



Volume XI

61st Issue

November - December 2021



Image courtesy of NEDA (neda.gov.ph)

The Philippines' ODA in the Time of COVID-19: A Situationer

Atty. Rachel L. Yuayan

Director II, Tax Policy and Administration Branch

We breezed through 2019 and 2020 doing our best to survive a global pandemic. While we were all locked down in our own homes, we witnessed things that we only see on films, i.e. total shutdown of intra-national and international borders; indefinite closure of offices and businesses; stranded commuters begging for food and ride; panic buying of essential goods and disinfectants; and medical workers in Hazmat-like suits. We were in a war against something we couldn't perceive through our senses but could be felt through fear and panic. Then, upon learning that people related to us also got infected or dying due to COVID-19, we began to be in despair. It was like a

holocaust, terrifying and unprecedented, but it brought out the heroes in us as we viewed up-close how our healthcare professionals and medical volunteers made sacrifices to save lives. Meanwhile, we have our policy makers, think tanks and government executives trying to curb the viral transmission while struggling to keep the economy afloat.

No one saw it coming. Thus, in order to support the various programs and projects for COVID-19 response, the Government of the Philippines (GPH) entered into a total of 25 loan agreements under the Official Development Assistance¹ (ODA) worth

US\$9.08 billion (US\$8.16 for 20 program loans and US\$915 million for 5 project loans).² Of the US\$9.08 billion, US\$5.82 billion (64%) was disbursed as of end 2020, and an additional US\$200 million was disbursed from a program loan signed in 2019 to support COVID-19 response. These ODA programs were secured to augment the government's pandemic response, such as the procurement and delivery of vaccines, support for the emergency cash assistance program, provision of medical supplies and equipment, construction of isolation and quarantine facilities, and strengthening the capacity of existing health facilities.

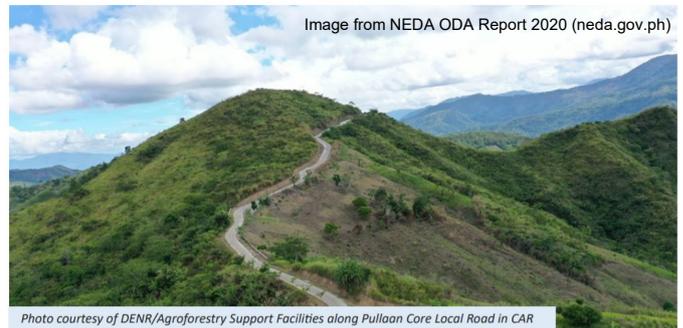
In NEDA's 2020 Official Development Assistance Portfolio Review Report, the total ODA portfolio as of December 2020 increased by US\$9.76 billion (46.63%), from US\$20.93 billion (for 81 loans and 268 grants) in 2019 to US\$30.69 billion (for 106 loans and 251 grants) in 2020. Proceeds from ODA in the portfolio supported 93 loan-assisted programs and projects and 251 grant-assisted projects.



As of September 2021³, our biggest sources of ODA loans from bilateral partners are Japan in the amount of US\$14,139.49 million or 72% of the total ODA Loan portfolio; European Union with US\$3,049.874 million or 15%; and China with US\$1,185.183 million or 6%. Over the same period, multilateral Development Partners (DP) extended US\$33,277.16 million of ODA loans, with the Asian Development Bank (ADB) as the top multilateral lender to the GPH amounting to US\$18,376.11 million worth of financial support (29.80%), followed by the World Bank and the Asian Infrastructure and Investment Bank. Such extensive bilateral borrowings have been instrumental in allowing the GPH to spend around 5% of GDP for infrastructure to spur economic growth, and in safeguarding development gains during the pandemic.

To complement the ODA loans, the GPH availed of grant assistance to improve institutional capacity, establish organizational or policy reforms, streamline processes and systems of GPH agencies, and formulate masterplans and feasibility studies. Grant assistance comes in the form of technical assistance (policy/thematic studies, studies for project preparation, advisory services), emergency/relief, technical cooperation (consultants, experts, training, and other forms of capacity building, capital grants (facility, equipment, and infrastructure), and mixed or having components belonging to different categories. Our top grant providers⁴ are the USA, comprising

32.92% of the total grants portfolio, European Union with 13.84%, and the UN System⁵ with 12.48%. Such grants were focused on Social Reform and Community Development (SRCD)⁶ and the Governance and Institutions Development (GID)⁷ sectors.



Moreover, the GPH has received grant⁸ assistance from the eight largest providers of non-capital grants in the country. These are the Asian Development Bank (ADB), Australian Department of Foreign Affairs and Trade (DFAT), European Union (EU), Japan International Cooperation Agency (JICA), Korea International Cooperation Agency (KOICA), United Nations Development Programme (UNDP), United States Agency for International Development (USAID), and World Bank (WB). Such grants were focused on the delivery and/or achievement of results anchored on recurring themes on inclusive economic growth, infrastructure, human development, and rural development.

The NEDA report also stated that the GPH's active ODA portfolio reached US\$30.69 billion in 2020, which is a 46.6% increase from the previous US\$20.93 billion in 2019. It consists of 30 program loans, 76 project loans and 251 grants. Among these, 20 program loans, 14 project loans, and 25 grants were signed in 2020.



As of 2020, Japan remained as the country's overall top provider of ODA with US\$11.18 billion (36.4%) for 30 loans and 15 grants, followed by the ADB with US\$8.75 billion (29%) for 31 loans and 21 grants, and the WB with US\$6.44 billion (21%) for 22 loans and 7 grants. Total assistance from the three DPs accounted for 86% of the ODA portfolio as of 2020. Table 1 provides for the percentage distribution of active ODA by fund source.

Table 1. ODA by Fund Source

Fund Source	Loans	Grants	Total Count	Loan Net Commitment (in US\$ Million)	Grant Amount (in US\$ Million)	Total ODA (in US\$ Million)	Percent Share on Amount
Japan ⁹	30	15	45	11,110.14	74.67	11,184.81	36.44
ADB	31	21	52	8,641.91	110.33	8,752.24	28.52
WB	22	7	29	6,405.30	29.80	6,435.10	20.97
AIIB	2	-	2	957.60	-	957.60	3.12
Korea ¹⁰	7	14	21	731.77	78.13	809.90	2.64
China	3	2	5	493.08	127.66	620.74	2.02
USA	-	36	36	-	555.78	555.78	1.81
France	4	3	7	451.09	1.71	452.80	1.48
UN System	5	103	108	151.82	210.61	362.43	1.18
EU	-	6	6	-	233.71	233.71	0.76
Australia	-	18	18	-	176.77	176.77	0.58
Italy	1	2	3	31.21	6.24	37.45	0.12
Germany	-	3	3	-	31.71	31.71	0.10
OFID	1	-	1	30.00	-	30.00	0.10
Netherlands	-	6	6	-	21.36	21.36	0.07
Canada	-	3	3	-	14.52	14.52	0.05
Spain	-	6	6	-	10.55	10.55	0.03
New Zealand	-	4	4	-	4.25	4.25	0.01
Switzerland ¹¹	-	1	1	-	-	-	-
UK ¹²	-	1	1	-	-	-	-
Grand Total	106	251	357	29,003.92	1,687.80	30,691.72	100.00

As for Sectoral Distribution, Table 2 shows that for the 59 new ODA loans and grants in 2020, the governance and institutions development (GID) sector recorded the highest share amounting to US\$5.04

billion (45%), followed by the social reform and community development (SRCD) sector (31%). The infrastructure development sector came in third (16%).

Table 2. Distribution Per Sector of New ODA Loans and Grants in 2020

Sector	Loans	Loan Net Commitment (in US\$ Million)	Grant Count	Grant Amount (in US\$ Million)	Total Count	Total ODA (in US\$ Million)	Percent Share on Amount
GID	13	4,931.56	4	105.96	17	5,037.52	45.12
SRCD	11	3,403.12	3	22.63	14	3,425.75	30.69
INFRA ¹³	7	1,830.68	1	-	8	1,830.68	16.40
AARNR ¹⁴	2	770.00	17	11.57	19	781.57	7.00
ITT ¹⁵	1	88.28	-	-	1	88.28	0.79
Grand Total	34	11,023.64	25	140.16	59	11,163.80	100.00

As for ODA Distribution by Implementing/ Executing Agency (IA/EA), the DOF, as the borrower or as signatory on behalf of the GPH, accounted for the largest share (30%) of the active ODA portfolio in 2020. It consisted of 26 loans (4 project loans and 22 policy-based program loans) amounting to US\$9.21 billion, and 3 grants (2 technical assistance and 1 debt swap facility) amounting to US\$25.08 million. Of the 26 loans, there were 17 loans that were used for

COVID-19 response. This is followed by the Department of Transportation (DOTr) with 28% (US\$8.59 billion for 21 loans and 4 grants), and the Department of Public Works and Highways (DPWH) with 16% (US\$4.87 billion for 23 loans and 9 grants).

In total, ODA received by these top three agencies constitute 74% (US\$22.69 billion) of the entire ODA portfolio as shown in Table 3.

