



I. Terms of Reference

Among the various internal revenue taxes, transfer taxes are the most uncertain in terms of revenue generation because transfer taxes are levies directly affecting the passing on of wealth and property of a taxpayer to his heirs and beneficiaries. These are comprised of the estate and donor's taxes. The estate tax (Section 85, NIRC of 1997, as amended) is imposed on the transfer of the decedent's estate to his lawful heirs and beneficiaries based on the fair market value or the zonal value of real property whichever is higher at the time of death. It is a tax on the privilege to transmit property upon death. The donor's tax (Section 98, NIRC of 1997, as amended) on the other hand, is levied on the transfer by any person, resident or non-resident, of the property by way of gift. The transfer tax system was designed with the end in view of redistributing wealth i.e., to encourage the break-up of big estates and bring about their immediate transfer to others so that greater productivity may be achieved.

The imposition of the estate tax is justified based on the estate-partnership theory which provides that the estate tax represents the share of the State as a passive and silent partner in the accumulation of property by the decedent. The State is regarded as an extraordinary compulsory heir of the decedent, practically taking precedence over the legitimate heirs in the distribution of the decedent's assets.¹

The negligible ratio of transfer taxes to the revenue collections of the Bureau of Internal Revenue in the last two decades in spite of the institution of major reforms brings to the fore the apparent need to

¹ Emmanuel C. Alcantara & Stephanie G. Vicente of "How family corporations ease the burden of tax on estates." (Philippine Daily Inquirer, Tax Files : January 1, 2004)



explore other methods of taxing transfers. Inter-generational transfers may have been hindered by the tax and the penalties imposed for delayed filing. As a consequence thereof, the country's data base on landownership has not been updated. Some estates remained in the name of the ancestors because the heirs to the estate failed to pay the tax that cumulated through the years.

As early as 2002, the then BIR Commissioner Guillermo L. Parayno, Jr. declared that he would support the conduct of study on estate taxes to determine the extent of potential tax revenue from this source and more importantly to be able to identify who the potential taxpayers are, where they are and what kind of policy of attraction must be provided to let them surface and to legitimize their records on their property. It is along this vein that the taxation of estate and gifts is herein revisited and possible alternatives are presented for further study.²

II. Historical Development of Transfer Taxes³

⇒ Act 2601 which took effect on July 1, 1916 was the first inheritance tax law of the Philippines, imposing graduated rates computed on net inventoried property left by the decedent. It was subsequently embodied in the Revised Administrative Code. Thus, Section 1536 of the said Code imposed the tax upon "every transmission by virtue of inheritance, devise,

bequest, gift *mortis causa*, or advance in anticipation of inheritance, devise or bequest."

- ⇒ Act 3031 (March 9, 1922) amended the 1916 Inheritance Tax Law as embodied in the Revised Administrative Code by imposing graduated rates on the shares of the beneficiaries or heirs. Subsequently, statutory amendments provided for delinquency penalties.
- ⇒ Commonwealth Act 105 (October 9, 1936) increased the rates of inheritance tax.
- ⇒ Commonwealth Act 466 or the 1939 Tax Code imposed the tax on the net estate and net share of heirs depending on the classes of heirs with mark-up for heirs distantly related to the decedent.
- ⇒ Presidential Decree 69 (November 24, 1972) eliminated the inheritance tax but increased the tax rates on net estate. It likewise abolished the donee's tax .
- ⇒ RA 7499 (May 18, 1992) restructured the estate and donor's taxes as shown in Table 1, by introducing a standard deduction of P1 million in the case of the estate tax and raising the ceiling of the funeral expenses.
- ⇒ RA 8424 (Effective Jan.1, 1998) further restructured the tax base and rates of both estate and donor's taxes in addition to allowing the deduction of medical expenses from the gross estate.

III. Comments and Observations

1. Major changes in the transfer tax regime occurred in 1992 and in 1997. The tax brackets and rates were revised and the magnitudes of allowable deductions were raised and a standard deduction was granted, as well. Deadlines for filing were likewise extended. Table 1 provides a glimpse of the tax structure before major amendments were introduced and under RAs 7499 and 8424, respectively.

² Jeannee Grace U. Rubrico, "Estate taxes next target in bid to raise revenues" (Business World issue dated December 5, 2002).

³ Jose N. Nollado and Mercedita Santiago Nollado, The National Internal Revenue Code of the Philippines (Annotated) 1983 11th Revised and Enlarged Edition. (Manila National Book Store) : pp 382- 383.

Table 1. Comparative Features of the Estate and Donor's Taxes under Different Laws

Features	Prior to RA 7499	Under RA 7499	Under RA 8424
A. Estate Tax			
Nominal Rates	3% to 60%	5% to 35%	5% to 20%
Number of Brackets	16	6	6
Exemption	P10,000 or less	P200,000 or less	P200,000 or less
Ceiling on Deduction			
a. Funeral expenses	5% of gross estate but not exceeding P50,000	5% of gross estate but not exceeding P100,000	5% of gross estate but not exceeding P200,000
b. Family home	None	P1,000,000	P 1,000,000
c. Medical expenses	None		
d. Time of Filing	90 days from date of death	180 days from the date of death	180 days from the date of death
B. Donor's Tax			
Nominal Rates	1.5% to 40%	1.5% to 20%	2% to 15%
Number of Brackets	16	8	7
Exemption	P1,000 or less	P50,000 or less	P100,000 or less
Rate of tax on stranger-donee	Computed tax or 20% of net gifts whichever is higher	10% of net gifts	30% of net gifts
Time of filing	30 days after gift is made	30 days after gift is made	30 days after gift is made

- Changes in the tax structure under RAs 7499 and 8424 aimed to encourage the lawful heirs of the estate to file the return and pay the corresponding estate tax within the prescribed period. Same was true in the case of the donor's tax. Prior to RA 7499, taxpayers complained of high rates of transfer taxes. The rates which ranged from 3% to 60% were deemed confiscatory thereby inducing some taxpayers to resort to collusion with tax examiners in order to minimize tax liability.
- The restructuring of the tax brackets and rates and providing certain allowable deductions, like the value of the family home but not to exceed P1 million and an adjusted ceiling for the allowable funeral expenses were introduced in RA 7499. It was basically intended to encourage compliance and consequently

lessen the adverse effects of inflation on the market value of the estate and the adoption of the zonal values by the BIR as basis for tax determination. Subsequently, the 1997 Tax Reform Program granted a standard deduction of P1 million, apart from the restructuring of the tax brackets and further reduction of the rates. The later revisions also had for its underlying intent the development of the real estate industry and the improvement of the urban landscape. Policy makers believed that the change in the tax structure can bolster tax compliance and consequently empower the heirs to develop their properties through bank loans and sales, thereby stimulating investments and generating employment through a construction boom.

- How these statutory amendments may have

affected compliance, cannot be gauged from the number of returns filed for both estate and donor's taxes even if the data can be disaggregated i.e., delinquent taxfilers can be isolated from the total number of returns filed for each of the given period when reforms were enacted, because the restructuring had prospective application. Generally however, the statistics showed an encouraging trend from 1991 to the present, though there were negative growths on a year on year basis (please refer to Table 2). From 8,531 estate tax returns in 1990, the number nearly quadrupled in 2005. To crudely evaluate therefore, the impact of RAs 7499 and 8424, the data are grouped accordingly and the average growth for each period is compared to that of the preceding period.

5. Using as starting point the number of returns for 1991, a year prior to the effectivity of RA 7499 will show that the 12.60% average growth in estate tax returns and 18.72% in the case of the donor's tax for the period covering the effectivity of RA 7499 are offhand

considered as significant when compared to the average growth of 0.86% and 3.34%, respectively for the period 1998 to 2008. But one should not lose sight of the interplay of other factors in the tax compliance effort, like the rise in OFW remittances, the upsurge in housing construction, and the demand for real estate in the metropolis. Additionally, the erratic growth pattern within the two individual periods may be accounted for by the usual upswings and downswings in the real estate market.

6. Surprisingly, donor's tax returns grew rapidly from 4,195 in 1990 to 24,315 in 2008. The growing awareness on the benefits of estate tax planning may have induced the transfer of properties through donations not only due to the relatively lower tax burden but also because of the advantages of passing on the management of the assets to their heirs while the parents are still alive.

