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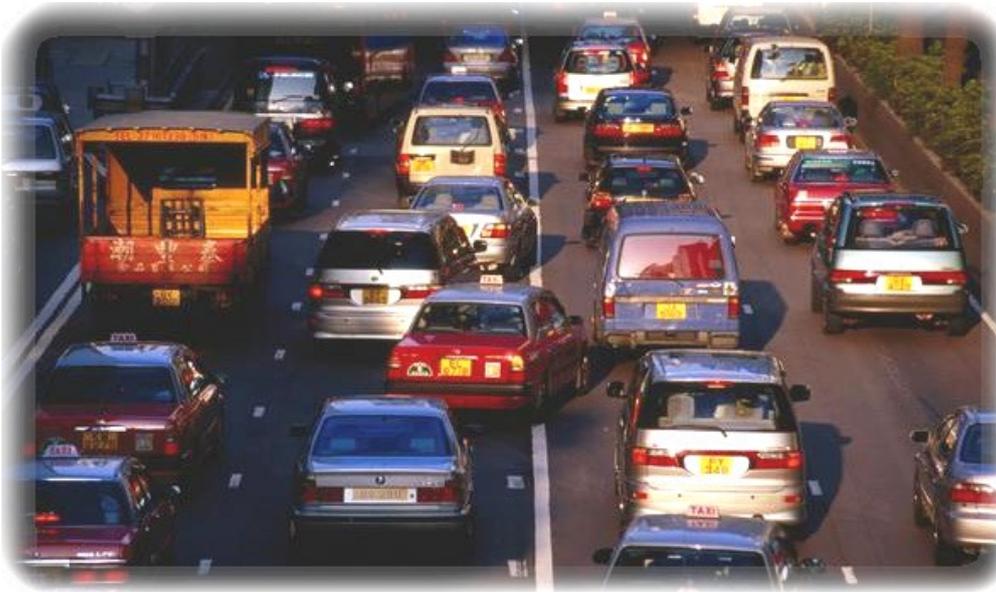
AUGUST - SEPTEMBER 2010

## A SPECIAL ACCOUNT: MOTOR VEHICLE USER'S CHARGE

By:

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The management and utilization of these funds are given to the Road Board which is composed of seven members and assisted by a Secretariat. The Secretary of the Department of Public Works and Highways acts as *ex-officio* head, and the Secretaries of the Department of Finance, Department of Budget and Management, and Department of Transportation and Communication as *ex officio* members of the Board with the three remaining members coming from the private sector.

Republic Act No. 8794 which was passed on June 27, 2000 replaced the motor vehicle's registration fee imposed on Section 8 of Republic Act No. 4136, as amended by Batas Pambansa Bilang 74, and the Private Motor Vehicle Tax under Executive Order No. 43, series of 1986 with the Motor Vehicle User's Charge (MVUC). The MVUC preserved both the gross vehicle weight, age, and classification of the vehicle as bases for rate differentiation. It provides for an indexation clause allowing the President to adjust the rates to reflect the movements in the Consumer Price Index (CPI) not more than once every five (5) years. The MVUC collection has been placed in four (4) special trust accounts earmarked for road maintenance and related projects, namely: a) Special Road Support Fund (80%); b) Special Road Safety Fund (7.5%); c) Special Vehicle Pollution Control Fund (7.5%); and d) Special Local Road Fund (5%). Said funds are intended to provide and ensure the adequate maintenance of national and provincial roads. By its nature, MVUC proceeds ceased to become part of the annual General Appropriations Act jointly reviewed and examined by the House of Representatives and the Senate of the Philippines every year. In essence, it has been converted into a Special Fund which is automatically appropriated by virtue of the law.

In its first accomplishment report in 2007, the total MVUC collections for 2001-2006 reached P27.5 billion, with fund releases of P24.2 billion, and unused balance of P3.3 billion. As of 2007, the biggest share from the road maintenance fund was given to Region IV-A, followed by the National Capital Region and Region III.

By 2008, total MVUC collections for the 8-year period (2001-2008) amounted to P51.78 billion or an average collection of P6.47 billion annually. Allotment releases which are subject to prior approval by the Road Board and submission of a special budget pursuant to Sec. 35, Chapter 5, Book VI of E.O. 292 amounted to P46.71 billion, leaving a balance of P5.07 billion as of December 31, 2008<sup>1</sup>. It would be noted that 92.5% of the special fund is added to the DPWH budget as a Special Account for road maintenance and safety while the remaining 7.5% goes to the Department of Transportation and Communication for the special vehicle pollution control.

