STSR TAXBITS

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by:

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The only thing constant in life is change; this holds true for our tax laws since reforms had always been a part of our country's legislative history. As new economic conditions arise, our tax laws cannot remain unchanged and must be modified accordingly.

The Department of Finance (DOF) initiated a tax reform program aimed to amend several provisions in the National Internal Revenue Code (NIRC). The first of the five reform packages was presented to Congress late last year; it seeks to amend the provisions on tax administration, income tax, the value-added tax, as well as the excise tax rates on automobiles and petroleum products. Package 1 is popularly known as the *Tax Reform for Acceleration and Inclusion Act* or TRAIN. This measure later on became House Bill No. (HBN) 5636, and was passed by the Lower House on third reading last 31 May 2017. The bill was transmitted to the Senate on 11 July 2017.

After conducting a total of 19 public hearings, 3 consultative meetings, and 2 technical working group (TWG) meetings, the Senate Committee on Ways and Means drafted its own version of TRAIN and submitted the same as Senate Bill No. (SBN) 1592 under Committee Report No. 164. The Honorable Senator Sonny Angara delivered his sponsorship speech last 20 September 2017. The period of interpellation on SBN 1592 lasted for two weeks or a total of six session days with thirteen Senators grilling the Sponsor on the various topics covered by the proposed tax measure. With the Q&A portion now closed, the bill is set for the period of amendments to be introduced by the Members of the Senate.

Several issues were raised by the Senators during the course of the interpellations that deserve a second look. As currently worded, there are provisions that must be clarified in order to preserve the main objectives of the TRAIN bill, which are pro-poor and inclusive growth.

THE Php150,000 INCOME TAX CAP

Under SBN 1592, the income tax threshold was lowered to only P150,000 as compared to the P250,000 cap proposed under HBN 5636. Although the Senate version retained the provision on additional exemption of P25,000 for each qualified dependent not exceeding four (4), it deleted the provision regarding the basic personal exemption of P50,000. This means that a taxpayer will be better off if he has qualified dependents to declare since he can get a deduction of up to P100,000. On the other hand, taxpayers who are single, without any children or qualified dependents, or the wife whose husband is the one claiming the deduction will be at

the losing end of the income tax proposal under the Senate bill. According to the DOF, around 60% of taxpayers have no qualified dependents.

The impact of this proposed income cap on the *minimum wage earner* should likewise be considered. SBN 1592 retained the current provision regarding the income tax exemption of minimum wage earners (MWEs). But with the new cap, there is a great possibility that the annual income of MWEs will exceed the same. This is especially true for those working in the National Capital Region wherein the minimum wage was increased to P512.00 as per Wage Order No. NCR-21. In such a situation, what will be the tax treatment of their income? During the period of interpellation, Senator Sherwin Gatchalian also pointed out the possible dilemma of MWEs with respect to the income cap. The Senator pointed out that a minimum wage earner may be placed in the borderline of being taxed and being exempt depending on their overtime or night differential pay.[1] He further added that he would propose to increase the threshold from the current P150,000 to P200,000 so as to safeguard those belonging to the lower income deciles including the MWEs[2]. Moreover, there are other wage earners who earn as much as or even less than the minimum wage but are not classified as MWEs, and as such they will be subject to income tax should they exceed the P150,000 cap. Examples of these peculiar types of workers are those that did not work for the entire year or those that worked only for a particular project. According to the DOF, this disadvantageous situation will also be cured by increasing the income tax threshold.

Senator Risa Hontiveros also devoted her time on the issue of minimum wage earners during her interpellation on the bill. Senator Hontiveros pointed out that more than two million MWEs would be in worse conditions as a result of the Senate tax reform measure[3]. Based on their findings, the Lady Senator reported that there are two million minimum wage earners falling within the fifth to seventh deciles that will incur an additional burden but will not receive any of the compensating transfers.[4] She added that while these groups are no longer considered as "poor", they are still vulnerable to falling back to poverty.[5]

THE FAMILY FARM - ESTATE TAX

The new provision on *family farm* was included as an allowable deduction to the estate in the Senate version of the TRAIN bill. The intention behind this provision was to cover the beneficiaries of the *Comprehensive Agrarian Reform Program* (CARP), and to preserve the small landholdings used for agriculture in the country.[6] Unfortunately, this intention seems to have been lost in translation as a cursory reading of the provision is devoid of any mention of CARP or being a beneficiary thereof. Thus, it would seem that landed families will likewise be benefitting from this proposed deduction, and not just CARP beneficiaries as was originally intended. Moreover, as pointed out by the DOF[7], the significant increase in the standard deduction to P5 million will already cover the average landholding of small farmer beneficiaries. Also, this will pose administrative problems given the conditions enumerated under SBN 1592. This is because the Bureau of Internal Revenue (BIR) may be required to do a post audit of the transfer, and to monitor the landholding even after the settlement of the estate. Thus, the administrative cost of conducting a post-audit and to monitor the farm may be more than the estate tax collectible.

VALUE ADDED TAX PROVISIONS

A number of Value Added Tax (VAT) zero rated and exempt transactions were retained in SBN 1592. According to Senator Angara, most of the retained VAT transactions were in response to the request of some Members of the Senate but with some minor adjustments made such as in the case of the housing provision.[8] The special economic zones, cooperatives, socialized housing, senior citizens, and persons with disabilities (PWDs) are just a few of the sectors whose VAT privileges were retained.

