comprehensive Tax Reform Program, the law amended several provisions of the National Internal Revenue Code of 1997 (NIRC of 1997) particularly on personal income taxation, passive income for both individuals and corporations, estate tax, donor's tax, value-added tax (VAT), excise tax, documentary stamp tax (DST), and tax administration, among others. It likewise introduced new taxes such as the excise tax on cosmetic surgery and sugar-sweetened beverages.

While the TRAIN law restructured and reduced the rates of personal income tax, it has likewise imposed compensatory measures, which included higher taxes on tobacco and petroleum products, automobiles, certain non-essential services, sweetened beverages, mineral products and documentary stamps. The additional revenues that will be generated in the implementation of the Act shall be used to fund the President's priority infrastructure and social programs that will ultimately benefit the poor.

The following are the major provisions of the law that adjusted the tax rates of particular goods and services, which is deemed, in one way or another, to have influenced the current upward movement of prices of most commodities in the market:

1. Increase in the excise tax rates on cigarettes packed by hand and machine and on those imposed under Section 145 (Cigars and Cigarettes) of the law;
2. Increase in the excise tax rates on petroleum/fuel products;
3. Restructuring of the tax schedule on the excise tax on automobiles by imposing ad valorem tax rates that are directly applied to the net manufacturer's price/importer's selling price instead of imposing marginal tax rates; and subjecting of hybrid vehicles to excise tax rates equivalent to 50% of the applicable

excise tax rates on equivalent automobiles;

4. Imposition of excise tax on non-essential services (Cosmetic Procedures Tax);
5. Imposition of excise tax on sweetened beverages;
6. Increase in excise taxes on mineral products particularly on domestic or imported coal and coke; on all nonmetallic and metallic minerals and quarry resources; and on indigenous petroleum;
7. Increase in the rates on DST.

Inflation and TRAIN Law

Even during the deliberations last year on the DOF-endorsed TRAIN proposals in Congress, there were already serious concerns by some legislators and stakeholders on the tax measures' possible inflationary impact when enacted and implemented. Much of the worries and apprehension was based on the increased excise tax rates for petroleum products considering that excise tax – being an indirect tax – is easily passed on to consumers through higher consumer prices.

The increase in fuel prices would affect other sectors that are highly dependent on fuel as a major input to production. Aside from the transportation sector, other industries such as agriculture-related industries (e.g., manufacture of pesticides, insecticides and fertilizer) are also affected. This would mean that eventually, farmers, especially those who are poor, would also be affected by fuel price increases⁷.

Table 1. Annual Inflation Rate (June 2017-June 2018)



Source: <https://www.rappler.com/business/206518-inflation-rate-philippines-june-2018>

The constant rise in inflation starting in January this year has fanned stronger speculations that the TRAIN law – aside from other factors – may have caused significantly such upward surge in the prices of most commodities. And whether or not the law has something to do with it, both the 5.2% year-on-year inflation in June and the 4.3% 6-month average rate (January-June 2018) have already breached the 2%-4% projection that was originally set by the

⁷ Celia M. Reyes, Alellie B. Sobrevinas, Joel Bancolita and Jeremy de Jesus, "Impact of changes in the prices of rice and fuel on poverty in the Philippines", www.pep-net.org ISSN: 1908-6989 Vol. VI, No. 2, March 2009.

government late last year for the period 2018-2010⁸. The figures are likewise beyond the BSP's 3.4% projected inflation rate particularly for 2018⁹.

Research group IBON maintains that the new tax program definitely contributed to the marked uptick in inflation because additional taxes were already implemented since the law became effective starting January 1. The organization said that while the change in global oil prices and peso depreciation were certainly factors in recent inflation, TRAIN also already increased the prices of oil products, sugar sweetened beverages, and other goods and services. It explains that this includes price increases due to excise taxes as well as from establishments using the law as an excuse to charge more¹⁰.

In an academic conference held in February 2018, Dennis Mapa, dean of the UP Diliman School of Statistics, highlighted the direct and indirect impacts of the newly-implemented TRAIN law on the movement of prices of basic goods and services. Dean Mapa said that contrary to the economic managers' estimated 0.1 to 0.7-percentage-point impact of the tax reform law on inflation, it would even be higher or at 0.9 percentage point for the bottom 30% of households in the first year of implementation. He added that it would further increase to a 1.8 percentage point impact on the poor once the entire P6 per liter tax is implemented¹¹.

Is TRAIN Law to Blame?

