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PHILIPPINE BUSINESS TAXES AMID COVID-19

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I. Introduction

The outbreak of COVID-19 took the world by surprise. To borrow the title of a famous movie franchise, the virus was so fast and furious that even the advanced economies are crippled and the response was tamer than the raging devastation. There is a substantial negative economic impact that tests how much longer could the fundamentals hold. Our unseen enemy knows no borders: its disruption of the "normal" now a given.

At least 90,000 businesses in the Philippines remained closed half a year after the country imposed a lockdown in the capital region and several provinces to prevent the spread of the coronavirus disease, according to Trade Secretary Ramon Lopez. In fact, between August and September 2020, 6% of the 1.4 million micro, small and medium enterprises (MSMEs) in the country remain closed¹. This is quite alarming consider-

ing that MSMEs comprise 99.5% of business establishments in the Philippines and they are employing approximately 63% of the country's workforce. In the past years, MSMEs were responsible for 40% of the country's Gross Domestic Product (GDP). During the second quarter of 2020 and almost four months since the community quarantine was put in place, the country's GDP sank to 16.5%².

In terms of employment, the Department of Labor and Employment (DOLE) reported that more than 200,000 Filipinos "permanently" lost their jobs due to the coronavirus disease pandemic, which affected 319,330 individuals nationwide. The DOLE also cited that 1,264 companies permanently closed nationwide while 11,000 decreased their workers due to the COVID-19 crisis. Of these firms, among the hardest-hit industries are wholesale and retail business, transportation, education as well as tourism³.

Some of the businesses that closed down officially include the Shangri-la Finest Chinese Cuisine, which started serving delicious dishes in 1983; Regina Gift Shop, known to sell unique finds since 1977; Zirkoh and Klownz Comedy Bars owned by Mr. Allan K; and select Victoria Court branches⁴.

Worldwide jurisdictions responded on various fronts, namely, health, physical boundaries, economics, and social and cultural norms. Governments rescued labor and industry, seen as the prime movers of the economy. Countries have implemented a variety of investment policies in response to the coronavirus pandemic, according to a special issue of UNCTAD's Investment Policy Monitor released on May 4, 2020. Such policies include facilitation and retention of investment, providing incentives, financial support to crisis-affected companies, supporting local small and medium-sized enterprises (SMEs) in supply chains, as well as protecting national security and public health through foreign investment screening.

In the ASEAN region, governments have reacted in ways that stimulate their economies from the long-term damage using either expansionary fiscal policy or easy monetary policy or the combination of the two. For example, Singapore announced four fiscal stimulus packages with the total amount of US\$44.9 billion (S\$63.7 billion), which accounted for about 13 per cent of its GDP; Thailand approved a fiscal package of US\$46.1 billion (THB 1.5 trillion) or 8.9 per cent of its GDP; Vietnam introduced a fiscal support package valued at US\$11.4 billion (VND 266 trillion) or 3.5 per cent of its GDP.

And elsewhere in most regions, taxation -- the oft-cited "Sword of Damocles" among the tax-paying community, has become an instant responder⁵.

The Philippines is not left behind in the global fight. Some of the most important and recent initiatives by the Philippine government as part of its mitigation response to the pandemic include: (a) the establishment of the One Command Hospital Center (OCHC) launched in August 2020 as a referral system between

private and public hospitals, (b) the ramping-up of the country's testing capacity (c) the augmentation in the number of contact-tracers and intensified contact tracing efforts; (d) the scaling-up of local health care system capacity and infrastructure; (e) the passage into law of the Bayanihan Act 2; and (f) the latest directive of President Rodrigo Duterte to extend the "state of calamity" in the Philippines until 12 September 2021 to give the national and local governments time to marshal their resources to better address and defeat the pandemic⁶.

While this paper recognizes the overall response of the Philippine government to address the multi-faceted impact of the pandemic to various aspects of our socio-cultural and economic environment, it particularly dichotomizes and tackles the country's response in terms of taxation and public finance.

II. National Government Response

Since time is of the essence, legislating pandemic relief measures is a pillar of the government's stimulus plan. This will either make or break our chance of boosting the Philippines' economic potential and turn our plight into an ideal opportunity.

In order to immediately respond to the needs of the country amid the COVID-19 pandemic, both the executive and legislative branches of the government issued and enacted the following laws, rules, and regulations to carry out the necessary and proper actions to combat the spread of COVID-19 and provide economic relief:

A. Congressional Issuances

Bayanihan 1

Due to the urgent need to mitigate, if not contain, the transmission of COVID-19 and to immediately mobilize assistance to families affected by the community quarantine, Republic Act (RA) No. 11469, otherwise known as the Bayanihan to Heal as One Act, was promulgated. Section 4(o) provides the liberalization of granting incentives for the manufacture or importation of critical or needed equipment or supplies for carrying-out the declared policies and exemption from import duties, taxes, and other fees of imported equipment and supplies. Section 4(z) directs the moving of statutory deadlines and timelines for the filing and submission of any document, the payment of taxes, fees, and other charges to ease the burden on individuals under community quarantine. Section 4(aa) directs all banks, quasi-banks, financing companies, lending companies, and other financial institutions to implement a minimum of thirty (30)-day grace period for the payment of loans.

Bayanihan 2

In cognizance of the adverse impact of the COVID-19 pandemic to the country's economy and society, the government promulgated RA No. 11494, otherwise known as the Bayanihan to Recover as One

Act, to establish mechanisms to mitigate the economic cost and losses caused by the pandemic and to accelerate the recovery and bolster the resilience of the country's economy through measures promoting economic inclusivity and fiscal sustainability. Section 4(cc) states the liberalization of the grant of incentives for the manufacture or importation of critical or needed equipment or supplies or essential goods as well as exemption from import duties, taxes, and other fees for the manufacture or importation of critical or needed equipment or essential goods. Section 4(tt) directs the moving of statutory deadlines and times for the filing and submission of documents and payments of taxes, fees, and other charges. Section 4(zzz) provides for the exemption of donated personal computer, laptops, tablets, or similar equipment appropriate for use in schools from import duties and taxes, including donor's tax. Meanwhile, Section 5 provides for the exemption from tax of retirement benefits. Furthermore, Sections 11(g) and 11(f) list franchise tax on gross bets or turnovers or agreed pre-determined minimum monthly revenues from gaming operations as well as income tax, VAT, and other applicable taxes on income from non-gaming operations as sources of funding.

(Note: On January 5, 2021, the Supreme Court issued a Temporary Restraining Order against the DOF and BIR from collecting the franchise tax on POGOs under RA No. 11494)

B. Executive Action

1. Executive Orders

In accordance with Article II, Section 15 of the Constitution which provides that the State shall protect and promote the right to health of the people and instill

consciousness among them, Executive Order (EO) No. 108, s. 2020 was issued to direct the Philippine Charity Sweepstakes Office (PCSO) to set aside the amount of Php420,585,000, which corresponds to 50% of the remainder of the standby fund under Section 4 of EO No. 201, to cover the financial requirements for the treatment, containment, prevention, and management of COVID-19 cases in the Philippines. The other 50% is allocated to continue covering the funding necessary to respond to future cases of SARS in the country. In addition, the Inter-Agency Task Force for the Management of Emerging Infectious Diseases (IATF-MEID) is directed, through the Department of Health, to coordinate with the PCSO relative to the release of said funds, subject to applicable budgeting, accounting, and auditing laws and regulations.

Pursuant to RA No. 11469, particularly Section 4 (ee), which grants the President temporary emergency powers to undertake measures to carry out the declared policy, EO No. 113, s. 2020 declared that the articles classified under Section 1611 of RA No. 10863, otherwise known as the Customs Modernization and Tariff Act, shall be subject to a temporary additional import duty of 10%, in addition to their existing Most Favored Nation (MFN) and preferential import duties, to augment the urgent need to sufficiently finance the government's programs and measures to mitigate the effects of the COVID-19 pandemic.

2. BIR Issuances

The BIR issued several Revenue Regulations to implement the tax provisions of RA No. 11469 and RA No. 11494, as well as to supplement other policies and measures.

3. BOC Issuances ⁷

BOC Issuance	Subject	Salient Points
Office of the Commissioner (OCOM) Memo No. 89-2020 (April 23, 2020)	Extending the Suspension of Actual and Face-to-Face Seizure and Forfeiture Proceedings	Memorandum dated March 18, 2020 with the subject "Conduct of Hearing in all Forfeiture Proceedings under Customs Memorandum 4-2018A in Light of COVID-19 Travel Restrictions" shall remain effective until the formal lifting of the ECQ.
OCOM Memo No. 82-2020 (April 13, 2020)	Online Submission of Documents for Export Processing	The BOC allowed its accredited exporters, licensed custom brokers, and declarants to submit online their documents for processing of Export Declaration. The online submission shall be made within 48 hours from lodgement of the Export Single Administrative Document (SAD) at the E2M Customs System or the Automated Export Declaration System (AEDS), as applicable. The online submission of documents for processing of Manual Export Declarations, Pre-export Evaluation, Certificate of Shipment, Certificate of Identification, Special Permit to Load, Application as Registered Exporter and Application as Approved Exporter shall be uploaded to the Customer Care Portal System (CCPS), as needed.

