

Senator Win Gatchalian
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Congressional Oversight: Putting a Premium on Quality Laws

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Legislative oversight functions are essential components of checks and balances in a democracy. Checks and balances is a system of separation of powers among the three branches of government - the legislative, executive, and judicial branches - with each branch having distinct powers and functions in “checking” and “balancing” each other.

The executive branch, headed by the President, is responsible for day-to-day enforcement and administration of laws passed by the legislative branch. Its functions include managing government agencies, directing foreign relations, and enforcing national security policies.

The judiciary is responsible for applying and interpreting laws, resolving conflicts among parties, and ensuring that the government adheres to the rule of law.

The legislative branch has the primary responsibility of creating laws, appropriating funds, and over-

seeing government activities. Its oversight functions include reviewing government programs and agencies, conducting inquiries, and writing reports and making recommendations to improve efficiency, effectiveness, and accountability in government operations, with the end in view of promoting transparency, public participation, and democracy.

The Rising Concerns on Tax Administration

Our most recent Congresses gave birth to numerous laws; the 18th Congress producing 472 laws; the 17th Congress, 539 laws; 16th Congress, 291 laws; 15th Congress, 485 laws; and the 14th Congress, 664 laws. With the purpose of enhancing its capacity in policy formulation, Congress has been enacting new laws that included the creation of oversight committees.

Legislative oversight functions refer to the powers and activities of legislature to monitor and supervise the actions of government agencies. These func-

tions aim to ensure that the government is responsive to the needs and interests of the people and that it is operating within the bounds of laws. Indeed, effective legislative oversight helps to prevent abuse of power, corruption, and mismanagement of funds in government, and likewise promotes integrity in public service.

Several issues concerning our taxation system that require oversight work include:

1. *Tax evasion and tax avoidance.* The Philippines has had high levels of tax evasion,¹ particularly among wealthy individuals and corporations. This deprives the government of much-needed revenue and undermines the fairness of the taxation system;
2. *Inefficient tax collection.*² The Bureau of Internal Revenue (BIR) faces various challenges, such as inadequate resources, outdated technology, and insufficient training for its personnel. Our country's borders are porous as well, making monitoring of illicit trade more difficult for our authorities, which results in low tax collection and difficulties in detecting and addressing tax evasion;
3. *Complex tax system.* The tax system in the Philippines is complicated,³ with multiple tax types, rates, and exemptions that create confusion among taxpayers and make it difficult to enforce tax compliance;
4. *High tax rates.* The Philippines has relatively high tax rates.⁴ This can discourage investment and economic growth, as well as limit the disposable income of many Filipinos;
5. *Corruption in tax administration.* Corruption is a significant challenge in tax administration, with reports of bribery and other irregularities involving BIR officials and employees.

Effective legislative oversight is crucial in addressing these issues and ensuring that the taxation system in the Philippines is fair, efficient, and effective in raising revenue for the government. Addressing these concerns requires legislative action and oversight to reform the tax system and improve tax administration, which in turn can foster economic growth, promote social development, and increase trust in government.

Overall, the checks and balances system helps prevent the concentration of power in any one branch of government, and ensures that the government is accountable to the people.

The Congressional Oversight Committees on Tax Matters

It is settled that the oversight power of Congress is, in general, inherent in legislation. The oversight power towards distinct issues involving taxation is specially mandated by laws, considering the reve-

nue-generating aspect of these measures and their consequent technicalities. Various laws have been enacted to aid Congress in the supervision of implementation of tax laws, with the following oversight committees in Congress given a wide latitude of discretion in collecting revenue data and reports from the government agencies concerned:

Congressional Oversight Committee on the Comprehensive Tax Reform Program (COCCTRP)

Section 290 of Republic Act No. 8424, or the *National Internal Revenue Code (NIRC)*, which was enacted in 1997, provides for a Congressional Oversight Committee that is empowered to require of the BIR the submission of all pertinent information, including but not limited to: industry audits; collection performance data; status report on criminal actions initiated against persons; and submission of taxpayer returns.

The following laws likewise provided the COCCTRP oversight powers to monitor compliance and to review the benefits of pertinent tax laws:

1. *Section 289-A of Republic Act No. 10026 (Granting Tax Exemption to Local Water Districts);*
2. *Sec. 11 of RA 10351 (Sin Tax Reform Law of 2012);*
3. *Sec. 106 of RA 10963 (Tax Reform for Acceleration and Inclusion Law);*
4. *Sec. 26 of RA 11213 (Tax Amnesty Act);*
5. *Secs. 20 and 290 of RA 11534 (Corporate Recovery and Tax Incentives for Enterprises Act); and*
6. *Sec. 10 of RA 11590 (Philippine Offshore Gaming Operations Tax Regime).*

On 19 September 2022, the Senate of the Philippines constituted the COCCTRP and designated Senator Win Gatchalian as Chairperson; and Sen. Sonny Angara, Sen. Pia S. Cayetano, Sen. Mark A. Villar, and Sen. Aquilino "Koko" Pimentel III as members.

Congressional Oversight Committee on the Official Development Assistance (COCODA)

Sections 8, 9 and 10 of Republic Act No. 8182 or the *Official Development Assistance Act of 1996* provide for the creation and composition of an Oversight Committee (Section 8) and respective mandates of the National Economic Development Authority (NEDA), Commission on Audit (COA), and Congress relative to the monitoring, review, audit, and reportorial requirements of all projects financed by Official Development Assistance (ODA).