Road fund allocation makes use of a formula that considers the technical details for the infrastructure project. Fund releases to the Special Support Fund consider the total number of vehicles per region and equivalent maintenance

<sup>1</sup> 2009 Road Board Submission



## Factors affecting BOC personnel

by

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In 2004, RA 9335 otherwise known as the Attrition Act became a law. It provides for a system of rewards, incentives and sanctions for the officials and employees of both the Bureau of Internal Revenue (BIR) and the Bureau of Custom (BOC), regardless of status provided that they are employed for a period of more than six months. The legislative intent is to eliminate corruption in both institutions through the efficient and effective collection of taxes and duties, the primary source of income for the government.

Annually, the collection goals are set based on the Budget Expenditures and Sources of Financing submitted by the President. For example, the only role of the BOC and the BIR is to submit their estimate of the target collection for the coming year to be later submitted to the Development Budget and Coordinating Committee (DBCC). The two bureaus do not have a hand in the final version of the revenue targets.

As soon as the DBCC determines the revenue targets, the BIR and the BOC can no longer alter such targets. Their responsibility is to exceed the revenue targets in order to avail of the rewards provided for in the law. There is however a compulsion to at least meet the target because the law also provides for the termination of concerned officials and employees once the target is not met under certain conditions. The law also creates the Revenue Performance Evaluation Board to facilitate the distribution of the rewards as well as to prescribe the penalties in case the pertinent office fails to meet the revenue target.

RA 9335 affects the BOC personnel in the following manner:

1. Under RA 6758, all forms of compensation should be consolidated and *shall be deemed included in the standardized salary rates*<sup>1</sup> as prescribed by the law. The rewards given to the BOC personnel as a result of the Attrition law might exceed the limits set herein. In effect, there is an implied repeal of the law (RA 6758, Sec. 21). To a certain extent the BOC personnel would be exempted from the provisions of RA 6758.
2. Unfortunately for the permanent BOC employees, the Attrition law can be used to remove them from employment because RA 2260 (the Amended and Revised Civil Service law) provides for the following: *No officer or employee in the civil service shall be removed or suspended except for a **cause provided by law** and after due process.* The loss of employment is the biggest objection of the BOC employees.

Due to the sensitivity of the subject matter of the Attrition law, the drafting of the Implementing Rules and Regulations (IRR) took two years to be finalized after the effectivity of the law. Looking back, during the legislation of the then Attrition bill, the controversial and sensitive details were omitted from the draft bill to facilitate its passage. After all it was a certified bill. The common comment is – *The devil is in the details* – hoping that the problem will be ironed out in the IRR. The IRR of RA No. 9335 took effect on May 22, 2006.

Several comments were made during the implantation phase of the Attrition law, but the most notable ones are as follows:

1. From the point of view of the rank and file BOC employees, the law is inequitable. They opined that the higher the position, the greater is the amount of rewards. Take into consideration that the aims of the law would not be attained without the cooperation and help of the rank and file employees; the sharing should be more or less across the board. After all, the rewards under the law are not part of the regular salaries of the personnel and it is the rank and file employees that have lower salaries.

From the point of view of the higher ranking personnel, they deserve the current sharing system because of their bigger responsibilities. It is the reward for their services to compensate the possible loss of employment.

<sup>1</sup> RA 6758, Sec. 21 – *Consolidation of Allowances and Compensation.*

2. There is also the lure of advancing the payments of taxes and duties from the importers whenever possible. The practice increases the possibility of receiving the rewards early to the detriment of the effort to reach the target for the succeeding year. The detrimental effect of such practice is the distortion of the amount of government revenues for a particular year. It also sets higher the revenue goal for the succeeding year. In the case of government budgeting the revenue estimate might not be attainable the following year.
3. The worldwide trend is to lower the rates of tariffs to facilitate international trade. A way to counter the lower tariffs is to increase the taxes under the National Internal Revenue Code (NIRC) like the value added tax (VAT) and other excise taxes accompanying the importation process. The down side in such a move is the loss of the competitive edge of the Philippines due to the higher cost of importation.

During the implementation of the Attrition law, several suggestions affecting BOC personnel were made, such as:

1. *Privatization of the function of the BOC*

One of the proposals by some sectors is to privatize the operations of the BOC. It means that private entities will handle the collection of taxes and duties in order to shield the BOC from political intervention. Such private entity would be free to determine its own salary structure enough to deter smuggling and other practices contrary to the interests of the government.

The problem with such proposal is that the BOC have functions that cannot be privatized because such functions are purely governmental in nature. The Tariff and Customs Code of the Philippines (TCCP) contains penal and administrative provisions involving the payments of fines, work suspensions and imprisonment, among others. Furthermore, the BOC deals with other government agencies like the Department of Finance, the Department of Health, the Bureau of Internal Revenue and the Department of Trade and Industry.