BOC Issuance	Subject	Salient Points
		<p>Hard copies of the documents shall be submitted upon lifting of the Declaration of the Enhanced Community Quarantine (ECQ) or within 3 days thereafter.</p>
<p>OCOM Memo No. 80-2020 (April 13, 2020)</p>	<p>Guidelines for the Online Filing and Submission of Goods Declaration for Warehousing and the Processing thereof during the ECQ as declared by the President</p>	<p>The online filing of Goods Declaration can only be availed by BOC accredited importers, licensed custom brokers and declarants. Upon availing of the online filing, they shall undertake to submit the original copy of the supporting documents upon lifting of the ECQ or within 3 days thereafter</p> <p>They shall also attach a scanned copy of a letter of commitment and undertaking in lieu of the required notarized undertaking. The undertaking to be submitted may be signed by any of the responsible officers of the company. The notarized Warehouse Goods Declaration (WGD) and undertaking shall be submitted together with the other supporting documents upon lifting of the ECQ or within 3 days thereafter.</p> <p>The assessment of duties, taxes, and other charges due on shipments covered by goods declaration processed and amount of bonds applied shall be deemed tentative. It shall only be deemed completed upon submission of the hard copies of the documents upon lifting of the ECQ or within 3 days thereafter, and validation by the BOC.</p>
<p>Customs Memorandum Order No. 10-2020 (April 8, 2020)</p>	<p>Summary Abandonment Proceedings during Enhanced Community Quarantine</p>	<p>The abandonment proceedings for the refrigerated containers and dry vans is summarized as follows:</p> <ol style="list-style-type: none"> 1. Imported goods that are deemed abandoned will be tagged as abandoned in the E2M Customs System. The District Collector shall issue Notice of Abandonment via electronic mail, or if not possible, through publication in the official website of the Bureau of Customs and posting in a conspicuous place at the Collection District concerned. 2. Within 24 hours from the issuance of the Notice of Abandonment, the importer/consignee may request for the untagging of abandonment. The District Officer shall resolve the said request within 24 hours from the receipt of the request. 3. When no request is received, a Decree of Abandonment (Decree) shall be issued. The importer/consignee may appeal within 72 hours from the issuance of the Decree, or within the 10-day withdrawal period, whichever comes first; otherwise, the Decree shall become final. 4. Within 24 hours from the finality of the Decree, the BOC shall make a proper determination of the refrigerated containers that are intended for human or animal consumption in coordination with the regulatory agency concerned. 5. If upon determination, donation is deemed to be the best mode of disposition, the BOC shall immediately recommend the donation of the goods

BOC Issuance	Subject	Salient Points
<p>Joint Administrative Order (JAO) 20-01 (April 2, 2020)</p> <p>Issued by the Bureau of Customs, Department of Trade and Industry, Department of Finance, and Philippine Ports Authority</p>	<p>Adoption of Processes for the Expedited Release of Refrigerated Containers and Dry Vans during the ECQ.</p>	<p>to the appropriate agency, through the Office of the Civil Defense, subject to the necessary approval and certification from regulatory agencies concerned as to its fitness for consumption, upon approval of the Secretary of Finance.</p> <p>Bureau of Customs (BOC) should prioritize the processing of arriving cargoes, particularly foods, medicine, medical and basic necessities.</p> <p>Lodgment of and online filing of goods declaration by importers /consignees should be two days from the date of discharge.</p> <p>BOC will issue the final assessment on the goods thereby declared no later than 24 hours from the date of online filing of the goods declaration.</p> <p>Imports/consignees should pay, preferably online, duties, taxes, and other charges within 24 hours from date of issuance of the final assessment by BOC.</p> <p>Importers/consignees will have 24 hours to claim the goods from date of payment, or the goods will be declared abandoned.</p> <p>BOC should also accept filing of provisional goods declaration in accordance with the Customs Modernization and Tariff Act (CMTA) and as implemented by Customs Memorandum Order No. 07-2020 (guidelines for granting tax and duty exemption on imported medical supplies and equipment needed to address the outbreak of the coronavirus disease in the Philippines).</p> <p>BOC should also relax its selectivity process for food, medicine, medical and other basic necessities, and should adopt the “green lane” process flow for importers/consignees jointly identified with the DTI Bureau of Import Services (BIS), based on a set of criteria.</p> <p>These identified importers/consignees will be subject to post-entry audit.</p>
<p>Joint Memorandum Circular No. 01, series of 2020 (April 2, 2020)</p> <p>Issued by the BOC, Anti-Red Tape Authority (ARTA), and Food and Drugs Administration (FDA)</p>	<p>Creation of Bayanihan One Stop Shop (BOSS) for securing License to Operate (LTO) to import Covid-19 critical commodities for commercial distribution</p>	<p>The BOSS is a single window and concierge for the BOC and FDA. The BOSS shall operate under the following process:</p> <ol style="list-style-type: none"> 1. A single window to accept all online applications for importation of Covid-19 critical commodities. 2. Interconnection of systems and portals of the concerned agencies: BOC, ARTA, and FDA’s websites are now linked to each other. A BOSS online platforms composed of FDA, BOC, SEC, DTI, CDA, GCG, and ARTA is likewise created. 3. All transactions with FDA and BOC shall be done online. 4. All FDA laws, rules, and regulations governing post-importation of Covid-19 critical commodities shall be complied with.

BOC Issuance	Subject	Salient Points
		<ol style="list-style-type: none"> 5. When national public health emergency has been lifted, all FDA rules and regulation on registration of health products, post-LTO inspection and post market surveillance shall apply to the establishments given provisional LTO. 6. ARTA is designated to act as general coordinator for processing and exchange of information between and across the agencies concerned. 7. Daily and weekly reports facilitated through BOSS are to be submitted to IATF for monitoring and validation.
<p>Customs Administrative Order (CAO) No. 7-2020 (March 30, 2020)</p>	<p>Tax and duty exempt Importations under Section 4 (O) of “Bayanihan to Heal as One Act” Counterpart is BIR RR RMO 10- 2020, which exempts importers of PPE’s and medical emergency supplies from securing ATRIG. RR 6-2020 exempts critical and needed healthcare equipment or supplies from VAT and excise tax on importation.</p>	<p>The importation of health equipment and supplies deemed critical or needed to carry out the objectives of the Act and address the COVID-19 public health emergency shall be exempt from duties, taxes and fees, such as:</p> <ol style="list-style-type: none"> a. Personal Protective Equipment (PPE) b. Laboratory Equipment c. Medical Equipment and devices d. Support and maintenance for laboratory and medical equipment e. Surgical equipment and supplies f. Medical supplies, tools and consumables g. COVID-19 Testing Kits h. Others as may be identified by the DOH <p>For Commercial Purposes – exempted from Certificate of Product Notification (CPN) or Certification of Product Registration (CPR) issued by FDA prior to release, provided that they present a copy of their License to Operate (LTO) and application of product of notification.</p> <p>Those importing ventilators, respirators and accessories need to present only their LTO</p> <p>For donations – automatically cleared when certified by regulatory agencies or accredited 3rd party organizations I the originating countries. No FDS clearance is required prior to release.</p> <p>Qualified importations under PGD are subject to the submission of TEI from DOF after April 12, 2020 or upon lifting of the declaration of ECQ.</p>
<p>OCOM Memo 62-2020 (March 25, 2020)</p>	<p>Guidelines for the Issuance of Accreditation Pass to BOC Stakeholders</p>	<p>The application for an Accreditation Pass to BOC’s Accredited Importers, Licensed Custom Brokers, Declarants, or any of their authorized representatives shall be done through the “Customer Care Portal System”, an online facility ticket system of the BOC. If the application is approved, the one-time Accreditation Pass shall be sent via electronic email in the indicated email address of the applicant.</p>

BOC Issuance	Subject	Salient Points
OCOM Memo 61-2020 (March 24, 2020)	Online Filing of Goods Declaration	The order shall cover the interim implementation of the Online Filing of Goods Declaration in all Collection Districts involving goods declaration processed at the Formal Entry Division, Informal Entry Division or equivalent units.
OCOM Memo 60-2020 (March 23, 2020)	Suspension of the 7-day Period to Lodge Goods Declaration During the Enhanced Community Quarantine	<p>The prescribed period of 7 days to lodge goods declaration is hereby suspended for the duration of the emergency.</p> <p>At any time during the declaration of the ECQ, lodgement and filing of goods declaration may be made within 15 days from the date of the discharge of last package. The period to file goods declaration may be extended to another 15 days on valid grounds.</p> <p>This Order covers shipments with date of discharge of last package starting March 10, 2020.</p>
OCOM Memo 58-2020 (March 24, 2020)	Temporary Closure of the Manila International Container Port (MICP) Building	<p>The Manila International Container Port (MICP) Building shall be placed under temporary closure immediately until further notice.</p> <p>All port operations of MICP which remain unaffected by the temporary closure shall continue to function such as but not limited to the boarding of vessel, examination of goods at the designated examination area, x-ray inspection and transfer of goods to the CY/CFS.</p> <p>All other transactions such as processing of goods declaration which may be affected by the temporary closure of the MICP Building shall be temporarily be processed through the ancillary support of the Port of Manila (POM) and utilization of online facilities.</p> <p>Processing of goods and other necessary functions which may require submission of hard copies or physical presence of the stakeholder in the MICP Building shall be processed by the POM through the Custom Care Center.</p>
OCOM Memo 57-2020 (March 19, 2020)	Extension of Validity of Accreditation of Stakeholders during the Enhanced Community Quarantine	<p>All Customs accreditation of BOC Stakeholders, such as but not limited to importers, custom brokers, Super Green Lane importers, Customs Bonded Warehouses, Customs Facilities and Warehouses, or any other third party transacting and accredited by the Bureau, that will expire during the Enhanced Community Quarantine (ECQ) shall remain valid.</p> <p>All stakeholders with expired accreditation during the said period will be given 1 month from the lifting of the ECQ to submit then necessary application.</p>
OCOM Memo 54-2020 (March 18, 2020)	Conduct of hearings in all Forfeiture Proceedings under Custom Memorandum Order No. 4-2018 (A) in light of Covid-19 Travel Restrictions	<p>The conduct of actual hearings is temporarily suspended. The Hearing Officer shall not require the presence of the PLD Government Lawyer.</p> <p>Instead, the Hearing Officer shall require the claimant to file its position paper with a longer period of 7 working days from receipt of the notice to file the same.</p>

