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Photo by Getty Images (with refinement)

## Let's CREATE that our people may live<sup>1</sup>

by Maria Lucrecia R. Mir, PhD, MNSA  
Director III, Direct Taxes Branch

Much of the modern world have been caught off guard by the advent of Covid-19 and the speed by which it has wrought havoc on all imaginable facets of national and local life. In the Philippines, the past 122 days of varying types and intensities of community quarantines have left a hefty price tag on the economy, socio-cultural health, and even political temper. Amid this pandemonium of sorts, the Philippines' whole-of-government approach centers on four (4) main pillars, viz.: (i) emergency support for vulnerable groups and individuals; (ii) marshalling of resources to fight Covid-19; (iii) fiscal and monetary actions to finance emergency initiatives and keep the economy afloat; and (iv) an economic recovery program focused on getting businesses back on their feet to sustain and create jobs.

Dubbed as the Philippine Program for Recovery with Equity and Solidarity or PH-PROGRESO, the proposed stimulus package of the Duterte administration's economic team lists the Corporate Recovery and Tax Incentives for Enterprises Act (CREATE) bill as the "largest economic stimulus ever for businesses in the

<sup>1</sup>Inspired by the motto of the 55th Rescue Squadron, U.S. Air Force - "These things we do, that others may live".

in the country and a strong signal that the Philippines is back in the game despite the contagion” (Finance Secretary Carlos Dominguez III, quoted by Business News Asia on May 30, 2020).



Sen. Pia S. Cayetano  
Chairperson, Committee on Ways and Means  
Photo by the Senate of the Philippines (senate.gov.ph)

We recall that in the line-up of the Comprehensive Tax Reform Program, Package 2 - CITIRA (or Corporate Income Tax and Incentives Reform Act) sought to reduce the 30-percent corporate income tax (CIT) rate by 1-percentage point per year in a span of 10 years until it reaches 20-percent in 2029. Since it did not hurdle the Senate legislative mill when Congress went on recess on June 4 vis-à-vis in light of the Covid-19 pandemic, the CITIRA bill was recalibrated to make it more relevant and responsive to the needs of businesses and increase the ability of the country to attract investments that will benefit the public interest.

PCCI president Benedicto Yujuico said that CREATE will give the Philippines a “fighting chance” in attracting more foreign direct investments (FDIs) under the “new normal.” Several former government executives concurred that CREATE is a much-needed boost to the recovery of the Philippine economy, and a necessary policy tool for retaining and creating jobs that will help our people secure their livelihoods against the adverse impacts of Covid-19.

As drafted, the CREATE bill proposes an immediate 5-percentage point cut in the CIT rate beginning July 2020 and a 1-ppt reduction yearly until 2027 when the rate shall be pegged at 20%. According to the Department of Finance (DOF), all firms, especially the country’s micro, small, and medium enterprises (MSMEs), can use the tax savings to fund their operations and retain employees. These firms can invest this amount in the revitalization of their businesses and create even more jobs for Filipino workers. The DOF is optimistic that this immediate and unprecedented lowering of the CIT rate, combined with the country’s strong demographic and financial fundamentals, will help strengthen the country’s case for more and better investments, notwithstanding the projections that in the second half of 2020 alone, this will result in reduction of government revenues estimated at P42 billion. For the succeeding 5 years, the total estimated loss is P625 billion.

The second major proposal under CREATE is the extension of the applicability of the net operating

loss carryover (NOLCO) for losses incurred in 2020 by non-large taxpayers, from the current 3 years to 5 years. This means that operating losses in taxable year 2020 can be carried over for the next 5 years. The NOLCO amendment intends to help companies hardest-hit by Covid-19 to recover by allowing them to deduct incurred losses from tax payments for a longer period, thus providing them more time to set their finances in order.

The third major feature of CREATE is maintaining for up to 9 years the status quo for registered business activities enjoying the 5% gross income earned (GIE) incentive. The sunset period is prolonged by two years – from 2 to 7 years in the CITIRA version, to 4 to 9 years under CREATE. By extending the sunset period for IPA-registered firms, the government is able to directly address their requests for ample time to adjust to the new incentive scheme. The DOF is bullish however, that even with the extended sunset period, most firms will find the modernized incentives system more attractive and better-suited to their needs.

Finally, CREATE proposes a more flexible mode in granting fiscal and non-fiscal incentives. This is critical as the Philippines competes internationally for high-value investments, including those businesses contemplating to move out of mainland China. The flexibility accorded to the President is neither novel nor unique since among our ASEAN neighbors - the Malaysian, Indonesian, Thai and Vietnamese authorities - have been exercising a similar level of discretion in granting incentives to boost their attractiveness and achieve their economic objectives. The CREATE proposal seeks to work within the boundaries of a performance-based, targeted, time-bound, and transparent system, and not confined to a “one-size-fits-all” type of incentive regime that we have at present. The economic team rationalizes that as economic trends evolve faster than regulation can keep up with, this ability to tailor-fit incentives will help us attract highly desirable investments.

A cursory Google search of related stimulus packages adopted by other countries hit by Covid-19 shows commonalities such as (i) providing food and relief to the poorest and most vulnerable people; (ii) money spent on providing and improving health care available to citizens; (iii) supporting small formal and informal businesses; and (iv) other areas of support such as delays in tax payment, interest payment moratorium, loan guarantees for SMEs, cutting benchmark rates, infusing huge liquidity into the banking system with a hope that they will on-lend to industry, giving loans or guarantees to support strategic businesses like airports, airlines, among others.

Hence, the CREATE stimulus package that would largely benefit MSMEs and eventually bridle over Covid-19 effectively follows the three (3) essential processes of a viable economy, namely: production, consumption, and investment.

For the Philippine economy to survive amid and post Covid-19, government should allow the production of goods and services, since we all know that ultimately, the standard of living or the consumption standard of our people depends on the volume and variety of production. Since producers make goods and perform services in order to satisfy the consumption wants of the people, there would be no production if there is no collective desire for goods and services. Consumption is thus the end of all productive activity. When consumption is sustained in the short to medium term, government should never wane in encouraging robust investment which in turn is relied upon to keep the employment of our people running. When this is satisfied, the virtuous “community transmission” cycle of production – consumption – investment repeats itself. As Secretary Dominguez remarked during the pre-SONA briefing on July 8, “We will overcome this crisis. We will get back to work. We will get back our economy...”

To achieve this requires the ultimate heroism, the co-operation of all that comprise the whole of Philippines. Let us CREATE so that our people may live.

## EDITORS' NOTE

Twenty (20) months following the publication of the last issue of STSRO Taxbits, we are pleased to share with you a new issue featuring the Tax Reforms under the Duterte Administration. In particular, the articles contained herein focus on the various packages of the Comprehensive Tax Reform Program (CTRP) and the different stages of its legislation process or implementation. Notably, “Chiaroscuro: The Making of PDU30 CTRP” reflects the journey of CTRP and correlates to the lights and shadows of the tax reforms depending on the time period, who will benefit or carry the tax burden induced by recent developments. Furthermore, a comprehensive list of other tax-related issuances such as Supreme Court (SC) cases, Bureau of Internal Revenue (BIR) Revenue Regulations, and Bureau of Customs (BOC) Customs Memorandum Order (CMO) are also included in this issue to emphasize the latest advancements on tax policies, for your convenience and information.



## PRESIDENT DUTERTE'S TAX REFORMS

Photo by Ace Morandante/PPD (pcoo.gov.ph)

## Chiaroscuro : The Making of the PDU30 CTRP

by **Marvee Anne C. Felipe**  
Director II, Direct Taxes Branch

### I. Introduction

Taxation and tax reforms have been primarily used as policy instruments to achieve a set of economic and fiscal goals. According to Rao (2014) tax reforms are generally undertaken to improve the

efficiency of tax administration and to maximize the economic and social benefits that can be achieved through the tax system.

Reside and Burns (2016) highlight their observation that tax reforms in the Philippines have always been exercises colored by both the politics and the economics of the time period. They emphasize that economics has usually provided the rationale for reform while politics has often shaped the outcomes.