On 19 September 2022, the Senate of the Philippines constituted the COCODA and designated Senator Win Gatchalian as Chairperson; and Sen. Sonny Angara, Sen. Ramon Bong Revilla, Jr., Sen. Grace Poe, Sen. Imee R. Marcos, Sen. Joseph Victor "JV" Ejercito, Sen. Aquilino "Koko" Pimentel III, and Sen. Risa Hontiveros as members.

Congressional Oversight Committee on the Tax Incentives Management and Transparency Act (COCTIMTA)

Section 9 of R.A. No. 10708 or the Tax Incentives Management and Transparency Act (TIMTA), which was enacted in 2015, created a Congressional Oversight Committee that is mandated to monitor and ensure the proper implementation of the law.

Section 5 of the TIMTA law provides for the task of the Oversight Committee or the COCTIMTA to monitor and receive particular information on aggregate data relative to fiscal incentives as submitted by the Department of Finance (DOF) to the Department of Budget and Management (DBM).

On 19 September 2022, the Senate of the Philippines constituted the COCTIMTA and designated Senator Win Gatchalian as Chairperson; and Sen. Sonny Angara, Sen. Mark A. Villar, Sen. Maria Lourdes Nancy S. Binay, and Sen. Aquilino “Koko” Pimentel III as members.

Congressional Customs and Tariff Oversight Committee (CCTOC) under the Customs Modernization and Tariff Act (2016)

The CCTOC, pursuant to R.A. No. 10863 shall, in aid of legislation, have the authority to:

1. Monitor and ensure the proper implementation of this Act;
2. Review the collection performance of the Bureau of Customs; and
3. Review the implementation of the programs of the Bureau.

The CCTOC shall also have the power to investigate all matters and/or issues arising from or involving the Bureau of Customs (BOC), and the implementation of the CMTA. Concomitant thereto is the power to require the submission of all pertinent data or documents that will assist the Committee in addressing issues such as, but not limited to, industry audits, collection performance data, and status report on administrative, civil and criminal actions initiated against persons.

On 19 September 2022, the Senate of the Philippines constituted the CCTOC and designated Senator Win Gatchalian as Chairperson; and Sen. Sonny Angara, Sen. Mark A. Villar, Sen. Francis “Tol” N. Tolentino, and Sen. Aquilino “Koko” Pimentel III as members.

Joint Congressional Oversight Committee on Illicit Trade on Excisable Products (JCOCITEP)

Section 290-A of the National Internal Revenue Code of 1997, as amended by R.A. No. 11467, provides the following duties and functions of the Joint Congressional Oversight Committee on Illicit Trade on Excisable Products (JCOCITEP):

1. Review and evaluate the programs and performance of the BIR and the BOC in addressing illicit trade on excisable products and recommend necessary remedial legislation;
2. Require concerned government agencies to submit reports and all pertinent data and information which will aid in resolving illicit trade of excisable products;
3. Hold public hearings and summon concerned private individuals, government personnel and officials as resource persons;
4. Deputize the BIR, BOC, Philippine National Police (PNP), National Bureau of Investigation (BIR), and other enforcement agencies of the government as may be necessary in undertaking its duties and functions; and
5. Perform such other duties and functions as may be necessary to perform its mandate.

On 19 September 2022, the Senate of the Philippines constituted the JCOCITEP and designated Senator Win Gatchalian as Chairperson; and Sen. Sonny Angara, Sen. Mark A. Villar, Sen. Francis “Tol” Tolentino, Sen. Ronald “Bato” Dela Rosa, Sen. Pia S. Cayetano, and Sen. Aquilino “Koko” Pimentel III as members.

Of the foregoing Congressional Oversight Committees, it is only the COCODA that has been fully constituted, with the House of Representatives designating Representative Gloria Macapagal-Arroyo as Chairperson; and Rep. Joey Sarte Salceda, Rep. Maria Rachel J. Arenas, Rep. Jose “Joboy” S. Aquino, Rep. Eric Go Yap, Rep. Stella Luz A. Quimbo, Rep. Wilbert T. Lee, and Rep. Gabriel H. Bordado, Jr. as members on 22 March 2023.

References

- 1 As of 31 December 2018, there are 929 pending cases worth Php148.35B in the Department of Justice. (Retrieved from <https://www.bir.gov.ph/index.php/tax-evasion-cases.html> on 02 May 2023)
- 2 According to the BIR, the Government loses around Php500B annually (Retrieved from <https://www.bworldonline.com/top-stories/2023/02/21/505872/government-losing-p500-billion-to-tax-evasion-bir/> on 02 May 2023).
- 3 In 2020, the Philippines scored 72.6 in payment of taxes, below the regional average of 73.6. (<https://www.doingbusiness.org/content/dam/doingBusiness/country/p/philippines/PHL.pdf>)
- 4 Retrieved from <https://www.aseanbriefing.com/news/comparing-tax-rates-across-asean/> on 02 May 2023.



Revisiting the Implementation of the Estate Tax Amnesty Extension: A Necessity?

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Introduction

During the term of President Rodrigo Roa Duterte, tax reform has been one of the centerpieces of his administration's economic reform program. This paved the way for the birth of the Comprehensive Tax Reform Program (CTRP).