Table 2 Number of Estate and Donor's Tax Returns Filed; 1990 – 2009

Year	Estate Tax	Growth (%)	Donor's Tax	Growth (%)
Prior to RA 7499				
1990	8,531	---	4,195	----
1991	15,110	77.11	7,969	89.96
Ave. Growth				
Under RA 7499				
1992	14,583	(3.48)	10,624	33.31
1993	22,541	54.57	13,448	26.58
1994	21,806	(3.26)	19,476	44.82
1995	23,765	8.98	18,634	(4.32)
1996	24,206	1.85	17,231	7.52
1997	28,312	16.96	17,991	4.41
Ave. Growth		12.60		18.72
Under RA 8424				
1998	23,211	(18.01)	14,950	(16.90)
1999	22,510	(3.02)	17,004	13.73
2000	22,103	(1.80)	16,789	(1.26)
2001	23,786	7.61	17,176	2.30
2002	25,902	8.89	16,833	(1.99)
2003	27,919	7.78	20,546	22.05
2004	30,373	8.78	20,394	(0.73)
2005	32,223	6.09	22,934	12.45
2006	28,435	(11.75)	21,051	(8.21)
2007	29,198	2.68	21,265	1.01
2008	29,863	2.27	24,315	14.34
2009	30,079	0.62	23,187	(4.68)
Ave. Grth.		0.86		2.67

Source of Basic Data : BIR Annual Reports

Table 3. Growth and Ratios of Transfer Tax Collections to Total BIR Collections: 1990 - 2009

Year	Total Collections (P Million)	Transfer Taxes* (P Million)	Growth Rate (%)	Ratio to Total Collections (%)
Prior to RA 7499				
1990	104,106	194.74	----	0.18
1991	116,256	164.70	(15.42)	0.14
Average Ratio (%)				0.16
Under RA 7499				
1992	133,904	248.42	50.83	0.18
1993	145,931	223.34	(10.09)	0.15
1994	187,443	309.10	38.39	0.16
1995	211,462	416.69	34.80	0.19
1996	260,774	565.18	35.63	0.21
1997	314,697	881.14	55.90	0.27
Average Ratio (%)				0.19
Under RA 8424				
1998	337,176	473.57	(46.25)	0.14
1999	341,320	572.74	20.94	0.16
2000	360,802	479.99	(16.19)	0.13
2001	388,679	594.43	23.84	0.15
2002	394,549	527.96	(11.18)	0.13
2003	426,010	714.54	35.33	0.16
2004	468,176	749.52	4.89	0.16
2005	542,696	1,016.75	35.65	0.18
2006	652,732	1,113.80	9.54	0.17
2007	707,862	961.88	(13.63)	0.13
2008	778,580	1,278.52	32.91	0.16
2009	750,287	1,425.97	11.53	0.19
Average Ratio (%)				0.15

*Combined estate and donor's taxes
Source of Basic Data : BIR Annual Reports

7. As can be gleaned from above data, the average ratios of transfer taxes was highest at **0.19%** of total revenue collections of the BIR during the implementation of RA 7499 as compared to the average ratio of **0.16%** for the years prior thereto and the **0.15%** average ratio during the effectivity of RA 8424. The first round of amendments had a greater impact on tax compliance than in the next round of restructuring introduced by RA 8424. On the whole, the observed weakness of the major reforms in the transfer tax system in recent years, as evidenced by the comparative average growth of revenue collections and the number of returns filed during the three separate periods poses a challenge to look for better alternatives to the usual rate and bracket restructuring and grant of exemptions.

8. It would be worthwhile to note too, that even the latest Tax Amnesty Law (RA 9480, issued on May 24, 2007) only enticed 16 estate taxpayers. The amount collected from this group was P3.26 Million or a measly 0.06% of the total tax amnesty yield of P5.04 Billion. It could be surmised that the basis of the tax

amnesty payment which was the net worth of the taxfiler based on the latest statement of assets and liabilities in addition to the minimum amnesty tax of P50,000 were not attractive enough for delinquent estate tax filers to come forward and avail themselves of the tax amnesty.

9. Three Senate Bills (SB No.132, authored by Sen. Juan Ponce Enrile; SB Nos. 483 and 658, both authored by Sen. Jinggoy Ejercito Estrada were recently filed to amend certain provision of the estate tax law. SB 132 seeks to increase the limit of the deductible value of the decedent's family home from the present current fair market value of P 1 million to P10 million. SB 483, on the other hand seeks to increase the limit of the deductible medical expenses of P500 thousand to P1.5 million. And SB 658 seeks to exempt the family home from execution, forced sale or attachment except for non-payment of real property taxes and under certain circumstances.

IV. Reforms in Estate and Gift Taxes in Other Countries

Several countries had already abolished their estate tax. These are: Australia in 1979; Hongkong in 2006; Italy in 2001, but on a staggered basis; New Zealand in 1992; Singapore in 2008; and Sweden in 2005. Some countries however, tried introducing reforms or replacing the estate tax with another type of tax. The methods employed are as follows:

a. India

There is no inheritance or gift tax in India. However, the recipients of assets is subject to wealth tax. A net wealth tax is levied at 1% of the net assets if the same exceeds INR 1,500,000 (US\$ 30,881). Net assets are computed by deducting debts relating to the properties against their aggregate value. The income tax authorities are generally responsible for assessing the property value. Self assessment is also possible but interest and penalties are imposed for defaults.

b. Italy⁷

In 2000, Italy embarked on a gradual abolition of the estate tax. Prior thereto, the Italian tax regime consisted of two taxes. The estate tax is levied on the donor or estate of the deceased, with an exemption threshold of approximately 125,000 euros. Then a second tax was levied on the shares received by the heirs. Both taxes followed a graduated schedule of tax brackets and rates ranging from 3% to 27%. Between 1999 and 2000 however, estate taxation was eliminated in three steps. The first reform was the raising of the exemption level that applied to the donor's total estate from 125,000 euros to 175,000 euros⁸. In 2000, a second reform ruled that the exemption be applied to the share received by each of the recipient instead of to the total estate, consequently increasing the exemption. Above the exemption amount the tax became a flat rate of 4% for the spouse and direct relatives, 6% for relatives up to fourth degree and members of the stepfamily up to third degree, and 8% for other recipients. Finally, the estate tax was abolished at the end of 2001.

c. United States of America

Eakin and Marples in their paper in 2001⁴ noted that "In recent years there has been considerable attention devoted to the impact of taxes on the incentives to accumulate wealth. One manifestation of this interest has been the widespread debate over the desirability of 'fundamental' tax reform, generally taking the form of a consumption-based tax system. These systems⁵ exempt from tax wealth accumulation until the point at which it is consumed." Attention was then focused on the repeal of the federal estate and gift taxes as contained in the Unified Transfer Tax. In 2000, Congress passed a repeal of the estate tax, but the same was vetoed by President Clinton. Said authors developed a framework for computing the deadweight loss of a revenue-neutral switch from an estate tax to a capital income tax. The conclusion reached from the results of the exercise is that in eliminating the estate tax and replacing the revenue with that from a capital income tax will likely enhance economic efficiency. Their basic findings suggest that capital taxes have a modestly depressing effect on the accumulation of wealth.

From an article written by Kaufman in 2009⁶ some observations were culled. Kaufman wrote that when Congress enacted the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), 2010 seemed like a time in the distant future. The EGTRRA contained the promise of a one year repeal of the estate tax in 2010, followed by the reversion to prior law (with a \$1 Million exemption) in 2011. The basic issues in play which the author analyzed are: a) the estate tax exemption levels and rates; b) whether the exemption can be made portable; c) whether to re-unify the estate tax and gift tax exemption; and d) whether to reinstate the state death tax credit.