The more important issue raised about the VAT is the possibility of reducing the VAT rate to 10% from the current 12%. This matter was first raised by the Honorable Majority Leader, Senator Vicente Sotto, during his interpellation on SBN 1592.[9] The Majority Leader inquired as to the possibility of lowering the VAT rate and limiting the exemptions to only raw food, agriculture, education, health, senior citizens, and PWDs. However, the Sponsor replied that such a proposal may neutralize all other revenue generating efforts as this is a substantial portion of the total revenue collection.[10] The 10% VAT proposal was also espoused by other Senators, among which are Senators Panfilo Lacson and Risa Hontiveros during their interpellation.

Senator Lacson proposed the delisting of sixty four (64) items from the line of VAT exemptions especially since some of the special laws date as far back as 1986 and 1998[11]. He opined that these sectors have already benefited from this VAT privilege for a long period of time and it is only proper that they now also give back to the government through the VAT system. Senator Hontiveros added that she would be proposing lowering the VAT rate to 10% as soon as conditional transfers are no longer available but not later than the end of 2019.[12]

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1 Senate of the Philippines. Journal. 17th Congress, 2nd Regular Session, Session No. 27, 2 October 2017, at p. 517.
2 *Id.*
3 Senate of the Philippines. Journal. 17th Congress, 2nd Regular Session, Session No. 29, 4 October 2017, at p. 553 (DRAFT).
4 *Id.*
5 *Id.*
6 Senate of the Philippines. Committee on Ways and Means. *Other Revenue Generating Measures*. 17th Congress, 2nd Regular Session, 7 September 2017, at p 98.
7 *Id* at p. 102.
8 Senate of the Philippines. Journal. 17th Congress, 2nd Regular Session, Session No. 24, 25 September 2017, at p. 458.
9 *Id* at p. 459.
10 *Id.*
11 *Supra note* 3 at p. 550 (DRAFT).
12 *Id.* at pp. 557.

The idea behind the 10% VAT proposal is to lower the rate and at the same time broaden the tax base by keeping only a few exempt sectors. To recall, the original rate of the VAT was 10%. It was raised to 12% in February 2006 after the conditions set forth in Republic Act No. 9337 were satisfied. It should be noted that the economic conditions back in 2006 necessitated a higher VAT rate in order to generate the needed revenues to cushion the budget deficit, and the burgeoning national debt. Although our country is still a long way off from securing financial liberty, one cannot deny that we have attained some form of economic stability through the combined efforts of past administrations. Thus, lowering the VAT to 10% may actually be a welcome respite from the other tax increases proposed under the TRAIN. As VAT is a consumption tax, the benefits of lowering this tax will be felt by everybody regardless of economic or income status. Moreover, the DOF believes that the government can collect between P728 billion and P873 billion with the proposed 10% VAT rate scenario. Note that these estimates are substantially bigger than the actual 2016 collection at 12% of only P625 million. Hence, this is indeed a proposal that should be thoroughly considered by the Senate.

EXCISE TAX ON PETROLEUM PRODUCTS

The proposed increase in the excise tax rates on petroleum products is another tax that will impact on the people. The Sponsor explains that although the Senate version will generate a lower revenue gain as compared to its House counterpart, it was designed that way to ensure a lighter impact on the taxpayer.[13]

It is noted that the Senate version decided to exempt kerosene from excise taxes. The proposal to exempt kerosene came from the Petroleum Industry of the Philippines (PIP)-sponsored study of the University of Asia and the Pacific (UA&P.) In HBN 5636, the tax rate on all products including kerosene increased by 3-2-1 over the years 2018-2020. When asked about this matter, Senator Angara replied that the exemption was based on the fact that kerosene is a highly sensitive product consumed mostly by the poor, and also due to the comparatively low incremental revenue of P400 million that it will generate.[14]

At the other end of the spectrum is the aviation fuel, which is the only petroleum product whose tax rate remained unchanged at P4.00. In the House proposal, the tax rate on all products including that of aviation turbo jet fuel increased by 3-2-1. Senator Angara explained that increasing the cost of aviation fuel may result in a 29% increase in air transport operations cost.[15] Moreover, the Sponsor also cited the *Convention on International Civil Aviation* (ICAO), which provides that fuel and lubricating oils onboard an aircraft of a contracting state and retained onboard upon leaving that territory shall be exempt from customs duty, fees, and similar national or local duties and charges.[16] Senator Angara concluded that any increase in the excise tax of aviation fuel will only burden domestic airlines.[17]

Senator Francis Pangilinan began his interpellation on the impact of the proposed rates of petroleum products on agricultural production particularly on the fisheries sector and the rice farmers. He noted that according to the *Council for Agriculture and Fisheries,* the actual increase in fuel costs will run from 17% to 22% of the current price or approximately P7.6 million to P9 million annually for municipal fisheries; and about P8.7 million to P10.04 million for commercial fisheries.[18] As for rice production, Senator Pangilinan stated that rice areas using shallow tube wells will also be heavily affected as their pumps use fuel especially during the dry season.[19] The good Sponsor noted that the price increases of basic commodities such as rice or palay would only increase by 0.061%, corn by 0.019%, coconut by 0.003%, and sugarcane including *muscovado sugar* by 0.130%.[20]

SWEETENED BEVERAGES TAX

The proposed tax on sweetened beverages is predicated on the rising incidence of diabetes and other non-communicable diseases related to the intake of such drinks. Although there are no local studies that directly link such beverages to these diseases, the experts invited during the hearings of the Committee believed that there is a causal connection between sweetened drinks and the risk of acquiring diabetes or similar diseases. The end goal of this new tax is to lower the consumption of these sweetened beverages, and to make people choose healthier beverages as these are not taxed. The proposed three (3) tier tax structure under a volumetric scheme in the Senate version may pose some administrative challenges during actual implementation. However, it was fortunate that coffee products, particularly the instant varieties such as 3 in 1 coffee, were excluded from the imposition of this beverage tax. It is unfortunate that for milk products, only those with a sweetener content of 5 grams or less per 100 ml are exempted from this tax. It would have been better had all milk products were exempted from the imposition of this proposed tax especially given the nutritive value of all milk based drinks.