BOC Issuance	Subject	Salient Points
		<p>Unless a Reply or Rejoinder is filed by the parties, the case shall be submitted for resolution by the Hearing Officer within the prescribed period upon receipt of these pleadings.</p> <p>All pleadings to be filed by the PLD Government prosecutor shall be forwarded to the Acting Chief, PLD for review.</p>
<p>OCOM Memo 53-2020 (March 17, 2020)</p>	<p>Provisional Goods Declaration for Relief Consignment under a State of Calamity</p>	<p>Goods declaration involving donations for relief consignment may be provisionally declared, provided that:</p> <ul style="list-style-type: none"> a. The done is the national government; b. The consignee shall issue an undertaking to (b.1) submit the lacking documents within 45 days from release of shipment; and (b.2) to use and distribute the goods upon clearance from the Food Drug Administration or other regulatory agencies.
<p>Customs Memorandum Order No. 07-2020 (March 16, 2020)</p>	<p>Interim Procedure on Provisional Goods Declaration (PGD)</p>	<p>Lodgment of PGD shall be allowed in the following instances:</p> <ul style="list-style-type: none"> a. No regulatory permit, clearance or license, provided that importer has filed his application prior to departure of the goods from the country of origin, prior to or after arrival of the goods in the Philippines, depending on the policy of the concerned regulatory agency. b. Tax Exemption Indorsement (TEI) from the DOF, or Tax Exempt Certificate (TEC) or ATRIG from the BIR has not yet been issued, provided an application has already been filed at the time of lodgment. <p>Any other situation where the declarant lacks certain information or document to complete the goods declaration, provided it is not due to the declarant's negligence or fault and provided further that the mandatory information and documents are present.</p>
<p>Customs Memorandum Order 05-2020 (February 5, 2020)</p>	<p>Implementing Department of Health (DOH) Department Circular No 2020-0034 re Guidelines at All Seaports for Prevention and Spread of Novel Corona Virus Acute Respiratory Disease (2019-nCoV ARD)</p>	<p>Boarding formalities by the Customs Operations Officer on vessels shall be made after the conduct of Quarantine Boarding formalities and issuance of the Free Pratique by Quarantine officials.</p> <p>Customs officers involved in the conduct of boarding formalities must ensure that they are equipped with safety equipment prescribed by the Quarantine Medical Officer</p>

C. Laws and Issuances on Digital Economy

Laws/Issuances	Subject	Salient Points
Republic Act No. 11494 signed on September 11, 2020	Bayanihan to Recover as One Act	Citing the need to build a resilient digital economy by accelerating the deployment of the necessary infrastructure throughout the country for prompt delivery of public services (Sec.4 (ii) COVID-19 Response and Recovery Interventions)
Revenue Memorandum Circular No. 60-2020 issued on June 10, 2020	Obligations of Persons Conducting Business Transaction Through Any Forms of Electronic Media, and Notice to Unregistered Businesses	Notifies persons conducting business through any forms of electronic media regarding their tax obligations and the registration of their business with the BIR, pursuant to the provisions of Section 236 of the Tax Code, as amended. The provisions of this Circular cover not only partner sellers/merchants, but also other stakeholders involved, such as the payment gateways, delivery channels, internet service providers, and other facilitators.

D. Pending Legislation (Status and Highlights)**Digital Economy**

Senate Bills/Resolutions	Rationale and Legislative Status	Key Tax Provision
SBN 1808 Promoting Online Transactions, Safeguarding the Rights of Consumers and Merchants (filed on September 7, 2020)	The bill seeks to promote the growth of the eCommerce and online transactions where digital access to goods and digital products, including digital content and digital services, are secure, fast, and accessible to consumers, and where businesses are more readily able to adopt to innovations. Further, the bill aims to uphold fair business competition and practices and enable all businesses and consumers with online eCommerce platforms to have access to effective mechanisms for dispute resolution Pending with the Committee on Trade, Commerce and Entrepreneurship (9/7/2020)	<i>Sec. 20. Tax Exemption for Newly Registered eCommerce Enterprises.</i> – Newly registered MSMEs, as defined under existing laws, and which are engaged in eCommerce shall be exempt from all national and local taxes for the first three (3) years of operation under the following conditions: <ul style="list-style-type: none"> a. The enterprise is not an affiliate, subsidiary, or a franchise of any existing company; b. In the case of a sole proprietorship, one-person corporation or partnership, it does not have any previous or other existing registered companies, partnerships, or businesses; c. In the case of a corporation, each stockholder of the eCommerce enterprise must have at least a five percent (5%) share in stocks and the corporation must have no nominal stakeholders or stockholders holding the shares in trust for others: Provided, That all stockholders of the corporation shall not have held shares of previous or existing corporation with at least a five percent (5%) share therein, nor registered any former or existing sole proprietorship or partnership.
SBN 1591 Internet Transactions Act (filed on June 9, 2020)	The bill seeks to create an environment founded on trust among consumers and merchants, as a means to increase the number of eCommerce participants, and ultimately achieve sustainable	<i>SEC. 19. Tax. Exemption for Newly Registered eCommerce Enterprises.</i> - Newly registered micro-enterprises, as defined under existing laws, and which are engaged in eCommerce shall be exempt from all national and local taxes for the first two (2) years of operation under the following conditions:

Senate Bills/Resolutions	Rationale and Legislative Status	Key Tax Provision
	<p>growth. This bill will address the need to establish a singular office that will: (1) be given the responsibility to carry out provisions of this bill; (2) ensure the implementation of Republic Act. No. 8792 or the Electronic Commerce Act of 2000; and (3) be the focal point in the monitoring and implementation of the Philippine eCommerce roadmap.</p> <p>Pending with the Committee on Trade, Commerce and Entrepreneurship (7/29/2020)</p>	<p>(A) The enterprise is not an affiliate, subsidiary, or a franchise of any existing company;</p> <p>(B) In the case of a sole proprietorship, one-person corporation or partnership, it does not have any previous or other existing registered companies, partnerships, or businesses; and</p> <p>(C) In the case of a corporation, each stockholder of the eCommerce enterprise must have at least a five percent (5%) share in stocks and the corporation must have no nominal stakeholders or stockholders holding the shares in trust for others: <i>Provided</i>, That all stockholders of the corporation shall not have held shares of a previous or existing corporation with at least a five percent (5%) share therein, nor registered any former or existing sole proprietorship or partnership.</p>
<p>SRN 453 Taxation of Subsistence Entrepreneurs Conducting Business Online During the Pandemic (filed on June 22, 2020)</p>	<p>It urges the proper Senate Committee to inquire, in aid of legislation, into the taxation of subsistence entrepreneurs conducting business online during the pandemic and to urge the BIR, pending the results thereof, to suspend the implementation of RMC No. 60-2020 until the end of the year.</p> <p>Pending with the Committee on Trade, Commerce and Entrepreneurship (7/29/2020)</p>	
<p>SRN 410 Imposing and Collecting Taxes from Multinational Online Streaming Services (filed on May 19, 2020)</p>	<p>– It urges the Senate Committee on Ways and Means and the appropriate Senate Committees to conduct an inquiry, in aid of legislation, into the possibility of imposing and collecting taxes from multinational online streaming services and the digital economy in general.</p> <p>Pending with the Committee on Ways and Means (5/19/2020)</p>	

E. Can Our Coffers Hold On?

BIR and BOC Revenue Collections (in PhP), 2020

Month	BIR Collection	BOC Collection
January to August	1.289 T	347.6 B
September	118.63 B	50.2 B
October	134.40 B	50.9 B
TOTAL	1.542 T	448.70 B

Sources: BIR and BOC

Annual Revenue Estimates (in billions)⁸

Source	Tax base (2020)	Tax due	Assumptions
Improvement in tax compliance with network orchestrators as withholding agents for income tax	28.55	1.20	+50% in tax compliance
Digital advertising VAT	33.1	4.0	\$662 million in revenues
Other digital services (games and other digital media)	24.05	2.9	\$461 million in revenues
Subscription-based services VAT	18.2	2.2	
Movie streaming (Spotify, etc.)	2.7	0.3	\$53 million in revenues
Video streaming (Netflix, etc.)	3.2	0.4	\$63 million in revenues
Electronic publishing (e-books)	12.4	1.5	\$248 million in revenues
Network orchestrators as withholding agents for VAT	28.8	3.5	60,000 hosts at P40,000/month
E-commerce platforms as withholding agents for VAT	161.9	9.7	+50% in tax compliance
CIT from digital services	75.4	5.7	Sum of digital services, 30% profit margin
Annual Incremental Revenue estimate		29.1	

Notes:

1) Using conservative figures for estimation, the proposed bill on Digital Economy Taxation will yield about PhP29.1 billion in new revenues for the government; and

2) Such is annual incremental revenues by specifically subjecting to income tax and value-added tax (VAT) both local and cross-border digital transactions.

III. Looking Ahead

The coronavirus pandemic caught the world by surprise and there is no country, person, or business has ever prepared for the devastation it instigated. Recognizing that the COVID-19 pandemic is far more than a health crisis but also a social and economic crisis, policymakers across the globe rush to implement fiscal and monetary policies to ease the burden on their citizens and to boost the economies that have been greatly wounded.

Considering that the Philippines is one of the hardest-hit countries compared with our neighbors in Southeast Asia, it is imperative that the government assess what have we done wrong, what measures we have not taken, and answer why are we being left behind in this fight against the COVID-19. Examining the quality and pace of our response towards this pandemic- be it in the health, social, or economic aspect- will ultimately prepare us for the future.

Support for businesses, most especially for micro and small enterprises, is vital in reviving the country's economy. The World Bank recommends to support firms to prevent bankruptcies and unemployment. Support must be based as far as possible on objective criteria related not just to past performance or current pain but the potential to thrive in the future. To avoid assistance being prolonged unduly, governments can commit to phasing it out by linking it to observable macroeconomic indicators of recovery⁹.

It also urged governments to deepen trade reform, especially of still-protected service sectors – such as finance, transport, and communications – to enhance firm productivity, avert pressures to protect other sectors, and equip people to take advantage of the digital opportunities whose emergence the pandemic is accelerating¹⁰.

Tangible measures to make both on-site and

online businesses thrive and co-exist with the virus should be implemented to ensure that employers can recuperate their losses, workers will have money to pay for their day-to-day expenses, and online sellers can go bigger. Opening-up business activities and supporting online and digital transactions have a multiplier effect that can help resuscitate our economy.