On the exemption level - Prior to the 2001 Act the exemption level for the gift tax, estate tax and the generation-skipping transfer (GST) tax was \$1 Million. Then a series of changes were enacted. While the exemption for the gift tax remained the same, that of the estate tax was changed to \$1.5 million in 2004, \$2 million in 2006, and \$3.5 million in 2009. For 2010 the estate tax was to be repealed and due to the operation of a sunset provision, the estate tax was to return with a \$1million exemption in 2011. Developments in the political scene caused the freezing of the 2009 law

⁴ Douglas Holtz-Eakin and Donald Marples, Distortion Costs of Taxing Wealth Accumulation: Income Versus Estate Taxes: Working Paper 8261, National Bureau of Economic Research, Cambridge, MA, April 2001

⁵ Ibid. Interest in consumption-based systems is generally traced to Blueprints for Basic Tax Reform (US Treasury [1977].

⁶ Beth Shapiro Kaufman, "United States: Estate Tax Legislation in 2009: Avoiding the Train Wreck." Estate Planning Magazine, July 2009. The article was downloaded from <http://www.Mondaq.com/united-states/articles.asp?articleid=82182>

⁷ Tullio Japelli, Mario Padula, and Giovanni Pica. Estate Taxation and Intergenerational Transfers: VOX (Researched-based policy analysis and commentary from leading economists) 26 February 2010.

⁸ Roughly equivalent to P7.285 M to P10.20M at P58.28 to 1 Euro.



and moves were initiated to make i.e., the \$3.5 million exemption permanent. Some legislators however, are in support of the move to increase the exemption level to \$5 million in lieu of repeal. Others proposed for the reduction of the exemption to \$2 million.

On the tax rates - Prior to EGTRRA, the estate tax was imposed at a 55% marginal rate on estates in excess of \$3 million. The surtax on estates between \$10 million and \$17.184 million created a flat 55% tax on estates in excess of \$17.184 million. EGTRRA in turn repealed the surtax and introduced the reduction of the top rate to 45% over a period of several years. *Because of the increased exemption level, the lower marginal rates were swallowed up by the exemption*, thus in 2009 the estate tax became a flat rate of 45%.⁹ Proposals from Congress to return to the graduated rate structure with indexation of the tax brackets were submitted in 2009. However, a lower tax rate would cause too much loss in revenue and a higher tax rate, unless it applies only to very large estates, seems unlikely. Retaining therefore the flat 45% tax rate was consistent with both Pres. Obama's budget proposal and the concurrent resolutions of Congress.

On the portability issue - The portability of the exemptions between spouses is deemed the most advocated change in the estate tax. In this case, any unused portion of the estate tax exemption of the first spouse to die, could be transferred to the surviving spouse. Who in turn could then use the

credit in addition to his/her own at the time of his/her death. Some issues raised on the portability aspect hover on how many exemptions a surviving spouse could be allowed to accumulate in the case of those who remarry and would there be a market in unused exemptions.

On the reunification of the estate and gift tax exemption - The exemption level of the estate tax was gradually raised to \$3.5 million while that of the gift tax remained at \$1 million. The purpose of limiting the exemption of the gift tax was to protect the income tax base in the case of repeal. Congress believed that in the absence of an estate tax, some will transfer their assets to family members in the lower income tax bracket in order to minimize their income taxes. Thus, to prevent the erosion of the tax base, Congress opted to limit the amount that could be transferred free of gift tax to \$1 million.

On the repeal of the State death tax credit - The EGTRRA has also provided for the repeal of the state death tax credit and enacted in its stead a deduction for state death taxes. For some of the states that retained the state estate tax, the effective tax varied depending on whether the said tax is deductible. Where such a deduction is allowed, the effective tax rate is 52.6%, i.e., 38.8% to the federal government and 13.8% paid to the state. Higher effective rates are shown for those that disallowed the deduction. Thus, it is disclosed that the rate reduction from 55% to 45% is only illusory in many states. In some of the legislative proposals therefore, the reinstatement of the state death tax credit is included.

V. Possible Alternatives to the Present Transfer Tax System

An empirical study conducted by Japelli et al. in 2010 disclosed that the abolition of transfer taxes increased real estate intergenerational transfers. The evidence indicates that the effect took place mostly at the extensive margin, raising the fraction of donors by about 2 percentage points. Other empirical studies have attempted to estimate the tax elasticity of bequests (Holtz-Eakin and Marples: 2001; Kopczuk and Siemrod : 2001; and Joulfaian :2006). These focused on the US and analyzed the relationship between aggregate measures of the estate tax and measures of wealth. These studies find that "estate taxes have a dampening effect on wealth" and noted that the tax elasticity of bequests ranges from -0.2 to -0.1. Moreover, the study observed that when taxes increase, individuals' attempt to avoid taxes also increases, so that any estimate of a change in estate taxes on the size of estates reflects the impact of taxes on wealth accumulation but also that on tax avoidance.

⁹ Ibid.



In-depth studies on the following alternatives to the present transfer tax system may be contemplated and their results evaluated in terms of their capability to meet the two-pronged objectives of raising the revenue potential and encouraging the legitimization of records on real property at the least cost to the present owners/administrators. The proposed alternatives which are mutually exclusive are:

a. Further restructuring of the tax brackets and rates and/or granting a higher exemption level;

In light of the creeping effects of inflation on the market value of real properties, the exemption level of P200,000 needs to be reexamined and probably raised using a price-related index of real property instead of the consumer price index (CPI). Accordingly, the tax brackets, not necessarily the rates have to be adjusted. Moreover, it may be worthwhile to anticipate the effects on the market value of real properties with the eventual passage of the Valuation Reform Act (VRA) which was filed and subjected to nationwide public consultation in the 14th Congress.

b. Abolition of the estate and donor's taxes and in lieu thereof the imposition of a wealth tax for assets above a certain amount;

From a one-time transaction form of tax, the transfer taxes may evolve into a sumptuary tax that is continually levied for as long as the wealth or assets are in the hands of the individual. The effective burden should be low and graduated after allowing for an exemption. The conversion of the assets into investible funds or stocks primarily to avoid the wealth tax will indubitably result into greater efficiency in resource allocation and lead to a more meaningful redistribution of wealth. Subsequently a capital gains tax can be levied on the sale/disposition of the asset.

c. Abolition of the estate tax.

The final abolition of the estate tax in Italy in 2001 may be worth replicating in the case of the Philippines. The attendant revenue foregone while potentially substantial remains to be elusive if potential taxpayers will not surface because of the existing estate tax. At any rate, the revenue loss will consequently be recouped through the capital gains tax which shall be imposed upon the eventual sale or transfer of the estate to the prospective buyers or donor's tax if passed on through a donation. The documentary stamp tax however, should remain to be collected, it being a different impost. Corollary to this proposal is the grant of a tax amnesty on back transfer taxes which should be affordable enough to encourage property owners/ or their administrators to legitimize the records on ownership. Better still, a recording fee will just be imposed on the current executor administrator of the property principally to update the records of the Register of Deeds and the Assessor's office. Making the legitimization of records on property ownership mandatory may be explored with accompanying safeguard measures to abet opportunities for fraud and graft and corruption to flourish. Close coordination between the BIR, Register of Deeds, the Assessor's office of the LGUs, and the Barangay chairmen/officials will facilitate this undertaking, barring aside any legal impediments.

d. Imposition of flat rate estate and gift taxes depending on the degree of relationship with the deceased or donor, as the case may be following the Italian model before the abolition of the tax.

Above an exemption amount or threshold value i.e. 175,000 euros in the case of Italy, it was 4% on the value of the share of the spouse and direct relatives; 6% for relatives up to fourth degree and members of the stepfamily up to third degree; and 8% for other recipients.

e. Restructuring of the estate and donor's tax schedules and instituting a cut-off amount of gross estate and gross gift that need not file a return.

Further restructuring the tax bracket and rate schedules taking into account the need to adjust exemption levels may again be explored.

VI. Conclusion

Major reforms instituted on the estate and donor's taxes in the recent past have not enticed heirs and donors to come forward and pay their tax obligations. Alternative methods may thus be explored albeit the current trend of abolishing said taxes in some countries.