Efforts to reform the Philippine tax system have been a commonality of every administration.

History tells us that tax reforms have played an important role in every administration's quest of increasing government's revenues and duty to provide social benefits to its people. The Duterte administration is no exception.

## II. The Birth of the Comprehensive Tax Reform Program (CTRP) Under the Duterte Administration

Tax reform in the Duterte administration started as a campaign promise when the then Davao City Mayor promised to exempt from paying income tax workers earning Php 20,000 and below. Before his assumption into office, President-elect Duterte and his economic team disclosed the incoming administration's Ten-point Socio-Economic Agenda. Number 2 in the agenda is taxation, which focuses on the institution of a progressive and more effective tax system, and the indexation of taxes to inflation. In his first State of the Nation Address (SONA), President Duterte laid down the foundation of his tax reform program by saying that "My administration will pursue tax reforms towards a simpler, more equitable and more efficient tax system that can foster investment and job creation. We will lower personal and corporate tax rates." This paved the way for Comprehensive Tax Reform Program (CTRP) under the leadership of the President's childhood friend and classmate, Finance Secretary Carlos Dominguez III.

## III. Tax Reform Packages Under the Duterte Administration



Package 1:  
TRAIN



Package 1B:  
Tax Amnesty



Package 2:  
Corporate Income Tax and  
Incentives Rationalization



Package 2+:  
Mining Taxes



Package 2+:  
Sin Taxes



Package 3:  
Real Property Valuation



Package 4:  
Passive Income and  
Financial Taxes

Illustration by the Department of Finance (taxreform.dof.gov.ph)

### Packages Enacted into Law:

Three of the seven tax reform packages were already enacted into law. **Package 1 is the Tax Reform for Acceleration and Inclusion (TRAIN) law** which "seeks to correct a number of deficiencies in the tax system to make it simpler, fairer, and more efficient. It corrects the longstanding inequity of the

tax system by reducing income taxes for 99 percent of income taxpayers, thereby giving them much-needed relief after 20 years of non-adjustment. It also raises significant revenues to fund the President's priority infrastructure programs to reduce poverty incidence from 21.6 percent in 2015 to 14 percent by 2022."

The TRAIN law had several stops in both Houses of Congress – from conducting numerous hearings to holding five (5) bicameral conference meetings before it was finally signed into law and became RA 10963 on December 19, 2017.

**Package 1B is the Tax Amnesty Act or RA 11213.** It was enacted on February 14, 2019 to complement the TRAIN Law. It lets errant taxpayers affordably settle their outstanding tax liabilities, allowing for a "fresh start," while also providing the government with additional revenues for its priority infrastructure and social programs. At the same time, it signals the start of a more aggressive tax enforcement campaign by tax authorities.

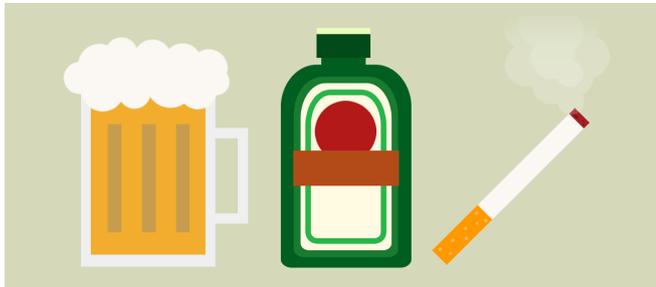
The President, however, vetoed several provisions such as the grant of general tax amnesty, one-time declaration and settlement of estate taxes on properties subject to multiple unsettled estates, and the presumption of correctness of the estate tax amnesty returns.



Image by Pixabay (www.pixabay.com)

Recently, the BIR issued RR No.15-20 extending the period of availment of the Tax Amnesty on Delinquencies (TAD) from June 22, 2020 to December 31, 2020. Section 19 of RA 11213 allows any person, natural or juridical, to avail of the TAD one year from the effectivity of the IRR of the law. Originally, BIR issued RR No. 4-2019 on April 8, 2019 to implement the said law. The period of availment of the TAD should have already been terminated by this time. The law provides for only one year to avail of the TAD but BIR extended it to December 31, 2020 citing Section 4(z) of the Bayaninhan to Heal as One Act (RA 11469) which gives the President the power to move statutory deadlines and timelines for the filing and submission of any document, the payment of taxes, fees and other charges required by law, and the grant of any benefit as a temporary emergency measure to respond to the crisis brought by the pandemic in order to ease the burden on individuals under quarantine. It also cited Administrative Order No. 30 series of

2020 which likewise provides for the suspension of deadlines for the payment of monetary obligations and/or submission of documents, for the duration of community quarantine, for the movement of time-lines for the grant of any benefit, to allow the release thereof to individuals during community quarantine.

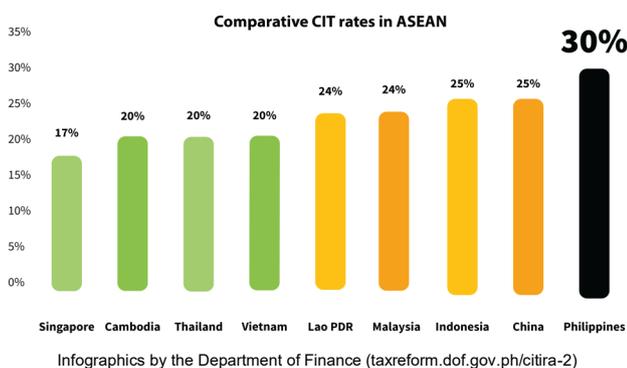


**Package 2+ is Sin Taxes.** This tax reform package aims to increase taxes on tobacco, alcohol, and e-cigarette products to fund the universal health care (UHC) and to reduce the incidence of risks associated with the consumption of “sin” products.

To implement this package, two laws were enacted. First is RA 11346 or the Tobacco Tax Law of 2019 which is a piece of legislation that will largely fund RA 11223 or the Universal Health Care Act. The law increased the excise tax on tobacco products and taxed heated tobacco and vapor products as well. The measure is viewed as an invaluable economic criterion that will not only save lives because of the expected decrease in the smoking rate; it will generate revenue as well.

Another law is RA 11467 or the Sin Tax Reform on Alcohol and E-cigarette Products which is a cost-effective health measure envisioned to reduce smoking and alcohol consumption among Filipinos. The law will not only positively impact on the utilization of our natural resources; it is also aligned with the Duterte administration’s commitment to a better quality of life for every Filipino.

**Tax Reform Components Still Pending in Congress:**



First on the list of tax reform packages that are still pending in Congress is **Package 2, now known as the Corporate Recovery and Tax**

**Incentives for Enterprises Act or CREATE.** This is formerly the Corporate Income Tax and Incentives Reform Act or CITIRA which has been recalibrated to make it more relevant and responsive to the needs of businesses, especially those facing financial difficulties, and increase the ability of the Philippines to attract investments that will benefit the public interest in light of the Covid-19 pandemic.

With a vote of 170-8-6, the Lower House passed on Third Reading the then CITIRA measure (HB No. 4157) on September 13, 2019 and was immediately transmitted to the Senate three days after. In the Upper House, it was consolidated as SB No. 1357 under Committee Report No. 50 and was sponsored on the floor by Senator Pia S. Cayetano, Chairperson of the Committee on Ways and Means, on February 18, 2020. DOF, the staunch advocate of the measure, was able to secure from the President a certification for its immediate passage on March 9, 2020 and was hoping to get it approved before the Senate adjourned on March 12, 2020. However, Senators were not able to interpellate Senator Cayetano due to time constraints. Thus, the measure lingered on the floor until the Covid-19 pandemic happened which necessitated for CITIRA’s transformation into CREATE. When the Session resumed on May 4, there was hope that this measure would be approved before Session again adjourned sine die on June 4 but as it turned out, Senators did not agree on certain provisions. Thus, the CREATE measure had to be sidelined again. The Session will open on July 27 and it is seen to be one of the priorities by the Committee on Ways and Means.