It is truly alarming that milk and milk product consumption in 2013 has plunged to a low of only 7 grams per capita per day.[21] It should be noted that this number does not represent the consumption of milk drinks alone but also includes milk products such as cheese, yogurt, ice cream, leche flan, and similar types

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[13] Senate of the Philippines. Journal. 17th Congress, 2nd Regular Session, Session No. 25, 26 September 2017, at p. 475.
[14] *Id.* at p. 476.
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Supra note* 3 at p. 561.
[19] *Id.*
[20] *Id.*
[21] Department of Science and Technology, *Food and Nutrition Research Institute, Philippine Nutrition Facts and Figures 2013: Food Security Survey*, 2015, Taguig City, pp. 105.
[22] *Id.*

of food.[22] One study of the *Food and Nutrition Research Institute* (FNRI) stated that the reduction in milk consumption as one ages is mirrored in the decreasing adequacy of nutrient intake.[23] The study also indicated that Filipinos are only meeting 57.1% of their daily calcium requirement.[24] Further, the 1997 Formative Research on Milk and Milk products conducted by the FNRI showed that Filipinos only purchase milk drinks when they have extra money.[25] This proves that milk is not considered by most Filipino households as part of their regular diet.[26] Thus, the poor consumption of milk by Filipinos may be one of the factors that contributed to our country's high malnutrition rate.[27]

Other jurisdictions that have imposed a similar sugar tax have also seen the importance of milk based drinks and have exempted these beverages from the coverage of the said tax. Several states and cities in the US such as Berkeley[28] in California, Cook County[29], Washington[30], and Philadelphia[31] have also excluded milk based drinks from their respective sugar tax.

FROM TAXING COSMETICS TO COAL TAX

These are two additional revenue measures in the Senate version of the TRAIN measure. Although it should be noted that the proposed coal tax is included in the fifth package to be submitted by the DOF, the proposal to impose taxes on cosmetic procedures is not part of any of the packages of the Finance department. Thus, the DOF did not have any estimates of revenues that may be generated from these products or services.

On the matter of the *cosmetics tax,* majority of the concerns of the Senators who raised questions on this proposal revolve around the safeguards or standards that will be put in place to determine which procedures will be taxable and those that will be exempted. Senator Angara emphasized that the intention is to tax those procedures that are done mainly by reason of vanity or for aesthetic purposes only. This means that those that are medically needed or are considered reconstructive surgeries will be free from the proposed tax. However, it should be noted that during the course of interpellation, the Sponsor mentioned that *cleft palate* and *lasik surgery* will be taxable.[32]

It is submitted, however, that these two procedures are reconstructive in nature and are therefore needed in order to restore normal bodily functions. It is hoped that this proposed tax will be clearly stated in the bill so as to avoid any unfortunate interpretations or abuses in the future. Further, it should be noted that all cosmetic procedures, whether invasive/surgical or non-invasive/ non-surgical, are currently included in this proposed tax. Thus, if this is passed then even simple *facials* or *warts removal* (which should be considered as a necessity given that warts are viral in nature) will have a higher price tag.

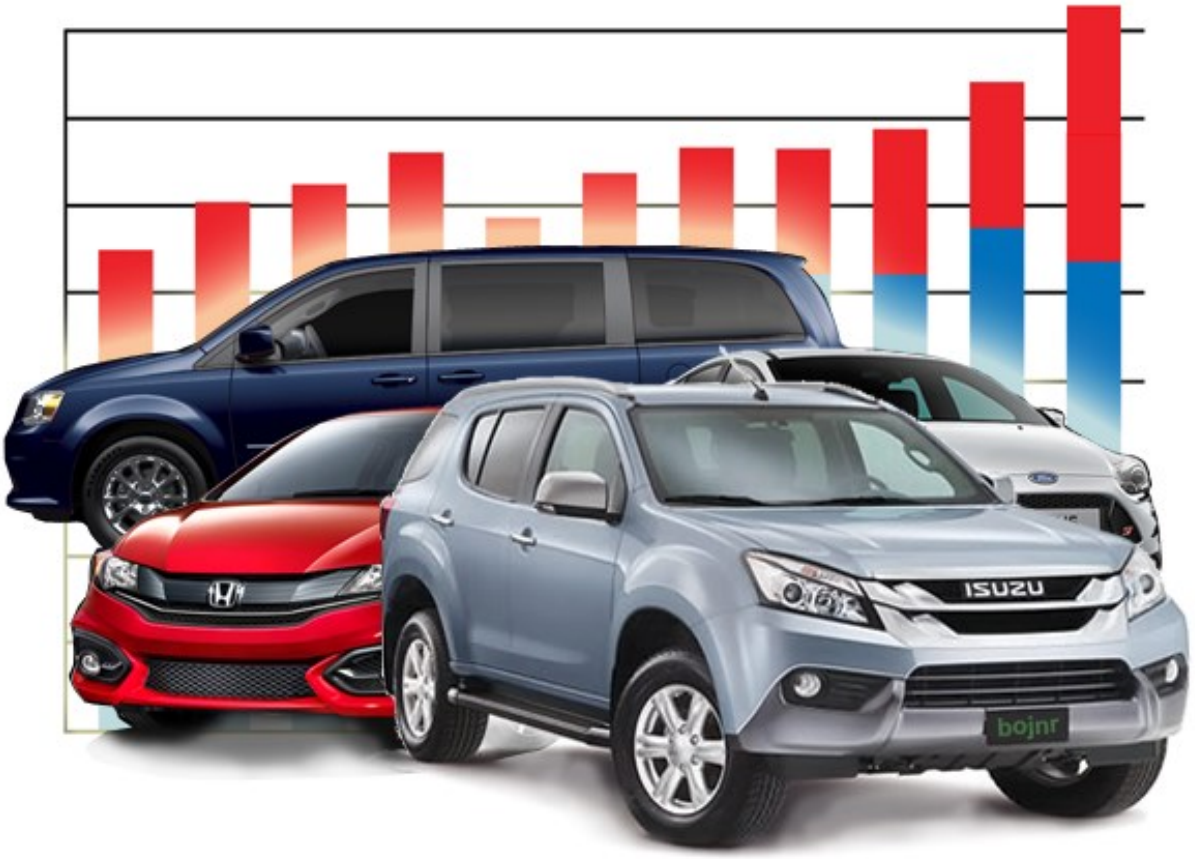
With respect to the tax on coal, Senator Risa questioned the Sponsor as to why the Committee Report only imposed a mere P20 tax while *Professor Ciel Habito* proposed a much higher rate of P600 per ton.[33] To this, Senator Angara replied that the proposal came about as a result of a balancing act between several factors, i.e. the possible effect on electric costs, and the fact that 70% of our country's power generation heavily relies on coal.[34] The Sponsor further added that the P20 tax will affect Meralco consumers by 30% or one centavo per kilowatt hour.[35] However, Senator Hontiveros countered as per Professor Habito's calculations, the electric bill of a middle class family will only increase by P36/month even at the rate of P600 per ton.[36] The good Sponsor replied that the DOF has to study this further given that this tax was supposed to be part of package 5.[37]