On May 9, 2018, the Senate Committees on Economic Affairs and Ways and Means jointly conducted another inquiry in aid of legislation on Senate Resolution No. 696. The public hearing focused on two critical issues brought about by the implementation of Package 1 of the TRAIN Law, namely, (1) on the inflationary effects of the law, especially on its impact on the prices of basic necessities and prime commodities and the available remedies that can dampen inflationary pressure; and (2) on measures that would push for a faster, sufficient and more effective implementation of the social mitigating measures under the law, which would provide relief to the Filipino poor especially the bottom 30 percent who bears the costs of a fiscal reform whose intent is to promote sustainable and inclusive growth.

The following are the highlights of the joint report/assessment of the government's economic managers, which included the DOF, BSP, National Economic and Development Authority (NEDA), and Department of Trade and Industry (DTI)¹²:

1. Moderate inflation is typical for a rapidly growing economy, and inflation has been manageable, with the BSP having sufficient tools to reign in unwarranted price shocks and remaining ready to implement necessary monetary measures to actively keep inflation under control.
2. The main reasons for inflation in April are: a) Better collection of sin tax from tobacco which induced producers to recover their tax payments through price adjustments; b) Decline in corn stocks; c) Rise in global prices—Dubai crude oil prices rose from US\$52.45 per barrel in April 2017 to US\$64.75 in April 2018 at 23.5 percent increase; d) Fish supply problems and to a lesser extent, the TRAIN law.
3. TRAIN directly impacted prices of a limited category of goods, non-alcoholic beverages, tobacco, electricity, gas and other fuels and transportation. Based on the DOF's decomposition analysis/assessment, TRAIN only pushed up inflation by zero point four (0.4) percentage point and much of it was felt in Q1. This is lower than the zero point seven (0.7) percentage point which the DOF earlier estimated.
4. For Q1 inflation, tobacco prices increased by 46 percent, year-on-year, of which, TRAIN only accounts for 2 percentage points, sin tax for the 4 percentage points, and the rest is due to the industries' response to a more efficient sin tax collection.
5. Of the 34% year-on-year increase in petroleum prices in Q1, TRAIN only accounts for 7 percentage points. The rest or 27 percentage points is due to increasing world prices of crude oil and peso depreciation.
6. The increase in the cost of operating personal transport is mainly attributed to the adjustment in the domestic price of oil which is driven by higher international oil prices and peso depreciation. Higher crude oil price and currency depreciation accounts for P9.10 or 22% of the retail price, while additional excise tax on fuel due to TRAIN contributed less at P2.8 including additional VAT, or 7% of the retail price.
7. The expansionary fiscal stance of the administration to pursue its socioeconomic agenda is inflationary in nature. Substantial increases in government spending and higher salaries, in particular, induce demand that put upward pressure on prices, which include salary increase for uniformed personnel (P62.8 billion for 2018); lowered income tax (P146.6 billion foregone revenue); Tertiary Education Law (P51.4 billion

⁸ On December 22, 2017, the cabinet-level Development Budget Coordination Committee kept the inflation target for the period 2018 to 2020 at 2-4 percent. <https://www.philstar.com/business/2018/01/05/1774935/bsp-sees-manageable-inflation-2018-2019#eb80RfSmHb1pqGXl.99>, accessed on July 2, 2018.

⁹ In January 5, 2018, BSP Governor Nestor Espenilla, Jr. said that "robust domestic economic activity, ample liquidity, and well-anchored inflation expectation continue to support within-target inflation".

¹⁰ <http://ibon.org/2018/03/january-inflation-partially-due-to-train-ibon/>

¹¹ De la Paz, Chrisee, "Inflation seen to continue hitting poor hard", March 6, 2018, rappler.com

¹² Joint report presented to the Committees on Economic Affairs and Ways and Means by DOF Undersecretary Gil S. Beltran; BSP Deputy Governor Diwa C. Guinigundo; NEDA Assistant Secretary Carlos O. Abad Santos; and DTI Undersecretary Ruth B. Castelo.

foregone revenues); and Build, Build, Build Program (about P1 billion).

8. It is difficult to foresee accurately the external factors that pushed inflation beyond government targets and assumptions for 2018. These sources include the geo-political tensions in the Middle East (January-April) and the dynamics of policy decisions between OPEC and non-member countries with regard to the regulation of oil production. Thus, the economic managers failed to anticipate and factor in the surging global oil prices, peso depreciation and possibilities of profiteering in their macro-economic assumptions particularly in projecting inflation in relation to TRAIN law implementation.