This situation helped us realize that online and digital transactions are no longer an alternative to actual trade and commerce but considered as the new norm and would probably be the preferred mode of trade and commerce in the future. With this, government should now step-in and regulate these transactions in the online world so that both the sellers and consumers would be protected and at the same time generate the necessary revenues.

This pandemic may have claimed lives, restricted movement, and slowed down economies. Therefore, this experience should have left us with hard-earned lessons we can tailor-fit to suit the needs of our country. It is vital for the government to function and to act swiftly for the public good, while balancing its responsibility of raising funds and providing its people's needs. Indeed, the lifeblood doctrine will play a fundamental role. Time and again, taxation finds its relevance now more than ever.

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Photo by Mike Gonzalez (commons.wikimedia.org)

Digest of Supreme Court Cases in Taxation

by Clinton S. Martinez
Director II, Legal and Tariff Branch

CORAL BAY NICKEL CORPORATION, *Petitioner*, v. COMMISSIONER OF INTERNAL REVENUE, *Respondent*. [G.R. No. 190506, June 13, 2016 - BERSAMIN, J.]

Facts:

Petitioner Coral Bay Nickel Corporation (CBNC) is a domestic entity engaged in the

manufacture of nickel and/or cobalt mixed sulphide. It is a VAT-registered corporation with the BIR. The CBNC is likewise listed with the PEZA as an Ecozone Export Enterprise at the Rio Tuba Export Processing Zone with PEZA Certificate of Registration (CR) dated December 27, 2002. Petitioner filed on August 5, 2003 its amended VAT return alleging unutilized input tax on its domestic purchases of capital goods, other than capital goods and services, for the 3rd and 4th quarters of 2002 in the sum of P50,124,086.75. On June 14, 2004, CBNC filed with RDO No. 36 in Palawan its Application for Tax Credits/Refund (BIR Form 1914) together with supporting documents.

Respondent Commissioner of Internal Revenue (CIR) did not act on petitioner's plea, forcing it to elevate its claim to the Court of Tax Appeals (CTA) on July 8, 2004 by Petition for Review, hoping for the refund of its input VAT (Case 7022). The CTA Division denied the claim on March 10, 2008 relying on Section 106(A)(2)(a)(5) of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Article 77(2) of the Omnibus Investment Code and conformably with the Cross Border Doctrine. The ruling was supported by the case of *CIR vs. Toshiba Information Equipment (Phils) Inc. (Toshiba)* and Revenue Memorandum Circular (RMC) 42-03. The Motion for Reconsideration (MR) was denied (July 2, 2008) prompting CBNC to seek relief to the CTA En Banc (Case 403), which also denied the petition via the questioned pronouncement made on May 29 2009. The MR was also not given due course (December 10, 2009).

CBNC posits that Toshiba is not controlling because the unutilized input VAT was incurred from May 1, 2002 to December 31, 2002, as a VAT-registered taxpayer and not as a PEZA-registered entity. During said period it was not yet PEZA-registered because it was only on December 27, 2002 that its CR was given, and it could not have refused the payment because it could not show any valid proof of zero-rating. It complied with all the requirements under the law and regulations for its entitlement to the refund.

Issue:

“Was the petitioner, an entity located within an ECOZONE, entitled to the refund of its unutilized input taxes incurred before it became a PEZA registered entity?”

Held:

The Supreme Court (SC) did not side with CBNC. However, the SC gave due course to the petition despite premature filing citing the jurisprudence in the case of *Silicon Philippines Inc. vs. Commissioner of Internal Revenue* (G.R. No.

173241, March 25, 2015) wherein it was decided that the exception to the mandatory and jurisdictional compliance with the 120+30 day-period is when the claim for the tax refund or credit was filed in the period between December 10, 2003 and October 5, 2010 during which BIR Ruling No. DA-489-03 was still in effect. Accordingly, the premature filing of the judicial claim was allowed, giving to the CTA jurisdiction over the appeal.

We touch here the principle of Cross Border Doctrine which was mentioned in the decision. In the case of *“Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue”* [524 SCRA 73,103 (2007)], the SC said the doctrine mandates that no VAT shall be imposed to form part of the cost of the goods destined for consumption outside the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT while those destined for use or consumption within the Philippines shall be imposed with 10% VAT (Now 12% under R.A. No. 9337).

Shifting to the main issue, the SC ruled that CBNCs stand that Toshiba is not controlling is untenable. The High Court said: *“The most significant difference between Toshiba and this case is that Revenue Memorandum Circular No. 74-99 was not yet in effect at the time Toshiba Information Equipment (Phils) Inc. brought its claim for refund. X x x, Toshiba actually discussed the VAT implication of PEZA-registered enterprises and ECOZONE-located enterprises in its entirety, which renders Toshiba applicable to the petitioner's case.”*

The SC pointed out:

“Prior to the effectivity of RMC 74-99, the old VAT rule for PEZA-registered enterprises was based on their choice of fiscal incentives, namely: (1) if the PEZA-registered enterprise chose the 5% preferential tax on its gross income in lieu of all taxes, as provided by Republic Act No. 7916, as amended, then it was VAT-exempt; and (2) if the PEZA-registered enterprise availed itself of the income tax holiday under Executive Order No. 226, as amended, it was subject to VAT at 10%¹⁷ (now, 12%). Based on this old rule, Toshiba allowed the claim for refund or credit on the part of Toshiba Information Equipment (Phils) Inc. This is not true with the petitioner. With the issuance of RMC 74-99, the distinction under the old rule was disregarded and the new circular took into consideration the two important principles of the Philippine VAT system: the Cross Border Doctrine and the Destination Principle.” X x x. This old rule clearly did not take into consideration the Cross Border Doctrine essential to the VAT

system or the fiction of the ECOZONE as a foreign territory. It relied totally on the choice of fiscal incentives of the PEZA-registered enterprise. Again, for emphasis, the old VAT rule for PEZA-registered enterprises was based on their choice of fiscal incentives: (1) If the PEZA-registered enterprise chose the five percent (5%) preferential tax on its gross income, in lieu of all taxes, as provided by Rep. Act No. 7916, as amended, then it would be VAT-exempt; (2) If the PEZA-registered enterprise availed of the income tax holiday under Exec. Order No. 226, as amended, it shall be subject to VAT at ten percent (10%). Such distinction was abolished by RMC No. 74-99, which categorically declared that all sales of goods, properties, and services made by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be subject to VAT, at zero percent (0%) rate, regardless of the tatter's type or class of PEZA registration; and, thus, affirming the nature of a PEZA-registered or an ECOZONE enterprise as a VAT-exempt entity."

Explaining further, the High Court stressed:

"X x x, Section 8 of Republic Act No. 7916 mandates that PEZA shall manage and operate the ECOZONE as a separate customs territory. The provision thereby establishes the fiction that an ECOZONE is a foreign territory separate and distinct from the customs territory. Accordingly, the sales made by suppliers from a customs territory to a purchaser located within an ECOZONE will be considered as exportations. Following the Philippine VAT system's adherence to the Cross Border Doctrine and Destination Principle, the VAT implications are that "no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority."

In finally resolving the issue, the High Tribunal manifested:

"The petitioner's principal office was located in Barangay Rio Tuba, Bataraza, Palawan. Its plant site was specifically located inside the Rio Tuba Export Processing Zone — a special economic zone (ECOZONE) created by Proclamation No. 304, Series of 2002, in relation to Republic Act No. 7916. As such, the purchases of goods and services by the petitioner that were destined for consumption within the ECOZONE should be free of VAT; hence, no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit. Verily, if the petitioner had paid the input VAT, the CTA was correct in holding that the petitioner's

proper recourse was not against the Government but against the seller who had shifted to it the output VAT following RMC No. 42-02 which provides:

"In case the supplier alleges that it reported such sale as a taxable sale, the substantiation of remittance of the output taxes of the seller (input taxes of the exporter-buyer) can only be established upon the thorough audit of the suppliers' VAT returns and corresponding books and records. It is, therefore, imperative that the processing office recommends to the concerned BIR Office the audit of the records of the seller."

"In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier."

"We should also take into consideration the nature of VAT as an indirect tax. Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer. However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. Hence, the proper party to seek the tax refund or credit should be the suppliers, not the petitioner."

"This Court has repeatedly pointed out that a claim for tax refund or credit is similar to a tax exemption and should be strictly construed against the taxpayer. The burden of proof to show that he is ultimately entitled to the grant of such tax refund or credit rests on the taxpayer. Sadly, the petitioner has not discharged its burden."

Petitioner Coral Bay Nickel Corporation lost the case and was ordered to pay the cost of the suit.



COMMISSIONER OF INTERNAL REVENUE, Petitioner, v. **PHILIPPINE NATIONAL BANK,** Respondent. [G.R. No. 195147, July 11, 2016 - **BERSAMIN, J.**]

Facts:

This case concerns respondent Philippine National Bank's (PNB) alleged deficiency documentary stamp tax (DST) arising from its interbank call loans and special savings account (SSA). Petitioner Commissioner of Internal Revenue (CIR) issued on March 23, 2000 a Letter of Authority (LA) authorizing the examination of PNBs book of accounts and other records related thereto, in connection with its internal revenue taxes for taxable year 1997. On May 12, 2003, PNB received the preliminary assessment notice (PAN) detailing discrepancies, dated March 31, 2003, showing that it had deficiency payments of DST, withholding taxes on compensation (WITC), and expanded withholding tax (EWT) for the year 1997. On May 26, 2003, CIR issued a formal assessment notice (FAN), including a formal letter of demand (FLD) and details of discrepancies, requiring respondent to pay deficiency taxes. PNB paid the Assessment No. 97-000067 representing EWT on May 30, 2003 but filed a protest against Assessment No. 97-000064 for DST. CIR denied PNBs protest on December 10, 2003.