Image by Pixabay (www.pixabay.com)

Another tax reform package that is sought to be immediately approved is **Package 4 or PIFITA.** This is not as controversial as the CREATE considering it is a revenue-neutral measure where the stakeholders are not as aggressive as that of the CREATE. PIFITA complements the TRAIN law by making passive income and financial intermediary taxes simpler, fairer, more efficient, and more competitive regionally. It will reduce the number of tax rates from 80 to 36. It will also harmonize the tax rates on interest, dividends, and capital gains, and the business taxes imposed on financial intermediaries. Finally, Package 4 will likewise remove the documentary stamp tax (DST) imposed on nonmonetary transactions.

The HOR passed this on Third Reading on September 9, 2019 and was transmitted to the Senate the following day. In the Senate, the Committee on Ways and Means conducted two (2) public hearings. A Committee Report is being drafted and hopefully this will be sponsored and deliberated in Plenary once Session resumes.



**Package 2+ includes reforms on Mining** which aims to implement a single fiscal regime applicable to all mineral agreements to promote fairness because the mining industry is currently under two fiscal regimes based on the mineral agreements with the national government: Mineral Production Sharing Agreement (MPSA) and Financial or Technical Assistance Agreement (FTAA).

In the HOR, the Committee on Ways and Means filed Committee Report No. 221 on House Bill No. 6135 or the Fiscal Regime for Mining Industry. The HOR Committee on Rules already approved this for plenary consideration so that it may be tackled once Session resumes. In the Senate, there have been no hearings conducted on this matter but in the 17th Congress, this measure reached the TWG stage and a Committee Report was drafted.



The last tax reform package of the CTRP pending in Congress is **Package 3 or the Real Property Valuation Reform**. This aims to promote the development of a just, equitable, and efficient real property valuation system. It will broaden the tax base used for property-related taxes of the national and local governments, thereby increasing government revenues without increasing the existing tax rates or devising new tax impositions.

The Lower House approved on Third Reading HB No. 4664 on November 25, 2019 and was

transmitted to the Senate the following day. There is no hearing conducted yet in the 18th Congress but in the 17th Congress, this measure reached the TWG stage. "Although this will increase the coffers of the LGUs, it may be opposed at this time by property owners. However, it should be noted that the House version contains a proviso wherein in times of calamities or other disasters, or when there are inequalities in the Schedule of Market Values (SMVs), the DOF Secretary may order the revisions of such property values under Sec. 18 of HB No. 4664."

#### IV. Quo Vadis?

Within four years, the Duterte administration has enacted into law 4 landmark legislations covering three major tax reform packages – Package 1, Package 1B, and Package 2+ (Sin Taxes). There are four remaining tax reform packages still pending in Congress – Package 2, Package 2+ (Mining), Package 3, and Package 4 – all expected to be approved within the next two remaining years of President Duterte's regime.

The CREATE measure will be prioritized in the resumption of Session on July 27 but this will be a very controversial measure and may take more time before it gets the nod of all the legislators and stakeholders involved. Reforms on Mining and the Real Property Valuation may be looked at as additional sources of revenues for the government in this time of pandemic considering that government funds are becoming more scarce but may, on the contrary, hardly affect stakeholders who are already badly hit by the pandemic. Thus, these measures may take a back seat for a while. Lastly, PIFITA is seen to be a more feasible legislation to be passed in the short term.

To reiterate Reside and Burns, "tax reforms in the Philippines have always been exercises colored by both the politics and the economics of the time period." Thus, it is this writer's humble opinion that the four remaining tax reform components will see the light of day and be approved into law. The only thing that remains to be seen is how the form and structure may take shape from what was originally proposed by the administration because "politics has often shaped the outcomes" of many tax reforms.

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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

### Commissioner of Internal Revenue vs. Liguiaz Philippines Corporation [GR. No. 215534, April 18, 2016 – Mendoza, J.]

#### FACTS

The antecedent events, in the Supreme Court's (SC) own narration are:

*“Liquigaz Philippines Corporation (Liquigaz) is a corporation duly organized and existing under Philippine laws. On July 11, 2006, it received a copy of Letter of Authority (LOA) No. 00067824, dated July 4, 2006, issued by the Commissioner of Internal Revenue (CIR), authorizing the investigation of all internal revenue taxes for taxable year 2005.”*

*“On April 9, 2008, Liquigaz received an undated letter purporting to be a Notice of Informal Conference (NIC), as well as the detailed computation of its supposed tax liability. On May 28, 2008, it received a copy of the Preliminary Assessment Notice (PAN), dated May 20, 2008, together with the attached details of discrepancies for the calendar year ending December 31, 2005. Upon investigation, Liquigaz was initially assessed with deficiency withholding tax liabilities, inclusive of interest, in the aggregate amount of P23,931,708.72.”*

*“X x x.”*

*“Thereafter, on June 25, 2008, it received a Formal Letter of Demand (FLD)/Formal Assessment Notice (FAN), together with its attached details of discrepancies, for the calendar year ending December 31, 2005. The total deficiency withholding tax liabilities, inclusive of interest, under the FLD was P24,332,347.20.”*

*“X x x.”*

*“On July 25, 2008, Liquigaz filed its protest against the FLD/FAN and subsequently submitted its supporting documents on September 23, 2008.”*

*“Then, on July 1, 2010, it received a copy of the FDDA covering the tax audit under LOA No. 00067824 for the calendar year ending December 31, 2005. As reflected in the FDDA, the CIR still found Liquigaz liable for deficiency withholding tax liabilities, inclusive of interest, in the aggregate amount of P22,380,025.19.”*

Liquigaz filed its Petition for Review with the Court of Tax Appeals (CTA) Division questioning the FDDA issued by the CIR, on July 29, 2010.

The CTA (November 22, 2012) partially granted Liquigaz’s petition cancelling the Expanded Withholding Tax (EWT) and Fringe Benefits Tax (FBT) assessments but affirmed the Withholding Tax on Compensation (WTC) assessment with modification.

Additionally, petitioner was ordered to pay deficiency and delinquency interest, based on Section 249 of the Tax Code.

## **ISSUE**

*“Whether the Court of Tax Appeals En Banc Erred in Partially Upholding the Validity of the Assessment as to the Withholding Tax on Compensation but Declaring Invalid the Assessment on Expanded Withholding Tax and Fringe Benefits Tax.”*

## **HELD**

Stated differently, the issue is: *“When may a Final Decision on Disputed Assessment (FDDA) be*

*declared void, and in the event that the FDDA is found void, what would be its effect on the tax assessment?”*

The SC partially affirmed the CTA En Banc decision in that it upheld the deficiency on WTC. With respect to the assessment on deficiency EWT and FBT, the same was remanded to the CTA.

The SC clarified that a void FDDA does not necessarily render the tax assessment therein ineffectual. Said the Court:

*“To recapitulate, a “decision” differs from an “assessment” and failure of the FDDA to state the facts and law on which it is based renders the decision void—but not necessarily the assessment. Tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided.”*

The SC likewise pronounced that *“[T]he FDDA must state the facts and law on which it is based to provide the taxpayer the opportunity to file an intelligent appeal.”* It said:

*“The Court, however, finds that the CTA erred in concluding that the assessment on EWT and FBT deficiency was void because the FDDA covering the same was void. The assessment remains valid notwithstanding the nullity of the FDDA because as discussed above, the assessment itself differs from a decision on the disputed assessment.”*

*“As established, an FDDA that does not inform the taxpayer in writing of the facts and law on which it is based renders the decision void. Therefore, it is as if there was no decision rendered by the CIR. It is tantamount to a denial by inaction by the CIR, which may still be appealed before the CTA and the assessment evaluated on the basis of the available evidence and documents. The merits of the EWT and FBT assessment should have been discussed and not merely brushed aside on account of the void FDDA.”*

*“On the other hand, the Court agrees that the FDDA substantially informed Liquigaz of its tax liabilities with regard to its WTC assessment. As highlighted by the CTA, the basis for the assessment was the same for the FLD and the FDDA, where the salaries reflected in the ITR and the alphalist were compared resulting in a discrepancy of P9,318,255.84. The change in the amount of assessed deficiency withholding taxes on compensation merely arose from the modification of the tax rates used— 32% in the FLD and the effective tax rate of 25.40% in the FDDA. The Court notes it was Liquigaz itself which proposed the rate of 25.40% as a more appropriate tax rate as it represented the effective tax on compensation paid for taxable year 2005. As such, Liquigaz was effectively informed in writing of the factual bases of its*

assessment for WTC because the basis for the FDDA, with regard to the WTC, was identical with the FAN— which had a detail of discrepancy attached to it.”