Committee on Economic Affairs Chair Senator Sherwin Gatchalian, while recognizing the significant impact of external and uncontrolled factors of inflation, expressed disappointment over the seemingly inaccurate inflation projections for 2018 of the DOF (3.9%), NEDA (3.6%) and BSP (3.8%) during the deliberation on the TRAIN proposals in August 17, 2017. He pointed out the critical responsibility of the economic cluster to deliver macro-economic forecasts and assumptions that are as accurate as possible. He cited that the economic managers should have provided the legislators with more precise data estimates that would have guided their decisions competently with regard to the consideration and enactment of the tax reform law.

Conclusion

The government's economic managers maintain that the recent spike in consumer prices and the corresponding surge in inflation rate – a 5-year high – are not attributable to the initial implementation of the TRAIN law. Theoretically, it is considered as an inflation that is moderate, within levels that are manageable and thus, generally good for the economy. Indeed, the spiraling global oil prices, aggravated by a weakening peso, could be the main culprit for such upward trend.

Although the unabated rise in world oil prices has slowed down¹³ a bit at the end of May, the surge may continue or settle at high levels if geopolitical tensions persist. These uncertainties include the conflict in the Middle East, the diplomatic row between the US and Iran and the current crisis in Venezuela.

While the TRAIN law's effect on rising inflation is indeed minimal and within assumptions¹⁴, it cannot be denied, however, that its passage came at the most imperfect time and amid very risky conditions in global economies. When Congress responded to the

firm endorsement of the Duterte administration to enact the tax reform bill late last year, there were already indications of an imminent uptick in global oil prices and threats of a depreciating local currency. Worse, the prospect of profiteering and other opportunistic trade practices within the local market – a way of taking advantage of the effect of increased excise tax rates at least in fuel – were not anticipated and therefore not considered well in the crafting of macro-economic projections.

The result is a tax reform law whose pure and holistic intention to reduce taxpayers' burden and strengthen the economy is overwhelmed only by the inflationary impact of its compensatory provisions, which seemed to have been anchored on some deficient if not erroneous economic assumptions.

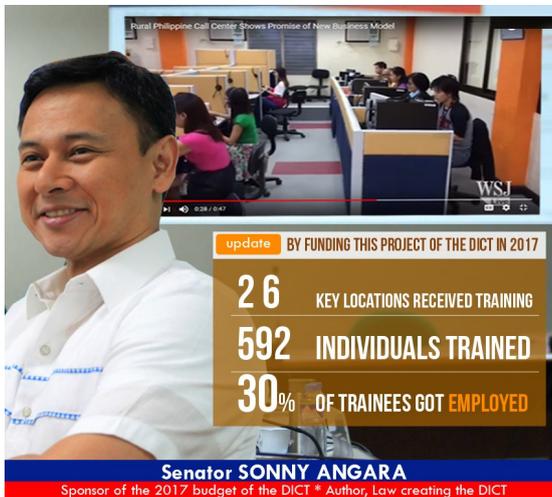
It is notable though that aside from the law's provision for social mitigating measures like the unconditional cash transfer (UCT) and the suspension of implementation of the additional excise tax on fuel once world oil prices reach \$80 per barrel, the government is determined to put in place other safety nets including the passage of the Rice Tariffication Act (shift from import quotas to tariffs that would reduce rice prices by up to P7 per kilo and dampen inflation by 0.2 to 0.4 percentage points); importation of oil from non-OPEC countries; grant of fuel discounts for PUVs; and enhancing agricultural production to meet growing demands and arrest supply shortfall.

As inflation levels continue to breach government thresholds and breed uncertainties within the economy, the government should start shifting its focus from absolving the TRAIN law from any accountability to finding solutions that would address and temper the surging prices of commodities. While inflation may not be generally bad for the economy, its adverse effects in the longer term will be strongly felt particularly by the poor. Until this consumer price surge is tamed and the inflation rates are held within ideal levels, the consumers will remain insensitive to the supposed economic gains as claimed by the government. What will matter most to them, for the meantime, are not the benefits of a growing GDP or the massive infrastructure program of the government but rather, the fast deteriorating purchasing capacity of their hard-earned money.



¹³ US crude oil futures have dropped by nearly 10% to trade around \$66.50 per barrel, down from about \$73 on the 3rd week of May 2018. Global benchmark Brent crude oil has dropped by about 6% to trade around \$76, after peaking above \$80. The sharp price decline was triggered recently by Saudi Arabia, the biggest oil exporter in the world and de facto leader of oil cartel OPEC. Saudi energy minister Khalid Al-Falih said during a CNN-hosted panel in St. Petersburg, Russia, that he was in intensive discussions with Russia and other OPEC nations to pump more oil to ease global supply concerns.

¹⁴ TRAIN law effect on inflation is mere 0.4 percentage points in April and May as per the DOF.