The CTRP has seven (7) major components including **Package 1B: Tax Amnesty** which was envisioned to complement the Tax Reform for Acceleration and Inclusion (TRAIN) Act by giving errant taxpayers a "fresh start" and letting them settle their outstanding tax liabilities in a more affordable manner. The tax amnesty was also seen as a revenue-generating measure that will provide the government the additional revenues it urgently needs for its priority infrastructure and social programs.

Package 1B of the CTRP materialized when Republic Act No. 11213 or the "Tax Amnesty Act" was enacted on February 14, 2019. Through this piece of legislation, taxpayers were given a one-time opportunity to settle their tax obligations, including estate tax, through an estate tax amnesty program that will give reasonable tax relief to estates with deficient estate taxes. This was also seen as a tool that the Filipino people can make use of in transforming their idle lands and/or properties into productive assets. During the deliberations of the legislative measures that led to the passage of the law, it was estimated that the estate tax amnesty program would generate PHP 6.28 billion.¹

Estate Tax Amnesty Extension and Issues Surrounding Its Implementation

On March 2020, several months after the Tax Amnesty Act's enactment, the COVID-19 pandemic infected the whole world, disrupting our lives and affecting our ways of doing business with lockdowns and restrictions being enforced all over the country. This gravely affected the estate tax amnesty availment considering the requirements that need to be submitted and the very tedious process that heirs need to undergo. Thus, based on the data provided by the Bureau of Internal Revenue (BIR), as of May 2021 or a month before the deadline of the estate tax

amnesty availment on June 14, 2021, only PHP 2.5 billion was generated from almost 43,700 filers.² This figure did not even reach half of the estimated revenue that was expected to be generated from estate tax amnesty.

With this as a backdrop and the deadline of the estate tax amnesty is nearing its expiration, the Senate was prompted to conduct a hearing on May 4, 2021 on measures that seek to extend the estate tax amnesty period of availment. This allowed all stakeholders, both from the government and the private sectors, to voice out their comments and recommendations whether or not there is a need to extend the estate tax amnesty.

On the issue of whether or not to extend the deadline for the availment of the estate tax amnesty, the government and private sectors all agreed to extend for two (2) years or up to June 14, 2023 the deadline considering the lockdowns and restrictions which hampered the filing and processing of applications. This instantly provided our taxpayers with the needed additional time to process their estate tax amnesty applications.

Another important issue that surfaced during the hearing is the concern raised by the Land Registration Authority (LRA) which voiced out the problems observed by most practitioners. This is on the requirement to produce the judicial or extrajudicial proof of settlement between and among heirs which delays the process of availing the amnesty. Many of the heirs could not settle among themselves because of disagreements, and geographical difficulties, among others which is a big hurdle in availing the amnesty. These taxpayers are willing to pay but because they cannot agree among themselves regarding the partition, they are stalled.

According to Atty. Robert Nomar V. Leyretana, Deputy Commissioner of the LRA, many heirs are willing to avail of the estate tax amnesty and beat the deadline but because of this burdensome requirement, most of them are not able to provide the needed documents. Tax practitioners present in the hearing echoed this and supported the removal of this requirement.

With this valuable information at hand, our Senators deleted the provision requiring proof of judicial and extrajudicial settlement of estates. This became part of Republic Act No. 11569 which was enacted on June 30, 2021. This law extended for two (2) years the period of availment for estate tax amnesty taking into account the two-year period of lockdowns and restrictions due to COVID-19. Thus, taxpayers have up to June 14, 2023, to avail of the estate tax amnesty for deaths occurring on or before December 31, 2017, as provided for under Republic Act No. 11213.

Our lawmakers crafted it in such a way that taxpayers, particularly those with unsettled estates due to non-payment of estate taxes, will be able to avail of the amnesty by removing other requirements that make the entire process complex, burdensome and laborious. However, although the said law already removed the judicial or extrajudicial proof of settlement of estate as requirement to settle the estate tax, there are reports from taxpayers that the BIR still imposes stringent requirements that are beyond the provisions of the law. This only causes confusion and reluctance to file on the part of the taxpayers that delay the processing of their estate tax amnesty application.

To implement the provisions of Republic Act No. 11569, the BIR issued Revenue Regulation (RR) No.17-2021 on August 3, 2021. It stated the following, to wit:

“Proof of settlement of the estate, whether judicial or extra-judicial, need not accompany the ETAR if it is not yet available at the time of its filing, but no electronic Certificate Authorizing Registration (eCAR) shall be issued unless such proof is presented and submitted to the concerned RDO.”

Examining the above provision, it can be surmised that the BIR followed truthfully the intent of the crafters of the law. However, RR No. 17-2021 contained this questionable provision, to wit:

*“After payment, the duly accomplished and sworn ETAR and APF with proof of payment, together with the complete documentary requirements, shall be immediately submitted to the RDO in triplicate copies. **Failure to submit the same until June 14, 2023 is tantamount to non-availment of the Estate Tax Amnesty and any payment made may be applied against the total regular estate tax due inclusive of penalties.**” (emphasis ours)*

Surprising in this abovementioned provision is that complete documentary requirements are needed to be submitted on June 14, 2023 or else the taxpayers will not be able to avail of the amnesty. The so-called complete documentary requirements includes the proof of judicial or extrajudicial settlement. Based on taxpayer information, taxpayers are required to produce the proof of judicial or extrajudicial settlement

even if the law does not specifically require it, hence, this is totally contrary to the intent of the framers of the law.