Table 3. ODA Distribution by Implementing/ Executing Agency

IA/ EA	Loans	Grants	Total Count	Loan Net Commitment (in US\$ Million)	Grant Amount (in US\$ Million)	Total ODA (in US\$ Million)	Percent Share on Total ODA
DOF	26	3	29	9,209.68	25.08	9,234.76	30.09
DOTr	21	4	25	8,577.51	7.50	8,585.01	27.97
DPWH	23	9	32	4,700.87	167.54	4,868.41	15.86
DSWD	8	7	15	2,739.00	37.87	2,776.87	9.05
DepEd	2	11	13	600.00	136.96	736.96	2.40
DA	4	28	32	612.70	49.07	661.77	2.16
DAR	4	1	5	484.37	2.65	487.02	1.59
DOH	2	20	22	225.00	252.40	477.40	1.56
DOLE	1	2	3	400.00	16.47	416.47	1.36
MWSS*	3	-	3	404.57	-	404.57	1.32
DP - Implemented ¹⁶	-	59	59	-	389.41	389.41	1.27
NIA*	4	-	4	348.05	-	348.05	1.13
LANDBANK*	2	4	6	322.17	18.57	340.74	1.11
OTHER IAs ¹⁷	-	50	50	-	267.07	267.07	0.87
DENR	2	15	17	145.52	79.16	224.68	0.73
Multi-agency	-	14	14	-	135.63	135.63	0.44
BOC*	1	-	1	88.28	-	88.28	0.29
LGU- Implemented ¹⁸	-	13	13	-	78.60	78.60	0.25
DTI	1	4	5	62.90	7.50	70.40	0.23
LWUA*	1	2	3	60.00	3.00	63.00	0.21
PCC*	1	-	1	23.30	-	23.30	0.07
DOE	-	2	2	-	11.15	11.15	0.03
DILG	-	3	3	-	2.17	2.17	0.01
Grand Total	106	251	357	29,003.92	1,687.80	30,691.72	100.00

* Metropolitan Waterworks and Sewerage System (MWSS), National Irrigation Authority (NIA), Landbank of the Philippines (LANDBANK), Bureau of Customs (BOC), Local Water Utilities Administration (LWUA), Philippine Competition Commission (PCC).

In sum, the total ODA portfolio as of December 2020 increased by US\$9.76 billion (46.63%), from US\$20.93 billion (for 81 loans and 268 grants) in 2019 to US\$30.69 billion (for 106 loans and 251 grants) in

2020. Proceeds from ODA in the portfolio supported 93 loan-assisted programs and projects and 251 grant-assisted projects, as shown in Table 4.

Table 4. Comparison of CY 2019 and CY 2020 ODA Portfolio

ODA	CY 2019			CY 2020		
	Loan/ Grant Count	Commitments (in US\$ Million)	Programs/ Projects Supported by ODA	Loan/ Grant Count	Commitments (in US\$ Million)	Programs/ Projects Supported by ODA
Loans	81	19,289.92	73	106	29,003.92	93
Programs	14	5,000.00	14	30	11,813.15	26
Projects	67	14,289.92	59	76	17,190.77	67
Grants	268	1,641.18	268	251	1,687.80	251
Projects	268	1,641.18	268	251	1,687.80	251
Total	349	20,931.10	341	357	30,691.72	344
Programs	14	5,000.00	14	30	11,813.15	26
Projects	335	15,931.10	327	327	18,878.57	318

Furthermore, the total cost of the 67 loan-assisted projects, as approved by the Investment Co-ordination Committee (ICC), amounted to Php2.13 trillion, of which Php477.10 billion (22.38%) was fund-

ed using government appropriations. The percent share of each fund category to the total cost of the entire portfolio is shown in Table 5.

Table 5. Share of Various Fund Categories to the Project Loans Portfolio

Fund Category	Amount (in Php Million)	Percent Share to Total Portfolio
Loan Proceeds	1,607,024.25	75.37
GPH Counterpart	477,096.78	22.38
Private Sector Counterpart	39,565.31	1.86
Local Government Unit/ Beneficiary Counterpart	7,420.08	0.35
Grant Proceeds	989.48	0.05
Total Project Cost	2,132,095.90	100.00

THE BIG PICTURE

Overall, 72% of the GPH's ODA portfolio was implemented on schedule as of December 2020 while 17% was behind schedule. The share of projects that was behind schedule consisted of 28 loan-assisted projects with reported implementation issues, and 25 grant-assisted projects. These implementation issues include the imposition of community quarantines to prevent the spread of COVID-19 transmission; site condition/availability like issues on right-of-way, land acquisitions and peace and order; delays in the procurement of materials and services; government/

funding institution approvals; budget and fund flow; design, scope and technical specifications; performance of contractors; capacity of project management offices and other implementing partners; institutional support; inputs and costs, and those related to legal matters or force majeure, e.g. major typhoons, flooding, or earthquakes.

According to the Department of Finance (DOF), despite the pandemic-induced annual GDP contraction of 9.5%, thus reaching a 54.5% debt-to-GDP ratio at the end of 2020, this debt level is still manageable as it is far lower than the most recent peak of 71.6%

in 2004 during the administration of President Gloria M. Arroyo. The Philippines entered 2020 with a historic low debt-to-GDP ratio of 39.6%, which means that we could better absorb additional borrowings. Hence, the 15-percentage point increase in our debt-to-GDP ratio in 2020 is still within the prescribed bounds of fiscal viability and the experience of our neighbors and rating peers globally.

Furthermore, more of our fiscal resources are being directed towards productive spending rather than debt servicing. The ratio of our interest payment to expenditure dropped from 13.9% in 2015 to only 9% in 2020, which indicates that our additional borrowing is beneficial to our economic development rather than a burden to growth.

The DOF confidently stated that although we have acquired additional debt to meet the health emergency, public borrowing remains well within sustainable levels. The GPH debt-to-GDP ratio is projected to slightly increase to 60% in 2022 from the programmed 59% ratio for 2021. Our debt ratio will start its downward trend once the Philippines achieves herd immunity through the ongoing national vaccination program and the economic recovery starts to bring us closer to pre-pandemic levels of growth.

MOVING FORWARD

The Government of the Philippines has been a recipient of ODA for both loans and grants since 1957. Since ODA constitutes public resources for public use, our government's accountability encompasses planning, programming, and implementation, i.e. spending things right and spending on the right things, transparency and sustainability. This is covered by our stakeholders namely the DOF, NEDA, Commission on Audit and the Bangko Sentral ng Pilipinas.

The COVID-19 pandemic affected the implementation of 59 ongoing ODA programs and projects due to the imposition of community quarantines in the entire country. Out of the 97 COVID-19 related issues which affected project implementation, 40 were already resolved. These issues include securing visas for foreign nationals engaged with the project; deployment of foreign/local staff due to travel restrictions; delays in materials/service delivery, deployment in manpower, and additional cost related to health and safety measures; procurement delays; securing permits/clearance/approvals of government/development partners; budget cuts/realignment of funds; delays in contract implementation and suspension of project activities due to the enhanced community quarantine.

Considering the government's recent decision to ease restrictions, triggered by the consistent decline in the number of COVID-19 patients, we expect that such projects would soon be completed. These updates would augur well for both the country's economic recoup, especially in the coming Christmas and New Year celebrations, and the people's well-being, who have been stricken with personal and fi-

ancial challenges during the prolonged lockdown. Indeed, things are looking better and we hope to finally leave this dark period behind.

Footnotes:

- 1 Republic Act No. 8182, otherwise known as the "Official Development Act (ODA) of 1996", is a loan or grant administered with the objective of promoting sustainable social and economic development and welfare of the Philippines. It must be contracted with governments of foreign countries with whom the Philippines has diplomatic, trade relations or bilateral agreements, or which are members of the United Nations, their agencies, and international or multilateral lending institutions.
- 2 NEDA ODA Portfolio Review Report for CY 2020
- 3 Data on Official Development Assistance (ODA) to the Philippines (2001-2021) by the Department of Finance – International Finance Group (DOF-IFG) signed by Undersecretary Mark Dennis Y.C. Joven dated 7 October 2021.
- 4 NEDA ODA Portfolio Review Report for CY 2020
- 5 UN System is composed of Food and Agriculture Organization (FAO), International Fund for Agriculture Development (IFAD), IOM, UN HABITAT, UNDP, UNESCO, UNFPA, UNICEF, UNIDO, UNOPS, WFP, and World Health Organization (WHO). Loans under the UN System refer to IFAD Loans.
- 6 The components under the SRCD are education, technical and vocational training, arts, culture, maternal and child health services, hospital services, nutrition and population, social welfare and development, multi-purpose and school buildings, potable water supply, and water, sanitation and hygiene.
- 7 The key activities under the GID are tax reforms, human resource development and management, judicial reforms and local governance.
- 8 The Organization for Economic Co-operation and Development (OECD) defines grants as "transfers made in cash, goods or services for which no repayment is required".
- 9 Japan is composed of JICA and the Embassy of Japan (i.e. non-project grant aid).
- 10 Korea is composed of KOICA, Korea Rural Economic Institute, and Ministry of Agriculture, Food and Rural Affairs – Education, Promotion and Information Service.
- 11 This excludes the grant amount of the Switzerland-assisted Trade Capacity Building Market Study – Philippines due to unavailability of data.
- 12 This excludes the grant amount of the UK-assisted Global Future Cities due to unavailability of data.
- 13 Components under Infrastructure Development are power, energy, electrification, information communications technology, air, land (roads and bridges), rail and water transportation, flood control and drainage, solid waste management, water supply and sanitation, and other public works (e.g. public markets, bus terminals).
- 14 Agriculture, Agrarian Reform, and Natural Resources include farm-to-market roads and bridges, irrigation systems/facilities, agriculture and enterprise development, agricultural credit, multi-purpose buildings, flood protection, solar dryers, warehouses, potable water supply, watershed conservation, forest management and agro-forestry, agribusiness, and environmental management (e.g. climate change, disaster risk reduction).
- 15 Industry, Trade, and Tourism include trade and investment, environmental technologies in industries, and microfinance and microenterprise development.
- 16 Development Partner - Implemented projects are grants that are administered directly by the DPs including Australia, Canada, EU, International Organization for Migration (IOM), KOICA, Netherlands, UN Habitat, UNDP, United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Population Fund (UNFPA), United Nations Industrial Development Organization (UNIDO), United Nations Office for Project Service (UNOPS), and World Food Programme (WFP).
- 17 Other Implementing Agencies include the following: Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) with 8 projects; NEDA with 7 projects; Climate Change Commission (CCC), Commission on Human Rights (CHR) and Securities and Exchange Commission (SEC) with 3 projects each; Council for the Welfare of Children (CWC), Mindanao Development Agency (MinDA), Philippine Association of Water Districts (PAWD) and Commission on Population and Development (POPCOM) with 2 projects each; and Bureau of Internal Revenue (BIR), Bangko Sentral ng Pilipinas (BSP), COA, Department of Science and Technology (DOST), Department of Tourism (DOT), Early Childhood Care and Development (ECCD) Council, Metropolitan Cebu Water District (MCWD), National Nutrition Council (NNC), National Water Resources Board (NWRB), Philippine Commission on Women (PCW), Partnerships in Environmental Management for the Seas of East Asia (PEMSEA), Philippine National Police (PNP), Public Private Partnership (PPP) Center, Supreme Court (SC), and Technical Education and Skills Development Authority (TESDA) with 1 project each.
- 18 LGU-Implemented projects are grants that are administered by the LGUs in the National Capital Region (NCR), BARMM, Cordillera Administrative Region (CAR), Regions 2, 3, 4A, 4B, 5, 6, 7, 9, 11, 12 and 13.



STSRO 2021 Christmas Message A Meaningful Paskong Pinoy*

Among the many nations that celebrate the birth of Jesus Christ, the Philippines is known to have the longest and most joyous Christmas. “*Paskong Pinoy*” is filled with preparations from the month of September towards the birth of Jesus, the New Year, and for most, until the Feast of the Three Kings. Filipinos love to celebrate and ours is a *fiesta* to the senses – one can eat *puto bumbong* and fruit salad in this tropical country while Christmas carols on Jack Frost, Santa Claus, and chestnuts roasting on an open fire play in the background.

Paskong Pinoy brings out the best in Filipinos and we consider it as more than just a celebration with material gifts and good food. It highlights the importance of giving and sharing. It is a season for travels to our homes and endless reunions with family and friends. Everyone is kind, nurturing, and happier. But with Christmas coming again in the midst of this pandemic, how are we to celebrate the most wonderful season of all?

The COVID-19 pandemic has brought us realizations on the more important matters in life: a healthier mind and body, a complete family, food on the table, and sufficient resources to live our days. We appreciated simplicity and understood the essence of the basics. We were taught to YOLO (“*you only live once*”) and with the lockdowns we were reminded of the freedoms we hold dear. More importantly, we held each other’s hands and kept our faith in Him as we take the road to healing.

As we all rise together to eagerly face another Christmas during a pandemic, we are likewise reminded to be grateful for being given this chance to share precious moments with our loved ones. Each day does not come without its own share of sacrifices under our current circumstances. As they say, every day is a struggle and yet we are blessed for we are still alive.

We are now at a juncture where we are to turn another page in our country’s story. By the next Congress’s opening in July 2022, we shall have a new set of elected leaders with new challenges, new directions to take, and a new chance to steer our future. But before all these, we deserve to celebrate a safe, free, and the most meaningful Christmas, to date.

In the words of a famous Filipino Christmas song, we sing: “*Ngunit kahit na anong mangyari. Ang pag-ibig sana ay maghari. Sapat nang si Hesus ang kasama mo. Tuloy na tuloy pa rin ang Pasko. (Whatever may happen, may love always reign. Having Jesus is enough and Christmas shall remain.)*” May we always be reminded to live the ways of Jesus Christ.

Maligayang Pasko at Manigong Bagong Taon po mula sa STSRO!



STSRO 2021 Christmas Greeting Card:
Left - Cover; Right - Message inside

*Written by **Atty. Harold Ian V. Bartolome**, Director II, Indirect Taxes Branch



CREATE Act's Repealing and Amendatory Clause Series: Rationalizing Fiscal Incentives and the Strategic Investment Priorities Plan

Clinton S. Martinez, Director II, Legal and Tariff Branch
Robynne Ann Albaniel, LSO IV, Legal and Tariff Branch

In the last issue, the CREATE Act's Repealing and Amendatory clauses concerning the transfer of power to review and approve fiscal incentives from the investment promotion agencies (IPA) to the Fiscal Incentives Review Board (FIRB) were discussed.¹

Rationalizing fiscal incentives granted to investors is one of the salient features of Republic Act No. 11534 or the Corporate Recovery and Tax Incentives for Enterprises Act (CREATE). The Act has instituted an incentive system that is based on industry and location tiers in order to reflect the current industrial policy of the country.

Concisely, all businesses seeking tax incentives shall continue to deal with IPAs. Approval of incentives will be done by the IPAs unless the proposed activity exceeds an investment capital threshold of ₱1 billion. Above that value, applications for incentives will be decided on by the FIRB.

Rationalizing Fiscal Incentives

The amended and repealed provisions listed in Section 17(B) and 18(B) contain the different fiscal incentive menus that different IPAs offer their locators. Due to this, CREATE effectively rationalized the multitude of incentive menus from different laws offered by IPAs into a single standard – including income tax holidays (ITH). It also completely transferred to the FIRB the oversight of granting fiscal incentives. The incentives may or may not be granted by the IPAs or the FIRB depending on how the business project or activity benefits the Philippine economy. Also, CREATE added incentives for businesses relocating outside the National Capital Region (additional of 3 years), and in disaster or conflict areas (additional ITH of 2 years).

Moreover, RA 11534 ended the indefinite duration of the special corporate income tax (SCIT) or the tax on gross income earned (GIE) by providing a sunset provision of 14-17 years for exporters.

Section 17(B) of RA 11534 effectively repealed the following provisions on tax incentives that are in-

consistent with CREATE Act:

- 1) Articles 39(A), (B), (C), (D), (H), (I), (J), (L) and (M); 40, 41, 42, 61, 62, 63, 64, 65, 67, 69, and 77 of Executive Order No. 226, series of 1987, entitled "*The Omnibus Investments Code of 1987*", as amended by Republic Act No. 7918, and further amended by Republic Act No. 8756";
- 2) Executive Order No. 85, series of 2019, entitled "*Reducing the Rates of Duty on Capital Equipment, Spare Parts and Accessories Imported by Board of Investments - Registered New and Expanding Enterprises*";
- 3) Presidential Decree No. 66, entitled "*Creating the Export Processing Zone Authority and Revising Republic Act No. 5490*";
- 4) Section 4(e) of Republic Act No. 7903, entitled "*An Act Creating Special Economic Zone and Freeport in the City of Zamboanga and Establishing for this Purpose the Zamboanga City Special Economic Zone Authority, Appropriating Funds Therefor, and for Other Purposes*";
- 5) Section 7 of Republic Act 9400, entitled "*An Act Amending Republic Act No. 7227, as amended, Otherwise Known as the Bases Conversion and Development Act of 1992, and for Other Purposes*";
- 6) Section 4(b) of Republic Act No. 7922, entitled "*An Act Establishing a Special Economic Zone and Freeport in the Municipality of Santa Ana and the Neighboring Islands in the Municipality of Aparri, Province of Cagayan Providing Funds Therefor, and for Other Purposes*";
- 7) Sections 23 and 42 of Republic Act No. 7916, entitled "*An Act Providing for the Legal Framework and Mechanisms for the Creation, Operation, Administration, and Coordination of Special Economic Zones in the Philippines, Creating for the Purpose the Philippine Eco-*

conomic Zone Authority (PEZA), and for Other Purposes” as amended by Republic Act No. 8748”;

- 8) Sections 4(f), 5(a), (b), (d), (e), (f), (g), (h), (j), (l), and (m), and 9 of Republic Act No. 9490, entitled “An Act Establishing the Aurora Special Economic Zone in the Province of Aurora, Creating for the Purpose the Aurora Special Economic Zone Authority, Appropriating Funds Therefor and for Other Purposes”, as amended by RA 10083;
- 9) Sections 5, 9 and 10 of Republic Act No. 9728, entitled “An Act Converting the Bataan Economic Zone Located in the Municipality of Mariveles, Province of Bataan, into the Freeport Area of Bataan (FAB), Creating for this Purpose the Authority of the Freeport Area of Bataan (AFAB), Appropriating Funds Therefor and for Other Purposes”;
- 10) Section 16 of Republic Act No. 7844, entitled “An Act to Develop Exports as a Key Towards the Achievement of the National Goals Towards the Year 2000”;
- 11) Sections 86(a), (c), (d), (e), (f), and 88 of Republic Act No. 9593, entitled “An Act Declaring a National Policy for Tourism as an Engine of Investment, Employment, Growth and National Development, and Strengthening the Department of Tourism and its Attached Agencies to Effectively and Efficiently Implement that Policy, and Appropriating Funds Therefor”; and
- 12) Presidential Decree No. 1955, entitled “Withdrawing, Subject to Certain Conditions, the Duty and Tax Privileges Granted to Private Business Enterprises and/or Persons Engaged in Any Economic Activity and for Other Purposes”.