WAITING GAME

The fate of this bill hangs in the balance as the Period of Amendments will commence once the Session resumes. However, the Committee has already been preparing for the same given the numerous and lengthy interpellations made by the Members of this Chamber. While the nation waits for the outcome of the plenary deliberations on this priority measure, one can only hope that the final version of the bill that will be signed into law will truly be beneficial for all. A measure that will live up to its objectives of providing inclusive growth for all especially the poor, and of providing the needed revenues to fund the government's programs or projects such as the *Build, Build, Build* program.

It is true that not everyone can be satisfied with the provisions contained in this proposed tax reform bill. There will always be counter studies and estimates that will be thrown at the Senate. But as DOF Undersecretary Karl Chua always says, "this tax reform must be seen as a package". There will always be losers and winners in every tax reform. Our only prayer is that the greater majority will be the winners this time around.

[23] Retrieved from http://www.philstar.com/sunday-life/70106/do-filipinos-drink-milk on 9 August 2017.
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] Refer to https://ballotpedia.org/City_of_Berkeley_Sugary_Beverages_and_Soda_Tax_Question,_Measure_D_%28November_2014%29
[29] Refer to http://www.dailyherald.com/news/20170628/what-drinks-arent-included-in-cook-countys-soda-tax
[30] Refer to http://dor.wa.gov/Docs/Pubs/SpecialNotices/2015/sn_15_SoftDrinks.pdf
[31] Refer to http://www.philly.com/philly/infographics/383217911.html
[32] *Supra note* 3 at p. 564.
[33] *Supra note* 3 at p. 558.
[34] *Id*
[35] *Id*
[36] *Id*
[37] *Id*



Tax on Automobiles.. For Better or for Worse..

by:

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On 20 September 2017, the Senate version of the *"Tax Reform for Acceleration and Inclusion"* under Senate Bill No. (SBN) 1592, Committee Report No. 164 was considered on Second reading in the Senate plenary hall. Sponsorship speech was read by the Chairperson of the Senate Ways and Means Committee Senator Sonny Angara, citing its consolidation with thirty-one (31) Senate bills, three (3) House bills and three (3) Senate resolutions.

The senator then underscored the objective of the bill by reiterating Felix Rohatyn's commencement address in Middlebury College in 1982, *to wit*:

> *"A basic test of a functioning democracy is its ability to create new wealth and see to its fair distribution. When a democratic society does not meet the test of fairness, freedom is in jeopardy."*

SBN 1592's theme of social justice with moral considerations was also emphasized by the senator. Accordingly, a *"reduction in the income taxes of ninety-nine percent (99%) of individual taxpayers"* would be achieved *"without impairing the government's capability to raise enough revenues for its ambitious Build, Build, Build projects like rebuilding Marawi and upgrading defense and police forces."*

Among the salient points of SBN 1592 is the proposed *Ad Valorem Tax on Automobiles* based on the manufacturer's or importer's selling price, net of excise and value-added tax, in accord with the following schedule:

Effective January 1, 2018	
Net Manufacturer's Price/ Importer's Selling Price	**Rate**
Up to P600K	4%
Over P600k to P1.1 Million	P24,000 + 35% of excess over P600k
Over P1.1 Million to P2.1 Million	P199,000 + 55% of excess over P1.1 Million
Over P2.1 Million TO P3.1 Million	P749,000 + 90% of excess over P2.1 Million
OVER P3.1 Million	P1,649,000 + 100% of excess over P3.1 Million

As defined in the bill, *"automobiles shall mean any four (4) or more- wheeled motor vehicle regardless of seating capacity, propelled by gasoline, diesel, electricity or any other motive power; Provided, that buses, trucks, cargo vans, jeepneys/jeepney substitutes, single cab chassis, special-purpose vehicles, and vehicles purely powered by electricity or hybrid vehicles shall not be subject to excise tax."*