The idea of the privatization of the BOC is not a novel idea. The Philippines once engaged the services of the Swiss company, the *Societe General de Surveillance (SGS)*. The BOC function delegated to the SGS was limited to the valuation of imports. During that time (prior to the WTO) the SGS has a worldwide network justifying its claim that it possesses data regarding up-to-date valuation of imports. Fortunately for the Philippines, the services of the SGS was terminated.

2. *Exempting the BOC personnel from the coverage of the Salary Standardization Act (RA 6758)*

There is a proposal to exempt the personnel of the BOC from the coverage of the Salary Standardization Act. The idea from such exemption is that once the salaries of the BOC personnel are increased, corruption would be eliminated. The pitfall of the suggestion is the question of – *How much is enough?* – to eliminate for example smuggling. Another concern is whether increase in compensation is enough deterrent for graft and corruption.

3. *Increasing the penalty for smuggling*

In the draft anti-smuggling bill the penalties for smuggling is increased. The proposal covers both the private parties as well as the personnel of the BOC cooperating with the smugglers.

4. *Making the BOC lawyers the prosecutors in smuggling cases*

In the importation process, both the NIRC and the TCCP are involved. All imports are subjected to tariff and duties under the TCCP on one hand, and the value added tax (VAT) and specific taxes under the NIRC on the other.

Furthermore the TCCP also includes “unfair trade practices” imposed by the World Trade Organization (WTO) like dumping, offences against valuation, import surges, and countervailing duties. It is the Tariff Commission who investigates these offences, but the Commission has no prosecutorial power. There is also the need for the BOC lawyers to aid the Tariff Commission in the prosecution phase of these cases.

Although the government prosecutors under the Department of Justice are the official prosecuting arm of the government, they do not have expertise in importation cases.

Sometimes the creation of an Oversight Committee does realize the good legislative intent but adversely affecting the personnel management of the office under scrutiny.

On April 6, 1993, RA 7650 took effect providing the following provisions:

**SEC. 1401. Conditions for Examination.** – *For the protection of government revenue and public interest and to prevent the entry into the country of smuggled or contraband goods, the Commissioner shall, in consultation of the **Oversight Committee** and subject to approval of the Secretary of Finance, **promulgate the rules and regulations that shall prescribe the procedure in accordance with which the examination shall be undertaken on the importation and the required quantity or percentage thereof: Provided, That the imported articles shall in any case be subject to the regular physical examination when:***

1. *The government surveyor's seal on the container has been tampered with or broken or the container shows signs of having been opened or having its identity changed;*
2. *The container is leaking or damaged;*
3. *The number, weight, and nature of packages indicated in the customs entry declaration and supporting documents differ from that in the manifest;*
4. *The shipment is covered by alert/hold order issued pursuant to existing orders;*
5. *The importer disagrees with the findings as contained in the surveyor's report; or*
6. *The articles are imported through air freight where the Commissioner or Collector has knowledge that there is variance between the declared and true quantity, measurement, and weight and tariff classification.*

Unfortunately, less than two years (from April 6, 1993 to January 1, 1995) after the promulgation of RA 1401 (*SEC. 1401, Conditions for Examination*), the Senate of the Philippines ratified the GATT-Uruguay Round paving the way for the creation of the World Trade Organization (WTO).

At first glance, RA 1401 covers only the inspection of imported goods by the BOC and does not concern itself with the internal operation of the BOC. Scrutinizing more closely the provision reveals the opposite because it contains a provision regarding the creation of an Oversight Committee whose purpose is *to promulgate the rules and regulations that shall prescribe the procedure in accordance with the examination on importations.*

With all the good intentions of the framers of the law, the results are bordering into a "disaster". Consider the following effects of the law:

1. The customs valuations system when the law was promulgated used the *Modified Brussels Definition of Value* whose basic principles are based in the old *Home Consumption Value*. The rest of the world abandoned such system because it is a reconstructed value based on home consumption not on the real value of the import at the port of importation. The country persisted in its use because the values are higher. Such higher values were translated into higher government revenues because the tariffs and taxes uses the *ad valorem* method;
2. When the WTO took effect in 1995, the Philippines switched to the Transaction Value method which reflects the value of the goods at the port of importation. However, the method meant lesser government revenues in terms of taxes and duties.

3. In fairness to the drafters of RA 7650, RA 8792 (the *Philippine E-Commerce Act*) took effect five years afterwards on February 11, 1998. The E-Commerce Act *recognizes the authenticity and reliability of electronic data messages or electronic documents*. It means that it would be easier to transmit data and such data is considered an authentic document.
4. The BOC installed modern machines that will eliminate the need to have physical examinations of imports. An example is the use of x-ray machines that can identify the contents of a container van even if the goods are still inside.
5. The Revised Kyoto Convention (RKC) provides that the customs authorities should use computers in obtaining the necessary data. In fact, even before the arrival of the imports such data may be transmitted.
6. Regarding the establishment of an Oversight Committee on the inspection of imports in the 14<sup>th</sup> Congress, the House of Representatives proposed the activation of the provision of RA 7650. The Senate Committee on Ways and Means did not agree with the proposal of the House because it would interfere with the operations of the BOC.