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Para sa balik-eskwela:

STUDENT DISCOUNT SA MGA LIBRO, IBA PANG SCHOOL SUPPLIES, IGINIIT NI ANGARA

"Balik eskwela na naman. Siguradong excited na ang mga bata mamili ng mga bagong gamit sa school, pero para sa mga magulang, panahon na naman ito ng malaking gastos. Kaya ipinanukala natin ang pagbibigay ng diskwento para mapagaan ang gastusin ng pamilya sa pag-aaral," ani Sen. Sonny Angara, kilalang tagapagsulong ng mga repormang pang-edukasyon.



"X x x.. ang Senate Bill 134, lahat ng mahihirap na estudyante sa elementary, high school, kolehiyo at maging ang mga naka-enrol sa technical-vocational institutions ay pagkakalooban ng 5-percent discount sa libro, school supplies, food establishments, sa pagbili ng gamot, sa pagpasok sa museums, sinehan at sa cultural events." (FB, May 28, 2018) ²

* Compiled and sorted by Dir. Clinton S. Martinez

¹ <https://www.facebook.com/sonnyangara/photos/a.327669587322597.74930.156752721080952/1733119450110930/?type=3&theater>

² <https://web.facebook.com/notes/sonny-angara/para-sa-balik-eskwela-student-discount-sa-mga-libro-iba-pang-school-supplies-igi/1750603001695908/>



COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, v. MIRANT PAGBILAO CORPORATION (NOW TEAM ENERGY CORPORATION), *Respondent*. [G.R. No. 180434, January 20, 2016]



Facts:

Respondent Mirant Pagbilao Corporation (MPC) is a duly-registered Philippine corporation situated at Pagbilao Grande Island in Pagbilao, Quezon, and in the business of generation and distribution of electricity to the National Power Corporation (NAPOCOR) under a Build, Operate, Transfer (BOT) Scheme. It is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer pursuant to the Tax Code of 1997.

On November 26, 1999, the BIR approved MPC's application for Effective Zero-Rating for the construction and operation of its power plant. For taxable year 2000, the quarterly VAT returns filed by MPC showed an excess input VAT paid on domestic purchases of goods, services and importation of goods in the amount of P127,140,331.85.

On March 11, 2002, respondent filed before the BIR an administrative claim for refund of its input VAT covering the taxable year of 2000. Subsequently on March 26, 2002, MPC proceeded to file a petition for review before the Court of Tax Appeals (CTA), without waiting for the CIR's action on the administrative claim.

On August 31, 2005, the CTA Second Division made a Decision partially granting MPC's claim for refund, and ordering the CIR to grant a refund or a tax credit certificate, but only in the amount of P118,749,001.55, covering MPC's unutilized input VAT incurred for the second, third and fourth quarters of taxable year 2000.

MPC filed a motion for partial reconsideration and new trial in view of the additional amount it sought to be approved. In an Amended Decision, the CTA Second Division found that MPC is entitled to a modified amount of P118,756,640.97 input VAT, upon allowing the amount of P7,639.42 in addition to the VAT input tax. However, MPC's motion for new trial was denied.

Not contended, MPC elevated the matter to the CTA *en banc*.

Meanwhile, the CIR filed a motion for reconsideration of the amended decision. However, on November 13, 2006, the CTA Second Division issued a Resolution denying the motion. Thereafter, the CIR filed a petition for review before the CTA *en banc*, docketed as E.B. Case No. 225.

In its decision dated September 11, 2007, the CTA *en banc* affirmed *in toto* the assailed amended decision and resolved the issues presented in E.B. Case Nos. 216 and 225.

In sustaining the decision of the CTA Second Division in E.B. Case No. 216, the CTA *en banc* ruled that:

“(a) MPC's claim for the refund of P810,047.31 is disallowed for lack of supporting documents. Tax refunds, being in the nature of tax exemptions, are construed in strictissimi juris against the claimant.

Thus, a mere summary list submitted by MPC is considered immaterial to prove the amount of its claimed unutilized input taxes.

“(b) MPC’s claim for the refund of P836,768.00 as input taxes is denied due to lack of proof of payment. As a rule, “input tax on importations should be supported with Import Entry and Internal Revenue Declarations (IEIRDs) duly validated for actual payment of input tax” and that other documents may be adduced to determine its payment. Here, the IEIRDs presented by MPC did not show payment of the input taxes and the amounts indicated therein differed from the bank debit advice. More so, the bank debit advice did not properly describe the mode of payment of the input tax which made it difficult to determine which payee, and to what kind of payment did the bank debit advices pertain to.