Photo by ccPixs.com

**Procter and Gamble Asia Pte Ltd.  
vs. Commissioner of Internal Revenue  
[G.R. No. 204277, May 30, 2016 – Brion, J.]**

### FACTS

This case is a petition for review on certiorari under Rule 45 of the Rules of Court asking for the reversal of the decision (June 18, 2012) and resolution (November 8, 2012) of the Court of Tax Appeals (CTA) en banc. The CTA en banc affirmed the decision of the CTA Division dismissing the petition of the Procter and Gamble Asia Pte Ltd (PGAPL) for premature filing.

### ISSUE

Did PGAPL prematurely file its judicial claim for tax refund or credit before the CTA?

### HELD

The Supreme Court (SC) finds merit in the petition.

The SC, relying on its previous doctrines interpreting the National Internal Revenue Code (NIRC), as amended, made the following statements:

1] BIR Ruling No. DA-489-03 is an exception to the Aichi Doctrine. -

*“Indeed, Aichi is the prevailing doctrine on the matter of mandatory compliance with the 120- and 30-day periods in the filing of judicial claims of tax credit or refund before the CTA. However, in the manner of most rules, the Aichi Doctrine is also subject to exceptions.”*

*“In accordance with the equitable estoppel principle under Section 246 of the NIRC, we ruled in San Roque-Taganito that there are exceptions to the strict rule that compliance with the Aichi Doctrine is mandatory and jurisdictional, one of which is BIR Ruling No. DA-489-03. If the CIR issues a ruling, either a specific one applicable to a particular taxpayer or a general interpretative rule applicable to all taxpayers, and, as a result,*

*misleads the taxpayers affected by the rule, into filing prematurely judicial claims with the CTA, the CIR cannot be allowed to later on question the CTA’s assumption of jurisdiction over such claim.”*

*“Since then, this Court has consistently adopted the ruling in San Roque-Taganito in holding that BIR Ruling No. DA-489-03 is an exception to the Aichi Doctrine. We see no reason to disturb what is now a settled ruling.”*

*“Therefore, as a general interpretative rule, all taxpayers may rely on BIR Ruling No. DA-489-03 from the time of its issuance on December 10, 2003, until its effective reversal by the Aichi Doctrine adopted on October 6, 2010. Thus, judicial claims for tax credit or refund instituted before the CTA should be given due course, despite their failure to comply with the 120- and 30-day periods.”*

2] BIR Ruling No. DA-489-03 is valid even if issued by the Deputy Commissioner. -

*“This issue has been settled in the Court en banc’s resolution dated October 8, 2013 in the consolidated cases of San Roque-Taganito where we upheld the validity of the BIR ruling, because the power to interpret rules and regulations is not exclusive and may be delegated by the CIR to the Deputy Commissioner.”*

3] PGAPL is presumed to have relied on BIR Ruling No. DA-489-03 in good faith. -

*“First, good faith is always presumed and this presumption can only be overcome by clear and convincing evidence. Good faith, or its absence, is a question of fact that is better determined by the lower courts. This Court cannot, without sufficient reason, throw out a presumption that arises as a matter of law and is well-entrenched in our legal system.”*

*“The mere allegation that the petitioner failed to raise BIR Ruling No. DA-489-03 before the CTA is insufficient to negate this presumption.”*

*“Second, even if petitioner did not raise the BIR ruling before the CTA, we can take cognizance of an official act emanating from the BIR, an executive department of the government. Judicial notice of BIR Ruling No. DA-489-03 is all the more mandatory especially when it has been applied consistently by this Court in its past rulings.”*

*“Based on the foregoing, we rule that the judicial claim that PGAPL filed with the CTA on September 27, 2007 (during the effectivity of BIR Ruling No. DA-489-03) was timely filed.”*

The SC granted the petition and remanded the case to the CTA Second Division for the determination of refundable or creditable amount, if there is any.



Photo by Patrick Roque (upload.wikimedia.org)

## Digest of BIR Revenue Regulations

by Elsie T. Jesalva, SLSO II, Indirect Taxes Branch  
Zenaida G. Sanchez, LSO III, Direct Taxes Branch

ISSUANCE	SUMMARY
<p><b>RR No. 16-2020</b> (June 25, 2020)</p>	<p>Further suspends the due dates in the application of the 90-day period to process VAT refund claim pursuant to Section 112 of the Tax Code of 1997, as amended by RA No. 10963 (TRAIN Law) for taxable quarters affected by the declaration of the national state of emergency.</p> <p>The filing of claims for VAT refund for the following taxable quarters shall be until the specified due dates:</p> <p>Calendar Quarter ending March 31, 2018 - July 15, 2020 Fiscal Quarter ending April 30, 2018 - July 31, 2020 Fiscal Quarter ending May 31, 2018 - August 15, 2020 Calendar Quarter ending June 30, 2018 - August 31, 2020</p> <p>Said due dates do not apply to areas not yet declared to be in a GCQ state. In which case, the deadline shall be 30 days from the lifting of the ECQ or modified ECQ in the affected areas of taxpayer-claimant or the above stated deadlines, whichever comes later.</p> <p>The 90-day period of processing VAT refund claims shall be suspended in areas where the ECQ or modified ECQ is still in force.</p>
<p><b>RR No. 15-2020</b> (June 19, 2020)</p>	<p>Further amends RR No. 4-2019 relative to the period and manner of availment of the Tax Amnesty on Delinquencies (TAD). These Regulations amend Section 3 of RR No. 4-2019, by extending the period for availment of the TAD until December 31, 2020. However, the said date may be extended if the circumstances warrant an extension such as in case of country-wide economic or health reasons. (Cross reference: RR No. 5-2020)</p>
<p><b>RR No. 14-2020</b> (May 28, 2020)</p>	<p>Amends Section 5.b of RR No. 5-2000 which prescribes the regulations governing the manner of the issuance of TCCs and the conditions for their use, revalidation and transfer.</p> <p>Any request for conversion into cash refund of unutilized tax credits may be allowed during the validity period of TCC. The original copy of the TCC showing a creditable balance is surrendered to the Assistant Commissioner, Collection Service or other authorized Revenue Officer, for verification and cancellation. Provided, further, that a refund check or treasury warrant issued in accordance with the pertinent provisions of the Tax Code of 1997, as amended, which shall remain uncashed or unclaimed within 5 years from the date of issue, mailing or delivery, whichever comes later, shall be forfeited in favor of the Government and the amount thereof shall revert to the General Fund.</p>