Fourteenth (14th) Congress Grant of Tax Perks - An Evaluation

by

Atty. EMMANUEL M. ALONZO

Director III, Legal & Tariff



During the 14th Congress (June 30, 2007 to June 30, 2010), several laws were passed granting tax incentives (tax and duty exemptions) to several entities. During the three (3) year period, Congress passed thirty six (36) such laws or an average of one law every month. These laws are as follows:

I. Laws containing tax incentives (tax exemptions) during the 14th Congress

Enacted Law	Recipient Entity	Incentives Granted
1. RA 9497 – approved by the President on March 4, 2008	<i>Civil Aviation Authority (CBA)</i>	<ul style="list-style-type: none"> • Importation of equipment, machineries, spare parts, accessories and other materials used exclusively for the use of the CBA, • Income tax exemption, • Capital gains tax, documentary stamp tax exemption, and • Exemption from the payment of local government taxes.
2. RA 9500 – approved by the President on April 29, 2008	<i>University of the Philippines (UP)</i>	<ul style="list-style-type: none"> • Income tax exemption, • Donor's tax exemption, • Tariff and NIRC tax exemptions accompanying the importations, • Value added tax (VAT) exemption, and • Exemption from the payment of taxes on academic awards given by the UP.
3. RA 9501 – approved by the President on May 23, 2008	Micro, Small, and Medium scale enterprises	<ul style="list-style-type: none"> • Tax credits, and • All incentives provided for in the Omnibus Investment Code of the Philippines, and other laws are also granted.
4. RA 9504 – approved by the President on June 17, 2008	Individual taxpayers	<ul style="list-style-type: none"> • Income tax exemption
5. RA 9505 – approved by the President on August 22, 2008	Personal Equity and Retirement Account (PERA)	<ul style="list-style-type: none"> • Income tax credit equivalent to five percent (5%) of the total PERA contributions, • Income tax exemption from the investments and reinvestments of the maximum amount allowed, and • All monetary distributions are tax exempt.

<p>6. RA 9511 – approved by the President on December 1, 2008</p>	<p><i>National Grid Corporation</i>, a corporation conveying or transmitting electricity through high voltage backbone systems of interconnected transmission lines substations and related facilities</p>	<ul style="list-style-type: none"> • Franchise tax of three percent (3%) of gross receipts in lieu of income tax and all other taxes
<p>7. RA 9513 – approved by the President on December 16, 2008</p>	<p>Developers of renewable energy facilities, including hybrid systems</p>	<ul style="list-style-type: none"> • Income tax holiday for a period of seven (7) years, • Duty free importation of renewable energy machinery, equipment, and materials, • Special realty tax rates on equipment and machinery, • Net operating loss carry over (NOLCO), • After the seven (7) year income tax holiday, the corporation shall pay a special corporate income tax of ten percent (10%), • Accelerated depreciation, • Zero rate value added Tax (VAT), and • The renewable energy sector shall form part of the country's Investment Priority Plan.
<p>8. RA 9520 – approved by the President on February 23, 2009</p>	<p>Cooperatives</p>	<ul style="list-style-type: none"> • Exemptions from taxes and fees imposed under the National Internal Revenue Code and other laws, • Cooperatives transacting business with both members and non-members are tax exempt on their transactions with members, and • Tax exemptions on predetermined accumulated reserves and undivided net savings, • Donations to charitable, research and educational institutions and reinvestment to socioeconomic projects shall exempted from the payment of donor's tax, and • Tax exemptions on transactions with banks and insurance companies.
<p>9. RA 9521 – approved by the President on March 5, 2009</p>	<p><i>National Book Development Trust Fund</i></p>	<ul style="list-style-type: none"> • Contributions to the fund shall be exempted from the payment of donor's tax and the same shall be considered as allowable deductions from the gross income of the donor, and • The allowable deductions shall be equivalent to one hundred fifty percent (150%) of the value of such donation.
<p>10. RA 9576 – approved by the President on April 29, 2009</p>	<p><i>Philippine Deposit Insurance Corporation (PDIC)</i></p>	<ul style="list-style-type: none"> • All tax obligations of the PDIC for a period of five (5) years reckoned from the date of effectivity of this Act shall be chargeable to the Tax Expenditure Fund (TEF) in the annual General Appropriations Act, • In the sixth (6th) year and thereafter, the PDIC shall be exempt from the payment of income tax, final withholding tax, value added tax (VAT) on assessments collected from member banks and local taxes, and • All notes, debentures, bonds, or such obligations issued by the PDIC shall be exempted from the payment of taxes both as to the principal and its interests.

<p>11. RA 9593 – approved by the president on May 12, 2009</p>	<p>Tourism related enterprises</p>	<ul style="list-style-type: none"> • Exemption from the payment of corporate tax, • Local government units (LGUs) are encouraged to provide incentives for tourism enterprises through reduction in applicable real estate taxes and waivers of fees and charges, • Income tax holidays for a period of the first six (6) years, • They are allowed to carry over as a deduction from the gross income for the next consecutive six (6) years immediately following the loss, their net operating losses for any taxable year immediately preceding the current taxable year which had not been previously offset as deduction from gross income, • A new enterprise shall pay a tax of five percent (5%) on gross income earned, • Exemption from the payment of taxes and duties on the importation of capital investments and equipments, and • Grant of tax credit equivalent to all national internal revenue taxes paid on all locally sourced goods and services directly or indirectly used by the registered enterprises for services actually rendered, among others.
<p>12. RA 9640 – lapsed into law on May 21, 2009</p>	<p>Enterprises paying amusement taxes under the Local Government Code of 1991 as levied by provinces</p>	<ul style="list-style-type: none"> • Lowering of the amusement tax from thirty percent (30%) of the gross receipts from admission fees to ten percent (10%).
<p>13. RA 9648 – approved by the President on June 30, 2009</p>	<p>Traders of shares of stocks</p>	<ul style="list-style-type: none"> • Exemption from the payment of documentary stamps any sale, barter, or exchange of shares of stocks traded through the stock exchange.
<p>14. RA 9679 – approved by the President on July 21, 2009</p>	<p>Home Development Mutual Fund (PAG-IBIG Fund)</p>	<ul style="list-style-type: none"> • The fund and all its assets and properties, all contributions collected and all accruals thereto and income or investment earnings there from, as well as supplies, equipment, papers, or documents shall be exempt from any tax, assessment, fee, charge, or customs or import duty; and all the benefit payments made by the PAG-IBIG Fund shall be exempted from the payment of all kinds of taxes fees and charges.
<p>15. RA 9728 – lapsed into law on October 23, 2009</p>	<p>Bataan Economic Zone (Mariveles, Bataan)</p>	<ul style="list-style-type: none"> • The registered enterprises operating within the Zone shall be entitled to the existing pertinent fiscal incentives as provided by RA 7916, as amended by RA 8748, also known as the Special Economic Zone of 1995, or those provided by EO 226, as amended, otherwise known as the Omnibus Investment Code of 1987, and • Imposition of a tax rate of five percent (5%) on gross income earned in lieu local and national taxes.
<p>16. RA 9746 - approved by the President on November 10, 2009</p>	<p>Polytechnic State College of Antique</p>	<ul style="list-style-type: none"> • Importation of duty-free economic, technical and cultural books and/or publications.
<p>17. RA 9832 – approved by the President on December 9, 2009</p>	<p>Don Honorio Ventura College</p>	<ul style="list-style-type: none"> • Importation of duty-free economic, technical and cultural books and/or publications.
<p>18. RA 9852 – approved by the President on December 16, 2009</p>	<p>Jose Rizal State University</p>	<ul style="list-style-type: none"> • Duty-free importation of economic, technical and cultural books and/or publications, • To receive trust legacies, gifts and donations and real and personal properties of all kinds. Such donations shall be exempt from the payment of donor's tax and the same shall be allowed as allowable deductions from the gross income in the computation of the income tax of the donor.