During the refinement in the Senate of SBN 1592, several primordial considerations prevailed in the mind of the senator, *to wit*:

1. **Environmental protection**. Exemption from tax of greener and cleaner transportation such as hybrid and electric cars.
2. **Traffic decongestion**. Car sales have consistently gone up in the past few years as shown by the all-time high 413,700 units sold last year, representing a twenty-four percent (24%) growth from 2015. While more started purchasing new cars, road networks and mass transportation did not improve or expand in tandem. Thus, many suffer through congested roads every day.
3. **Innovative development policy**. Subscription to the long-term vision expressed by former Bogota of Colombia Mayor Gustavo Petro: *"A developed country is not a place where the poor have cars. It is where the rich use public transportation."*
4. **Earmarking of revenue**. The commensurate revenue to be earned from the proposed excise tax on automobiles would be used to improve the efficiency of the public transportation system alleviating the plight of our poor countrymen as well.

Attesting to the passionate approach of Chairperson Angara to arrive at a measure that is most effectively heard and understood by all concerned sectors, the Committee conducted nineteen (19) public hearings many taking as long as five (5) to six (6) hours, two (2) TWGs, three (3) consultative meetings, and three (3) workshops.

It must be noted that Senator Angara clarified SBN 1592's intention to keep it easy on the buyers of low-end sedans costing Six hundred thousand pesos (P600,000.00) and below, conscious of the fact that majority of the purchasers prefer vehicles priced between P600,000.00 to One million pesos (P1,000,000.00).

Be that as it may, there is fear that if the proposed rates are too high like what is provided in the Department of Finance (DOF) version, the gains of the automobile industry may be derailed. This includes the manufacturing programs of the private sector and the government, particularly the Comprehensive Automotive Resurgence Strategy (CARS).

During the interpellation of Senator Vicente "Tito" Sotto III on the TRAIN bill[1], he commented on the projected *"high impact of SBN 1592 to the high-end luxury brands such as Ferrari, Bentley, Rolls Royce, BMW, Mercedes Benz and Porsche"* such that smuggling may become rampant again. This was dispelled by Senator Angara who reiterated the DOF's theory that our *"strong economy, evidenced by a 6.3% Gross Domestic Product (GDP) growth for the last six (6) years, can overcome the effects of a higher excise tax on automobiles"*.

According to the president of the Chamber of Automotive Manufacturers of the Philippines (CAMPI) Atty. Rommel Gutierrez[2] *"the Philippines is very much in the radar of the ASEAN automotive industry because it's the only country that shows positive growth figures among ASEAN countries. CAMPI supports the passage of the excise tax on automobiles, but at reasonable rates."*

The automobile industry is mainly covered by two (2) associations; CAMPI and the Association of Vehicle Importers and Distributors (AVID), the latter likewise submitting a similar position as the former.

To date, SBN 1592 under CR No. 164 is still in the period of amendments. Meanwhile, we trust that our legislators will produce a *Tax Reform Measure* worthy of our collective admiration as we wait with bated breath SBN 1592's actual effect to our country's economy and our people's lives.

1 Senate of the Philippines. Journal. 17th Congress, 2nd Regular Session No. 26, September 27, 2017 at p. 500
2 Interview with the Philippine Daily Inquirer on 9 June 2017 (viewed on 1 October 2017

Sponsorship Speech of Senator Sonny Angara on Tax Reform Acceleration and Inclusion (TRAIN)

(September 25, 2017)

Mr. President, we rise on behalf of the Committee on Ways and Means to sponsor Committee Report No. 164 on Senate bill No. 1592 which consolidates 31 Senate bills, 3 House bills and three Senate resolutions.

Bawat isa po sa atin ay may pangarap na nais nating abutin. Ngunit sa ngayon, kakaunting Pilipino lamang ang tunay na nakaka-angat. Ang gusto po natin, Mr. President, *ay dumami ang hanay ng mga Pilipino na nakakaasenso sa buhay.*

A leader once remarked that a basic test of a functioning democracy is its ability to create a new wealth and see to its fair distribution. When a democratic society does not meet the test of fairness, freedom is in jeopardy. *Kapag kakaunti lamang sa ating mga kababayan na nasa baba ang nakakaakyat or nakakaangat, ito po ay labag sa katarungang panlipunan o* social justice *na nakasaad sa ating Saligang Batas at dapat nabibigyan ng pinakamataas ng prayoridad ng Kamarang ito.*

May katarungang panlipunan o social justice *kapag bawat isa ay malayang makipagsa[pa]laran at nagtitiwala sa sariling kakayahan. Kapag mararamdaman niya agad ang bunga ng kaniyang pagsisikap. Kapag malawak ang abot-tanaw ng kaniyang mga pangarap. Nais po nating abutin ang lipunang iyon.*

The Senate version of TRAIN (Tax Reform for Acceleration and Inclusion) started with building a theme - the theme of social justice which is its moral arc and its dominant purpose. Next, we put in the fiscal math. The result is a very comprehensive and ambitious tax reform which reduces the income taxes of 99% of individual tax payers without impairing the government's capability to finance its ambitious "Build, Build, Build" program and other worthy projects like rebuilding Marawi and upgrading our defense and police forces, among others, Mr. President.

It simplifies the tax code to create the environment to expand the tax base and make payments easier. Too many Filipinos are hungry, sick, homeless, jobless and, mot unfortunately, hopeless. The Senate's mandate is to find ways of feeding them, of healing them, of giving them jobs and, most importantly, of bringing back hope into their lives. Let this measure be one of those ways.