PNB filed its petition for review in the Court of Tax Appeals [(CTA) No. 6850] on January 16, 2004. On March 3, 2009 the CTA First Division partially granted PNBs petition by cancelling the DST on interbank loans. The assessment for DST on SSA for 1997 was affirmed. PNB was likewise ordered to pay penalty. CIR and PNB moved for partial reconsideration. The CTA Division denied CIRs motion and held in abeyance that of PNBs "pending its submission of its supplemental formal offer of evidence to admit tax abatement documents." CIR appealed to the CTA *En Banc* on August 10, 2009 and on September 21, 2010 the same was denied. The Motion for Reconsideration (MR) of CIR was denied on January 10, 2011.

Issue:

"The sole issue concerns whether or not PNB's interbank call loans for taxable year 1997 are subject to DST."

Held:

The Supreme Court (SC) denied the appeal of the CIR. Its claim that PNB's interbank call loans which has a maturity of more than five (5) days, were included in the concept of loan agreements, ergo subject to DST, is untenable. The SC mentioned that the maturity of the loan was irrelevant in considering its DST coverage for year 1997, in relation to which the controlling law was the Tax Code of 1977. The 5-day maturity was made applicable only in the 1997 National Internal Revenue Code (NIRC), as amended. While it may be pointed out "that debt instruments issued for

interbank call loans with maturity of not more than five (5) days to cover deficiency in reserves against deposit liabilities, including those between or among banks and quasi-banks, shall not be considered as deposit substitute debt instruments" the 1997 Tax Code cannot be given a retroactive effect since tax laws are prospective in application, unless their retroactive application is expressly provided.

The High Court further said that PNB's interbank call loans are not taxable under Section 180 of the 1977 NIRC, as amended. CIR insists that PNB's loan fell under the definition of a loan agreement found under Revenue Regulation (RR) no. 9-94. In rebutting this allegation, the SC said: "An interbank call loan refers to the cost of borrowings from other resident banks and non-bank financial institutions with quasi-banking authority that is payable on call or demand. It is transacted primarily to correct a bank's reserve requirements. Under the Manual of Regulation for Banks (MORB) issued by the Bangko Sentral ng Pilipinas (BSP), interbank borrowings, which include interbank call loans, shall be evidenced by deposit substitute instruments containing the minimum features prescribed -under Section X235.3 of the MORB, except those that are settled through the banks' respective demand deposit accounts with the BSP via Philpass."

The High Court added:

"Simply put, an interbank call loan is considered as a deposit substitute transaction by a bank performing quasi-banking functions to cover reserve deficiencies. It does not fall under the definition of a loan agreement. Even if it does, the DST liability under Section 180, supra, will only attach if the loan agreement was signed abroad but the object of the contract is located or used in the Philippines, which was not the case in regard to PNB's interbank call loans.

"We note, however, that for taxation purposes interbank call loans are not considered as deposit substitutes by express provision of Section 20(y) of the 1977 NIRC, as amended by PD No. 1959, viz:

"Sec. 1. A new subsection (y) is inserted in Sec. 2 of the National Internal Revenue Code to read as follows: X x x.

"(y) 'Deposit substitutes' shall mean an alternative form of obtaining funds from the public, other than deposit, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purchasing of receivables and other obligations, or financing their own needs or the needs of their agent or dealer. These instruments may include but need not be limited to banker's acceptances, promissory notes, repurchase agreements, certificates of assignment or participation and similar instruments with recourse as may be authorized by the Central Bank of the Philippines, for banks

and non-bank financial intermediaries or by the Securities and Exchange Commission of the Philippines for commercial, industrial, finance companies and other non-financial companies: Provided, however, that only debt instruments issued for inter-bank call loans to cover deficiency in reserves against deposit liabilities including those between or among banks and quasi-banks shall not be considered as deposit substitute debt instruments.”

Finally, the Court underscored that:

“The rule in the interpretation of tax laws is that a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. A tax cannot be imposed without

clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication. In answering the question of who is subject to tax statutes, it is basic that in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import. As burdens, taxes should not be unduly exacted nor assumed beyond the plain meaning of the tax laws.” (CIR vs. FTC, GR 167274-75, July 21, 2008, 559 SCRA 160, 185)



Photo by the Court of Tax Appeals (<http://cta.judiciary.gov.ph/>)

CTA Tax Case Digest

by Johann Francis A. Guevarra
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ZENITH FOOD CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE

CTA Case No. 9165
Promulgated: July 29, 2020

Facts:

Petitioner's books of accounts and accounting records for CY 2004 were subjected to an audit investigation pursuant to Letter of Authority (LOA) dated September 15, 2005.

The other antecedent facts followed:

- April 11, 2008. Respondent BIR issued a revised Preliminary Assessment Notice (PAN).
- July 23, 2008. Petitioner received from Revenue Region (RR) No. 9 a Formal Letter of Demand/Final Assessment Notice (FLD/FAN), dated July 10, 2008, demanding payment of the alleged deficiency internal revenue taxes in the total amount of P8,406,714.79.
- August 22, 2008. Petitioner filed its Protest Letter to the FLD/FAN with RR No. 9, requesting for the reinvestigation and/or reconsideration of the assessment for CY 2004.
- January 27, 2010. Petitioner received a Final Notice Before Seizure (FNBS) giving it the final opportunity to settle its deficiency tax liabilities.
- December 10, 2010. Petitioner paid the amount of P352,295.56 as its supposed full settlement of its deficiency tax liabilities. A substantial reduction of the assessed amount from P8,406,714.79, as stated in the FLD.
- September 23, 2015. Petitioner received a Notice of Dis-Accreditation from the Bureau of Customs-Accounts Management Office (BOC-AMO) effective on September 16, 2015. Petitioner likewise received a Preliminary Notice of Dis-Accreditation as Importer on October 8, 2015 from the BIR-Accounts Receivable Monitoring Division (BIR-ARMD).
- October 14, 2015. Petitioner paid the delinquent account for CY 2004 in the aggregate amount of P13,628,099.53 to avert its dis-accreditation as importer.
- November 5, 2015. Respondent issued a Certification stating that petitioner had settled its deficiency liabilities.
- April 12, 2016. Petitioner filed an administrative claim for refund or issuance of TCC pursuant to Section 229 of the NIRC of 1997, as amended, for the P13,628,099.53 deficiency taxes paid on October 14, 2015.
- October 5, 2015. Within thirty (30) days from the receipt of the final decision, petitioner filed a

Petition for Review before the CTA.

- Pre-trial ensued. Thereafter, respondents' witnesses were presented and then the submission of the parties' memoranda.

Issues:

- W/N the CTA has jurisdiction
- W/N Petitioner is liable to the assessed deficiency Expanded Withholding Tax, Final Withholding Tax, Fringe Benefit Tax, and compromise penalties for taxable year 2004
- W/N Petitioner is entitled to a refund in the amount of P13,628,099.53 representing payment for illegally assessed and collected tax

Ruling:

1) On jurisdiction

The allegations in the petition for review clearly made out a case of an appeal to a disputed assessment. The court's jurisdiction was acquired from that point. Hence, the petitioner's payment to avert the impending cancellation of its importer accreditation will not be considered as acceding to the assessment that will strip us off of our jurisdiction, especially when petitioner itself made it clear that such payment was without conceding liability.

Citing a SC Ruling in **CIR vs. First Express Pawnshop Company, Inc.**, "the term relevant supporting documents should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit".

2) The assessment for CY 2004 is void

The argument of the respondent that "withholding taxes are not contemplated under Section 203 of the Tax Code as they are not internal revenue taxes but are penalties imposed on the withholding agent should it fail to remit the proper amount of tax withheld was adjudged untenable.

Withholding tax assessments such as EWT and WTC clearly contemplate deficiency internal revenue taxes. Their aim is to collect unpaid income taxes and not merely to impose a penalty on the withholding agent for its failure to comply with its statutory duty. Respondent cannot circumnavigate the three-year prescriptive period in the guise that it is merely collecting penalty and not internal revenue taxes.

The assessment having been issued beyond the three-year prescriptive period and not otherwise falling

under the exception(s) provided, the CTA deems that the assessment is void.

In relation to the following provisions of the NIRC, As Amended, to wit:

"Section 57(a), Withholding of Final Tax on Certain Incomes xxx".

Note: "The withholding agent who is "required to deduct and withhold any tax" is made "personally liable for such tax" and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC";

"Section 203. Period of Limitation Upon Assessment and Collection. – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period xxx";

Section 247. General Provisions. –

"xxx

"(b) If the withholding agent is the Government or any of its agencies, political subdivisions or instrumentalities, or a government-owned or controlled corporation the employee thereof responsible for the withholding and remittance of the tax shall be personally liable for the additions of the tax prescribed herein." and

"Section 251. Failure of a Withholding Agent to Collect and Remit Tax. - Any person required to withhold, account for and remit any tax imposed by this Code or who willfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties provided for under this Chapter, be liable upon conviction xxx".

3) The formal letter of demand/final assessment notice issued is void

Assuming that the period to assess petitioner did not prescribe or lapse, the assessment is still void as the FLO failed to provide a definite amount demanded of petitioner. Although the parties did not raise the validity of the FLO/FAN as an issue, the CTA can rule on the same pursuant to the last paragraph of Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals, in relation to the relevant provision of the NIRC, As Amended, to wit:

"Section 228. Protesting of Assessment – When the Commissioner or his duly authorized representative finds that proper taxes should be

assessed, he shall first notify the taxpayer of his findings xxx”;

4) Petitioner is entitled to a refund of the amount paid

What prompted petitioner to pay the full amount of the alleged deficiency taxes was its impending discreditation as an importer. Petitioner was made to choose between paying the delinquent account or losing its privilege to import its products. Thus, it cannot be considered as estopped from questioning the as-

essment and seeking refund of the amount it paid given the special and unusual circumstances that it was placed in.

Petitioner has sufficiently established that it is entitled to the refund or issuance of a TCC representing the illegally collected deficiency taxes (that resulted from a void assessment).

In relation to Section 204, “*Authority of the Commissioner to Compromise, Abate, and Refund of Credit Taxes xxx*” of the NIRC, As Amended.