<p>19. RA 9854 – approved by the President on December 16, 2009</p>	<p>Caraga State University (Northern Mindanao)</p>	<ul style="list-style-type: none"> • Duty-free importation of economic, technical and cultural books and/or publications, • To receive legacies, gifts and donations of real and personal properties of all kinds. Such donations shall be exempt from the donor's tax and the same shall be allowed as deductible deductions from the gross income in the computation of the income tax of the donor.
<p>20. RA 9856 – lapsed into law on December 17, 2009</p>	<p>Real Estate Investment Trust (REIT)</p>	<ul style="list-style-type: none"> • A REIT shall be subject to income tax under Chapter IV, Title II of the NIRC of 1997, as amended, on its taxable net income as defined in this Act: Provided, That in no case shall a REIT be subject to the minimum corporate income tax, as provided under Section 27 (E) and Section 28(A)(2) of the same Code: Provided, further, That for purposes of computing the taxable income of a REIT, dividends distributed by a REIT for its distributable income after the close of a taxable year shall be considered as paid on the last day of such taxable year..., etc.
<p>21. RA 9904 – approved by the President on January 1, 2010</p>	<p>Homeowners and homeowners associations</p>	<ul style="list-style-type: none"> • Incomes and dues derived by the homeowners and homeowners associations shall be tax exempt, provided that such incomes and dues shall be used for the cleanliness, safety, security and other basic services needed by the members.
<p>22. RA 9966 – approved by the President on January 18, 2010</p>	<p>Sultan Kudarat Polytechnic State College (SKPSC)</p>	<ul style="list-style-type: none"> • Duty-free importation of economic, technical and cultural books and/or publications, • To receive in trust legacies, gifts and donations of real properties of all kinds.
<p>23. RA 9994 – approved by the President on February 15, 2010</p>	<p>Senior citizens</p>	<ul style="list-style-type: none"> • Twenty per cent (20%) discount and exemption from the VAT, if applicable, on the sale of the following goods and services..., etc.
<p>24. RA 9999 – approved by the President on February 23, 2010</p>	<p>Lawyers rendering free legal services</p>	<ul style="list-style-type: none"> • Lawyers rendering free legal services shall be entitled to an allowable deduction from the gross income, the amount that could have been collected for the actual free legal services rendered or up to ten per cent (10%) of the gross income derived from actual performance of the profession, whichever is lower.
<p>25. RA 10001 – approved by the President on February 23, 2010</p>	<p>Life insurance companies</p>	<ul style="list-style-type: none"> • Every person, company or corporation doing life insurance business shall pay a two per cent (2%) on the total premium collected...etc.
<p>26. RA 10022 – lapsed into law on March 8, 2010</p>	<p>Migrant workers and overseas Filipinos</p>	<ul style="list-style-type: none"> • Exemption from travel tax and airport fees.
<p>27. RA 10026 – lapsed into law on March 11, 2010</p>	<p>Local water districts</p>	<ul style="list-style-type: none"> • Condonation of unpaid taxes starting August 13, 1996 until the effectivity of RA 10026, subject to conditions, and • Exemption from the payment of income tax
<p>28. RA 10028 – approved by the President on March 16, 2010</p>	<p>Donors of private health and non-health facilities promoting breast feeding</p>	<ul style="list-style-type: none"> • The expenses incurred by a compliant private health facility, establishment or institution shall be deductible expenses for income tax purposes up to twice the actual amount incurred.
<p>29. RA 10066 – approved by the President on March 26, 2010</p>	<p>Donors of the National Commission for Culture and Arts (NCCA)</p>	<ul style="list-style-type: none"> • All donations in any form to the Commission and its affiliated cultural agencies shall be exempt from the donor's tax and the same shall be considered as allowable deduction from the gross income in the computation of the income tax of the donor.

<p>30. RA 10068 – approved by the President on April 6, 2010</p>	<p>Entities promoting organic agriculture</p>	<ul style="list-style-type: none"> • Exemption from payment of duties on importation of agricultural equipment, machinery and implements as provided in RA 9261, • Zero-rated VAT on the sale/purchase of bio-organic products, whether organic inputs or organic produce, and • Income tax holiday for a period of seven (7) years starting from the date of registration of organic food and organic input produces on all income tax levied by the National Government.
<p>31. RA 10072 – approved by the President on April 20, 2010</p>	<p>Philippine National Red Cross (PNRC)</p>	<ul style="list-style-type: none"> • Tax exemption from the payment of all direct and indirect taxes, • All donations, legacies and gifts made to the PNRC shall be exempt from donor's tax and shall be deductible from the gross income of the donor for income tax purposes or from the computation of the donor-decedent's net estate for public use for estate tax purposes.
<p>32. RA 10073 – approved by the President on April 20, 2010</p>	<p>Girl Scouts of the Philippines</p>	<ul style="list-style-type: none"> • Exemption from payment of all direct and indirect taxes, • Tax and/or duty exemption of donations from foreign countries as provided under relevant laws, and • All donations to the GSP shall be exempt from donor's tax and the same shall be deductible from the gross income of the donor for income tax purposes.
<p>33. RA 10083 – lapsed into law on April 22, 2010</p>	<p>Aurora Special Economic Zone</p>	<ul style="list-style-type: none"> • Imposition of a tax rate of 5% on Gross Income Earned (income tax), excise and franchise tax, • Foreign and domestic merchandises, raw, materials, etc. brought inside the ecozone for processing, repackaging or manufacturing, etc. inside the Aurora Ecozone shall not be subject to customs and internal revenue laws and regulations, and local tax ordinances, • Importation of raw materials and capital equipment are tax and duty free but exportation and removal of the same from the Freeport zone of goods shall be subject to customs and internal revenue laws and regulations.
<p>34. RA 10085 – approved by the President on May 5, 2010</p>	<p>University of Northern Philippines-Candon</p>	<ul style="list-style-type: none"> • Exemption from the payment of import duty of economic, technical and cultural books and/or publications, and • Donations shall be exempt from the donor's tax and the same shall be considered as allowable deductions from the gross income in the computation of the income tax of the donor.
<p>35. RA 10086 – approved by the president on May 12, 2010</p>	<p>National Historical Commission of the Philippines (NHCP)</p>	<ul style="list-style-type: none"> • NHCP shall be exempted from the payment of income tax, • All donations to the NHCP shall not pay donor's tax and shall be considered as allowable deduction from the gross income in the computation of the income tax of the donor, and • Exemption from the payment of customs duties of all scientific, philosophical, historical and cultural books and supplies.
<p>36. RA 10142 – lapsed into law on June 30, 2010</p>	<p>Financially distressed enterprises and individuals</p>	<ul style="list-style-type: none"> • Any reduction in the debtor's liabilities arising or resulting from a Rehabilitation Plan's approval shall not be subject to any tax.

II. Revenue losses due to the liberal grant of fiscal incentives

Out of the 36 laws legislated by the 14th Congress, only 16 of these laws have an estimate of government revenue loss, due to the difficulty in available data. The estimated government revenue losses are as follows:

Law giving exemptions	Government revenue foregone (in billions)
1. RA 9504 – increasing personal exemptions for self-employed individuals. It decreases the income tax paid by the individual.	P 26.35
2. RA 9505 – tax exemptions for the Personal Equity and Retirement Account (PERA)	14.00
3. RA 9511 – tax exemptions and other perks for the National Grid Corporation, an incentive to engage in the business of conveying or transmitting electricity through high voltage back-bone systems of interconnected transmission lines, substations and related facilities	9.00
4. RA 9576 – tax exemptions for the PDIC for increasing the maximum deposit insurance coverage of the PDIC	2.50
5. PD 9593 – exempts tourism related activities from the payment of taxes	6.60
6. RA 9640 – lowering the amusement tax under the Local Government Code of 1991	0.486
7. RA 9648 – exempting from documentary stamp tax any sale, barter or exchange of shares of stocks traded through the Stock Exchange	1.4
8. RA 9679 – granting exemptions to the Home Development Mutual Fund	1.0
9. RA 9728 – granting fiscal incentives to Bataan Economic Zone	3.0
10. PD 9856 – tax exemptions for real Estate Investment Trust	2.70
11. PD 9994 – grant of tax exemptions for senior citizens	1.68
12. RA 9999 – tax exemptions for lawyers giving free legal services	0.10
13. RA 10001 – tax privileges on life insurance premiums	1.37
14. RA 10022 – exemption of migrant workers and overseas Filipinos from the payment travel tax, documentary stamp tax and airport fee	1.00
15. RA 10026 – grants income tax exemption to Local Water Districts	0.83
16. RA 10083 – tax incentives given to Aurora Special Economic Zone	3.0
Total government revenue foregone per year	P75.016 billion

Obviously, the P75 billion loss in government revenues attributed to the grant of fiscal incentives during the 14th Congress should have been available for government expenditures. Furthermore the Board of Investments (BOI), the different Freeports, and the Philippine Economic Zone Authority (PEZA) also grant duty and tax exemptions as a matter of course to their respective locators, further increasing government revenue loss.