“(c) The denial of MPC’s motion for new trial was correct since it was pointless to require MPC to submit additional documents in support of the unutilized input tax of P3,310,109.20, in view of MPC’s admission that the VAT official receipts and invoices were not even pre-marked and proffered before the court. Regrettably, without such documents, the CTA could not in any way properly verify the correctness of the certified public accountant’s conclusion.

“As regards E.B. Case No. 225, the CTA en banc upheld the ruling of the CTA Second Division that VAT at 0% rate may be imposed on the sale of services of MPC to NAPOCOR on the basis of NAPOCOR’s exemption from direct and indirect taxes.”

Issues:

Whether or not the CTA erred in granting MPC’s claim for refund of its excess input VAT payments on domestic purchases of goods, services and importation of goods attributable to zero-rated sales for taxable year 2000.

A corollary issue is whether or not the CTA had jurisdiction to entertain MPC’s judicial claim inasmuch as the latter instituted the action 15 days from the filing of its administrative claim for refund and without waiting for the CIR’s action.

Held:

The Supreme Court (SC) ruled to dismiss the case, without discussing the entitlement to the refund, due to failure of MPC to observe proper rules on filing. The SC decided that MPC’s action of filing a petition for review before the CTA, docketed as CTA Case No. 6417, without waiting for the CIR’s action on the administrative claim, was premature.

The High Court stressed:

“The Court shall first address the issue on jurisdiction. While the matter was not raised by the CIR in its petition, it is settled that a jurisdictional issue may be invoked by either party or even the Court *motu proprio*, and may be raised at any stage of the proceedings, even on appeal. Thus, the Court emphasized in *Sales, et al. v. Barro*:

“It is well-settled that a court’s jurisdiction may be raised at any stage of the proceedings, even on appeal. The reason is that jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action. x x x [E]ven if [a party] did not raise the issue of jurisdiction, the reviewing court is not precluded from ruling that it has no jurisdiction over the case. In this sense, dismissal for lack of jurisdiction may even be ordered by the court *motu proprio*.

“In the present dispute, compliance with the requirements on administrative claims with the CIR, which are to precede judicial actions with the CTA, indubitably impinge on the tax court’s jurisdiction. In *CIR v. Aichi Forging Company of Asia, Inc.*, the Court ruled that the premature filing of a claim for refund or credit of input VAT before the CTA warrants a dismissal, inasmuch as no jurisdiction is acquired by the tax court. Pertinent thereto are the provisions of Section 112 of the NIRC at the time of MPC’s filing of the administrative and judicial claims, and which prescribe the periods within which to file and resolve such claims. X x x.

“Contrary to the specified periods, specifically those that are provided in the second paragraph of Section 112(D), MPC filed its petition for review with the CTA on March 26, 2002, or a mere 15 days after it filed an administrative claim for refund with the CIR on March 11, 2002. It then did not wait for the lapse of the 120-day period expressly provided for by law within which the CIR shall grant or deny the application for refund. The Court’s pronouncement in *CIR v. San Roque Power Corporation* is instructive on the effect of such failure to comply with the 120-day waiting period, to wit:

“1. Application of the 120 + 30 – Day Periods

“x x x

“It is indisputable that compliance with the 120-day waiting period is mandatory and jurisdictional. The waiting period, originally fixed at 60 days only, was part of the provisions of the first VAT law, Executive Order No. 273, which took effect on 1 January 1988. The waiting period was extended to 120 days

effective 1 January 1998 under RA 8424 or the Tax Reform Act of 1997. Thus, the waiting period has been in our statute books for more than fifteen (15) years before San Roque filed its judicial claim.

"Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition. Philippine jurisprudence is replete with cases upholding and reiterating these doctrinal principles.

"The charter of the CTA expressly provides that its jurisdiction is to review on appeal "decisions of the [CIR] in cases involving x x x refunds of internal revenue taxes." When a taxpayer prematurely files a judicial claim for tax refund or credit with the CIA without waiting for the decision of the Commissioner, there is no "decision" of the Commissioner to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. The charter of the CTA also expressly provides that if the Commissioner fails to decide within "a specific period" required by law, such "inaction shall be deemed a denial" of the application for tax refund or credit. It is the Commissioner's decision, or inaction "deemed a denial," that the taxpayer can take to the CTA for review. Without a decision or an "inaction x x x deemed a denial" of the Commissioner, the CTA has no jurisdiction over a petition for review. (Citations omitted, emphasis in the original and underscoring ours)

The Court explained further:

"The old rule that the taxpayer may file the judicial claim, without waiting for the Commissioner's decision if the two-year prescriptive period is about to expire, cannot apply because that rule was adopted before the enactment of the 30-day period. The 30-day period was adopted precisely to do away with the old rule, so that under the VAT System the taxpayer will always have 30 days to file the judicial claim even if the Commissioner acts only on the 120th day, or does not act at all during the 120-day period. With the 30-day period always available to the taxpayer, the taxpayer can no longer file a judicial claim for refund or credit of input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period.