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* Prepared by: Dir. Clinton S. Martinez, Legal and Tariff Branch

Commissioner of Internal Revenue, ***Petitioner*, *v*. Standard Chartered Bank**, ***Respondent*,** G.R. No. 192173, July 19, 2015 (Perez, *J.*)

FACTS:

This case involves the interpretation and proper application of Section 203 and Section 222 of the National Internal Revenue Code (NIRC), as amended, and the implementing memorandum order (RMO 20-90), circular (RMC 29-12) and Revenue Delegation Authority Order (RDAO) No. 05-01 issued by the Bureau of Internal Revenue (BIR). The Tax Code provisions states:

> ***"SEC. 203. Period of Limitation Upon Assessment and Collection***. – Except as provided in Section 222, internal revenue taxes shall be assessed within three 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*: Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed**.** For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.
>
> "*SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
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> x x x x
>
> "(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon**.** The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon."

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

Respondent Standard Chartered Bank (SCB) received from the Bureau of Internal Revenue (BIR) on July 14, 2004, a Formal Letter of Demand (FLD) dated June 24, 2004. Said FLD alleged deficiency income tax, final income tax – FCDU (Foreign Currency Deposit Unit), [withholding tax – compensation (WTC)], EWT, [final withholding tax (FWT)], and increments for taxable year 1998 in the aggregate amount of P33,326,211.37.

SCB questioned said FLD on August 12, 2004 by filing a letter-protest dated August 9, 2004. The same was addressed to the BIR Deputy Commissioner for the Large Taxpayers' Service (LTS), and praying that it be withdrawn and cancelled. The BIR did not render a decision on said letter-protest hence SCB filed a Petition for Review with the Supreme Court (SC), on March 9, 2005. On October 14, 2005 respondent filed a *Motion for Leave of Court to Serve Supplemental Petition, with attached Supplemental Petition for Review*, pursuant to *Rule 10 of the 1997 Rules of Civil Procedure, as amended*, in view of the alleged payments it made through the petitioner's Electronic Filing and Payment System (eFPS) as regards its deficiency [WTC] and [FWT] assessments, in the amounts of P124,967.73 and P139,713.11, respectively.

In SCB's *Supplemental Petition for Review*, it seeks to be fully credited of the payments it made covering the deficiency [WTC] and [FWT]. The remaining assessments cover only the deficiency income tax, final income tax – FCDU, and [EWT] in the amended amount of P33,076,944.18.

Both BIR and SCB presented witnesses and additional documentary exhibits and Memorandum. The case was considered presented for resolution on November 2, 2005.

The Court of Tax Appeals (CTA) Division rendered a decision dated February 27, 2009 granting SCB's petition *"for the cancellation and setting aside of the subject Formal Letter of Demand and Assessment Notices dated 24 June 2004 on the ground that petitioner's right to assess respondent for the deficiency income tax, final income tax – FCDU, and EWT covering taxable year 1998 was already barred by prescription."*

The CTA En Banc affirmed the CTA Division decision.

ISSUES:

> *"The primary issue presented before this Court is whether or not petitioner's right to assess respondent for deficiency income tax, final income tax – FCDU, and EWT covering taxable year 1998 has already prescribed under Section 203 of the NIRC of 1997, as amended, for failure to comply with the requirements set forth in RMO No. 20-90 dated 4 April 1990, pertaining to the proper and valid execution of a waiver of the Statute of Limitations, and in accordance with existing jurisprudential pronouncements.*
>
> *"Subsequently, even assuming that petitioner's right to assess had indeed prescribed, another issue was submitted for our consideration, to wit: whether or not respondent is estopped from questioning the validity of the waivers of the Statute of Limitations executed by its representatives in view of the partial payments it made on the deficiency taxes (i.e.* WTC and FWT) sought to be collected in petitioner's Formal Letter of Demand and Assessment Notices dated 24 June 2004."

HELD:

The Supreme Court (SC) denied the petition, pointing out that the period for the BIR to assess and collect taxes is limited only to three (3) years as provided under Section 203 of the NIRC, as amended, subject to the exceptions found in Section 222, as implemented by Revenue Memorandum Order (RMO) NO. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01.

The SC ratiocinated:

> "*This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation by not indefinitely extending the period of assessment and depriving the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time."*

Citing Section 222 of the Tax Code, the SC mentioned an exception wherein a waiver may be issued. The High Court declared:

> *"However, one of the exceptions to the three-year prescriptive period on the assessment of taxes is that provided for under Section 222(b) of the NIRC of 1997, as amended, which states:*
>
> *"SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.–*
>
> *"x x x x*
>
> *"(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the tax-payer have agreed in writing to its assessment*

after such time, the tax may be assessed within the period agreed upon.

"The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

"From the foregoing, the above provision authorizes the extension of the original three-year prescriptive period by the execution of a valid waiver, where the taxpayer and the Commissioner of Internal Revenue (CIR) may stipulate to extend the period of assessment by a written agreement executed prior to the lapse of the period prescribed by law, and by subsequent written agreements before the expiration of the period previously agreed upon. It must be kept in mind that the very reason why the law provided for prescription is to give taxpayers peace of mind, that is, to safeguard them from unreasonable examination, investigation, or assessment. The law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed.