Call to Action

On June 14, 2023, the deadline for the estate tax amnesty availment will expire. Many of our taxpayers have started the process but are faced with uncertainty as to whether they can truly benefit from this amnesty. The stringent requirements imposed on them truly delay, if not hamper, the entire process of availment.

These problems faced by our taxpayers may primarily be caused by the misinterpretation of the implementing agency through the issuance of RR No. 17-2021 which somehow deviated from the real intent and wisdom behind the passage of the law. Thus, Congress, particularly the Senate, should enter the scene and look into this matter. After all, our very own BIR has a history of issuing revenue regulations that are contrary from what was enacted by Congress.

In fact, “In an obiter dictum, the court said that it was not the first time that national revenue officials had ventured into the area of unauthorized administrative legislation. It enumerated a long list of cases where Revenue Regulations and Revenue Memorandum Orders were also stricken down by the court. The transgressions include expansions of definition, alteration or restriction of the application of a provision, and inclusion of another requirement not contemplated by the legislature. The list goes on.”³

An example would be the “case of CIR vs. Fortune Tobacco, GR Nos. 167274-75, July 21, 2008, the Supreme Court declared as invalid and indefensibly flawed Revenue Regulation No. 17-99 since it effectively tried to amend Section 145 of the Tax Code. The Revenue Regulation provided that the excise tax for cigarettes shall not be lower than the excise tax that was being paid prior to January 1, 2000, whereas the Tax Code specifically provides that the average net retail prices of the listed brands under Annex “D,” should remain as the bases for the application of the increase in excise tax rates effective on 1 January 2000.”⁴

“In another tax case, Philippine Bank of Communications vs. Commissioner of Internal Revenue, GR No. 112024, dated January 28, 1999, the BIR issued Revenue Memorandum Circular No.7-85 which changed the prescriptive period of two years found in the National Internal Revenue Code for excess income tax payments to a glaringly inconsistent period of ten years. In so doing, the BIR did not simply interpret the law; rather it legislated guidelines contrary to the statute passed by Congress.”⁵

These are clear instances where the Supreme Court struck down the regulations issued by the BIR “for being inconsistent with or contrary to the law itself.”⁶ With this, it is really high time that the Senate conduct an inquiry, in aid of legislation, on the imple-

mentation of Republic Act No. 11569. Without a doubt, it is a necessity.

This can be the perfect opportunity to determine how the law was implemented by our revenue authorities and if the law truly benefited our taxpayers. The hearing can also be a venue to assess whether there is still a need to extend, for the second time, the deadline for the availment of the estate tax amnesty. After all, the amnesty is a way of giving a “fresh start” to our taxpayers. However, how can our taxpayers have this needed “fresh start” if “to start” is already an impossibility?

References

1 Sponsorship Speech of Senator Pia S. Cayetano on SB No. 2208, May 18, 2021 Journal of the Senate

- 2 BIR Deputy Commissioner Marissa Cabrerros, TSN May 4, 2021 Public Hearing of the Committee on Ways and Means
- 3 Privilege Speech of Senator Francis Tolentino entitled “Law vs. IRR: The spring cannot rise higher than the source delivered on September 14, 2020. <https://mb.com.ph/2020/09/30/law-vs-irr-the-spring-cannot-rise-higher-than-the-source/>
- 4 Privilege Speech of Senator Francis Tolentino entitled “Law vs. IRR: The spring cannot rise higher than the source delivered on September 14, 2020. <https://mb.com.ph/2020/09/30/law-vs-irr-the-spring-cannot-rise-higher-than-the-source/>
- 5 *Ibid.*
- 6 *Ibid.*



Oversight Committee on Illicit Trade on Excisable Products and PS Resolution No. 566 ¹

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The Chairperson of the Senate Committee on Ways and Means is mandated under Republic Act (RA) 8424 (otherwise known as the Comprehensive Tax Reform Law) and RA 11467, to convene and preside as Co-Chair of the Oversight Committee on the Comprehensive Tax Reform Program, as well as the Joint Congressional Oversight Committee on Illicit Trade on Excisable Products, the latter being created

under Section 290-A of RA 11467. An excise tax is imposed on certain products such as alcohol products, tobacco products, and petroleum, as well as automobiles, non-essential goods and services, sweetened beverages, and mineral products. The table below displays the list of excisable products and the corresponding Sections of the Tax Code, as amended.

Major Classifications of Excisable Articles and Related Codal Section

<u>Particular</u>	<u>Sections in the NIRC of 1997, As Amended</u>
1. Alcohol Products	141-143
a. Distilled Spirits	141
b. Wines	142
c. Fermented Liquors	143
2. Tobacco Products	144-146
a. Tobacco Products	144
b. Cigars & Cigarettes	145
c. Inspection Fee	146
3. Petroleum Products	148
4. Miscellaneous Articles	149-150
a. Automobiles	149
b. Non-essential goods	150
c. Invasive Cosmetic Procedures	150(A) - [TRAIN Law]
d. Sweetened Beverages	150(B) - [TRAIN Law]
5. Mineral Products	151

What is Illicit Trade?