A Closer Look at Investment Promotion Agencies (IPAs)

by Angelique M. Patag
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Map of Investment Promotion Agencies
Photo by Board of Investments (www.boi.gov.ph)

Investment is vital to progress and sustainable development of a nation. A key engine for economic growth, investment generally refers to the value of machinery, plants, and buildings that are bought by firms for production purposes. A stream of investments, particularly foreign direct investments (FDI), stimulates the economy by generating employment, expanding the tax base, improving income growth and consumption, and enhancing technology transfer, among others. Realizing this, the Philippine government has promoted the establishment of Investment Promotion Agencies or IPAs as a tool in pursuing development strategy. The creation of Export Processing Zone Authority (EPZA) pursuant to Presidential Decree (PD) 66 of 1972 has pioneered the establishment of various IPAs in the country.

From an operational point of view, the specific core functions of the IPAs are as follows:

- 1) **Image Building:** creates the perception of a country as an alternative site for international investment;
- 2) **Investor Facilitation and Investor Services:** refer to the range of services provided in a host country that can assist an investor in analyzing investment decisions, establishing a business, and maintain it in good standing;
- 3) **Investment Generation:** entails targeting specific sectors and companies with a view to creating investment leads; and

- 4) **Policy Advocacy:** consists of the activities through which the agency supports initiatives to improve the quality of the investment climate and identifies the views of the private sector on that matter.

Undeniably, investment incentives may serve as a clincher to entice prospective investors that would ultimately help establish a competitive business environment. Fiscal incentives are preferential taxes in the form of exemptions, additional deductions from taxable income, tax credits and income tax holidays given to registered business enterprises. Non-Fiscal incentives include among others, simplification of customs procedure, the employment of foreign nationals, unrestricted use of consigned equipment and the privilege to operate a bonded manufacturing warehouse.

In the Philippines, the administration, implementation of investment promotion programs and the policies relative thereto, including the grant of fiscal and non-fiscal incentives, are being managed by various IPAs and mandated under various laws as well. The Omnibus Investments Code of 1987 or Executive Order No. 226, as amended, incorporates the basic laws on investments. Further, it is relatively based on the Investment Priorities Plan which is an annual listing of undertakings considered vital to the achievement of the country's overall economic growth.

The following are the various laws on incentives, as granted through and administered by IPAs:

Laws/ Enactment	Investment Promotion Agency
EO 70 (2012); RA 8756 (1999); EO 226 (1987)	Board of Investments (BOI)
RA 8748 (1999); RA 7916 (1999)	Philippine Economic Zone Authority (PEZA)
RA 10083 (2010); RA 9490 (2007)	Aurora Pacific Economic Zone and Freeport Authority (APECO)
RA 11453 (2019); RA 9728 (2009)	Freeport Area of Bataan (FAB)
RA 9593 (2009)	Tourism Infrastructure and Enterprises Zone Authority (TIEZA)
RA 9400 (2007)	Bases Conversion and Development Authority (BCDA)
RA 7922 (1995)	Cagayan Special Economic Zone (CSEZA)
RA 7903 (1995)	Zamboanga City Special Economic Zone Authority (ZAMBO-ECOZONE)
RA 7844 (1994)	Export Development Council (EDC)
RA 7227 (1992)	Subic Bay Metropolitan Authority (SBMA) and Clark Development Corporation (CDC)
EO 458 (1991)	Regional Board of Investments-ARMM
PD 1491 (1978); PD 538 (1974)	PHIVIDEDEC Industrial Authority (PIA)
PD 66 (1972)	Export Processing Zone Authority (EPZA)

While our country through IPAs aims to satisfy the needs of investors by offering those advantages that will make them competitive, said trade-off should be favorable. In return, the country expects to benefit from evident outcomes of the investments, may it be in the form of jobs, knowledge and skills, technology, export opportunity and revenues. It is worth noting that social benefits from preferred activities should compensate for the costs. It is important that the right balance is sought.

IPAs should carry out worthwhile and effective investment promotion. They should act upon in relation to their mandates and objectives. Not surprisingly, their performance will be the yardstick against which they will be evaluated and their accomplishments will be a determining factor to justify their claims for further government support. IPAs do deserve recognition for their sound stewardship and for shaping the future of Philippine economy.

With the recent passage by Congress and eventual approval by the President of the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act, all IPAs and other tax incentives ad-

ministering agencies are headed towards the grant and administration of a fully restructured and rationalized incentives regime. Once enacted into law, the measure would require IPAs to share their incentives-granting authority with the Fiscal Incentives Review Board (FIRB) while recognizing its expanded power as the highest policy-making entity and chief administrator of investment incentives.

Reference:

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Retirement Benefits at the Time of COVID-19

by **Zenaida G. Sanchez**
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It is already a given fact that worldwide, infections from the COVID-19 resulted in an enormous global health crisis, economic slowdown, disrupted business operations. Big and small, and particularly the small companies, went out of business, or if still in operations, have employed cost-cutting measures by reducing headcount using various means (San Juan, 2020). In the words of Guy Ryder, Director-General of the International Labor Organization, this pandemic has “mercilessly exposed the deep faultlines in our labor markets”, forcing governments to enact “tailored measures, unprecedented stimulus packages to protect their societies and economies and keep cash flowing to workers and businesses” (Ryder, 2020).

One of the “recovery interventions” adopted by Congress is Section 5 of RA 11494 or the Bayanihan to Recover as One Act. It provides that early retirement benefits granted to privately employed persons between June 5, 2020 and December 31, 2020 are exempt from tax. The exemption, however, may be revoked if the individual is re-employed by the same

organization within the succeeding 12 months. Re-employment is proof of non-retirement, making the benefits subject to the appropriate taxes.

Compare this provision with that provided under Section 32(B)(6)(a) of the National Internal Revenue Code of 1997, as amended, wherein retirement benefits are excluded from gross income if these satisfy certain conditions such as (a) received under RA No. 7641, (b) received in accordance with a reasonable private benefit plan maintained by the employer, (c) the retiring official or employee has been in the service of the same employer for at least ten (10) years and is not less than fifty (50) years of age at the time of his retirement, (d) the benefits granted shall be availed of by an official or employee only once.

Reading the present Tax Code provision and the provision under Bayanihan II, one could surmise that the tax exemption of retirement benefits under Bayanihan II is indeed more favorable to privately employed workers.

Meanwhile RR 29-2020, as clarified under RMC 120-2020, stipulated that the exemption under Bayanihan II shall apply IF the retirement benefits paid

were under a duly-registered retirement plan, and that the retirement date and receipt of retirement benefits should fall within the period June 5, 2020 to December 31, 2020. Note that said conditions are not prerequisites under the Bayanihan II law.

In other words, while the law seeks to lighten the yoke of the working class, the BIR regulations and circular have made this particular recovery intervention restrictive and not favorable to the intended beneficiaries. In fact, they render the intent of the law somewhat inutile.

This is a case whereby the BIR did not judiciously interpret the law but has gone beyond the spirit or intent of Congress, violating the principle that administrative regulations cannot go beyond the law.

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UNBOXED

Exemption from Documentary Stamp Tax (DST) of Loans Extended or Credits Restructured under RR No. 24-2020

by Elsie T. Jesalva
SLSO II, Indirect Taxes Branch

When some borrowers are losing capacity to pay loans, credits, amortizations and leases, lenders allow payment dates to be restructured and/or extended. The loan restructuring documents are normally subject to Documentary Stamp Tax (DST)¹ in the Philippines under the National Internal Revenue Code (NIRC) of 1997, as Amended.

To mitigate the adverse economic impact brought about by the COVID-19 pandemic, Congress passed the following laws:

- Republic Act (RA) No. 11469 or the “Bayanihan to Heal As One Act – 26 March 2020
- RA No. 11494 (Bayanihan to Recover As One

Act) – 11 September 2020

These laws declare “a state of national emergency over the entire country” and authorize the President to adopt “temporary emergency measures to respond to crisis brought about by the pandemic”.

Among these temporary measures are the: grant of grace periods and extensions on loans and rents, grant of tax exemptions, extension of deadlines to file tax returns and pay taxes, provision of lower lending rates and incentives, and regulation of certain businesses and industries.

To implement these laws, government agencies have issued regulations. In particular, on the DST treatment of loans, the Department of Finance (DoF)

issued Revenue Regulations (RR) No. 8-2020 (03 April 2020) which was later repealed by RR No. 24-2020 (30 September 2020).

REVENUE REGULATIONS NO. 24-2020² SUMMARY

Issued on 30 September 2020, RR No. 24-2020 implements Section 4 (uu) of RA No. 11494 (Bayanihan to Recover as One Act) on the exemption from Documentary Stamp Tax (DST) of loans extended or credits restructured.

The Regulations covers all extensions of payments and/or maturity periods of all loans, including, but not limited to, salary, personal, housing, commercial and motor vehicle loans, amortizations, financial lease payments and premium payments, as well as credit card payments, falling due, or any part thereof, on or before December 31, 2020, including the extension of maturity periods that may result from the grant of grace periods for these payments, whether or not such maturity period originally fall due on or before December 31, 2020. The Regulations shall also cover credit restructuring, micro-lending, including those obtained from pawnshops, and extensions thereof made on or before December 31, 2020.

No additional DST, including those imposed under Section 179³, 195⁴ and 198⁵ of the NIRC of 1997, as amended (RA No. 10963⁶), is applied to term extensions and credit restructuring, micro-lending, including those obtained from pawnshops and extensions thereof granted by covered institutions for loans falling due, or any part thereof, on or before December 31, 2020.

Interbank loans and bank borrowings are subject to the DST imposed under Section 179, 195 and 198 of the NIRC, as amended.

BACKGROUND INFORMATION

Pursuant to Article VI, Section 23(2) of the Constitution⁷, the President is hereby authorized to exercise powers that are necessary and proper to carry out the declared national policy. These include the power to adopt temporary measures to respond to crisis brought by any pandemic.

On 24 March 2020, RA 11469⁸ also known as “Bayanihan to Heal As One Act” was signed by President Rodrigo Roa Duterte declaring a State of Public Health Emergency throughout the Philippines due to the Coronavirus Disease 2019 (COVID-19) and granting the President additional authority to combat the COVID-19 pandemic.