"In the landmark case of Philippine Journalists, Inc. v. CIR (PJI case), we pronounced that a waiver is not automatically a renunciation of the right to invoke the defense of prescription. A waiver of the Statute of Limitations is nothing more than "an agreement between the taxpayer and the Bureau of Internal Revenue (BIR) that the period to issue an assessment and collect the taxes due is extended to a date certain." It is a bilateral agreement, thus necessitating the very signatures of both the CIR and the taxpayer to give birth to a valid agreement. Furthermore, indicating in the waiver the date of acceptance by the BIR is necessary in order to determine whether the parties (the taxpayer and the government) had entered into a waiver "before the expiration of the time prescribed in Section 203 (the three-year prescriptive period) for the assessment of the tax." When the period of prescription has expired, there will be no more need to execute a waiver as there will be nothing more to extend. Hence, no implied consent can be presumed, nor can it be contended that the concurrence to such waiver is a mere formality."

Alluding to RMO 20-90, the SC held that the waiver executed by respondent did not satisfy its requirements. Since there was no valid waiver, the Court said:

"Applying the rules and rulings, the waivers in question were defective and did not validly extend the original three-year prescriptive period. As correctly found by the CTA in Division, and affirmed in toto by the CTA *En Banc*, the subject waivers of the Statute of Limitations were in clear violation of RMO No. 20-90

"X x x.

"Taking into consideration the foregoing defects in the First and Second Waivers presented and admitted in evidence before the court a quo, the period to assess the tax liabilities of respondent for taxable year 1998 was never extended. Consequently, when the succeeding waivers of Statute of Limitations were subsequently executed covering the same tax liabilities of respondent, and there being no assessment having been issued as of that time, prescription has already set in. We therefore hold that the subject waivers did not extend the period to assess the subject deficiency tax liabilities of respondent for taxable year 1998. The aforesaid waivers cannot be considered as "subsequent written agreement(s) made before the expiration of the period previously agreed upon" referred to in the second sentence of the earlier quoted Section 222(b) of the NIRC of 1997, as amended, since there is no "period previously agreed upon" to speak of."

On another issue, the Court pronounced:

"As regards petitioner's insistence that respondent is already estopped from impugning the validity of the subject waivers considering that it made partial payments on the deficiency taxes being collected, particularly as to the payment of its deficiency WTC and FWT assessments in the amounts of P124,967.73 and P139,713.11, respectively, we find this argument bereft of merit.

"As aptly found in the 29 July 2009 Resolution of the CTA in Division, although respondent paid the deficiency WTC and FWT assessments, it did not waive the defense of prescription as regards the remaining tax deficiencies, it being on record that respondent continued to raise the issue of prescription in its Pre-Trial Brief filed on 15 August 2005, Joint Stipulations of Facts and Issues filed on 1 September 2005, direct testimonies of its witness, and Memorandum filed on 24 October 2008. More so, even petitioner did not consider such payment of respondent as a waiver of the defense of prescription, but merely raised the issue of estoppel in her Motion for Reconsideration of the aforesaid decision. From the conduct of both parties, there can be no *estoppel* in this case.

"X x x.

"It must be remembered that the execution of a Waiver of Statute of Limitations may be beneficial to the taxpayer or to the BIR, or to

both. Considering however, that it results to a derogation of some of the rights of the taxpayer, the same must be executed in accordance with pre-set guidelines and procedural requirements. Otherwise, it does not serve its purpose, and the taxpayer has all the right to invoke its nullity. For that reason, this Court cannot turn blind on the importance of the Statute of Limitations upon the assessment and collection of internal revenue taxes provided for under the NIRC. The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act properly in the making of the assessment, and to citizens because after the lapse of the period of prescription, citizens would have a feeling of security against unscrupulous tax agents who may find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such a legal defense, taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommends the approval of the law.

"In fine, considering the defects in the First and Second Waivers, the period to assess or collect deficiency taxes for the taxable year 1998 was never extended. Consequently, the Formal Letter of Demand and Assessment Notices dated 24 June 2004 for deficiency income tax, FCDU, and EWT in the aggregate amount of P33,076,944.18, including increments, were issued by the BIR beyond the three-year prescriptive period and are therefore void."

Petition was denied for lack of merit.

Hedcor, Inc., *Petitioner*, *v.* Commissioner of Internal Revenue, *Respondent*, G.R. No. 207575, July 15, 2015 (Sereno, *C.J.)*

Facts:

Petitioner Hedcor, Inc. (Hedcor) is a value-added tax (VAT) payer registered with the Bureau of Internal Revenue (BIR). In the course of its business in the operation of hydro-electric power plants, it bought domestic and capital goods and services, settling the VAT.

Hedcor later filed a claim for refund alleging that it is entitled to zero-percent rating as its sales to National Power Corporation qualified as zero-rated sales. The administrative claim for refund was filed on 28 December 2009. On 23 March 2010 it received from BIR a Letter of Authority (LA) or request for presentation of records. Believing that the period to file a judicial claim for refund would lapse on 21 July 2010, Hedcor, on 6 July 2010 filed a Petition for Review with the Court of Tax Appeals (CTA).

Subsequently, on 29 October 2010 petitioner filed a Motion for Leave to File Supplemental Petition for Review, alleging that it had submitted to the BIR on 20 September 2010 the last set of supporting documents related to its administrative claim for a refund. *The CTA Division granted the motion. The Commissioner of Internal Revenue (CIR) was required to file a Supplemental Answer to the Supplemental Petition for Review of Hedcor.*

The CIR, on 8 November 2010 filed a Motion to Dismiss on the ground of lack of jurisdiction. The CTA Division allowed the motion and dismissed the Petition for being filed out of time.

On appeal, the CTA En Banc denied the Petition and held that the judicial claim has been filed out of time. The Motion for Reconsideration (MR) was likewise denied for lack of merit.