Illicit trade, as defined by the Illicit Trade Group, ²“concerns ‘any commercial practice or transaction related to the production, acquisition, sale, purchase, shipment, movement, transfer, receipt, possession or distribution of any illicit product defined as such by international law, or any licit product for non-licit purposes as defined by international law’, as well as any conduct intended to facilitate such activities.”

International Tax and Investment Center categorized illicit trade in two major ways: illicit imports and illicit domestic production. ³

In an interview made by STOP ILLEGAL ⁴ on 21 March 2019, Commissioner Guillermo Parayno Jr. ⁵ said that in the 1980s, studies comparing illicit trade between different countries found that 35% of all reported imports in the Philippines were illegal. Studies indicate that this percentage has increased since then, and the figures do not include items that are categorically prohibited, such as drugs, weapons, and ammunition.

The Creation of the Joint Congressional Oversight Committee on Illicit Trade on Excisable Products (JCOC-ITEP)

The creation of the Joint Congressional Oversight Committee on Illicit Trade of Excisable Products (JCOC-ITEP), under RA 11467, is aimed towards monitoring performance of key implementing agencies and crafting remedial legislation that will address illicit trade on excisable products.

Section 290-A of the National Internal Revenue Code (NIRC) of 1997, as amended by RA 11467, provides the following duties and functions of the JCOC-ITEP:

- Review and evaluate the programs and performance of the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC) in addressing illicit trade on excisable products and recommend necessary remedial legislation;
- Require concerned government agencies to submit reports and all pertinent data and information which will aid in resolving illicit trade of excisable products;
- Hold public hearings and summon concerned private individuals, government personnel and officials as resource persons;
- Deputize the BIR, BOC, Philippine National Police (PNP), National Bureau of Investigation (NBI), and other enforcement agencies of the government as may be necessary in undertaking its duties and functions; and
- Perform such other duties and functions as may be necessary to perform its mandate.

This law, as well as RAs 11346 and 10963 (the TRAIN Law), requires several government agencies to perform the following activities and regularly submit reports to the Oversight Committees:

Agency	Duty/Mandate	Relevant Law(s)
BIR	Conduct a biannual price survey to determine the NRP of excisable products; and Issue a revenue regulation prescribing the floor price or the minimum price of tobacco products – heated tobacco products, vapor products and cigarettes.	RAs 10963, 11346 and 11467 RAs 11346 and 11467
Food Development Authority (FDA)	Require all manufacturers and importers of sweetened beverages to indicate on the label the type of sweetener used, and on sweetened beverages in power form to indicate on the label the number of liters per pack size (net weight/volume), starting 01 June 2018; and Periodically determine and regulate, consistent with evolving medical and scientific studies, the manufacture, importation, sale, packaging, advertising, and distribution of heated tobacco products and vapor products, including the banning of sale to non-smokers or persons below 21 years old.	RA 10963 RA 11467
PNP, NBI, and other enforcement agencies	Submit report on programs to address illicit trade in excisable products.	RA 11467
Government agencies involved in the implementation of the Universal Health Care (UHC) Act and the Sustainable Development Goals (SDGs) ⁶	Submit a detailed report on the expenditure of the amounts earmarked, and simultaneously publish the same in the <i>Official Gazette</i> and in the agencies’ websites.	RAs 10351 and 11467

In order to map out all issues relevant to illicit trade of excisable products, it is suggested that the agenda for meetings of the JCOC-ITEP must include these topics:

1. Methods used to measure illicit trade in excisable products;
2. Magnitude of illicit trade in excisable products in the Philippines;
3. Study on the relationship between tax increases and excise tax revenues; and on the relationship between tax increases and consumption;
4. The Philippines as a source country or a destination country of illicit excisable products;
5. Frequency and magnitude of smuggling (large- and small-scale);
6. Enforcement methods and subsequent prosecution of violators;
7. Efficiency of collection of sin taxes;
8. Effects of illegal trade on the Universal Healthcare objectives and Sustainable Development Goals; and
9. Influence of the digital market on excisable products.

The Senate Panel of the JCOC-ITEP is comprised of the Chairperson of the Committee on Ways and Means and six (6) members.⁷ For the 19th Congress – on 19 September 2022 – the Senate of the Philippines constituted the JCOC-ITEP and designated Senator Win Gatchalian as Chairperson with Senators Sonny Angara, Mark Villar, Francis “Tol” Tolentino, Ronaldo “Bato” Dela Rosa, Pia Cayetano, and Aquilino “Koko” Pimentel III as members thereof.

Senate Resolution No. (SRN) 566 to Counter Illicit Trade of Excisable Products

In an effort to stop revenue leakages, to safeguard consumer health and to address the rising incidence of illicit trade involving excisable products, Sen. Gatchalian filed on 12 April 2023 SRN 566 or “Resolution Directing the Committee on Ways and Means to Conduct an Inquiry, in Aid of Legislation, on the Rising Incidents of Illicit Trade on Excisable Products, with the End in View of Abating the Proliferation of Illicit Trade by Introducing Remedial Legislation as May Be Necessary”.

SRN 566 seeks to promptly assess the scale of illicit trade in the country, adjust enforcement agencies’ priorities and border restrictions, and introduce remedial legislation necessary to address revenue leakages caused by the smuggling of excisable products. Said resolution addresses the impact of illicit trade on excisable products such as: 1) Depriving the government of much-needed revenues; 2) Endangering the health of consumers; 3) Damaging legitimate volumes and profits of businesses; 4) Undermining intellectual property; and, 5) Reducing the country’s reputation and competitiveness.