Section 4(aa) of this Act grants the Philippine President the power to direct banks and other financial institutions to implement a 30-day grace period for “payment of loans falling due within the period of the Enhanced Community Quarantine (ECQ), to wit:

“SEC. 4. *Authorized Powers.* – x x x

“(aa) *Direct all banks, quasi-banks, financing companies, lending companies, and other financial institutions, public and private, including the Government Service Insurance System, Social Security System and Pag-ibig Fund, to implement a minimum of a thirty (30)-day grace period for the payment of all loans, including but not limited to salary, personal, housing, and motor vehicle loans, as well as credit card payments, falling due within the period of the enhanced Community Quarantine without incurring interests, penalties, fees, or other charges. Persons with multiple loans shall likewise be given the minimum thirty (30)-day grace period for every loan;*”

Pursuant to Chapter III, Sec. 244⁹ of the NIRC of 1997, as Amended, the DoF has issued implementing rules for the above provision, which took effect on 1 April 2020, directing “all banks, quasi-banks, financing companies, lending companies, and other (public and private) financial institutions, the Government Service Insurance System, Social Security System, and Pag-ibig Fund” to grant a minimum 30-day grace period, which will be automatically extended if the ECQ period is extended. Persons with multiple loans shall likewise be given the minimum 30-day grace period for every loan.

In this connection, the DoF has issued RR No 8-2020, which took effect on 3 April 2020. Under this regulation, credit extensions, credit-restructuring, and micro-lending are exempt from documentary stamp tax (DST) that would have otherwise been imposed on the renewal or extensions of credits.

To facilitate the DST exemption, the BIR issued Revenue Memorandum Circular (RMC) Nos. 35-2020 and 36-2020, which took effect on 2 and 3 April 2020, respectively. These circulars clarify the scope of the DST exemption, provide that the new loan principal will not be subject to DST, and outline reportorial requirements.

Prior to the expiration of the “Bayanihan to Heal as One Act”, Congress passed the new law that would provide government funds to stimulate the economy while strengthening the health sector and the government's pandemic responses. RA No. 11494 also known as “The Bayanihan to Recover as One Act” (Bayanihan 2) was enacted in 11 September 2020 granting the President additional authority to combat the COVID-19 pandemic in the Philippines. Sec. 4(uu) of this Act, it provides for an extension of payments on all loans extended or credits restructured made on or before December 31, 2020, except interbank loan and bank borrowings, to wit:

“SEC. 4. COVID-19 Response and Recovery Interventions. – Pursuant to Article VI, Section 23 (2) of the Constitution, the President is hereby authorized to exercise powers that are necessary and proper to undertake and implement the following COVID-19 response and recovery interventions:

“x x x

“(uu) Directing all banks, quasi-banks, financing companies, lending companies, real estate developers, insurance companies providing life insurance policies, pre-need companies, entities providing in-house financing for goods and properties purchased, asset and liabilities management companies and other financial institutions, public and private, including the Government Service Insurance System (GSIS), the SSS and Home Development Mutual Fund (Pag-IBIG Fund), to implement a one-time sixty (60)-day grace period to be granted for the payment of all existing, current and outstanding loans falling due, or any part thereof, on or before December 31, 2020, including, but not limited to, salary, personal, housing, commercial, and motor vehicle loans, amortizations, financial lease payments and premium payments, as well as credit card payments, without incurring interest on interests, penalties, fees, or other charges and thereby extending the maturity of the said loans: Provided, That all loans may be settled on staggered basis without interest on interests, penalties and other charges until December 31, 2020 or as may be agreed upon by the parties: Provided, further, That nothing shall stop the parties from mutually agreeing for a grace period longer than sixty (60) days: Provided, furthermore, That the banks and other non-bank financial institutions (NBFIs) that agree to further loan term extensions or restructuring pursuant to this subsection shall be entitled to regulatory relief as may be determined by the BSP, which may include, but is not limited to, (i) staggered booking of allowances for credit losses, (ii) exemption from loan-loss provisioning, (iii) exemption from the limits on real estate loans, when applicable, (iv) exemption from relat-

ed party transactions restrictions, (v) non-inclusion in the bank’s or NBFIs reporting on non-performing loans: Provided, finally, That the loan term extensions or restructuring pursuant to this subsection shall be exempt from documentary stamp taxes.

“It is understood that this provision shall not apply to interbank loan and bank borrowings;”

To implement Section 4(uu) of RA No. 11494, the BIR issued Revenue Regulations No. 24-2020 on 30 September 2020 directing lenders to implement a one-time sixty (60)-day grace period for the payment of all existing, current and outstanding loans falling due, or any part thereof, on or before December 31, 2020.

The extensions of the maturity periods pursuant to the above relief shall be exempt from documentary stamp tax (DST). The DST exemption shall also apply on credit restructuring, micro-lending including those obtained from pawnshops, and extensions thereof, made on or before December 31, 2020.

Interbank loans and bank borrowings with maturity period of at least seven (7) days are not covered by the DST exemption.

SUMMARY OF EXTENSION OF LOAN REPAYMENTS/ RESTRUCTURING IN OTHER ASEAN-MEMBER COUNTRIES DUE TO COVID-19

ASEAN member-countries adopted a policy extending the loan repayments or loan restructuring of individuals and businesses to cushion the adverse effect of COVID-19. The extension period ranges from one month up to one year and 6 months as indicated below:

Country	Number of confirmed cases ^{1/}	Relief	Remarks ^{2/}
Brunei Darussalam	175	Yes	6 months
Cambodia	458	Yes	Up to 6 months
Indonesia	977,474	Yes	Loans of MSME only, for up to 1 year
Lao PDR	43	Yes	1 year
Malaysia	180,455	Yes	Maximum deferment is 6 months
Myanmar	137,098	N.A.I.	N.A.I.
Philippines	511,679	Yes	30 days and one-time 60 days
Singapore	59,260	Yes	Up to 31 December 2020 for residential property loans for individuals
Thailand	13,500	Yes	Up to 1 year and 6 months for all SMEs
Vietnam	1,548	Yes	Up to 5 months

Source: Center for Strategic and International Studies (CSIS)

Notes: ^{1/} Data from the World Health Organization as of 24 January 2021.

^{2/} Updated Remarks lifted from National Tax Research Center Journal.

N.A.I. – No available information

REMARKS

Due to COVID-19 pandemic, the government implemented new tax rules that taxpayers should be aware of for their BIR tax compliance. Some of these rules are time-bound or during the effectivity of RA 11949, while some extend beyond the expiration of the law.

Under RA 11949, taxpayers need not pay DST on loans extended or credits restructured amid a coronavirus pandemic. The DST exemption will cover salary, personal, housing, commercial and motor vehicle loans and amortizations, as well as financial lease, premium and credit card payments. It also covers credit restructuring and micro-lending.

The exemption from DST on qualified loans during COVID-19 is justifiable, to ensure full compliance of the provision set under Section 4(aa) of RA 11469 and Sec. 4(uu) of RA 11494, as well as to reduce the financial burden of the lending institutions and their clients. However, said exemption would likely result to a P470-million¹⁰ foregone revenue as estimated by the National Tax Research Center (NTRC).

NTRC also emphasized that, "Since the DST is a transaction tax, the slowdown in economic activities and fewer transactions due to COVID-19 will have a negative impact on the attainment of the DST revenue target."

Thus, there is a need for the BIR to ensure the effective and efficient collection of DST on other documents/instruments/transactions not covered by the exemptions. Nevertheless, let us hope that these tax laws currently in place and those being proposed and pursued will make way for taxpayers to a faster recovery after COVID-19.

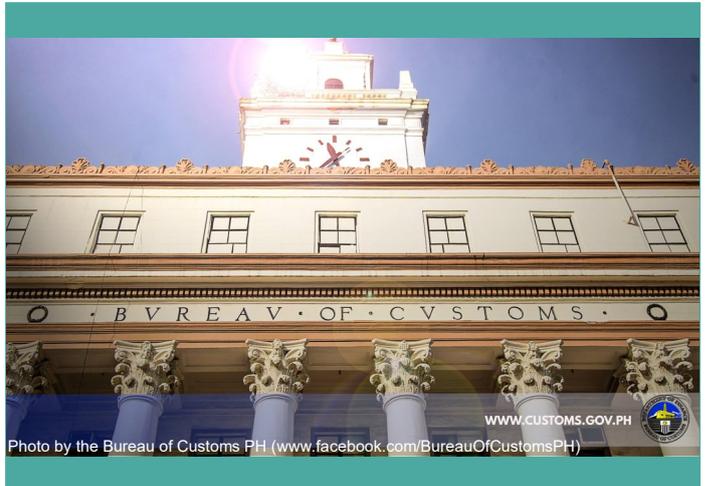
References:

- 1 Documentary stamp tax (DST) is a tax applied in the Philippines on the execution of documents such as deeds, instruments, loan agreements and other forms of transaction documents evidencing the acceptance, assignment, sale or transfer of a right or a property or sale or transfer of an obligation. The amount of tax is either fixed or based on the par or face value of the document or instrument.
- 2 This repeals Revenue Regulations No. 8-2020.
- 3 SEC. 179. Stamp Tax on All Debt Instruments.
- 4 SEC. 195. Stamp Tax on Mortgages, Pledges and Deeds of Trust.
- 5 SEC. 198. Stamp Tax on Assignments and Renewals of Certain Instruments.
- 6 Tax Reform for Acceleration and Inclusion (TRAIN Law) approved on December 19, 2017.
- 7 Article VI, Section 23(2) of the Constitution states that: "(2) In times of war or other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof."
- 8 RA 11469 – An Act Declaring the Existence of a National Emergency Arising from the Corona Virus Disease 2019 (COVID-19) Situation and a National Policy in Connection Therewith, and Authorizing the President of the Republic of the Philippines for a Limited Period and Subject to

Restrictions, to Exercise Powers Necessary and Proper to Carry Out the Declared National Policy and for Other Purposes (March 23, 2020).

- 9 NIRC of 1997, As Amended, Chapter III, Sec. 244. Authority of Secretary of Finance to Promulgate Rules and Regulations. - The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.