ISSUANCE	SUMMARY
	<p>Any TCC which remains unutilized for more than 1 year at any given interval of time during its validity shall be converted into cash with prior written notice by the BIR, subject to availability of funds, in accordance with the procedural requirements that will be issued by the BIR for this purpose.</p> <p>All expired TCCs, upon the effectivity of this Regulations, shall be automatically cancelled by the BIR, except those which are with the BIR, for purposes of utilization thru Tax Debit Memo, conversion or revalidation, before the expiration of their respective dates of validity. The list of expired TCCs and names of its taxpayers-owners shall be circularized/posted in the BIR Website within 30 days from the date of effectivity of this Regulations. The said circular or posting of the list is deemed a sufficient notice to the taxpayer-owner of the TCC.</p>
<b>RR No. 13-2020</b> (May 27, 2020)	<p>Prescribes the rules and regulations to implement the tax privileges granted to privately-owned establishments granting sales discounts and incentives to National Athletes and Coaches pursuant to the provision of Section 4 of RA No. 10699.</p> <p>The Chairman of the Philippine Sports Commission (PSC) shall issue a Philippine National Sports Team Identification Card and Booklet (PNSTM ID and Booklet) to the National Athletes and Coaches, which they will present to privately owned establishments for their availment of sales discounts and incentives.</p> <p>Qualified National Athletes and Coaches shall be entitled to 20% sales discount on sales amount exclusive of VAT relative to the sale of goods and services for their actual and exclusive use or enjoyment. VAT on sale of goods or services with sales discounts granted by business establishments enumerated under Section 4 of the Regulations shall be computed in accordance with the formula specified in the Regulations.</p> <p>Privately-owned establishments granting sales discounts and incentives shall enjoy tax deductions equivalent to the discounts extended to qualified National Athletes and Coaches, pursuant to Section 6 of the Regulations. They shall be entitled to deduct the said sales discount from their gross income, subject to certain conditions.</p>
<b>RR No. 12-2020</b> (May 21, 2020)	<p>Amends Section 2 of RR No. 10-2020, as amended by RR No. 11-2020, relative to the extension of statutory deadlines and timelines for the filing and submission of any document and the payment of taxes pursuant to Section 4 (z) of RA No. 11469 (Bayanihan to Heal as One Act).</p> <p>Section 3 of RR No. 10-2020, as amended by Section 3 of RR No. 11-2020, is repealed by these Regulations. Thus, the defined extended due dates under Section 2 of RR No. 11-2020 shall remain in effect regardless of any extension or modification of quarantine. In view of that, taxpayers are reminded to file their tax returns/pay taxes on or before the deadlines specified under Section 2 of RR No. 11-2020.</p> <p>Taxpayers are likewise reminded that if they file their tax returns within the original deadline or prior to the extended deadline, they can amend their tax returns at any time on or before the extended due date. An amendment that will result in additional tax to be paid can still be paid without the imposition of corresponding penalties (surcharge, interest and compromise penalties) if the same shall be done not later than the extended deadline, as provided under existing rules and regulations.</p> <p>A taxpayer whose amended tax returns will result in overpayment of taxes paid can opt to carry over the overpaid tax as credit against the tax due for the same tax type in the succeeding periods' tax returns, aside from filing for claim for refund. (Cross reference: RR Nos. 11-2020, 10-2020, 7-2020)</p>
<b>RR No. 11-2020</b> (April 30,2020)	<p>Amends Section 2 of RR No. 7-2020, as amended by Section 2 of RR No. 10-2020, relative to the extension of statutory deadlines for the submission and/or filing of documents and/or returns specified in the Regulations, as well as the payment of taxes pursuant to Section 4(z) of RA No. 11469 (Bayanihan to Heal as One Act).</p> <p>Further, the term "quarantine" used in the Regulations shall mean any announcement by the National Government resulting to limited operations and mobility, including, but not limited to, community quarantine, enhanced community quarantine, modified community quarantine, and general community quarantine.</p> <p>In case of another quarantine extension, the defined extended due dates under Section 2 of the Regulations shall be allowed further extension of 15 calendar days.</p> <p>Taxpayers who will file their tax returns within the original deadline or prior to the extended deadline can amend their tax returns at any time on or before the extended due date. An amendment that will result in additional tax to be paid can still be paid without the imposition of corresponding penalties (surcharge, interest and compromise penalties) if the same shall be done not later than the extended deadline, as provided under existing rules and regulations.</p> <p>A taxpayer whose amended returns will result in overpayment of taxes paid can opt to carry over the overpaid tax as credit against the tax due for the same tax type in the succeeding periods' tax returns, aside from filing for claim for refund. (Cross reference: RR Nos. 12-2020, 10-2020, 7-2020)</p>

ISSUANCE	SUMMARY
<b>RR No. 10-2020</b> (April 14, 2020)	<p>Amends Section 2 of RR No. 7-2020 by further extending the statutory deadlines and timelines for the filing and submission of various tax returns and/or documents and the payment of taxes specified in these Regulations, as a result of the extension of the ECQ period until April 30, 2020.</p> <p>If the ECQ period will be extended further, the filing of the returns and payment of the corresponding taxes due thereon, and submission of reports and attachments falling within the enhanced extended period shall be extended for 30 calendar days from the lifting of the ECQ.</p> <p>Taxpayers who will file their tax returns within the original deadline or prior to the extended deadline can amend their tax returns at any time on or before the extended due date. An amendment that will result in additional tax to be paid can still be paid without the imposition of corresponding penalties (surcharge, interest and compromise penalties) if the same shall be done not later than the extended deadline as provided under existing rules and regulations.</p> <p>A taxpayer whose amended returns will result in overpayment of taxes paid can opt to carry over the overpaid tax as credit against the tax due for the same tax type in the succeeding periods' tax returns, aside from filing for claim for refund. (Cross reference: RR Nos. 12-2020, 11-2020, 7-2020)</p>
<b>RR No. 9-2020</b> (April 7, 2020)	<p>Implements Section 4 (z) and Section 4 (ee) of RA No. 11469 (Bayanihan to Heal as One Act) by granting further benefits on donations during the period of ECQ in relation to the NIRC of 1997, as amended. The following donations/gifts made in accordance with Sections 101 and 34 (H), of the NIRC of 1997, as amended, when given for the sole and exclusive purpose of combating COVID19 during the period of the state of national emergency under RA No. 11469, shall be considered fully deductible against the gross income of the donor-corporation/donor-individual: a. Cash donations; b. Donations of all critical or needed healthcare equipment or supplies; c. Relief goods such as, but not limited to, food packs (rice, canned goods, noodles, etc.) and water; and d. Use of property, whether real or personal (shuttle service, use of lots/ buildings). To be fully deductible and allowable as an expense against the gross income of the donor-corporation and/or donor-individual, said exempt donation/gifts shall be made to any of the following donees and shall be supported by the following documents:</p> <p>a) National Government or any entity created by any of its agencies (including public hospitals) which is not conducted for profit, or to any political subdivision of the said Government, including fully-owned government corporations – Deed of Donation</p> <p>b) Accredited non-stock, non-profit educational and/or charitable, religious, cultural or social welfare corporation, institution, foundation, non-government organization, trust or philanthropic organization and/or research institution or organization – Certificate of Donation (BIR Form No. 2322)</p> <p>Moreover, donation of any of the above exempt donations/gifts to the National Government or to any of its agencies or political subdivisions, including fully-owned government corporations, for the sole and exclusive purpose of combating the COVID-19, shall be allowed full deductibility, regardless if covered by the NEDA annual priority plan, considering that such donations are made during State of Public Health Emergency and State of Calamity as declared under Presidential Proclamation Nos. 922 and 929, series of 2020. The requirement of submission of a Notice of Donation shall be dispensed with for this purpose. Furthermore, all donations/gifts mentioned in a, b, c, and d above, when donated during the period of the state of national emergency for the sole and exclusive purpose of combating COVID-19, subject to the timely submission of the documentary requirements enumerated under Section 6 of these regulations, shall also be considered as exempt from the Donor's Tax and shall be deductible in full against the gross income of the donor-corporation and/or donor-individual when given to the following donees:</p> <p>a. Private hospitals and/or non-stock non-profit educational and/or charitable, religious, cultural or social welfare corporation, institution, foundation, NGO (even if non-accredited), trust or philanthropic organization and/or research institution or organization; and b. Local private corporations, civic organizations, and/or international organizations/institutions provided that they shall i) actually, directly and exclusively distribute and/or transfer said donations/gifts to, and/or ii) partner as conduit/logistical machinery with the accredited NGOs and/or national government or any entity created by any of its agencies which is not conducted for profit, or to any political subdivision of the said Government.</p> <p>Said documentary requirements shall be submitted to the respective Revenue District Office where the donor and the donee-recipient are registered, in accordance with the form attached, within 60 days from the lifting of the ECQ.</p> <p>b. Donations/gifts to foreign institutions or international organizations shall not be subject to the documentary requirements enumerated under Section 6 of these regulations but shall be subject to the verification rules under Section 34(H)(4) of the NIRC. Donations of all critical or needed healthcare equipment or supplies and relief goods shall not be treated as a transaction deemed sale subject to VAT under Section 106 (B) of the NIRC, as amended. Furthermore, any input VAT attributable to such purchase of goods shall be creditable against any other output tax. The Regulations shall take effect starting March 16, 2020 upon issuance of Presidential Proclamation No. 929 and shall be in full force only during the 3 month effectivity of RA No. 11469, unless extended or withdrawn by Congress or ended by Presidential Proclamation.</p>