ASEAN Illicit Trade Rankings (2018)

The Economist Intelligence Unit (EIU) was com-

missioned by the Transnational Alliance to Combat Illicit Trade (TRACIT)⁸ to create the worldwide index on illicit trade, (Global Illicit Trade Environment Index) which covers 84 countries and four selected relevant categories. Instead of evaluating a country’s performance in combating illicit trade, the index looks at a country’s structural capacity and regulatory environment as a measure of its potential to combat illicit trade.

The definitions of these indices are:

- **Government Policy** – Availability of policy and legal approaches for monitoring and preventing illicit trade.
- **Supply and Demand** – Measure of the domestic environment that encourages or discourages supply and demand for illicit goods.
- **Transparency and Trade** – Degree of governance over Free Trade Zones (FTZs) and transshipment.
- **Customs Environment** – Effectiveness of custom service in facilitating legitimate trade and preventing illicit trade.⁹

	Global Ranking	Government Policy	Supply & Demand	Transparency & Trade	Customs Environment
 Cambodia	79 th	80 th	72 nd	74 th	77 th
 Indonesia	68 th	71 st	63 rd	45 th	69 th
 Lao PDR	81 st	82 nd	47 th	76 th	82 nd
 Malaysia	47 th	39 th	20 th	55 th	66 th
 Myanmar	82 nd	81 st	81 st	82 nd	78 th
 Philippines	64 th	79 th	55 th	24 th	60 th
 Singapore	25 th	22 nd	2 nd	57 th	56 th
 Thailand	48 th	60 th	31 st	40 th	45 th
 Vietnam	66 th	73 rd	38 th	79 th	54 th

Source: TRACIT Report: Tackling Illicit Trade in ASEAN Advocacy Paper, 2020

Excise Tax Collections on Excisable Products

In 2021, excise tax collections of the BIR amounted to P317.69B which is 15.23% of the total revenue collections of the agency. Of this, P90.128B came from excisable alcohol products, P176.486B

came from tobacco products, P7.370B from petroleum products, P35.832B from miscellaneous products, and P7.872B from mineral products.

Excise Taxes	Collection	2021	2020	Goal	Collection	Goal	Collection	Goal	Collection
		Goal							
		RMO No. 27-2021	(%)	(%)					
Alcohol Products	90,128.34	82,217.00	77,916.75	109.62	15.67				
Tobacco Products	176,486.48	172,343.00	149,651.05	102.40	17.93				
Petroleum Products	7,369.99	5,903.00	27,602.07	124.85	-73.30				
Miscellaneous Products	35,832.20	37,592.00	35,098.98	95.32	2.09				
Mining/Mineral Products	7,872.23	7,163.00	5,900.56	109.90	33.42				
TOTAL	317,689.24	305,218.00	296,169.40	104.09	7.27				

Source: BIR 2021 Annual Report

In its accomplishment report for 2022, the BOC said it had collected P203.53B¹⁰ of excise tax, or 24% of its total collection of P862.93B.

Conclusions

Among the effects that illicit trade has had on government relates to the health and safety of citizens. Low-quality imports not only violate intellectual property rights, but they also put public safety at risk. Substandard electrical components and equipment, for example, are traded and sold. In terms of health, the importation of cheaper, counterfeit cigarettes inhibits many citizens from purchasing higher-quality smokes. The same happens for illegal liquor. As a result, not only are there more smokers and drinkers, particularly among young people, but the things they buy might be doubly harmful to their health.

Another unfavorable effect is on criminal activities, particularly those associated with organized crime groups. This is especially difficult for the government since these criminal groups frequently have issues against the government, and their illicit trades generate income to fuel their underground operations.

The following measures may be implemented to combat illicit trade:

- BOC and BIR should take the initiative in formulating rules and regulations and adapting control measures, such as proper utilization of reports and intelligence databases;
- Shared data warehousing between BOC, BIR, and other government organizations participating in the JCOC-ITEP to identify and weed out suspicious transactions in global trade, especially for goods that are likely to be traded illegally as well as for

the raw materials used in their production;

- Initiate partnerships¹¹ among all stakeholders (e.g., governments, brand owner and intermediaries, NGOs) to bring about effective change and information sharing in order to combat illicit trade and reduce vulnerabilities through early detection. A responsive, evidence-based work program for addressing illegal trade may be determined by public and commercial players, who can also define best practices and, where appropriate, set regulatory standards.
- Establish productive working relationships with other nations, including EU countries, Hong Kong and the US, in order to exchange information. Other nations have laws that regulate the smuggling of goods like tobacco and alcohol. INTERPOL and Europol,¹² for instance, launched the first OPSON Operation in 2011 as a joint operation targeting counterfeit and substandard food and beverages with the involvement of 9 EU countries, plus Turkey; OSON IX campaign between 1 December 2019 and 15 June 2020 to which 77 countries, including six G7 countries participated; and OPSON X between December 2020 and July 2021, with the participation of some 72 countries.
- Local governments should be involved as well as they are the first to learn about the existence of illegal activities.

Over and above all these, the JCOC-ITEP must endeavor to convene and discuss illicit trade, with the end in view of empowering the administration, which in turn can foster economic growth and social development.