"To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the

conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during or after the effectivity of the Atlas doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the Aichi doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional. [Underscoring supplied]

"The cited exception to the general rule, which came as a result of the issuance of BIR Ruling No. DA-489-03, does not apply to MPC's case as its administrative and judicial claims were both filed in March 2002.

"The doctrine laid down in San Roque was reiterated in subsequent cases. In CIR v. Aichi Forging Company of Asia, Inc., the Court cited the general rule that parties must observe the mandatory 120-day waiting period to give the CIR an opportunity to act on administrative claims; otherwise, their judicial claims are prematurely filed. In Team Energy Corporation (formerly MPC) v. CIR, the Court again emphasized the rule stating that "the 120-day period is crucial in filing an appeal with the CTA." "[T]he 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period."

"Clearly, MPC's failure to observe the mandatory 120-day period under the law was fatal to its immediate filing of a judicial claim before the CTA. It rendered the filing of the CTA petition premature, and barred the tax court from acquiring jurisdiction over the same. Thus, the dismissal of the petition is in order. "[T]ax refunds or tax credits - just like tax exemptions - are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit"

"With the CTA being barren of jurisdiction to entertain MPC's petition, the Court finds it unnecessary, even inappropriate, to still discuss the main issue of MPC's entitlement to the disputed tax refund. The petition filed by MPC with the CTA instead warrants a dismissal. It is settled that "a void judgment for want of jurisdiction is no judgment at all."

The SC finally said: "WHEREFORE, the Decision dated September 11, 2007 and Resolution dated November 7, 2007 of the Court of Tax Appeals en banc in E.B. Case Nos. 216 and 225 are SET ASIDE,

as the CTA Case No. 6417 was prematurely filed, and therefore, the CTA lacked jurisdiction to entertain Mirant Pagbilao Corporation's judicial claim." [Emphasis provided]



PHILIPPINE AMUSEMENT AND GAMING CORPORATION, Petitioner, v. BUREAU OF INTERNAL REVENUE, COMMISSIONER OF INTERNAL REVENUE, AND REGIONAL DIRECTOR, REVENUE REGION NO. 6, Respondents. [G.R. No. 208731, January 27, 2016]

Facts:



Petitioner Philippine Amusement and Gaming Corporation (PAGCOR) is a duly organized government-owned and controlled corporation (GOCC) established pursuant to Presidential Decree (PD) No. 1869, as amended, with corporate address at

Manila to, among others, regulate and establish clubs and casinos for amusement and recreation, including sports gaming pools.

The Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR) and given the authority to resolve protests on assessments issued by her office or her authorized representatives, among others. She holds office at the BIR Building, Agham Road, Quezon City.

A car plan scheme is provided by PAGCOR to its qualified officers pursuant to a 60% - 40% payment schedule, payable in five (5) years.

Petitioner received a Final Assessment Notice (FAN) dated January 14, 2008, demanding that it pay and settle its deficiency fringe benefits tax (FBT) for taxable year 2004 in the amount of P48,589,507.65. On January 24, 2008 PAGCOR filed a protest to the assessment addressed to Revenue Region (RR) 6 of the BIR. On August 14, 2008 petitioner elevated its cause to the CIR (letter dated August 13, 2008), due to non-action on the same.

On September 25, 2008 PAGCOR was informed that the Legal Division of RR 6 sustained imposition of the FBT and that the protest was forwarded to the Assessment Division. It was later referred to Revenue District Office (RDO) 33 for appropriate action. Hence, this Petition by PAGCOR.

Issues:

"Whether or not the Court of Tax Appeals (CTA) En Banc gravely erred in affirming the CTA 1st Division's Decision dismissing the Petition for Review for having been filed out of time.

"Whether or not the CTA En Banc seriously

erred when it affirmed the CTA 1st Division's failure to decide the case on substantive matters, i.e., the full import of PAGCOR's tax exemption under its charter which necessarily includes its exemption from the fringe benefits tax (FBT).

" - Assuming that PAGCOR is not exempt from the FBT, whether or not the car plan extended to its officers inured to its benefit and it is required or necessary in the conduct of its business.

" - Assuming that PAGCOR is subject to the alleged deficiency FBT, whether or not it is only liable for the basic tax, i.e., excluding surcharge and interest.