ISSUANCE	SUMMARY
<b>RR No. 8-2020</b> (April 2, 2020)	<p>Implements Section 4 (aa) of RA No. 11469 (Bayanihan to Heal as One Act).</p> <p>The said Section of RA No. 11469 directs all banks, quasi-banks, financing companies, lending companies, and other financial institutions, public and private, including the GSIS, SSS and Pag-IBIG Fund, to implement a minimum of 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 ECQ without incurring interest, penalties, fees, or other charges. Persons with multiple loans shall likewise be given the minimum 30 day grace period for every loan.</p> <p>The regulations cover all extensions of payment and/or maturity periods of all loans mentioned above falling due within the ECQ Period, including the extension of maturity periods that may result from the grant of grace periods for these payments, whether or not such maturity periods originally fall due within the ECQ Period. These regulations also cover credit restructuring, micro-lending, including those obtained from pawnshops, and extensions thereof during the ECQ Period.</p> <p>No additional DST, including that imposed under Section 179, 195 and 198 of the NIRC, shall apply to credit extensions and credit restructuring, micro-lending, including those obtained from pawnshops and extensions thereof during the ECQ Period.</p>
<b>RR No. 7-2020</b> (March 30, 2020)	<p>Implements Section 4 (z) of RA No. 11469 (Bayanihan to Heal as One Act), particularly on the extension of statutory deadlines and timelines for the submission and/or filing of several documents and/or returns, as well as the payment of several taxes specified in the Regulations.</p> <p>The extension of the statutory deadline shall not prejudice any submission and/or filings made before the enactment of these Regulations, as well as those submissions and/or filings to be made effective pursuant to the original deadline set forth under the Tax Code, as amended, should the taxpayers still opt to follow the said deadlines.</p> <p>The extension of the statutory deadlines set in the Regulations may be further extended by the Commissioner of Internal Revenue, if the circumstances warrant for such an extension or as may be directed by the Secretary of Finance. (Cross reference: RR Nos. 12-2020, 11-2020, 10-2020)</p>
<b>RR No. 6-2020</b> (March 30, 2020)	<p>Implements the tax exemption provisions of RA No. 11469 (Bayanihan to Heal as One Act).</p> <p>Under the law, the President has been given the power to liberalize the grant of incentives for the manufacture or importation of critical or needed equipment or supplies, which include healthcare equipment and supplies. The importation of these equipment and supplies shall be exempt from import duties, taxes and other fees, viz:</p> <ol style="list-style-type: none"> <li>The importation of critical or needed healthcare equipment or supplies intended to combat the COVID-19 public health emergency, including personal protective equipment; laboratory equipment and its reagents; medical equipment and devices; support and maintenance for laboratory and medical equipment, surgical equipment and supplies; medical supplies, tools, and consumables; common medicines; testing kits, and such other supplies or equipment as may be determined by the Department of Health and other relevant government agencies, shall be exempt from VAT, excise tax, and other fees;</li> <li>Importation of materials needed to make health equipment and supplies deemed as critical or needed to address the current public health emergency shall likewise be exempt from VAT, excise tax, and other fees, provided that the importing manufacturer is included in the Master List of the DTI and other incentive granting bodies;</li> <li>The importation thereof shall not be subject to the issuance of Authority to Release Imported Goods (ATRIG) under RMO No. 35-2002. Hence, the ATRIG shall not be necessary for the release of said goods from the BOC. Based on the BOC list of importers who made importations without any ATRIG, the BIR will conduct post investigation/audit;</li> <li>Donations of these imported articles to or for the use of the National Government or any entity created by any of its agencies which is not conducted for profit, or to any political subdivision of the said government are exempt from donor's tax, and subject to the ordinary rules of deductibility under existing rules and issuances.</li> </ol> <p>The regulations shall take effect immediately and shall be in full force ONLY during the 3 month effectivity of RA No. 11469, unless extended or withdrawn by Congress or ended by Presidential Proclamation.</p>
<b>RR No. 5-2020</b> (March 23,2020)	<p>Amends RR No. 4-2019 relative to the availment period for the Tax Amnesty on Delinquencies.</p> <p>All persons, whether natural or juridical, with internal revenue tax liabilities covering taxable year 2017 and prior years, may avail of Tax Amnesty on Delinquencies within 1 year from the effectivity of the said Regulations or until April 23, 2020, under any of the instances listed in the Regulations. However, the said date may be extended if the circumstances warrant an extension, such as in case of country-wide economic or health reasons. (Cross reference: RR No. 15-2020)</p>
<b>RR No. 4-2020</b> (February 18, 2020)	<p>Implements the provisions of RA No. 11256 (An Act to Strengthen the Country's Gross International Reserves, Amending for the Purpose Sections 32 and 151 of the National Internal Revenue Code [NIRC], as Amended, and For Other Purposes).</p>

ISSUANCE	SUMMARY
	<p>The following transactions shall be exempt from taxes:</p> <p>a) Income derived from the following sale of gold are excluded in the gross income and shall be exempt from income tax, and consequently from withholding taxes:</p> <ul style="list-style-type: none"><li>i. The sale of gold to the BSP by registered Small Scale Miners (SSMs) and accredited traders; and</li><li>ii. The sale of gold by registered SSMs to accredited traders for eventual sale to the BSP.</li></ul> <p>b) Excise Tax shall not be levied, assessed and collected on the following:</p> <ul style="list-style-type: none"><li>i. The sale of gold to the BSP by registered SSMs and accredited traders; and</li><li>ii. The sale of gold by registered SSMs to accredited traders for eventual sale to the BSP.</li></ul> <p>If an Excise Tax has been otherwise paid prior to the sale of gold to the BSP, the taxpayer may file a claim for refund or credit with the Commissioner of Internal Revenue for the Excise Tax paid.</p> <p>All SSMs and accredited traders are required to obtain a TIN, which shall serve as basis for the income and excise tax exemption of their sale, or eventual sale, of gold to BSP.</p> <p>The BSP Certification issued to registered SSMs upon receipt of a certified copy of a valid and effective Small-Scale Mining Contract from the relevant agency, and to accredited traders upon submission of the complete accreditation requirements, shall be the basis for the tax exemptions and non-withholding/collection of taxes under RA No. 11256.</p> <p>In the event that the tax exemption is found by the BIR as not applicable to a BSP transaction with a person or entity purporting to be a registered SSM and/or accredited trader, such person or entity shall be primarily and solely liable for any deficiency taxes that may be assessed by the BIR.</p> <p>For purposes of validating the sale to accredited traders, SSMs shall issue Acknowledgment of Gold Delivery and Sale, stating therein their TIN, to such accredited traders. This, in turn, shall be submitted to BSP by accredited traders upon eventual sale of the gold to the BSP. In any case, all gold sold to the BSP by accredited traders shall be presumed to have been purchased by said accredited traders from SSMs.</p> <p>The BSP shall report to the BIR, on a monthly basis, the details of the sales transaction from registered SSMs and accredited traders.</p> <p>To avail of the tax exemption, SSMs and traders shall be given a period of 1 year, which may be extended for a period not exceeding 3 years, from the effectivity of the IRR to comply with the registration and accreditation requirements.</p> <p>During this transitory period, BSP shall issue a temporary certification to SSMs and traders; in the case of SSMs, upon submission of proof of their pending application for registration with the relevant agency, and in the case of traders, upon submission of proof of their pending application for accreditation with the BSP. SSMs and traders holding such temporary certification shall enjoy the tax exemptions and non-withholding/collection of taxes, provided, that they comply with the procedure for the sale of gold to BSP under Section 10 of the IRR of RA No. 11256.</p> <p>Upon the lapse of the said transitory period, all sale of gold to the BSP by nonregistered SSMs and/or non-accredited traders shall be subject to the applicable taxes under the NIRC of 1997, as amended.</p>
<b>RR No. 3-2020</b> (January 29, 2020)	<p>Amends certain provisions of RR No. 13-2011, implementing the tax provisions of RA No. 9856 (The Real Estate Investment Trust [REIT] Act of 2009). The more salient features include the following:</p> <p><b>SECTION 4. Registration and Classification of REIT.</b> — A REIT including its branches, shall register once with LTRAD 3, on or before the commencement of its business, in accordance with the provisions of Chapter II of Title IX of the NIRC and its implementing revenue regulations. Upon registration, a REIT shall submit, together with other documents that the Commissioner may require, certified true copies of its constitutive documents and the REIT Plan, Reinvestment Plan, a list of its shareholders, their Tax Identification Number, number of shares held and percentage of holding.</p> <p><b>SECTION 5. DST on the Transfer of Real Property.</b> — The transfer of real property to REITs, including the sale or transfer of any and all security interest thereto, shall be subject to 50% of the applicable DST imposed under Title VII of the NIRC, as amended.</p> <p>Where the transfer involves shares of stocks representing interest in the real property, the DST imposed on the sale or transfer of shares of stocks under Section 175 of the NIRC shall be at the reduced rate of P0.75 on each Php200.00, or fractional part thereof, of the par value of such stock. In case the stock transferred is without par value, the amount of the DST prescribed shall be equivalent to 25% of the DST paid upon original issuance of said stock.</p> <p>In the event the sale or transfer of real property to REITs shall occur prior to its listing, the REIT, in addition to all other presently existing requirements for the issuance of a CAR, shall execute an Affidavit of Undertaking that it shall list within two (2) years from the date of its initial availment of the incentive.</p> <p>For purposes of the above paragraph, the "date of the initial availment of the incentive" is the date of the execution of the transfer documents.</p> <p><b>SECTION 7. Transfers or exchanges of real property for shares of stock in a REIT falling under Section 40 (C) (2) of the NIRC shall have the following tax consequences:</b> The transfer of property to a REIT in exchange for its shares is exempt from VAT as provided under Section 109 (X) of the NIRC.</p>