References

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- 2 Illicit Trade Group website, <https://illicittrade.org/research-overview>. Accessed on 26 April 2023.
- 3 International Tax and Investment Center Report: The Illicit Trade in Tobacco Products and How to Tackle It, Second Edition. (ND)
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- 5 Commissioner Guillermo Parayno Jr. is one of the leading experts for tax and customs collection in the Philippines. He has served as head of the two largest revenue-collecting agencies in the Philippines. He was one of the youngest-ever commissioners of the Bureau of Customs (BOC), at the age of 44, and also led the Bureau of Internal Revenue (BIR).
- 6 The agencies include the Department of Budget and Management (DBM) for the disposition of the excise tax collections, the Department of Health (DOH) and PhilHealth on the implementation of the UHC, the NEDA for the SDGs and the Department of Finance (DOF) and its agencies on the excise tax collections.
- 7 Section 10 of RA 11467, effective 27 January 2020 (as clarified by the memorandum issued by the DOF).
- 8 TRACIT is organized as an independent, non-governmental, not-for-profit organization under US Tax Code 501(c)(6). Membership is open to corporations and select trade associations committed to mitigating the economic and social damages of illicit trade by strengthening government enforcement mechanisms and integrating supply chain controls across industry sectors most impacted by illicit trade.
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Digest of Supreme Court Cases in Taxation

Clinton S. Martinez
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PILMICO-MAURI FOODS CORP., *Petitioner*, v. COMMISSIONER OF INTERNAL REVENUE, *Respondent*. [G.R. No. 175651, September 14, 2016 - REYES, J.]

Facts:

Petitioner Pilmico-Mauri Foods Corporation (PMFC) is organized and existing under Philippine laws with principal office address at Banilad, Cebu City. PMFC's books of accounts for 1996 were examined by the Commissioner of Internal Revenue (CIR) for deficiency income, value-added tax (VAT) and withholding tax liabilities.

In view of the CIR's action, assessment notices (ANs) were issued against petitioner, viz:

- (1) Demanding payment for deficiency withholding taxes for 1996 in the amount of P384,925.05;
- (2) Demanding payment for deficiency VAT in the sum of P5,017,778.01; and
- (3) Demanding payment for deficiency income tax for

1996 adding up to P4,359,046.96. Total of P9,761,750.02, inclusive of interest and other penalties.

The said ANs were received by PMFC on December 1, 1998. On December 29, 1998 it filed a protest letter through the Regional Director of Region 13, Cebu City. The CIR reduced the amounts in a final decision dated July 3, 2000 to P3,020,259.30.

PMFC filed its Petition for Review on August 9, 2000 based on the above facts. The "*Joint Stipulation of Facts*" of the parties provided for the following:

- 1) Whether or not petitioner is liable for the payment of deficiency income, VAT, expanded withholding, final withholding and withholding tax (on compensation)
- 2) On the deficiency income tax, whether or not the:
 - (a) purchases of raw materials are unsupported;
 - (b) cancelled invoices and expenses for taxes, repairs and freight are unsupported;
 - (c) commission, storage and trucking charges are deductible; and
 - (d) alleged deficiency income tax for the year 1996

was correctly computed.

- 3) Whether or not the CIR's decision on the 1996 internal revenue tax liabilities of petitioner is contrary to law and facts.

The Court of Tax Appeals (CTA) Division affirmed the assessments but in a lower amount, plus deficiency interest until fully paid. The CTA Division made mention that PMFC's contention that the law did not impose substantiation requirements was bereft of merit. It cited Section 238 (now Section 237) of the Tax Code, saying that: "X x x a person who is subject to an internal revenue tax shall issue receipts, sales or commercial invoices, prepared at least in duplicate." In fact, PMFC even submitted some sales invoices, contrary to its stand.

Issues:

- 1) *The Honorable CTA First Division deprived PMFC of due process of law and the CTA assumed an executive function when it substituted a legal basis other than that stated in the assessment and pleading of the CIR, contrary to law.*
- 2) *The decision of the Honorable CTA First Division must conform to the pleadings and the theory of the action under which the case was tried. A judgment going outside the issues and purporting to adjudicate something on which the parties were not heard is invalid. Since the legal basis cited by the CTA supporting the validity of the assessment was never raised by the CIR, PMFC was deprived of its constitutional right to be apprised of the legal basis of the assessment.*
- 3) *The nature of evidence required to prove an ordinary expense like raw materials is governed by Section 29 of the 1977 National Internal Revenue Code (NIRC) and not by Section 238 as found by the CTA.*

Held:

The Supreme Court (SC) cannot outrightly dismiss the instant petition on the ground of mootness sans the submission of a termination letter, due to availment of the petitioner of the Abatement Program of the Bureau of Internal Revenue (BIR) under Revenue Regulation (RR) No. 15-2006. Hence, the SC still decided the case on its other merits.