III. Policy statements for the 15th Congress

President Benigno Simeon Aquino makes no secret of his desire not to impose new taxes during his administration. It is therefore imperative that the new administration find new sources of government revenues to mitigate the chronic budget deficit in order to implement the “**no new taxes**” thrust of his government. In this regard, a budget deficit government may resort to any or all of the following:

- Increase borrowings – This is a bad choice in order to fund a government operating on a deficit budget because loans will be paid somehow in the future. Borrowings would only postpone the hardships of a deficit government;
- Improving tax collection efficiency - This is a good choice because it only implements the mandates of any tax legislation. It also promotes honesty by preventing, if not eliminating graft and corruption in the revenue generating government agencies. However, it also involves suing tax evaders which may take

a long time before the financial benefits may be used by the government in its expenditures. An example of a legislation improving tax collection are the anti-smuggling bills of the current Congress;

- Decreasing government spending - This alternative is undesirable because it would be effective only to a certain extent. Too much cost cutting would have adverse political and economic effects on the country;
- Enacting "revenue neutral" laws - "Revenue neutral" means a law that grants tax and duty exemption to the beneficiary at the same time will not decrease government revenues. The compensating factor is finding a way to raise revenue for the government equal or more than the tax and duty exemption like processing fees, and other revenue generating ventures of the beneficiary. The problem is the limited application of this scheme; and
- Lessening the grant of tax perks - This is a viable alternative in helping the government in its effort to implement the "no new tax" policy of the present administration as well as to decrease the government's budget deficit.
- Selling of government assets - It may be done by the present administration, but such move may prove controversial.

Perhaps, there is a need for a policy both for the legislative and the executive branches of the government regarding the grant of tax and duty exemptions. In the absence of such a common policy, a law may be given a stricter interpretation, in the grant of tax and duty exceptions, by the revenue raising government agencies like the Bureau of Customs (BOC) and the Bureau of Internal Revenue (BIR). This is to be expected not only because of their primary task to collect taxes and duties, but on a more personal side, the Attrition Law (RA 9335) is in effect. RA 9335 penalizes both the BOC and the BIR if they do not meet their revenue targets in a particular year.

The Philippine Daily Inquirer in its December 18, 2010¹ issue cited the comment of the BOC Commissioner Angelito Alvarez – "*..the Customs Chief admitted that there was **no way** the Bureau would be able to meet its 2010 collection goal of P241.6 billion set by the Department of Finance...*"

Commissioner Alvarez gave the following reasons for the BOC collection shortfall:

- Reduced or zero duties on products covered by free trade agreements. These

agreements are the ASEAN Free Trade Area, ASEAN-China Free Trade Agreement, and the Japan-Philippines Economic Partnership Agreement. Ten of the "*big time items*" that are now zero-rated are petroleum products, cereals, plastics and articles thereof, iron and steel, paper and paperboard, organic chemicals, fertilizers, inorganic chemicals, and lime and cement;

- Appreciation of the peso. The revenue forecast for the year (2010) was pegged at P45 to a dollar but the peso strengthened to P44.62 in April, P44.31 in September and P43.44 in October; and
- High utilization of tax credit certificates. The BOC collection performance was encumbered by the preference of big-time importers to settle their financial obligations with the BOC through their accumulated non-cash assets known as tax credit certificates;

Futhermore, the two branches of government (legislative and executive) react to different stimulus. As far as the legislature is concerned, there is a tendency to grant as many incentives as possible. From their point of view, it is the politically correct thing to do. On the other hand, the executive department, particularly the Department of Finance, frowns on the grant of tax and duty exemptions because it aggravates the budget deficit of the government. Hence, there must be common ground wherein both the lawmaking and the executive branches of government may draw a common guideline.

IV. The 2010 Investment Priorities Plan (IPP)

Under the 2010 Investment Priorities Plan (IPP) the grant of fiscal incentives should be given to the following preferred activities: (a) job saving, or job creation, (b) agriculture, agribusiness and fishery, (c) manufactured products, (d) business process outsourcing, and (f) creative industries, like television and theatre arts production. The 36 bills passed during the 14th Congress hardly fall in the 2010 IPP categories. Clearly, there is a discrepancy between the priorities of the BOI and the legislature. Therefore there is a need to harmonize the aims of both government agencies for the sake of common good.

V. Bills in the 15th Congress on Incentives

At this point, let us scrutinize a sample of bills giving fiscal incentives:

¹ Jerome Aning, Customs exceeds '09 take but falls short of target, The Philippine Daily Inquirer, December 18, 2010.

Bill Provision	Comments
<p>SB 687. Sec. 23. <i>Exemption from Tax .- The Authority shall be exempt from all taxes, licenses, fees, imposts, charges, costs and duties except real property tax incidental to its operations and service/filing fees in any court or administrative proceedings in which it may be a party, restrictions and duties of the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and in its instrumentalities. Such exemption shall include any tax or fee imposed by the government on the sale, purchase or transfer of foreign exchange. All notes, bonds, debentures and other obligations issued by the Authority shall be exempt from all taxes both as to principal and interest.</i>²</p>	<p>The phrase – “...shall be except from all taxes, licenses, fees, imposts, charges, costs and duties...” should be avoided in drafting a tax incentive bill. It means all the tax and duty provisions of both the National Internal Revenue Code and the Customs and Tariff Code of the Philippines.</p> <p>As far as the imposition of tariff and duties is concerned, it is the Tariff Commission that has the authority to impose, reduce, or increase tariff duties taking into consideration its impact on Philippine economy. Note that a duty exemption means lessened competitiveness to domestic industries affected.</p> <p>A good practice is to identify the activity or the goods needing tax exemption avoiding “motherhood statements”.</p>
<p>SB 648. Section 21. <i>Tax and Duty Exemptions. - The Bank shall be exempted from the payment of all, kinds of taxes and duties imposed by the government, or any subdivision, agency or instrumentality thereof, or on its income, real or personal property acquisitions, or importation of equipment, machinery and other items needed in its operations, within a period of five (5) years from the date of the establishment of the Bank.</i>³</p>	<p>The bill also contains a motherhood provision encompassing tax and duty exemption from all government agencies imposing both taxes and duties and other charges as provided by the phrase – “...imposed by the government, or any subdivision, agency or instrumentality thereof...”.</p> <p>A good point in the provision is that it contains a “sunset clause” – ‘...within a period of five (5) years from the date of the establishment of the Bank.’.</p>
<p>SB 961. – Section 7. <i>Taxation of Foreign Recordings. – The Council shall have the authority to impose reasonable taxes of foreign musical recordings, the proceeds of which shall go to the Fund</i>⁴.</p>	<p>The provision is odd. As far as law the prevailing laws are concerned, only the Bureau of Internal Revenue collects taxes. In the same manner, only the Bureau of Customs may collect tariff and duties, as well as other internal revenue taxes accompanying importations.</p> <p>The Constitution provides for the following: “All appropriations, revenue and tariff bills, bills authorizing increase of the public debt, bills of local applications, and private bills, shall originate exclusively in the House of Representatives, by the Senate may propose or concur with amendments.”⁵</p>
<p>SB 984. – Section 9. – <i>Tax-free importation of Computer Hardware and Software. – All entities who have been accredited, or who have obtained contracts as participants in the activities provided for in Section 4 and 5 thereof shall be given fiscal incentives. These incentives shall include tax-free importation of all computer hardware, software, peripherals and documentary materials. However, these incentives shall be limited to imports that are intended for the schools. These incentives shall last for a period of not more than ten years from the effectivity of this Act.</i></p>	<p>The bill has two (2) good points, namely, (a) a sunset clause (for a period of ten years), and (b) limited application (intended for schools).</p> <p>Note that the bill refers only to VAT exemption as a consequence of the importations. At present, the importation of computers and its accessories are duty free.</p>

VI. Concluding remarks

Remember the old saying – “Those who disregard the lessons from the past are bound to repeat the same mistakes.”