Likewise, due to the inclusion of tax incentives inconsistent with RA 11534, Section 18(B) amended the provisions of the following laws:

- 1) Articles 69, 77, and 78 of Executive Order No. 226, series of 1987, entitled: *The Omnibus Investments Code of 1987*, as amended;
- 2) Sections 24 and 35 of Republic Act No. 7916, entitled: “*And Act Providing for the Legal Framework and Mechanisms for the Creation, Operation, Administration, and Coordination of Special Economic Zones in the Philippines, Creating for this Purpose, the Philippine Economic Zone Authority (PEZA), and for Other Purposes*”, as amended by Republic Act No. 8748;
- 3) Sections 12(c), 15, 15-A, 15-B, 15-C of Republic Act No. 7227, entitled: “*An Act Accelerating the Conversion of Military Reservations into Other Productive Uses, Creating the Ba-*

ses Conversion and Development Authority for the Purpose, Providing Funds Therefore and for Other Purposes” as amended by Republic Act No. 9400, and further amended by Executive Order No. 619, series of 2007;

- 4) Section 6 of Republic Act 9400, entitled: “*An Act Amending Republic Act No. 7227, as Amended, Otherwise Known as the Bases Conversion and Development Act of 1992, and for Other Purposes*”;
- 5) Section 5(c) of Republic Act No. 9490, entitled: “*An Act Establishing the Aurora Special Economic Zone in the Province of Aurora, Creating for the Purpose the Aurora Special Economic Zone Authority, Appropriating Funds Therfor and for Other Purposes*”, as amended by Republic Act No. 10083, entitled: “*An Act Amending Republic Act No. 9490, Otherwise Known as the ‘Aurora Special Economic Zone Act of 2007’*”;
- 6) Section 4(f) of Republic Act No. 7903, entitled: “*An Act Creating a Special Economic Zone and Free Port in the City of Zamboanga Creating for this Purpose the Zamboanga City Special Economic Zone Authority, Appropriating Funds Therefor, and for Other Purposes*”;
- 7) Section 4(c) of Republic Act No. 7922, entitled: “*An Act Establishing a Special Economic Zone and Free Port in the Municipality of Santa Ana and the Neighboring Islands in the Municipality of Santa Ana and the Neighboring Islands in the Municipality of Aparri, Province of Cagayan, Providing Funds Therefor, and for Other Purposes*”;
- 8) Section 6 of Republic Act No. 9728, entitled: “*An Act Converting the Bataan Economic Zone Located in the Municipality of Mariveles, Province of Bataan, into the Freeport Area of Bataan (FAB), Creating for this Purpose the Authority of the Freeport Area of Bataan (AFAB), Appropriating Funds Therefor and for Other Purposes*”;
- 9) Sections 6(k), 14(e), 39, 76, 85(c) and 86(b) of Republic Act No. 9593, entitled: “*An Act Declaring a National Policy for Tourism as an Engine of Investment, Employment, Growth and National Development, and Strengthening the Department of Tourism and its Attached Agencies to Effectively and Efficiently Implement that Policy, and Appropriating Funds Therefor*”;
- 10) Section 8 of Presidential Decree No. 538, entitled: “*Creating and Establishing the PHIVIDEC Industrial Authority and Making it a Subsidiary Agency of the Philippine Veterans Investment Development Corporation, Defining its Powers, Functions and Responsibilities, and for Other Purposes*”, as amended by Presidential

Decree No. 1491; and

- 11) Section 1(1.1) of Executive Order NO. 97-A, series of 1993, entitled: *“Further Clarifying the Tax and Duty-Free Privilege Within the Subic Special Economic and Free Port Zone”*.

The Strategic Investment Priority Plan

The Strategic Investment Priority Plan (SIPP) replaced the former Investment Priority Plan (IPP) that was prepared by the Board of Investments (BOI). With this reform, the FIRB, BOI, IPAs, and other government agencies administering tax incentives, with the private sector shall formulate the SIPP together. Moreover, the framework shall be valid for three (3) years unlike the IPP that was prepared and reviewed annually. The coverage of the SIPP shall also apply to the Bangsamoro Autonomous Region in Muslim Mindanao.

The SIPP represents the country’s investment plan by listing the priority industries and its investment promotion and facilitation activities. It will also provide the coverage of tiers and provide the conditions for qualifying the project or activity.

Section 17(D) of the CREATE Act repealed provisions of laws that are inconsistent with the provisions pertaining to the SIPP, to wit:

- 1) Articles 7(1), 22, 26, 27, 28, 29, 30, 31 and 32 of EO 226, series of 1987 entitled *“The Omnibus Investments Code of 1987”*, as amended; and
- 2) Sections 1(f), 2, and 3 of Executive Order No. 458, series of 1991 entitled, *“Devolving the Powers and Functions of the Board of Investments Over Investments Within the Autonomous Region in Muslim Mindanao to the Autonomous Regional Government and for Other Purposes”*.

Moreover, Section 18(D) amended provisions of laws on the IPP, including all other laws, decrees, executive orders, rules and regulation, or parts of these:

- 1) Sections 4(d) and 13(i) of Republic Act No. 9728, entitled: *“An Act Converting the Bataan Economic Zone Located in the Municipality of Mariveles, Province of Bataan, into the Freeport Area of Bataan (FAB), Creating for this Purpose the Authority of the Freeport Area of Bataan (AFAB), Appropriating Funds Therefor and for Other Purposes”*, as amended by Republic Act No. 11453;
- 2) Section 12(f) of Republic Act No. 9490, as amended, entitled: *“An Act Establishing the Aurora Special Economic Zone in the Province of Aurora, Creating for the Purpose the*

Aurora Special Economic Zone Authority, Appropriating Funds Therefor and for Other Purposes”;

- 3) Section 6(f) of Republic Act No. 7922, entitled: *“An Act Establishing a Special Economic Zone and Free Port in the Municipality of Santa Ana and the Neighboring Islands in the Municipality of Santa Ana and the Neighboring Islands in the Municipality of Aparri, Province of Cagayan, Providing Funds Therefor, and for Other Purposes”*;
- 4) Section 21 of Republic Act No. 7916, as amended, entitled: *“An Act Providing for the Legal Framework and Mechanisms for the Creation, Operation, Administration, and Coordination of Special Economic Zones in the Philippines, Creating for this Purpose, the Philippine Economic Zone Authority (PEZA), and for Other Purposes”*;
- 5) Section 5 of Executive Order No. 80, series of 1993 entitled: *“Authorizing the Establishment of the Clark Development Corporation as the Implementing Arm of the Bases Conversion and Development Authority for the Clark Special Economic Zone, and Directing All Heads of Departments, Bureaus, Offices, Agencies and Instrumentalities of Government to Support the Program”*;
- 6) Sections 4(b) and 13(b)(7) of Republic Act No. 7227, entitled: *“An Act Accelerating the Conversion of Military Reservations into Other Productive Uses, Creating the Bases Conversion and Development Authority for this Purpose, Providing Funds Therefore and for Other Purposes”*; and
- 7) Section 1(F) of Executive Order No. 458, series of 1991, entitled: *“Devolving the Powers and Functions of the Board of Investments Over Investments Within the Autonomous Region in Muslim Mindanao to Autonomous Regional Government and for Other Purposes”*.

With the CREATE in place, it is hoped that the revamped incentives system of the country will remain attractive to investors, and help the country in recovering from the effects of this pandemic, at the same time ensure that the government and the people will not be on the losing end of this bargain.

Footnote:

- 1 See STSRO Taxbits September-October 2021 Issue article: *“CREATE Act’s Repealing and Amendatory Clause Series: Empowering the FIRB”* at http://legacy.senate.gov.ph/publications/STSRO/60_Tax%20Bits_Final.pdf.



In This Corner:

CMO 25-2021 Implementation of the Automated Routing and Monitoring System (ARMS) for Goods Declarations

Romeo E. Regacho
LSO III, Legal and Tariff Branch

The Bureau of Customs (BOC) has issued Customs Memorandum Order (CMO) No. 25 – 2021, which applies to all goods declarations lodged in the Bureau's E2M system and processed by the Formal Entry Division or equivalent units.