ISSUANCE	SUMMARY
	<p>SECTION 10. Income Taxation of REIT. A REIT shall be taxable on all income derived from sources within and without the Philippines at the applicable income tax rate of 30% as provided under Section 27 (A) of the NIRC on its taxable net income as defined in these Regulations. Provided, that in no case shall a REIT be subject to a minimum corporate income tax, as provided under Section 27 (E) of the NIRC.</p> <p>For purposes of this section, the dividends allowed as deductions during the taxable year shall pertain to dividends actually distributed out of the REIT's distributable income at any time after the close of but not later than the last day of the fifth (5th) month from the close of the taxable year. Any dividends distributed within this prescribed period shall be considered as paid on the last day of REIT's taxable year.</p> <p>SECTION 11. General Conditions for the Availment of Tax Incentives. — In order to qualify for the tax incentives under Sections 5 and 10 of these Regulations, a REIT must:</p> <ol style="list-style-type: none"> <li>2. For the DST incentive on transfer of real property provided for under Section 6, enlist with an Exchange within 2 years from date of initial availment of DST incentive and maintain the listed status of the investor securities on the Exchange and the registration of the investor securities by the SEC;</li> <li>3. Distribute at least 90% of its distributable income as required under the Act and its IRR, as revised; and</li> <li>4. Comply with its Reinvestment Plan, as certified by the Commission. The Certification from the Commission that the REIT is compliant with its Reinvestment Plan must be submitted by the REIT as an attachment to its annual income tax return and audited financial statements on or before April 15 (or on the 15th day of the 4th month following the close of the fiscal year).</li> </ol> <p>SECTION 16. Withdrawal of Tax Incentives. - (a) A REIT shall be subject to the applicable taxes, plus interests and surcharges, under the NIRC upon the occurrence of any of the following events, subject to the rule on curing period where applicable:</p> <ol style="list-style-type: none"> <li>iv. Failure of a REIT to list with an Exchange within the two-year period from date of initial availment of DST incentive;</li> <li>v. Revocation or cancellation of the registration of the securities of a REIT; and</li> <li>vi. Failure of a REIT to comply with the Certification requirement under Section 11 (4) of the RR.</li> </ol> <p>(b) The recovery of the applicable deficiency income tax and DST from a REIT shall be subject to the following rules:</p> <ol style="list-style-type: none"> <li>i. For deficiency income tax, an assessment shall be issued by LTRAD 3 against a REIT in accordance with Section 228 of the NIRC and its implementing revenue regulations;</li> <li>ii. The deficiency income tax of a REIT shall be computed based on its gross income as defined under Section 32 of the NIRC less the deductions under Section 34 of the same Code. The dividends distributed shall not be allowed as deduction from the taxable income; and</li> <li>iii. On the other hand, the deficiency DST equivalent to 50% of the applicable DST, together with the applicable interest, surcharges and penalties, shall immediately become due and demandable, without need of an assessment, reckoned from the date of its initial availment of the DST incentives. For this purpose, a Formal Letter of Demand showing the details of the tax due shall be issued by LTRAD 3 against a REIT and collection of the tax shall be enforced in accordance with Chapter II, Title VIII of the NIRC.</li> </ol>
<p><b>RR No. 2-2020</b> (January 15, 2020)</p>	<p>Implements the tax exemption provisions of RA No.11211, as amended by RA No. 7653 (The New Central Bank Act), and for other purposes.</p> <p>The BSP shall be exempt from all national internal revenue taxes on income derived from its governmental functions, specifically:</p> <ol style="list-style-type: none"> <li>a. income from its activities or transactions in the exercise of its supervision over the operations of banks and its regulatory and examination powers over non-bank financial institutions performing quasi-banking functions, money service businesses. credit granting businesses and payment system operators; and</li> <li>b. income in pursuit of its primary objective to maintain price stability conducive to a balanced and sustainable growth of the economy, and the promotion and maintenance of monetary and financial stability and the convertibility of the peso.</li> </ol> <p>All other incomes not included in the above enumeration shall be considered as proprietary income and shall be subject to applicable national internal revenue taxes.</p>
<p><b>RR No. 1-2020</b> (January 9,2020)</p>	<p>Amends pertinent provisions of Section 8 under RR No. 11-2018, as amended, to implement further amendments introduced by RA No. 10963 (TRAIN Law).</p> <p>SECTION 2.79.1. The application for registration of employees shall be accomplished by both employer and employee relating to the following information and other requirements:</p> <ol style="list-style-type: none"> <li>(1) All employers shall require their concerned employees to accomplish in triplicate the Application for Registration BIR Form 1902;</li> <li>(2) Registration and information updates of employees receiving purely compensation income shall follow the existing policies and procedures thereon.</li> </ol>



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## At the Port: Dissecting CMO No. 07-2020

by Romeo E. Regacho

LSO III, Legal and Tariff Branch

The Bureau of Customs (BOC) has also responded to the challenges brought about by the Covid 19 pandemic by ensuring the continuity of its operations in all of our ports. The importance of facilitating the importation and immediate release of essential healthcare equipment and supplies during this critical period cannot be overemphasized. One such issuance made by the BOC is **Customs Memorandum Order No. 07-2020**, which took effect last 16 March 2020.

### (CMO-07-2020) – Interim Procedure on Provisional Goods Declaration (PGD)

It provides that goods involving donations for relief consignment may be provisionally declared subject to the following conditions:

1. The Donee must be a national government agency, such as the Department of Health;
2. The Consignee, through its responsible officer, shall issue an Undertaking to comply with the following:
  - a. Submit the lacking document within forty five (45) days from release of the shipment; and
  - b. Use or distribute the goods only upon clearance from the Food and Drugs Administration or other regulatory agencies, if required.