"In their Comment, respondents argue that the CTA properly dismissed PAGCOR's petition because it was filed beyond the periods provided by law."

Held:

The Supreme Court (SC) denied the petition due to premature and NOT late filing. In support of said pronouncement, the High Court said:

"We shall illustrate below how PAGCOR failed to follow the clear directive of Section 228 and Section 3.1.5 (of Revenue Regulations No. 12-99, implementing Section 228).

"PAGCOR's protest to the RD on 24 January 2008 was filed within the 30-day period prescribed in Section 228 and Section 3.1.5. The RD did not release any decision on PAGCOR's protest; thus, PAGCOR was unable to make use of the first option as described above to justify an appeal to the CTA. The effect of the lack of decision from the RD is the same, whether we consider PAGCOR's April 2008 submission of documents or not.

"Under the third option described above, even if we grant leeway to PAGCOR and consider its unspecified April 2008 submission, PAGCOR still should have waited for the RD's decision until 27 October 2008, or 180 days from 30 April 2008. PAGCOR then had 30 days from 27 October 2008, or until 26 November 2008, to file its petition before the CTA. PAGCOR, however, did not make use of the third option. PAGCOR did not file a petition before the CTA on or before 26 November 2008.

"Under the second option, PAGCOR ought to have waited for the RD's whole or partial denial of its protest before it filed an appeal before the CIR. PAGCOR rendered the second option moot when it formulated its own rule and chose to ignore the clear text of Section 3.1.5. PAGCOR "elevated an appeal" to the CIR on 13 August 2008 without any decision from the

RD, then filed a petition before the CTA on 11 March 2009. A textual reading of Section 228 and Section 3.1.5 will readily show that neither Section 228 nor Section 3.1.5 provides for the remedy of an appeal to the CIR in case of the RD's failure to act. The third option states that the remedy for failure to act by the CIR or his authorized representative is to file an appeal to the CTA within 30 days after the lapse of 180 days from the submission of the required supporting documents. PAGCOR clearly failed to do this.

"If we consider, for the sake of argument, PAGCOR's submission before the CIR as a separate protest and not as an appeal, then such protest should be denied for having been filed out of time. PAGCOR only had 30 days from 17 January 2008 within which to file its protest. This period ended on 16 February 2008. PAGCOR filed its submission before the CIR on 13 August 2008.

"When PAGCOR filed its petition before the CTA, it is clear that PAGCOR failed to make use of any of the three options described above. A petition before the CTA may only be made after a whole or partial denial of the protest by the CIR or the CIR's authorized representative. When PAGCOR filed its petition before the CTA on 11 March 2009, there was still no denial of PAGCOR's protest by either the RD or the CIR. Therefore, under the first option, PAGCOR's petition before the CTA had no cause of action because it was prematurely filed. The CIR made an unequivocal denial of PAGCOR's protest only on 18 July 2011, when the CIR sought to collect from PAGCOR the amount of P46,589,507.65. The CIR's denial further puts PAGCOR in a bind, because it can no longer amend its petition before the CTA.

"It thus follows that a complaint whose cause of action has not yet accrued cannot be cured or remedied by an amended or supplemental pleading alleging the existence or accrual of a cause of action while the case is pending. Such an action is prematurely brought and is, therefore, a groundless suit, which should be dismissed by the court upon proper motion seasonably filed by the defendant. The underlying reason for this rule is that a person should not be summoned before the public tribunals to answer for complaints which are [premature]. As this Court eloquently said in *Surigao Mine Exploration Co., Inc. v. Harris*:

"It is a rule of law to which there is, perhaps, no exception, either at law or in equity, that to recover at all there must be some cause of action at the commencement of the suit. As observed by counsel for appellees, there are reasons of public policy why there should be no needless haste in bringing up litigation, and why people who are in no default and against whom there is yet no cause of action should not

be summoned before the public tribunals to answer complaints which are groundless. We say groundless because if the action is [premature], it should not be entertained, and an action prematurely brought is a groundless suit.