The following are the CAO highlights:

- The Objectives are as follows:
 1. To integrate the automated assignment of goods declaration into the Electronic-to-Mobile (E2M) system. (Sec. 1.1)
 2. To provide clear and defined procedures in the automated random assignment of consumption goods declaration to Customs Operations Officers (COO) III and V. (Sec. 1.2)
 3. To provide a mechanism for brokers and importers to have updates on the status of their respective goods declaration. (Sec. 1.3)
- The ARMS, upon lodgment of goods declaration, shall randomly assign the same to a COO III and COO V at the port of discharge.

In the case of the Port of Manila (POM) and Manila International Container Port (MICP), the ARMS shall randomly route the goods declaration to a COO III and COO V of the assigned Section concerned.

In the case of the Ninoy Aquino International Airport (NAIA), the ARMS shall randomly route the goods declaration to a COO III and COO V of the designated off-terminal customs facility warehouse. (Sec. 3.1)

- Importers may check the status of their goods declaration online using their mobile phones, or personal computers through the Customer Care Portal System (CCPS) with the Help Top-

ic "Goods Declaration Online Filing/Other Inquiries" or any other goods declaration status inquiry system that will be implemented. (Sec. 3.3)

- For goods declarations released under Section 4.4.3 and goods declarations transferred under Section 4.4.4, the Entry Processing Unit (EPU) Customs Officer, upon receipt of the notice from the Formal Entry Division (FED) Chief, shall forward the related tickets to the newly assigned COO III/COO V. (Sec. 4.1.3)
- The COO III shall log in the CCPS to check for any ticket/s assigned to him/her and to retrieve the goods declaration and the supporting documents. The COO III shall notify the importer through the CCPS of any issue relating to said goods declaration that requires further action on the part of the importer. (Sec.4.2.1)
- If the goods declaration is not an SGL shipment, the COO III must tag the goods declaration as "In Progress" in the ARMS then perform the required review and/or examination of the goods declaration, its supporting documents and its shipment, as the case may be. (Sec. 4.2.4)
- If the goods declaration is returned by the COO V to the COO III for further update, the COO III shall retrieve the Single Administrative Document (SAD) for updating, input the findings/remarks in the inspection act and resubmit the goods declaration to the COO V. However, if the COO III has no further input to said goods declaration, the COO III shall tag the goods declaration with the "Stop Progress" status and the goods declaration will automatically be submitted to the COO V. (Sec. 4.2.6)
- The COO V shall log in the CCPS to see which ticket is assigned to him/her. He/she shall also access the E2M and view all the goods decla-

rations assigned to him/her. The COO V only has viewing access to goods declarations that are tagged by the COO III as “In-Progress”. (Sec.4.3.1)

- If the goods declaration is already examined and flagged as “Update SAD”, the COO V may now tag the goods declaration as “In Progress”.

If the COO V does not agree with the findings of the COO III, he/she shall return the goods declaration and the ticket to the COO III for further update. (Sec. 4.3.2)

- The reassignment of a particular goods declaration to another COO III or COO V may be done when the previously assigned is inactive for the day, is given urgent of other task/s by his/ her supervisor or higher officials of the Bureau resulting in the delay in the processing of the assigned goods declaration, or for any oth-

er valid reasons. (Sec. 4.4.4)

- For goods declarations released under Section 4.4.3 and goods declarations transferred under Section 4.4.4, the FED Chief shall inform the EPU through email or any other faster means of communication of the changes in the assignment of COO III or COO V indicating therein the particular goods declaration reference number/s for corresponding reassignment of the tickets/s in the CCPS. (Sec. 4.4.5)
- The ARMS shall initially be implemented in POM and MICP. Once the deployment of the system is already finalized, the Management Information and Systems Technology Group in coordination with Assessment and Operations Coordinating Group, shall announce its rollout to other ports. (Sec. 5)



EPR for EPR *Extended Producer Responsibility for Efficient Plastic Reduction*

Elsie T. Jesalva
SLSO II, Indirect Taxes Branch

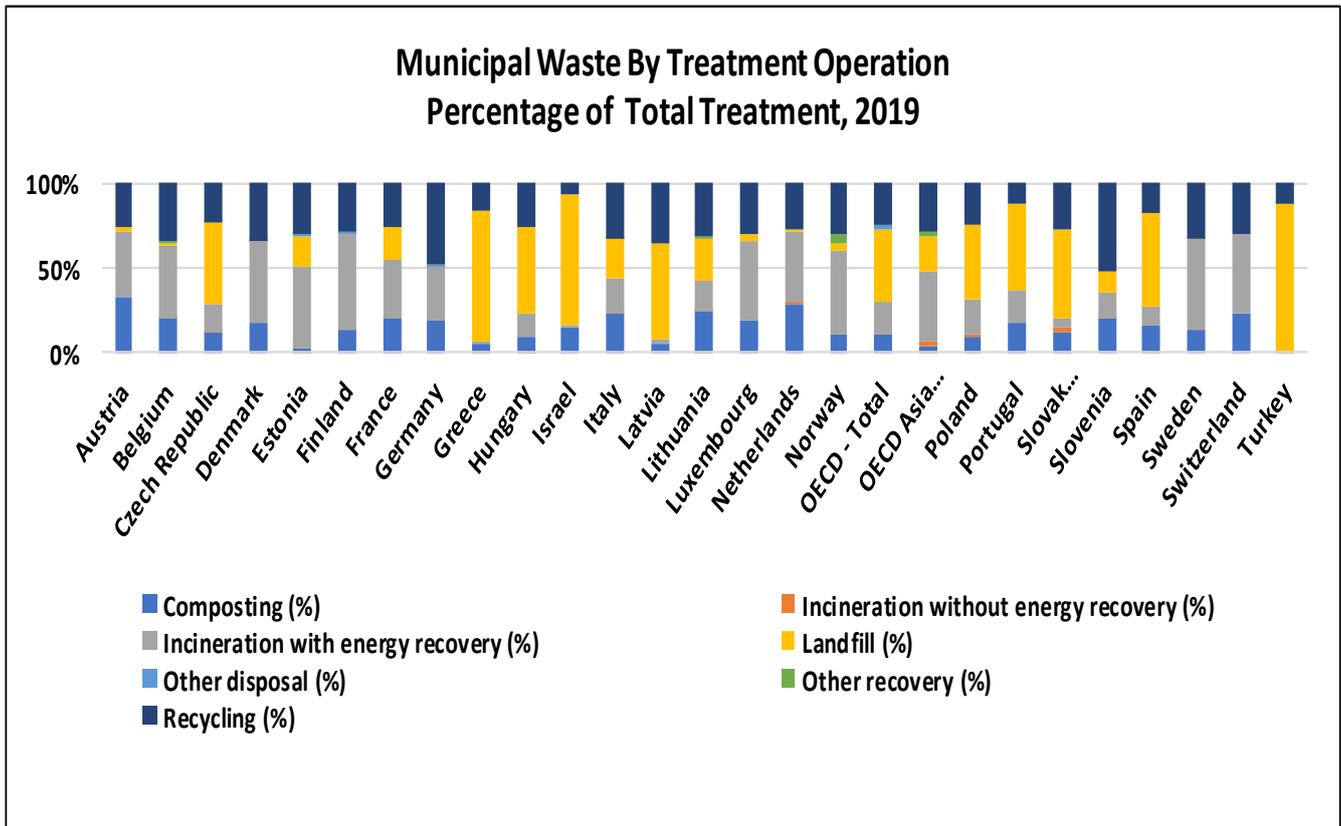
Countries all over the world face major environmental challenges associated with waste. In line with this, policies and mandates are being introduced for packaging and manufacturing companies to be responsible not only for the products they sell, but for what happens to them, and their packaging afterward. A policy approach wherein producers are given a significant responsibility – financial and/or physical – for the treatment or disposal of post-consumer products. Assigning such responsibility on companies can be associated with providing incentives to prevent wastes at the source, promoting product design for the environment and supporting the achievement of public recycling and materials management goals.

Extended Producer Responsibility (EPR) as defined is an environmental protection strategy that makes the manufacturer of the product responsible for the entire life cycle of the product and especially for the take back, recycling and final disposal of the product (Lindhqvist, 2000; Khetriwal et al., 2009).

Briefly, EPR is a general policy approach that aims to shift the cost of managing consumer packag-

ing from local solid waste agencies to those manufacturers who are producing these products. Those promoting EPR assert four major advantages¹ for EPR as a preferred policy approach for end-of-life management for packaging and printed paper:

- EPR causes producers to change packaging design and selection, leading to increased recyclability and/or less packaging use.
- EPR provides additional funds for recycling programs, resulting in higher recycling rates.
- EPR improves recycling program efficiency, leading to less cost, which provides a benefit to society.
- EPR results in a fairer system of waste management in which individual consumers pay the cost of their own consumption, rather than general taxpayers.



Source: OECD Indicators - Circular Economy, OECD Publishing as of 22 May 2021

EPR in Practice

There are currently over 400 EPR schemes used globally. These schemes are used for specific waste product streams: small consumer electronics (also known as waste electrical and electronic equip-

ment or WEEE), 35%; packaging, 17%; vehicles/auto batteries, 11%; and other products, 20%.