The lacking document may include, among others, the Tax Exemption Indorsement (TEI) from the Department of Finance (DOF). For exigency in the release of the goods, the received copy of the application for TEI shall be dispensed with.

The goods shall be considered as relief consignment, as defined in Section 120<sup>1</sup> of the Customs Modernization and Tariff Act (CMTA), imported during a state of calamity and intended for a specific calamity area for the use of the calamity victims therein. As such these shall be exempt from duties and taxes pursuant to Section 121<sup>2</sup> of the CMTA. While the goods shall be released under tentative assessment, the posting of bond for the release thereof is not required.

Upon receipt of the documents within the prescribed period, the assessment shall be deemed completed.

The following are the highlights from this CMO:

1. Lodgement of a PGD may be allowed in the following circumstances:
  - a. When no regulatory permit, clearance or license has been presented at the time of lodgement, provided that the importer has filed his/her application for such permit, clearance or license, prior to the departure of the goods from the country of origin, prior to or after the arrival of the goods into the Philippines, depending on the policy of the concerned regulatory agency. In cases where the permit, license or clearance may be secured after the arrival of the shipment, PGD may be allowed provided that the period to submit the same shall be in accordance with the requirement of the regulatory agency. (Sec. 3.1.1);

<sup>1</sup> **SEC. 120. Relief Consignment.** – Goods such as food, medicine, equipment and materials for shelter, donated or leased to government institutions and accredited private entities for free distribution to or use of victims of calamities shall be treated and entered as relief consignment.

<sup>2</sup> **SEC. 121. Duty and Tax Treatment.** – Relief consignment, as defined in Section 120, imported during a state of calamity and intended for a specific calamity area for the use of the calamity victims therein, shall be exempt from duties and taxes.

- b. When the TEI from the DOF, or the Tax Exempt Certificate (TEC) or Authority to Release Imported Goods (ATRIG) from the Bureau of Internal Revenue (BIR) has not been issued yet, provided an application has already been filed at the time of lodgement. (Sec. 3.1.2); and
  - c. Any other situation where the declarant lacks certain information or document to make a complete 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. (Sec. 3.1.3)
2. The Bureau shall assign a Model of Declaration/ Procedure Code(s) (see Annex "A" of the CMO) to identify that the goods declaration is provisional in nature upon lodgement. (Sec. 3.2)
  3. The procedure for assignment of PGDs under the Goods Declaration Verification System (GDVS), if applicable, shall be similar to the assignment of regular consumption goods declaration. (Sec. 3.4)
  4. Goods declaration shall be considered full and complete insofar as supporting documents and information are concerned if the declarant does not indicate the provisional nature of such lodgement. (Sec. 3.5)
  5. If the District/Subport Collector accepts a PGD, the duty and tax treatment of the goods shall not be different from that of goods with complete declaration. (Sec. 3.6)
  6. Tentative assessment of duties, taxes and other charges on goods covered by a PGD shall be completed upon final readjustment and submission by the declarant of the additional information or documentation required to complete the goods declaration. (Sec. 3.7)
  7. Processing of a PGD for relief consignments shall be governed by a separate CMO. (Sec. 3.8)
  8. The declarant shall apply all the necessary information upon lodgement as if he/she is filing a regular goods declaration. (Sec. 4.3)
  9. The declarant must file the PGD with the Entry Processing Unit (EPU) or equivalent unit within forty-eight (48) hours from lodgement, except when the 48th hour falls on a non-working day in which case the deadline shall be the next working day. (Sec. 4.4)
  10. The following documents shall be submitted upon filing in support of the PGD:
    - a. Duly endorsed Bill of Lading or Airway Bill;
    - b. Commercial Invoice or Proforma Invoice;
    - c. Packing List;
    - d. PGD Documentary Requirements (Annex "B" of the CMO);
    - e. Application for TEI, TEC, ATRIG, permit, clearance, license, or any other regulatory requirements, if applicable;
    - f. All supporting documents which are considered provisional such as advance copy of the Certificate of Origin/Origin Declaration; and
    - g. Undertaking (Annex "C" of the CMO) to submit the lacking documents. (Sec. 4.5)
11. The assigned EPU personnel shall receive the PGD together with all the supporting documents as listed under Section 4.5 of the CMO. (Sec. 5.1.1)
  12. In case of regulated shipments, the following shall be undertaken:
    - a. When no regulatory permit, clearance or license has been presented at the time of lodgement, the Customs Operations Officer (COO) III shall ensure that the application for such permit, clearance or license has been attached to the goods declaration.
    - b. If the permit, license or clearance is required by the concerned regulatory agency to be secured prior to the departure of the goods from the country of origin or prior to the arrival of the goods into the Philippines, the COO III shall not process the goods declaration and shall recommend the issuance of Warrant of Seizure and Detention (WSD) against the shipment.
    - c. In cases where the permit, license or clearance may be secured after the arrival of the shipment, the COO III shall ensure that the period requested to submit the lacking document as indicated in the Undertaking shall be in accordance with the requirement of the regulatory agency.
    - d. Pending submission of the lacking permit, license or clearance, the COO III shall hold in abeyance the processing of the goods declaration until the same has been submitted. Provided that, in case of non-submission, the COO III shall recommend the issuance of WSD against the shipment.
    - e. Notwithstanding the provisional nature of the goods declaration, if the importer failed to submit the permit, license or clearance as required by the concerned regulatory agency

to be secured prior to the departure of the goods from the country of origin or prior to the arrival of the goods into the Philippines, the COO III shall recommend the issuance of WSD against the shipment. The COO III shall change the procedure code under Box 37a from "4400" to "4402". (Sec. 5.2.1)

13. In case where the lack of the ATRIG is the reason for the PGD, the COO III shall not process the goods declaration without the submission of the same. (Sec. 5.2.2)
14. If the PGD is in order, the COO III shall process the same similar to goods declaration for consumption. (Sec. 5.2.3)
15. If there is a request for release of the goods under tentative assessment, the COO III shall compute the duties, taxes and other charges which shall not be different from that of goods with complete declaration.

The COO III shall also compute the amount of security equivalent to the difference between the declared duties, taxes and other charges versus the assessment if there is non-compliance of the undertaking to submit the required documents. (Sec. 5.2.4)

16. If upon filing of the PGD, the lacking document was eventually submitted, the COO III shall process the shipment similar to a goods declaration for consumption. The COO III shall reflect all findings and actions taken pertaining to the shipment in the E2M Inspection Act. The COO III shall update the GDVS status and then forward the PGD Single Administrative Document (SAD) with supporting documents to the COO V with recommendation to release the shipment under tentative assessment. (Sec. 5.2.6)



## Editors and Contributing Writers

**Atty. RODELIO T. DASCIL, MNSA**  
Director General  
(*Over-all Editor and Adviser*)

**MARIA LUCRECIA R. MIR, PhD, MNSA**  
Director III, Direct Taxes  
(*Editor-in-Chief*)

**Atty. MA. LOURDES M. ARBAS**  
Director IV, ODG  
(*Managing Editor*)

**VIVIAN A. CABILING**  
Director III, Indirect Taxes

**Atty. SHERRY ANNE C. SALAZAR**  
Director III, Legal and Tariff

**CLINTON S. MARTINEZ**  
Director II, Legal and Tariff

**MARVEE ANNE C. FELIPE**  
Director II, Direct Taxes

**ELSIE T. JESALVA**  
LSO II, Indirect Taxes

**ZENAIDA G. SANCHEZ**  
LSO III, Direct Taxes

**ROMEO E. REGACHO**  
LSO III, Legal and Tariff

**KRISTINE MAY A. MOREDO**  
LSA III, ODG  
(*Layout Artist*)

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Located at Room 524, Senate of the Philippines, Financial Center, Pasay City

Website <http://www.senate.gov.ph>

Email [stsro1989@gmail.com](mailto:stsro1989@gmail.com)

Facebook <http://www.facebook.com/stsro.stsro>

Telefax No. 8552-6850

Telephone No. 8552-6801 loc. 5506 and 5508