² Section 23. Exemption from Tax, SB 687, An Act to Strengthen the Laguna Lake development Authority (LLDA), repealing for its purpose Republic Act No. 4850 known as the Laguna Lake development Authority Act of 1966, and for other purposes (Authored by Senator Jinggoy Ejercito Estrada)

³ SB 648, An Act Creating the Philippine Overseas Workers Bank, and for other Purposes, authored by Senator Jinggoy Ejercito Estrada.

⁴ SB 961, An Act to Promote the Development of the Philippine Music Industry, and for other purposes, authored by Senator Manuel “Lito” Lapid.

⁵ Constitution of the Philippines, Article VI, The Legislative Department, Section 24.

Supreme Court Cases in Taxation

by

Clinton S. Martinez

ALLIED BANKING CORPORATION (ABC), Petitioner, vs. COMMISSIONER OF INTERNAL REVENUE (CIR), Respondent, GR No. 175097, February 5, 2010 (Del Castillo, J.).



FACTS:

The Bureau of Internal Revenue (BIR) issued a Preliminary Assessment Notice (PAN) to petitioner ABC for deficiency Documentary Stamp Taxes (DST) and Gross Receipts Tax (GRT) for taxable year 2001. Petitioner received the PAN on 18 May 2004 and filed a protest on 27 May 2004. The BIR on 16 July 2004 wrote a Formal Letter of Demand with Assessment Notices to petitioner. The latter received the same on 30 August 2004.

Petitioner filed a Petition for Review with Court of Tax Appeals (CTA) on 29 September 2004 which was raffled to its First Division (Case No. 7062). On 7 December 2004 CIR filed an Answer. On 28 July 2005 the CIR filed a Motion to Dismiss alleging that ABC failed to file an administrative protest on the Formal Letter of Demand with Assessment Notices. The CTA First Division granted the CIR's Motion to Dismiss. ABC appealed the dismissal to the CTA *En Banc* which denied the Petition for Review as well as the Motion for Reconsideration (MR).

CTA *En Banc* ruled that "X X X it is absolutely necessary for the taxpayer to file an administrative protest in order for the CTA to acquire jurisdiction." It emphasized that "an administrative protest is an integral part of the remedies given to a taxpayer in challenging the legality or validity of an assessment." And, the instant case does not fall in any of the exceptions to the doctrine of exhaustion of administrative remedies.

ISSUE:

Whether the Formal Letter of Demand of 16 July 2004 can be construed as a final decision of the CIR appealable to the CTA under Republic Act No. 9282 (An Act Expanding the Jurisdiction of the CTA, March 30, 2004).

HELD:

The SC granted the petition, stating that Section 7 of RA 9282 expressly provides that the CTA exercises exclusive appellate jurisdiction to review by appeal decisions of the CIR in cases involving disputed assessments. Furthermore, it ruled that the case is an exception to the rule on exhaustion of administrative remedies.

The decision cited Section 7 of RA 9282 covering the exclusive appellate jurisdiction of the CTA to review by appeal, among others, decisions of the CIR in cases involving disputed assessments, refunds, etc. arising under the Tax Code or other laws administered by the BIR. It said that the word "decisions" has been interpreted to mean decisions of the CIR on the protest of the taxpayer against the assessments. It likewise referred to the provisions of the Tax Code, in particular Section 228, outlining the procedure in cases of Protesting of Assessment. The Court ruled: In the instant case, petitioner timely filed a protest after receiving the PAN. In response thereto, the BIR issued Formal Letter of Demand with Assessment Notices. Pursuant to Section 228 of the NIRC, the proper recourse of petitioner was to dispute the assessments by filing an administrative protest within 30 days from receipt thereof. Petitioner, however, did not protest the final assessment notices. Instead, it filed a Petition for Review with the CTA. Thus, if we strictly apply the rules, the dismissal of the Petition for Review by the CTA was proper.

A careful reading of the Formal Letter of Demand with Assessment Notices led the SC to agree with petitioner that the case was an exception to the rule on exhaustion of administrative remedies, i.e., estoppel on the part of the administrative agency concerned. Said the SC: We have

time and again reminded the CIR to indicate, in a clear and unequivocal language, whether his action on a disputed assessment constitutes his final determination thereon in order for the taxpayer concerned to determine when his or her right to appeal to the tax court accrues.

The SC also ruled: To be clear, we are not disregarding the rules of procedure under Section 228 of the NIRC, as implemented by Section 3 of BIR Revenue Regulations No. 12-99. It is the Formal Letter of Demand and Assessment Notice that must be administratively protested or disputed within 30 days, and not the PAN. Neither are we deviating from our pronouncement in *St. Stephen's Chinese Girl's School v. Collector of Internal Revenue*, that the counting of the 30 days within which to institute an appeal in the CTA commences from the date of receipt of the decision of the CIR on the disputed assessment, not from the date the assessment was issued.

PANASONIC COMMUNICATIONS IMAGING CORPORATION OF THE PHILIPPINES (formerly MATSUSHITA BUSINESS MACHINE CORPORATION OF THE PHILIPPINES), *Petitioner*, vs. COMMISSIONER OF INTERNAL REVENUE, *Respondent*, GR No. 178090, February 8, 2010 (Abad, J.)

FACTS:

Petitioner seeks a refund of the input value-added tax (VAT) it paid with the Bureau of Internal Revenue (BIR) believing that its export sales were zero-rated. Petitioner is registered with the Board of Investments (BOI) as a preferred pioneer enterprise under the Omnibus Investment Code (OIC) of 1987. It is likewise a registered VAT enterprise.

The BIR did not act on its petition for refund, hence it went to the Court of Tax Appeals (CTA) which also denied the same. The CTA said that the petition did not qualify for zero-rating because the word "zero-rated" was not printed on Panasonic's export invoices, in violation of Section 4.108-1 of Revenue Regulations (RR) 7-95 (The Consolidated Value-Added Tax Regulation).

ISSUE:

Whether or not the CTA correctly denied petitioner's claim for refund of the VAT it paid as a zero-rated taxpayer on the ground that its sales invoices did not state on their faces that its sales were "zero-rated."

HELD:

The Supreme Court (SC) denied the petition. It ruled: The requirement is reasonable and is in accord with the efficient collection of VAT from the

covered sales of goods and services. As aptly explained by the CTA's First Division, the appearance of the word "zero-rated" on the face of invoices covering zero-rated sales prevents buyers from falsely claiming input VAT from their purchases when no VAT was actually paid. If, absent such word, a successful claim for input VAT is made, the government would be refunding money it did not collect. Finally the Court said: statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government.

SOUTH AFRICA AIRWAYS, *Petitioner*, vs. Commissioner of Internal Revenue (CIR), *Respondent*, GR No. 180356, February 16, 2010 (Velasco, Jr., J.).

FACTS:

Petitioner South Africa Airways seeks a refund of what it believes to be erroneously paid taxes it made to the Bureau of Internal Revenue (BIR) on its Gross Philippine Billings (GPB) for the taxable year 2000. The BIR and Court of Tax Appeals (CTA) denied its request. The CTA held that petitioner is liable to pay a tax of Thirty-two percent (32%) on its income derived from the sales of passage documents in the Philippines, but likewise ruled that it is not liable to pay tax on its GPB under Section 28(A)(3)(a) of the Tax Code.

Petitioner is a foreign corporation organized and existing under and by virtue of the laws of the Republic of South Africa, its principal office located therein. In the Philippines, it is an internal air carrier having no landing rights. Aerotel, the general sales agent of petitioner in the country, sells passage documents for compensation or commission for its (Petitioner) off-line flights for the carriage of passengers and cargo between ports or points outside the territory of the Philippines. It is not registered with the Securities and Exchange Commission (SEC) and is not licensed to do business in the Philippines.