The Senate Committee through its then Chairman Sen. Panfilo M. Lacson said the proposal has the tendency to create another level of bureaucracy in the BOC. Furthermore, it has the tendency to violate the constitutional provision of separation of powers between the legislative and the executive branches of the government.

The legislative personnel do not have expertise to interfere with the operations of the BOC. Generally speaking, they do not have the expertise and manpower needed to examine the entry of imports in order to check smuggling. The sending of personnel to the BOC would invite corruption and foster discord between the legislative people and the regular personnel of the BOC.

The better interpretation in creating a legislative oversight committee affecting the executive branch of the government is that such committee should focus its efforts on the evaluation of the results of the operations avoiding the day to day operation of office involved.

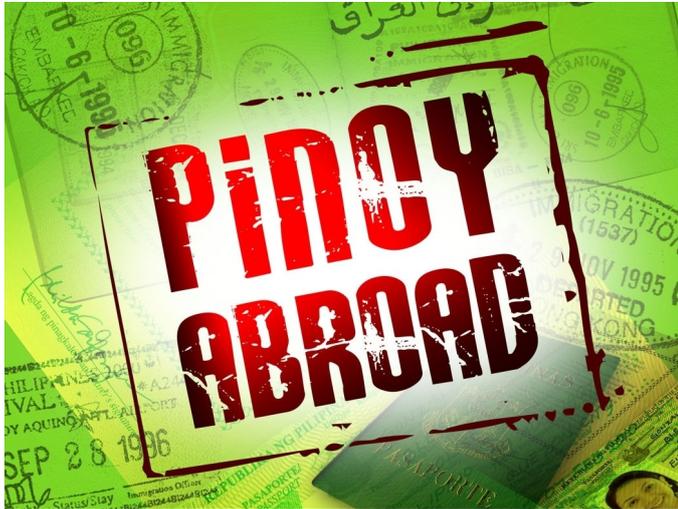
Sometimes the creation of an oversight committee does realize the good legislative intent but adversely affecting the personnel management of the office under scrutiny.

## OFW Remittances Now DST-Free

by

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P267.37 billion in 2000 to P804.19 billion in 2009.

Gloria Chammartin, writing for the International Labor Organization (ILO) says that “there is significant evidence of the phenomenal role that migrants play in poverty eradication, sustainable development and growth of their home communities through their monetary remittances”. She noted that “despite high transfer costs of remittances which reduce the socio-economic benefits for receiving families, migrants play a crucial role in the development processes of their countries and in fostering economic growth and poverty alleviation”.

It may interest our readers to note that the DST is on top of other charges imposed by remittance companies. For example, BPI Express Remittance Corporation (USA) charges service fees of US\$8 (P369.83 at P46.228:USD1) for crediting of remittance to a Philippine BPI account while charging US\$12 (P554.74) for crediting to another local bank. Door-to-door delivery charge is US\$12 (P554.74) while branch pick-up is US\$10 (P462.28). For remittance of US dollars, the service fees range from US\$20 (P924.56) for crediting to a Philippine BPI account to US\$25 (P1,155.70) for crediting to another local bank for amount of remittance ranging from US\$1-2,000 (P46.23 - P92,456). Hence, exempting OFW remittances from the DST definitely lowers the transaction costs and correspondingly translates to more value for money sent.

According to the Philippine Overseas Employment Administration (POEA), full implementation of RA 10022 is expected once the Implementing Rules and Regulations are published in a newspaper of national circulation.

The enactment of Republic Act No. 10022 in March 2010 paved the way for the exemption from documentary stamp tax (DST) of remittances sent by overseas Filipino workers to their loved ones in the Philippines.

Prior to RA 10022, OFW remittances are subject to a DST of P0.30 on each P200 under Section 181 of the Tax Code. The DST on money transfers dated as far back as 1939 under Commonwealth Act No. 466 which pegged the rate at P0.04 on each P200.

Data from the National Statistics Office (NSO) showed that the number of OFWs rose steadily from 978,000 in 2000 to 1,912,000 in 2009. Their combined money remittances for the same period amounted to

<sup>1</sup>Entitled “An Act Amending Republic Act No. 8042, Otherwise Known as the Migrant Workers and Overseas Filipinos Act of 1995, as Amended, Further Improving the Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress and for Other Purposes”.



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