***Issues**:*

The appeal is hinged on these points:

1) *"That the CTA gravely erred and has no authority to deviate from the clear and literal meaning of Section 112 (D) of the NIRC by counting the 120-day period from the filing of the administrative claim and not from the last submission of complete documents in the administrative proceedings with the BIR[1];*

2) *"That the CTA gravely erred when it dismissed CTA Case No. 8129/CTA EB No. 785 and granted respondent's motion to dismiss on ground of insufficiency of evidence although trial proceedings have not even started; and*

3) *"That the CTA gravely erred when it dismissed its petition for insufficiency of evidence and on ground of prescription when there is no such allegation in the pleading which would support such conclusion."*

[1] Section 112. Refunds or Tax Credits of Input Tax. - (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. Section 112 (D) covers the "*Manner of Giving Refund*."

Held:

The Supreme Court (SC) denied the petition of Hedcor. The High Court relied on the stipulations under Section 112 of the National Internal Revenue Code (NIRC), as amended, to wit:

"Sec. 112. Refunds or Tax Credits of Input Tax.—

"x x x x

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

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

In the Court's own words:

"Pursuant to Section 112(C) of the NIRC, respondent had 120 days from the date of submission of complete documents in support of the application within which to decide on the administrative claim. Thereafter, the taxpayer affected by the CIR's decision or inaction may appeal to the CTA within 30 days from the receipt of the decision or from the expiration of the 120-day period. Compliance with both periods is jurisdictional, considering that the 30-day period to appeal to the CTA is dependent on the 120-day period. The period of 120 days is a prerequisite for the commencement of the 30-day period to appeal.

*"Strict compliance with the 120+30 day period is necessary for a claim for a refund or credit of input VAT to prosper. An exception to that mandatory period was, however, recognized in San Roque*12 during the period between 10 December 2003, when BIR Ruling No. DA-489-03 was issued, and 6 October 2010, when the Court promulgated Aichi declaring the 120+30 day period mandatory and jurisdictional, thus reversing BIR Ruling No.DA-489-03.

"Since the claim of petitioner fell within the exception period, it did not have to observe the 120+30 day mandatory period under the San Roque doctrine. The present case, though, is not a case of premature filing.

"The CTA here found that the judicial claim was filed beyond the mandatory 120+30 day prescriptive period; hence, it did not acquire jurisdiction over the case."

"X x x.

It is worth emphasizing at this point that the burden of proving entitlement to a tax refund is on the taxpayer. It is logical to assume that in order to discharge this burden, the law intends the filing of an application for a refund to necessarily include the filing of complete supporting documents to prove entitlement for the refund. Otherwise, the mere filing of an application without any supporting document would be as good as filing a mere scrap of paper. Besides, the taxpayer was already given two (2) years to determine its refundable taxes and complete the documents necessary to prove its claim. The alleged completion of supporting documents after the filing of an application for an administrative claim - and worse, after the filing of a judicial claim - is tantamount to legal maneuvering, which this Court will not tolerate. X x x.

"Granting arguendo that the 120-day period should commence to run only upon receipt of the Transmittal Letter, petitioner's judicial claim must still fail. RMC No. 49-2003 provides:

"A-18 x x x

"For claims to be filed by claimants with the respective investigating/processing office of the administrative agency, the same shall be officially received only upon submission of complete documents.

The SC finally stressed:

"*To reiterate, the right to appeal is a mere statutory privilege that requires strict compliance with the conditions attached by the statute for its exercise. Like Philex*, petitioner failed to comply with the statutory conditions and must therefore bear the consequences. It has already lost its right to claim a refund or credit of its alleged excess input VAT attributable to zero-rated or effectively zero-rated sales for the second quarter of taxable year 2008 by virtue of its own failure to observe the prescriptive period."

Petition of Hedcor is denied.

Public Hearings

September - October 2017



19th Public Hearing on "Tax Reform for Acceleration and Inclusion" TRAIN Bills (HBN 5636 and SBN 1408) and SRN 118 focusing on Current Tax Treatment of the Coal Industry in the Philippines, September 14, 2017

In photos are: Chairperson of Committee on Ways and Means, Sen. Sonny Angara, Director General of STSRO, Atty. Rodelio T. Dascil and Dir. Clinton Martinez of Legal and Tariff Branch, STSRO.


18th Public Hearing on "Tax Reform for Acceleration and Inclusion" (TRAIN BILLS) HBN 5636 and SBN 1408, September 13, 2017.

In Photos are: Chairperson of Committee on Ways and Means, Sen. Sonny Angara, Sen. Win Gatchalian and Director General of STSRO Atty. Rodelio T. Dascil



17th Public Hearing on Other Revenue Generating Measures in Relation to HBN 5636 and SBN 1408 (TRAIN BILLS)

In photos are: Sens. Sonny Angara, Chairperson, Committee on Ways and Means, Win Gatchalian, Nancy Binay and Director General of STSRO, Atty. Rodelio T. Dascil.

STSRO CORNER

What they say about STSRO

Sponsorship Speech of Senator Sonny Angara (September 25, 2017)

We also thank Director General Rodelio Dascil and the rest of the Senate Tax Study and Research Office (STSRO). I particularly, on a personal note, would like to thank my staff who endured many late nights and early mornings and missed dates on Saturday nights.

12:02 a.m. of October 5, 2017, Thursday, after the termination of the period of interpellations on Senate Bill No. 1592 - Tax Reform for Acceleration and Inclusion (TRAIN) Record of interpellations started at 3:30 pm of October 4 and after 8 hours and 30 minutes ended the following day, just for 1 session but Interpellations lasted for 2 weeks.

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