Countries that have EPR schemes in place, as shown in the report of Watkins and Gionfra (2019)², are:

Country	EPR Scheme
China	2011, Regulation on the Administration of the Recovery and Disposal of WEEE – producers and importers are responsible for their products; a fund was set up to subsidize formal e-waste collection and treatment, to overcome the role played by the informal sector
South Korea	2003, EPR scheme for e-waste 2014, EPR scheme covered 27 electronic products Each year, the Ministry of Environment announces the rates specific for each product, based on the recycling performance of the producers, and sets weight-based recycling targets for each product
Singapore	Voluntary initiatives for e-waste recycling Responsibilities will be assigned to the key stakeholders involved in the e-waste value chain 2020, mandatory packaging reporting framework – business are required to report the types and amounts of packaging placed on the market in the previous year, together with details of their reuse, reduce and recycle plans
Indonesia	Producers will bear the responsibility for the management of waste from their products; regulation will incentivize the redesign to increase the percentage of recycled content – most affected are producers of processed food and beverages
India	Producer is to bear both the financial and physical responsibility of WEEE management
Chile	2016, 5 priority products: lubricating oil, car batteries, electrical and electronic products, tires, batteries, wrapping and packages

Firms that have voluntarily committed to plastic waste reduction/recycling include:

Firm(s)	Commitments
IKEA	All plastics used in IKEA products are 100% renewable and/or recyclable by August 2020
LEGO	Use only sustainable materials in LEGO products by 2030
Unilever	All plastic packaging is designed to be reusable, recyclable or compostable by 2025
McDonald's	Source 100% of packaging from renewable, recycled or certified sources by 2025
Nestle & Danone	Develop a 100% bio-based plastic bottle

Developing a Customized EPR Scheme for the Philippines

In its October 2020 Policy Brief, World Wide Fund for Nature (WWF) Philippines recommended the following customized EPR scheme for the Philippines:³

1. Mandatory (Year 3 and onwards) EPR scheme within a clear timeframe, while allowing for immediate voluntary compliance (Years 1-3);
2. EPR scheme for consumer packaging materials and non-packaging plastic products like single use plastic (SUP), from households and equivalent places of origin (offices, canteens, restaurants, etc.);
3. One (1) non-profit PRO;
4. Strict monitoring and control systems; and
5. Building high-quality recycling capacity

The **WWF EPR scheme assessment for plastic packaging waste in the Philippines 2020** identified the government sector, private sector, and civil society efforts on its waste management effort. For waste recycling, the government agencies involved are the following:

- National Solid Waste Management Commis-

sion (NSWMC);

- National Ecology Center (NEC);
- Department of Trade and Industry (DTI);
- Department of Agriculture;
- Department of Science and Technology (DOST); and
- Local government units (LGUs) including barangay

Economic incentives are offered to encourage private entities in the movement against waste such as: fiscal incentives (income tax holiday, duty reduction on imported capital equipment, spare parts and accessories, and tax credit on raw materials and supplies; non-fiscal incentives (simplification of customs procedures, unrestricted use of consigned equipment, and employment of foreign nationals); and financial assistance programs (environmental lending program of the Development Bank of the Philippines).

Initiatives for recycling by the private sector are mostly undertaken by large companies such as fast-moving consumer goods (FMCG) companies as part of their corporate social responsibility (CSR). A list of companies and their initiatives is shown below:

<u>Company</u>	<u>Target</u>	<u>Project</u>
Nestle Philippines ⁴	100% of packaging is recyclable or reusable by 2025	Tibayanihan, a project which upcycles used Bear Brand milk foil packs into plastic school chairs and tables for the benefit of elementary schools in the vicinity of Nestle factories and distribution centers Partnerships with Green Antz Builders for the collection of waste sachets that will be used to manufacture construction materials like eco-bricks and eco-paves

<u>Company</u>	<u>Target</u>	<u>Project</u>
Procter & Gamble Philippines	Ambition 2030: 100% of packaging is recyclable or reusable; cut GHG emissions by half; source 5B liters of water from circular sources	Waste to Worth: a partnership with the ADB to pilot waste-to-energy facilities in the Philippines, specifically in the pilot cities of Cabuyao, Laguna, Angeles, Pampanga and Dagupan
Unilever Philippines	By 2023, all plastic packaging will be reusable, recyclable, or compostable, as well as reducing the amount of virgin plastic in their packaging to 50% by 2025	Surf Misis Walastik, a bimonthly collection of Unilever-branded sachets. This recovery system is based in barangays along Pasig River, one of the main tributaries cutting across Metro Manila and a direct waterway leading to Manila Bay. These sachets are then converted into school chairs or refuse-derived fuel
The Coca-Cola Company Philippines	Aims to transform used bottles into new and useful beverage bottles	PlantBottle packaging technology — producing a fully recyclable PET plastic bottle made partially from plants. Invested Php1B in a state-of-the-art recycling facility
San Miguel Packaging Specialists	303% substitution of recycled PET flake in its manufacturing new bottles	Utilize certified biodegradable plastic packaging for food and non-food products
Pepsi Co.	By 2025, all plastic packaging should be 100% reusable, recyclable or compostable. In the same year, new plastic packaging will have at least 25% recycled plastic content	Design 100% of their packaging to be recyclable, compostable or biodegradable
L 'Oreal	Elimination of all disruptive substances and materials to hasten plastic recycling, 30% post-consumer recycled content across all plastic packaging used	100% rPET and rPE packaging for some products

According to the abovementioned report, the **Philippine Alliance for Recycling and Materials Sustainability (PARMS)** was constituted by several private companies to “develop and implement holistic and comprehensive programs to increase resource recovery and reduce landfill dependence towards zero waste.” Solid waste management in LGUs (with a pilot project in Paranaque), the *Mall Recovery Program for Residual Plastic Waste (under the 2019 USAID grant)* and the *Zero Waste to Nature: Ambition 2030* campaign are but some of the initiatives of PARMS.

Bills Mandating Producer Responsibility on Plastic Wastes

Several items of legislation have been filed mandating EPR, including House Bill No. 6279 by Congressman Rufus Rodriguez (Cagayan de Oro, 2nd District), which was substituted by House Bill No. 9147. Senators have also addressed EPR in bills they have sponsored.

- On 28 July 2021, the House of Representatives

passed on third and final reading **House Bill No. 9147**, seeking to phase out different single-use plastic products within one to four years depending on their classification. Under the bill, the producers and importers of single-use plastics are required to adopt EPR programs within two years from its enactment. It was transmitted to the Senate on 29 July 2021.

- **House Bill No. 6279**, filed by Representative Rufus B. Rodriguez, proposes the establishment of a system in which private companies using plastic will be responsible for collecting plastic waste in volumes equivalent to what they generate from the sale of their products. Collections will be done in phases, and in ten years, every company will be required to collect the equivalent amount of plastic it produces and sells in the market.
- **Senate Bill No. 1331** seeks to amend Republic Act No. 9003 or the "Ecological Solid Waste Management Act of 2002". The bill proposes to institutionalize the practice of EPR in waste

management among producers, distributors, and retailers.

- **Senate Bill No. 2425**, which mandates the establishment of an extended producer responsibility (EPR) programs for plastic packaging waste, provides for incentives to obliged companies doing EPR. The incentives include tax and duty exemption on imported capital equipment under EPR as well as income tax deductibility of EPR expenses. The latter incentive is hinged on the achievement of the targeted volume of plastic packaging waste for recovery, for recycling and for reuse.

Observations

Over the years, many people expressed their resentment over the world's use and reliance on plastic. On the part of the Philippine government, legislators seek to amend RA 9003 or the "Ecological Solid Waste Management Act of 2002", a law providing a systematic, comprehensive and ecological solid waste management program that promotes the protection of public health and the environment through the utilization of environmentally-sound resources conservation and waste minimization methods.

In addressing the country's plastic problem, legislators propose to implement EPR gradually to avoid overwhelming our waste management systems and to give time to assess what are the needed changes. EPR practices and activities that the legislators propose include re-designing the packaging of plastic containers to improve their recyclability or reusability; adoption of alternative delivery systems to allow consumers to buy products using refillable containers; and initiating campaigns to encourage consumers to avoid single-use plastics and to voluntarily bring these plastic products to identified collection facilities.

The scheme aims to increase collection and recycling rates in the country. The increased availability of material collected should encourage recyclers to use the plastic to make new packaging materials or manufacture other products. For example, plastic waste is now used to make school chairs, eco-bricks, and even roads. It may also be used as an alternative fuel to coal.

While it is noticeable that the shift towards sustainability is now gaining momentum, the country's capacity to recycle should also be upgraded. A plastic ban appears to be a temporary solution in solving the plastics problem. Simply banning single-use plastics without meaningful, significant, and complementary action from all stakeholders will not solve our current woes. An in-depth study and thorough discussion regarding systematic solution is necessary in approaching this multi-dimensional problem.