ISSUES:

1. Whether or not petitioner, as an off-line international carrier selling passage documents through an independent sales agent in the Philippines, is engaged in trade or business here subject to the Thirty-two percent (32%) income tax imposed under Section 28(A)(1) of the Tax Code.
2. Whether or not the income derived by petitioner from the sale of passage documents covering petitioner's off-line flights is Philippine-source income subject to income tax.
3. Whether or not petitioner is entitled to a refund

or a tax credit of erroneously paid tax on GPB for the taxable year 2000 in the amount of P1,727,766.38.

HELD:

The Supreme Court (SC) denied the petition and ruled that petitioner South African Airways is subject to Income Tax at the rate of Thirty-two percent (32%) of its taxable income.

The SC said that tax exemptions are strictly construed against the claimant and that petitioner failed to sufficiently prove its contention. It cited the case of Commissioner of Internal Revenue (CIR) vs. Acesite (Philippines) Hotel Corporation [GR No. 147295, February 16, 2007] which states: "Since an action for a tax refund partakes of the nature of an exemption, which cannot be allowed unless granted in the most explicit and categorical language, it is strictly construed against the claimant who must discharge such burden convincingly."

Furthermore, the Court said (Citing CIR vs. British Overseas Airways, GR No. L-65773-74, April 30, 1987): "X X X off-line air carriers having general sales agents in the Philippines are engaged in or doing business in the Philippines and their income from sales passage documents here is income from within the Philippines. Thus, in that case, we held the off-line air carrier liable for the 32% tax on its taxable income."

On the final issue of entitlement to a tax refund of tax credit, the Court pointed out that "It must be remembered that the tax under Sec. 28(A)(3)(a) is based on GPB, while Sec. 28(A)(1) is based on taxable income, that is, gross income less deductions and exemptions, if any. It cannot be assumed that petitioner's liabilities under the two provisions would be the same. There is a need to make a determination of petitioner's liability under Sec. 28(A)(1) to establish whether a tax refund is forthcoming or that a tax deficiency exists. The assailed decision fails to mention having computed for the tax due under Sec. 28(A)(1) and the records are bereft of any evidence sufficient to establish petitioner's taxable income. There is a necessity to receive evidence to establish such amount vis-à-vis the claim for refund. It is only after such amount is established that a tax refund or deficiency may be correctly pronounced."

The case was remanded to the CTA for further proceedings, in view of the above SC pronouncement.

SILKAIR (SINGAPORE) PTE. LTD., *Petitioner*, vs. COMMISSIONER OF INTERNAL REVENUE (CIR), *Respondent*, GR No. 184398, February 25, 2010 (Leonardo-De Castro, J.).

FACTS:

Petitioner herein is a foreign corporation organized under the laws of Singapore with a Philippine representative office in Cebu City. It is an online international carrier plying the Singapore-Cebu-Singapore and Singapore-Cebu-Davao-Singapore routes.

Respondent is the Commissioner of Internal Revenue (CIR) as head of the Bureau of Internal Revenue (BIR).

Petitioner filed with the BIR on June 24, 2002, an administrative claim for refund in excise taxes which it allegedly erroneously paid on its purchases of aviation fuel from June to December 2000, using as basis BIR Ruling No. 339-92 (December 1, 1992) which declared that its Singapore-Cebu-Singapore route is an international flight by an international carrier and that the petroleum products purchased by it should not be subject to excise taxes under the Tax Code.

The BIR took no action on petitioner's claim hence it went to the Court of Tax Appeals (CTA) invoking a Tax Code provision which exempts from excise taxes the entities covered by tax treaties, conventions and other international agreements provided that the country of said carrier or exempt entity similarly extends said privilege. It relied on the reciprocity clause under Article 4(2) of the Air Transport Agreement entered between the Philippines and Singapore.

The CTA ruled that petitioner was qualified for exemption but said that it is not entitled to the excise tax exemption for failure to present proof that it was authorized to operate in the Philippines during the period material to the case due to the non-admission of some of its exhibits. The CTA found the petitioner not to be the proper party to file the instant claim for refund.

ISSUE:

1. Whether or not petitioner has substantially proven its authority to operate in the Philippines.
2. Whether or not petitioner is the proper party to claim for the refund/tax credit of excise taxes paid on aviation fuel.

HELD:

The Supreme Court (SC) denied the petition. Petitioner's allegation that the CTA should have taken judicial notice of its SEC Registration was rebutted by the Court stating that: Evidence already presented and admitted by the court in a previous case cannot be adopted in a separate case pending before the same court without the same being offered and identified. A court is not compelled to take judicial notice of pieces of evidence offered and admitted in a previous case unless the same are properly offered or have accordingly complied with the requirements on the rules of evidence.

As to the second issue, the SC held that it is the supplier (Petron) which is the proper party to question, or seek a refund of, an indirect tax. It is the person or party on whom the tax is imposed by law and who paid the same even if he shifts the burden to another. The Court cited Section 130(A)(2) of the Tax Code which states: "Unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production."

The Court made the following concluding remarks: The exemption granted under Section 135(b) of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore cannot, without clear showing of legislative intent, be construed as

including indirect taxes. Statutes granting tax exemptions must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority, and if an exemption is found to exist, it must not be enlarged

by construction. This calls for the application of the doctrine, *stare decisis et non quieta movere*.



Taxes have been considered as burden by everyone. It has been with us ever since mankind began to group itself. Not surprisingly, taxation problems date back to earliest recorded history. Through the years

many great thinkers, government administrators and collectors have tried to give solutions to ease the inconvenience of the thought of being taxed, in a way that would lessen its impact to humanity in general and to the taxpayer's pocket in particular. However, no one has been successful. In the meantime, it's enough that people continue to think creatively, for without these innovative quotes on taxation, where would taxation be? Here are some:

- ⇒ "Certainty? In this world nothing is certain but death and taxes" *Benjamin Franklin*
- ⇒ "Death and taxes and childbirth! There's never any convenient time for any of them"
Margaret Mitchell quotes (American author of "gone with the wind", 1900-1949)
- ⇒ "The tax which will be paid for the purpose of education is not more than the thousandth part of what will be paid to kings, priests and nobles who will rise up among us if we leave the people in ignorance"
Thomas Jefferson quotes (American 3rd US President (1801-09). Author of the Declaration of Independence. 1762-1826)

- ⇒ "Taxes are the lifeblood of the government and their prompt and certain availability are an imperious need. (Commissioner vs. Pineda, 21 SCRA 105)
- ⇒ "When there is an income tax, the just man will pay more and the unjust less on the same amount of income."
Plato quotes (Ancient Greek Philosopher He was the world's most influential philosopher. 428 BC-348 BC)
- ⇒ "Thinking is one thing no one has ever been able to tax."
Charles F. Kettering quotes (American engineer, inventor of the electric starter, 1876-1958)
- ⇒ "For every benefit you receive a tax is levied."
Ralph Waldo Emerson quotes (American Poet, Lecturer and Essayist, 1803-1882)
- ⇒ "Elections should be held on April 16th- the day after we pay our income taxes. That is one of the few things that might discourage politicians from being big spenders."
Thomas Sowell quotes (American Writer and Economist, b.1930)
- ⇒ "Inflation is the one form of taxation that can be imposed without legislation".
Milton Friedman
- ⇒ We contend that for a nation to try to tax itself into prosperity is like a man standing in a bucket and trying to lift himself up by the handle" *Winston Churchill* quotes (British Orator, Author and Prime Minister during World War II. 1874-1965)



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Website: <http://www.senate.gov.ph>
Email: attydascil@yahoo.com, taxbits@yahoo.com
Telefax No.: 552-6849
Tel. No. : 552-6850

Contributing Writers and Editors

Atty. RODELIO T. DASCIL, MNSA
Director General

ERLINDA R. AGUJA
Director III, Direct Taxes

RECHILDA B. GASCON, MNSA
Director III, Tax Policy & Admin

Atty. EMMANUEL M. ALONZO
Director III, Legal & Tariff

VIVIAN A. CABILING
Director III, Indirect Taxes

MARIA LUCRECIA R. MIR, MNSA
Director II, Indirect Taxes

ELVIRA P. CRUDO
Director II, Direct Taxes

JULIETA M. FONTIVEROS
Director II, Legal & Tariff

XERXES S. NITAFAN
Director II, Tax Policy & Admin