- 10 NTRC Tax Research Journal, Vol. XXXII.2, March-April 2020.

*In This Corner:*

Customs Administrative Order No. 13-2020

Imposition of Penalties, Surcharges, Interests and Other Charges for Lifting, Claiming, or Recovering Part of the Proceeds in the Sale of Impliedly Abandoned Goods

by Romeo E. Regacho
LSO III, Legal and Tariff Branch

The Bureau of Customs (BOC) has issued Customs Administrative Order (CAO) No. 13-2020 that cover all impliedly abandoned goods, whether for consumption, warehousing, admission or transshipment.

The following are the CAO highlights:

- To effectively implement the provisions of the CMTA relating to impliedly abandoned goods. (Sec. 2.1)
- To impose penalties, surcharges, interests and other charges on the lifting, claiming, or recovery of proceeds in the sale of impliedly abandoned goods. (Sec. 2.2)
- To provide guidelines on the imposition of penalties, surcharges, interests and other charges therefor. (Sec. 2.3)
- The Bureau is likewise bound to minimize, if not prevent, any instance of overstaying or impliedly abandoned cargoes in the terminal facilities to

protect public interest. (Sec. 4.3)

- For services rendered and documents issued in relation to the lifting, claiming, or recovery of proceeds in the sale, of impliedly abandoned goods by the stakeholder, fees and charges shall be collected by the Bureau. (Sec. 4.4)
- The District/ Port Collector shall strictly monitor the period within which goods may be declared impliedly abandoned. It is the Collector's responsibility to issue a Decree of Abandonment against such goods after the lapse of the period. (Sec. 4.5)
- The following goods are considered impliedly abandoned:
 - 1) Failure to Lodge/ File the Goods Declaration after the lapse of the original fifteen (15) calendar days (Sec. 5.1);
 - 2) Failure to Lodge/ File the Goods Declaration after the lapse of the approved extension of fifteen (15) calendar days (Sec. 5.2);
 - 3) Failure to pay the assessed duties and taxes fifteen (15) calendar days from Final Assessment (Sec. 5.3);
 - 4) Failure to pay the assessed duties and taxes in case of regulated goods which are subject of an alert order, within fifteen (15) calendar days (Sec. 5.4);
 - 5) Failure to submit the required documents, permits or clearances, or information under the following instances, whichever comes first: (Sec. 5.5)
 - ◇ In case of provisional Goods Declaration, within forty-five (45) calendar days from the date of Lodgement or after the lapse of the approved extension of forty-five (45) calendar; (Sec. 5.5.1) or
 - ◇ Under Section 117 of the CMTA within fifteen (15) calendar days from Final Assessment. (Sec. 5.5.2)
 - 6) Failure to claim the goods within thirty (30) calendar days from payment of the assessed duties, taxes, fees, interests and other charges (Sec. 5.6);
 - 7) Failure to claim passenger's baggage within thirty (30) calendar days from arrival thereof (Sec. 5.7);
 - 8) Failure to claim mail matter within thirty (30) calendar days from the third delivery of the notice card to the addressee or claimant (Sec. 5.8);
 - 9) Failure to mark the goods within thirty (30) calendar days after the receipt of Notice to Mark from the District Collector concerned (Sec. 5.9);
 - 10) Failure to withdraw the imported raw materials or imported goods within one (1) year from the date of arrival at the customs bonded warehouse (CBW) (Sec. .10);
 - 11) Failure to withdraw Perishable Goods within three (3) months from the date of arrival at the CBW (Sec. 5.11); and
 - 12) Failure to withdraw Perishable Goods after the lapse of the approved extension of three (3) months to withdraw the goods from the CBW (Sec. 5.12).
- The implied abandonment of goods may be lifted by the District Collector upon request by the owner, importer or consignee, subject to the payment of fees and charges in accordance with the schedule provided under this CAO. (Sec. 6.1.1)
- The request for Lifting shall clearly indicate the following information:
 - ◇ Reason why the goods were impliedly abandoned;
 - ◇ Whether the goods were declared abandoned by the Bureau's automated system, or whether a Decree of Abandonment has already been issued against the goods;
 - ◇ Number of times in the past that the importer has requested for lifting of abandonment for its shipments; and
 - ◇ Whether the goods are subject of an Alert Order or a Warrant of Seizure and Detention. In this case, a clearance shall be secured from CIIS, ESS, Law Division, MISTG, at the Port is required, with the MISTG confirming the inactive status of the lodgement or shipment. (Sec. 6.1.2)
- The owner, importer or consignee may request to lift or set aside the Decree of Abandonment and claim the impliedly abandoned goods by paying the fees and charges therefor. (Sec. 6.2)
- Where the owner or importer of the imported goods intends to claim the proceeds of the sale after deduction of any duty and tax and all other charges and expenses incurred as provided in Section 1143, Section 1141 and Section 1144 of the CMTA, the claimant may file a request therefor at the Office of the District Collector within a period of thirty (30) calendar days from payment of the auction price by the winning bidder. (Sec. 6.4)

New STSRO Family Members

It is the pleasure of the Senate Tax Study and Research Office ("STSRO") family to introduce our newest members:

Kristine May A. Moredo obtained her bachelor's degree in Public Administration from the University of the Philippines - National College of Public Administration and Governance, graduating with honors, *Cum Laude*. Prior to her appointment in the STSRO, she has worked for Pfizer Philippines under the Customer Engagement and Events Team as well as the Bureau of Local Government Finance under the Policy, Planning, Programming and Standards Division. She plays the bass guitar and goes hiking in her spare time. Kristine May is currently a Legislative Staff Assistant III under the Office of the Director General.



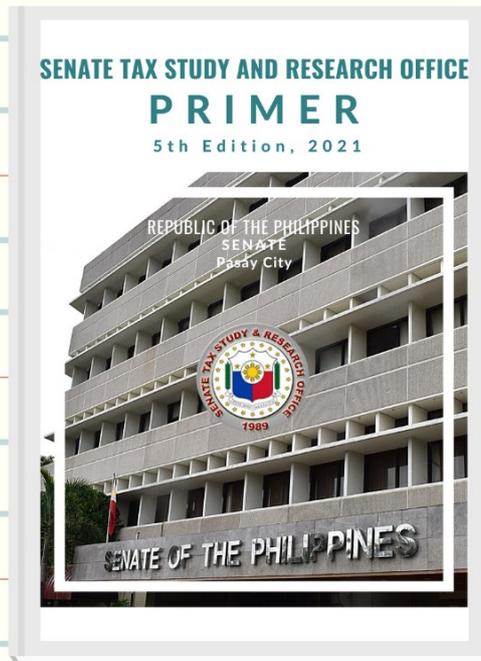
Robynne Ann A. Albaniel graduated with an AB in Development Studies, major in International Development, from the De La Salle University - Dasmariñas. Prior to joining the STSRO, she worked as a Research Analyst at business consultancy firm *The Wallace Business Forum* ("WBF"). At her stint at WBF, she provided research focusing on general business, financial technology, mining, tourism, impact investment, the Fourth Industrial Revolution, and green economy. She has likewise provided research support for many embassies, chambers of commerce, multinational companies, and notable personalities such as former Department of Finance Secretary Gary Teves, and Anti-Red Tape Authority Private Sector Representative Peter Wallace. She endeavors in event planning and plays with her pets during her free time. Robynne Ann is currently a Legislative Staff Officer IV of the STSRO Legal and Tariff Branch.



Atty. Harold Ian V. Bartolome is a former Legislative Committee Secretary to the Senate Committees on Public Services; Banks, Financial Institutions and Currencies; Justice and Human Rights; and other related subcommittees. He is instrumental to the shepherding of measures that led to the enactment of laws on special purpose vehicles; amendments to the Anti-Money Laundering Act of 2001; franchises of the *San Miguel Aerocity* and *Davao Light and Power Company*, among others; strengthening of the *Bangko Sentral ng Pilipinas*; national payment systems; amendments to the Access Devices Regulation Act of 1998; personal property security; the *Sandiganbayan* and of our graft and practices laws; amendments to the Probation Law; modernization of the National Bureau of Investigation; and the creation of new courts around the country. Prior to his appointment in the Senate in 2013, he served as a litigation lawyer, while serving as instructor of business laws in Tarlac State University and as corporate secretary (*pro bono*) of the College of St. John-Roxas in Roxas, Capiz. He is a graduate of San Sebastian College-Recoletos (*Bachelor of Laws, October 2007*) and the University of Santo Tomas (*AB Legal Management, 2003*). A sports enthusiast, he is a member of Heroes Volleyball Program and plays intermediate level volleyball and badminton. Atty. Bartolome joins the STSRO as the Director II/Assistant Service Chief of the Indirect Taxes Branch.



What they say about the STSR Primer 5th Edition, 2021



**Thank you for the STSR Primer, Atty. Dascil.
Congratulations on this undertaking!**

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Director III, Management Planning and Operations Audit Service

**Thank you for the STSR Primer, Congratulations
D/G Dascil and STSR!**

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Thank you EAR and STSR!

From Ms. Fleur De Liz A. Godoy
Director III, Broadcast Media Service and OIC, Print Media Service

Thank you, DirGen Dascil!

From Ms. Josephine Codilla
OIC and Director II, Legislative Journal Service

Thanks DG Rodel and STSR Team for the Primer 5th Edition.

From Atty. Arnel Jose S. Bañas
Deputy Secretary for Administration and Financial Services

What they say about STSRO



SEN. FRANCIS "TOL" N. TOLENTINO

"Our job here is to reconcile all existing laws and regulations. I'll flash on the screen provisions of the Civil Code of the Philippines relating to donations, a provision coming from the National Internal Revenue Code relating to donations. And I would like to congratulate a Senate office, napakagaling nila - the Senate Tax Study and Research Office. They gave me a report. I would like, Mr. President, all our colleagues to have a copy of this. Napakaganda ho ng sinabi nila."

DISCUSSION ON THE NATIONAL
GOVERNMENT'S COVID-19
VACCINATION PROGRAM



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