"It is true that an amended complaint and the answer thereto take the place of the originals which are thereby regarded as abandoned (*Reynes vs. Compania General de Tabacos* [1912], 21 Phil. 416; *Ruyman and Farris vs. Director of Lands* [1916], 34 Phil. 428) and that "the complaint and answer having been superseded by the amended complaint and answer thereto, and the answer to the original complaint not having been presented in evidence as an exhibit, the trial court was not authorized to take it into account." (*Bastida vs. Menzi & Co.* [1933], 58 Phil. 188.) But in none of these cases or in any other case have we held that if a right of action did not exist when the original complaint was filed, one could be created by filing an amended complaint. In some jurisdictions in the United States what was termed an "imperfect cause of action" could be perfected by suitable amendment (*Brown vs. Galena Mining & Smelting Co.*, 32 Kan., 528; *Hooper vs. City of Atlanta*, 26 Ga. App., 221) and this is virtually permitted in *Banzon* and *Rosauro vs. Sellner* ([1933], 58 Phil. 453); *Asiatic Petroleum [sic] Co. vs. Veloso* ([1935], 62 Phil. 683); and recently in *Ramos vs. Gibbon* (38 Off. Gaz. 241). That, however, which is no cause of action whatsoever cannot by amendment or supplemental pleading be converted into a cause of action: *Nihil de re accrescit ei qui nihil in re quandojus accresceret habet*.

"We are therefore of the opinion, and so hold, that unless the plaintiff has a valid and subsisting cause of action at the time his action is commenced, the defect cannot be cured or remedied by the acquisition or accrual of one while the action is pending, and a supplemental complaint or an amendment setting up such after-acquired cause of action is not permissible.

"PAGCOR has clearly failed to comply with the requisites in disputing an assessment as provided by Section 228 and Section 3.1.5. Indeed, PAGCOR's lapses in procedure have made the BIR's assessment final, executory and demandable, thus obviating the need to further discuss the issue of the propriety of imposition of fringe benefits tax. [Emphasis provided] Xxx.

The case was remanded to the CTA for the "determination of the final amount to be paid by PAGCOR after the imposition of surcharge and delinquency interest."

ENGAGEMENTS



LEARNING SESSIONS ON CHARTER CHANGE AND FEDERALISM

May 17, 2018 at the Pecson room, Senate of the Philippines

The Senate Economic Planning Office (SEPO), in partnership with the Institute for Autonomy and Governance (IAG) and International Institute for Democracy and Electoral Assistance (IDEA), an independent and non-partisan think tank committed to promoting autonomy, local governance and peace, holds a series of knowledge sharing activities.



The topic in the series was on : "Constitutional Design: Principles, Processes and Imperatives". Attended by Atty. Rodelio T. Dascal, STSRO Director General, Atty. Sherry Anne C. Salazar, Dir. Clinton Martinez and Ms. Elsie Jesalva, all of Legal and Tariff Branch.



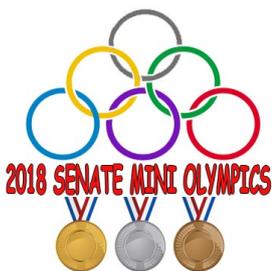
STSRO Officers and Staff paid their last respects to the Former Senate President Edgardo J. Angara (SEJA), May 22, 2018



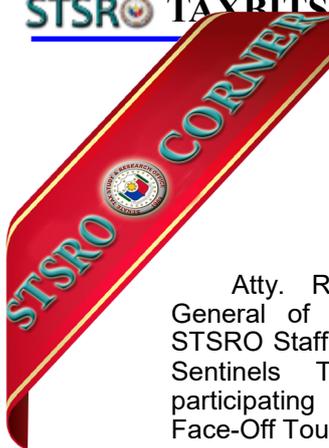
**3RD TECHNICAL WORKING GROUP (TWG) MEETING ON
ESTATE TAX AMNESTY AND
2ND TWG MEETING ON GENERAL TAX AMNESTY
(June 20, 2018)**



Deliberation/Discussion on the Draft Department of Finance (DOF) proposed bill on General Tax Amnesty entitled "An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2017 and Prior Years," submitted to Senator Sonny Angara on May 22, 2018. Shown are STSRO Directors: Norberto M. Villanueva (presiding officer), Elvira P. Crudo, Vivian A. Cabiling, Atty. Sherry Anne C. Salazar and Clinton S. Martinez.



The STSRO, under the Office of the Secretary (OSEC), participated in the Opening Ceremonies of the 2018 Senate Mini Olympics, held at the GSIS Gym. (June 21, 2018)



Atty. Rodelio T. Dascil, Director General of STSTRO, supported by the STSTRO Staff, is a member of the Senate Sentinels Team which is currently participating in the UNTV Executive Face-Off Tournament for a cause.



ATTY. MYRA MARIE D. VILLARICA
Senate Secretary

STSTRO Ladies paid a courtesy call to the new Senate Secretary **Atty. Myra Marie D. Villarica** (June 4, 2018)



TAXBITS is an official publication of the Senate Tax Study and Research Office (STSTRO) located at Rm. 524, Senate of the Philippines, Financial Center, Pasay City.

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