We should employ a holistic approach in tackling this issue, taking into consideration both the economic and environmental aspects. All stakeholders — big corporations, small businesses, government, and

consumers — should be involved and must take action. Sound public policies anchored with environmental stewardship, both by the industry sector and the citizen's behavior with regard to sustainability, will effectively address plastic waste and other types of pollution.

Environmental protection is everyone's responsibility. Everyone should do his/ her share in ensuring that future generations still have a viable place to live in.

Footnotes:

- 1 Marc J. Rogoff PhD, 3 - Collection Approaches, Editor(s): Marc J. Rogoff, Solid Waste Recycling and Processing (Second Edition), William Andrew Publishing, 2014, Pages 19-42, ISBN 9781455731923.
- 2 Watkins, E and Gionfra, S. (2019). How to implement extended producer responsibility (EPR): A briefing for governments and businesses. WWF.
- 3 No plastics in Nature Initiative (NPIN) (2020), Developing a customized EPR scheme for the Philippines, World Wide Fund (WWF) Philippines.
- 4 According to Mr. Peter Wallace, in his article "EPR: To reduce plastic waste", Nestle Philippines has achieved plastic neutrality since August 2020. It has so far collected more than 27,000 metric tons of plastic waste. It partnered with two (2) domestic non-government organizations (NGOs) namely, the Plastic Credit Exchange and Pure Ocean, to collect plastic waste, and two (2) cement companies, Republic Cement and CEMEX Holdings Philippines, to manufacture cement. <https://opinion.inquirer.net/144470/epr-to-reduce-plastic-waste#ixzz7DVvpl6s1>

References:

- Compare your country, Environment at a Glance - Circular economy, (OECD), <https://www1.compareyourcountry.org/environment-circular-economy/en/4/all/default/all/OECD>, Accessed on 28 November 2021.
- Environment at a Glance 2020: OECD Indicators - Circular Economy – Municipal Waste By Treatment Operation". OECD Publishing. 22 May 2021. Retrieved 28 November 2021.
- European Environmental Bureau (Eunomia), Issue 2: Recycling – who really leads the world? Identifying the world's best municipal waste recyclers, <file:///C:/Users/User/Downloads/Report-on-global-recycling-rates.pdf>, Accessed on 28 November 2021
- No plastics in Nature Initiative (NPIN) (2020), Developing a customized EPR scheme for the Philippines, World Wide Fund (WWF) Philippines. https://wwf.org.ph/wp-content/uploads/2020/10/WWF_A4_Factsheet_PHILIPPINES.pdf, Accessed on 27 November 2021.
- OECD, Better Policies for Better Lives, Environmental Policy Tools and Evaluation. Extended producer responsibility, <https://www.oecd.org/env/tools-evaluation/extendedproducerresponsibility.html>, Accessed on 29 November 2021.
- Rogoff, Marc J. PhD, 3 - Collection Approaches, Editor(s): Marc J. Rogoff, Solid Waste Recycling and Processing (Second Edition), William Andrew Publishing, 2014, Pages 19-42, ISBN 9781455731923, <https://doi.org/10.1016/B978-1-4557-3192-3.00003-8>, https://www.files.ethz.ch/isn/142007/rio_issue_brief_vol3_EPR_mar2012.pdf
- Terrazola, V. E., Bill mandating producer responsibility on plastic wastes reaches Senate plenary, Published September 30, 2021. <https://mb.com.ph/2021/09/30/bill-mandating-producer-responsibility-on-plastic-wastes-reaches-senate-plenary/>, Accessed on 29 November 2021.
- Wallace, P., EPR: To reduce plastic waste, Philippine Daily Inquirer, Published on September 23, 2021. <https://opinion.inquirer.net/144470/epr-to-reduce-plastic-waste>. Access on 28 November 2021.
- Watkins, E and Gionfra, S. (2019). How to implement extended producer responsibility (EPR): A briefing for governments and businesses. WWF.



REPUBLIC OF THE PHILIPPINES
Philippine Economic Zone Authority
ISO 9001:2015

Philippine Economic Zone Authority

Angelique M. Patag
LSO V, Tax Policy and Administration Branch

Image by PEZA (www.peza.gov.ph)

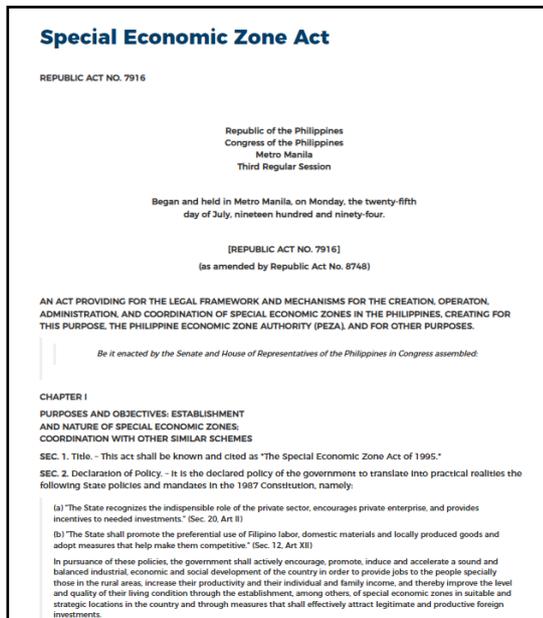
Republic Act No. 7916 (as amended by Republic Act No. 8748), otherwise known as “The Special Economic Zone Act of 1995”, was enacted into law on February 21, 1995. The law created the Philippine Economic Zone Authority (PEZA) and provided for the legal framework and mechanism for the creation, operation, administration and coordination of special economic zones in the Philippines.

conomic zones across industries, comprising 295 Information Technology Parks/Centers, 76 Manufacturing Economic Zones, 22 Agro-Industrial Economic Zones, 17 Tourism Export Enterprises and 3 Medical Tourism Parks/Centers.

Staying true to its mandate, for the period of January to August 2021, PEZA reported an 11.12% increase in its actual employment and a 17.35% increase in terms of export income, despite limitations brought about by the pandemic. Indeed, PEZA helps the economy afloat and likewise stimulates growth in the country.

The enactment on March 26, 2021 of Republic Act No. 11534 the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act has offered reprieve for the business sector including IPA-registered business enterprises that were affected by the COVID-19 pandemic. The law, considered as a sound reform to counter the effects of the health crisis and boost the flow of investments in the country, has effectively repealed the incentive provisions of the charters of all Investment Promotion Agencies (IPAs) including PEZA. As provided, IPAs have maintained their functions based on the laws governing them, except to the extent as modified by the CREATE law. Aside from lowering the Corporate Income Tax rate, the VAT rates of certain transactions and introducing various amendments to the Tax Code, it has rationalized and modernized the grant of tax incentives for registered business enterprises.

Upon its full implementation, all IPAs and other incentives-administering entities shall cease to grant incentives to registered activities based on their respective charters and shall commence compliance to the provisions of the new Title XIII of the NIRC. Additionally, it has attributed more powers to the President and the Fiscal Incentives Review Board (FIRB) to facilitate the grant of incentives. Further, the CREATE law is deemed to uphold a harmonized set of tax incentives that is performance-based, targeted, transparent and time-bound.



PEZA is a government agency attached to the Department of Trade and Industry. It is tasked to increase economic zones as a policy tool and as a development strategy. Enhancing economic opportunities by creating jobs, generating investments and promoting exports are among its functions. Through RA No. 7916, PEZA oversees and administers the grant of fiscal and non-fiscal incentives to enterprises engaged in export-oriented manufacturing and service facilities inside the various economic zones all over the country. It acts as a one-stop shop to facilitate the registration of new as well as existing businesses in PEZA ecozones.

Moreover, PEZA is also known for its best practices among economic zones worldwide and happens to be the biggest investment promotion agency and the largest contributor to our nation's local and national advancement. Its growth over the years has been remarkable. To date, PEZA has a total of 413 eco-

Reference:

<http://www.peza.gov.ph>



CTA Tax Case Digest

Johann Francis A. Guevarra
LSO III, Legal and Tariff Branch

PMFTC, INC. vs. COMMISSIONER OF INTERNAL REVENUE

Court of Tax Appeals (CTA) Case No. 10110
Promulgated: November 25, 2021

Facts:

On December 20, 2012, President Benigno S. Aquino III signed **Republic Act (RA) No. 10351**, otherwise known as the “*Sin Tax Reform Law*”. RA No. 10351 restructured the excise tax on alcohol and tobacco products by amending pertinent provisions of **RA No. 8424**, “*Tax Reform Act of 1997*” or the **National Internal Revenue Code (NIRC) of 1997**. Section 5 of RA No. 10351, which amended Section 145 (C) of the NIRC of 1997, increased the excise tax rates of cigars and cigarettes and allowed cigarettes packed by machine to be packed in other packaging combinations of not more than 20.

On December 21, 2012, the Secretary of Finance (SOF), upon recommendation of respondent, issued Revenue Regulations (RR) No. 17-2012. Section 11 thereof imposes an excise tax on individual cigarette pouches of 5's and 10's even if they are bundled or packed in packaging combinations not exceeding 20 cigarettes.

On January 16, 2013, prior to the payment of excise tax on its cigarette packs of 10's, petitioner wrote the BIR stating that the payment was being made under protest and without prejudice to its right to question the issuances through remedies available under the law.

On February 26, 2013, the Philippine Tobacco Institute (PTI), with PMFTC, Inc. as member, filed a *Petition for Declaratory Relief* with an *Application for Writ of Preliminary Injunction* with the Regional Trial Court (RTC). PTI sought to have RR No. 17-2012 and RMC No. 90-2012 declared null and void for allegedly violating the Constitution and imposing tax rates not authorized by RA No. 10351. PTI stated that the excise tax rate of either P12 or P25 under RA No. 10351 should be imposed only on cigarettes packed by machine in packs of 20's or packaging combinations of 20's and should not be imposed on cigarette pouches of 5's and 10's.

The RTC granted the *Petition for Declaratory Relief*, affirming that the tax rates imposed by RA No. 10351 should be imposed on the whole packaging combinations of 20's, regardless of whether they are packed by pouches of 2x10's or 4x5's, etc.

The Department of Finance Secretary Cesar V. Purisima and then Commissioner of Internal Revenue Kim S. Jacinto Henares, through the Office of the Solicitor General, filed a *Petition for Review on Certiorari* before the Supreme Court, assailing the RTC Decision. However, the Supreme Court denied their petition and affirmed the RTC decision.

Petitioner's main arguments:

- 1) The excise tax collected pursuant to BIR Issuances was excessive and violative of the provisions of the Tax Code;
- 2) Court has jurisdiction over the instant case; and
- 3) The excess excise tax payments in the amount of P2,747,529,700.00 made pursuant to the BIR Issuances was fully substantiated.

Respondent's counter-arguments:

- 1) Both the administrative and judicial claims for refund were filed out of time; and
- 2) Petitioner is not entitled to the claim for refund or issuance of tax credit for allegedly erroneously/excessively paid excise taxes.

Issue:

- 1) Whether or not Petitioner is entitled to a refund or issuance of a tax credit certificate in the total amount of Php2,747,529,700.00, representing overpaid excise tax on cigarette packs of 10's withdrawn from its production plants from 1 January 2014 until 31 December 2015.

Ruling:

- 1) **Petitioner's administrative and judicial claims were filed out of time.**

The related provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law.

Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional. The Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time.

In this case, the payment of the subject excise taxes was made from February 20, 2014 until December 17, 2015. Hence, the two-year prescriptive period under the aforementioned Sections 204(C) and 229 of the *National Internal Revenue Code of 1997, As Amended*, at the earliest, should end on February 20, 2016, and at the latest, should end on December 17, 2017. Considering that petitioner's administrative claim and the present judicial claim were filed only on June 13, 2019, and on July 11, 2019, respectively, Petitioner's refund claim are clearly filed out of time. Thus, the SC cannot take cognizance of the same.

2) Under the present state of the law, the two (2)-year prescriptive period runs from the date of payment of the tax, regardless of any supervening cause that may arise thereafter.

In the case of *Commissioner of Internal Revenue v. Manila Electric Co.* (Meralco), the SC squarely addressed the issue of which prescriptive period shall apply to a claim for tax refund of erroneously paid/remitted tax on interest income, whether the two (2)-year prescriptive period under Section 229 of the Tax Reform Act of 1997 or the six (6)-year prescriptive period for actions based on *solutio indebiti* under Article 1145 of the Civil Code. The Court therein applied the two (2)-year prescriptive period under the Tax Reform Act of 1997 which is mandatory regardless of any supervening cause that may arise after payment and categorically declared that *solutio*

indebiti was inapplicable.

In *Metropolitan Bank and Trust Company v. Commissioner of Internal Revenue* (Metrobank), the SC cited the Meralco case again in rejecting the application to tax refund cases on the principle of *solutio indebiti*, as well as the six (6)-year prescriptive period for claims based on quasi-contract. It reiterated that both administrative and judicial claims for tax refund or credit should be filed within the two (2)-year prescriptive period fixed under Section 229 of the Tax Reform Act of 1997.

Based on jurisprudence, it is clear that the administrative and judicial claims for refund or credit of internal revenue taxes must be filed within the two (2)-year prescriptive period, which commences from the payment of the tax. Such period is mandatory and jurisdictional regardless of any supervening cause that may arise after payment. The principle of *solutio indebiti* does not apply, since the NIRC, a special law, explicitly provides for a mandatory period for claiming a refund for taxes erroneously paid. The six (6)-year prescriptive period for claims based on quasi-contract is rejected.

A declaration by the Supreme Court that an RR is invalid and of no effect gives the taxpayer the right to request the return of illegally collected taxes under Section 229, provided it does so within the prescriptive period as prescribed therein. Equity is available only in the absence of law and not as its replacement.

Petition for Review was dismissed for lack of jurisdiction.



Angel in our Midst

Norberto M. Villanueva
Director III, Tax Policy and Administration Branch

Whenever Angel walks into a room, nobody seems to notice or even care. It's not because she isn't as fabulous as Julia Roberts. It's not even because everybody hates and ignores her for something. And definitely, it's not because she just doesn't deserve any attention at all.

Angelique M. Patag seldom creates grand impressions because she does what she does best – being herself. Since her inception to the Senate Tax Study and Research Office in 2009, she has consistently maintained an impression of being a silent but diligent worker. She hardly makes noise but when she does, everybody listens. It is because she lets her

admirable work ethics along with her worthy accomplishments do the talking.

As a Legislative Staff Officer V under the Tax Policy and Administration Branch of the STSRO, Angel has substantially contributed to the immediate and efficient dispatch of assigned tasks not only for her branch of assignment but for the entire office. With an overall positive work attitude, she has sustained her enthusiasm and dedication in learning new horizons relative to the sound accomplishment of tasks at hand.

Most notable among her professional traits is

her resourcefulness and initiative. She either finishes her work assignments on time or most often, ahead of deadlines. There are many instances when she was able to provide and accomplish some tasks that were not asked for but have been proven later on to be essential to the entire work requirement. Jell, as she is fondly called is competent, dependable and capable of handling research, reports and other functions in support to the various mandates of the office as technical arm of the Committee on Ways and Means.

Angel's small but meaningful feats didn't go unrecognized. In November this year, she was chosen as the official candidate of the Office of the Secretary for the 2019 Senate Secretariat Exemplary Award search, besting aspirants from various offices under the OSEC department. Her inclusion to the roster of candidates was courtesy of her endorsement by the TPAB-STSR, taking cognizance of her exemplary dispense of tasks as manifested in her "Outstanding"

rating at least for two consecutive evaluation periods.

If good deeds could rub positively into other peoples' senses, then positive work ethics could also do the trick. If that happens, considering the odds and improbabilities, there is indeed an Angel in our midst.



Editors, Contributing Writers, and Circulation Staff

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

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

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

VIVIAN A. CABILING
 Director III, Indirect Taxes Branch

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

NORBERTO M. VILLANUEVA
 Director III, Tax Policy and Administration Branch

Atty. HAROLD IAN V. BARTOLOME
 Director II, Indirect Taxes Branch

CLINTON S. MARTINEZ
 Director II, Legal and Tariff Branch

Atty. RACHEL L. YUAYAN
 Director II, Tax Policy and Administration Branch

ELSIE T. JESALVA
 SLSO II, Indirect Taxes Branch

ROBYNNE ANN A. ALBANIEL
 LSO IV, Legal and Tariff Branch

ANGELIQUE M. PATAG
 LSO V, Tax Policy and Administration Branch

JOHANN FRANCIS A. GUEVARRA
 LSO III, Legal and Tariff Branch

ROMEO E. REGACHO
 LSO III, Legal and Tariff Branch

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

JEFFRY TYRONE A. SANDERS
 LSA III, ODG
(Photographer)

JONATHAN O. COLINAYO
 LSE II, ODG
(Circulation)

ARIEL A. LAMBAN
 LSE I, DTB
(Circulation)

MARILOU T. GENERAO
 LSE I, ODG
(Circulation)

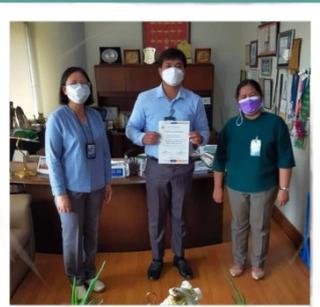
The Articles were principally prepared by the authors, under the supervision of STSR Directors and the overall guidance of the Director-General. The views and opinions expressed are those of STSR and do not necessarily reflect those of the Senate, its leadership, or its individual members. For comments and suggestions, please email us at stsr1989@gmail.com

Tax Bits is an official publication of the Senate Tax Study and Research Office (STSR)

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

Website <http://www.senate.gov.ph>
 Email stsr1989@gmail.com
 Facebook <http://www.facebook.com/stsr.stsr>
 Telefax No. 8552-6850
 Telephone No. 8552-6601 loc. 5506 and 5508

STSR IN-HOUSE WEBINAR ON REVENUE ESTIMATION AND FORECASTING AWARDING CEREMONY





STSR CHRISTMAS CELEBRATION 2021



#PaskongPinoySaSTSR



MALIGAYANG PASKO AT MANIGONG BAGONG TAON

STSR Christmas Decoration Contest



STSR Christmas Decoration Contest