On the procedural issues, the SC held that due process was not violated. The High Court said that "It is well settled that matters that were neither alleged in the pleadings nor raised during the proceedings below cannot be ventilated for the first time on appeal and are barred by estoppel. To allow the contrary would constitute a violation of the other party's right to due process, and is contrary to the principle of fair play." Applying said statement in this case, the SC pointed out that "in issuing the assessments, the CIR had stated the material facts and the law upon which they were based. In the petition for review filed by

PMFC before the CTA, it was the former's burden to properly invoke the applicable legal provisions in pursuit of its goal to reduce its tax liabilities. The CTA, on the other hand, is not bound to rule solely on the basis of the laws cited by the CIR. Were it otherwise, the tax court's appellate power of review shall be rendered useless. X x x. "With PMFC's acquiescence to the Joint Stipulation of Facts filed before the CTA and thenceforth, the former's participation in the proceedings with all opportunities it was afforded to ventilate its claims, the alleged deprivation of due process is bereft of basis."

The SC likewise ruled on the application of certain provisions of the Tax Code extant in the case. "The Court finds that the alleged differences between the requirements of Section 29 of the 1977 NIRC invoked by PMFC, on one hand, and Section 238 relied upon by the CTA, on the other, are more imagined than real." (Underscoring ours)

The judicial body said: "It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, i.e., that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. The law must not be read in truncated parts, its provisions must be read in relation to the whole law. The particular words, clauses and phrases should not be studied as detached and isolated expression, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole."

Sections 29 and 238 of the Tax Code must be read together. One provision should not be given priority over the other in the interpretation of the law. When it is clear as to their intent, the provisos must be construed to give effect to both.

"It is, thus, clear that Section 29 of the 1977 NIRC does not exempt the taxpayer from substantiating claims for deductions. While official receipts are not the only pieces of evidence which can prove deductible expenses, if presented, they shall be subjected to examination. PMFC submitted official receipts as among its evidence, and the CTA doubted their veracity. PMFC was, however, unable to persuasively explain and prove through other documents the discrepancies in the said receipts."

The SC concluded: "The Court recognizes that the CTA, which by the very nature of its function is dedicated exclusively to the consideration of tax problems, has necessarily developed an expertise on the subject, and its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority. Such findings can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the tax court. In the absence of any clear and convincing proof to the contrary, the Court must presume that the CTA rendered a decision which is valid in every respect."

“Further, revenue laws are not intended to be liberally construed. Taxes are the lifeblood of the government and in Holmes’ memorable metaphor, the price we pay for civilization; hence, laws relative thereto must be faithfully and strictly implemented.”



Image by 123rf.com

TAKENAKA CORPORATION - PHILIPPINE BRANCH, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent. [G.R. No. 193321, October 19, 2016 – Bersamin, J.]

Facts:

Petitioner Takenaka appeals a decision where the Court of Tax Appeals (CTA) denied its claim for refund of excess input value-added tax (VAT) arising from its zero-rated sales for services it rendered to Philippine Air Terminal Co., Inc. (PIATCO) for the construction (sub-contractor) of the Ninoy Aquino Terminal III (NAIA-IPT3). Its Motion for Reconsideration (MR) was also rejected.

Takenaka filed its Quarterly VAT Returns for the four quarters of year 2002. It amended the same several times before finally submitting a final one.

The Bureau of Internal Revenue (BIR) issued a Ruling stating that the sales of goods and services of Takenaka to PIATCO are subject to zero-percent VAT and requires no prior approval for zero rating based on Revenue Memorandum Circular (RMC) 74-99.

Takenaka filed its claim for tax refund with the BIR Revenue District Office (RDO) 51, Pasay City Branch. The tax agency failed to respond to the claim of Takenaka forcing the latter to file a Petition for Review (PR) with the CTA. The former First Division of the CTA made a decision partly granting the petition and ordered the Commissioner of Internal Revenue (CIR) to refund to respondent Takenaka a reduced amount. However, respondent was not satisfied with the decision and filed a Motion for Reconsideration (MR). The MR was granted. Subsequently, the CIR filed its own MR, which was denied by the former First Division. Respondent CIR filed a Petition for Review with the CTA *En Banc* to seek reversal of the decision and resolution, which it secured denying Takenaka’s claimed input tax attributable to its zero-rated sales.

Issue:

The issue to be resolved is whether or not the sales invoices presented by Takenaka were sufficient

as evidence to prove its zero-rated sale of services.

Held:

The Supreme Court (SC) denied petitioner’s appeal.

The SC initially delved into the procedural aspect of the case by determining the timeliness of Takenaka’s judicial claim for refund, to determine whether or not the CTA rightfully acquired jurisdiction over the case. The High Court said: *“Well-settled is the rule that the issue of jurisdiction over the subject matter may at any time either be raised by the parties or considered by the Court motu proprio. As such, the jurisdiction of the CTA over the appeal could still be determined by this Court despite its not being raised as an issue by the parties.”*

The SC referred to the case of *Mindanao II Geothermal Partnership* (G.R. No. 193301 and 194637, March 11, 2013, 693 SCRA 49, 89) where it has ruled that:

- (1) *An administrative claim must be filed within the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made;*
- (2) *The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction;*
- (3) *A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR’s decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR;*
- (4) *All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods.*

The SC detailed the pertinent dates:

“Amount Claimed and Taxable Period covered	Close of quarter when sales were made	Last day for filing administrative claim for refund (2 years)	Actual date of filing of administrative claim for refund	Last day for filing judicial claim with CTA (120 +30)	Actual filing of judicial claim with CTA
“P51,515,532.05, 1 st quarter of 2002	March 31, 2002	March 31, 2004	April 11, 2003	September 8, 2003	March 10, 2004
“P60,588,638.09, 2 nd quarter of 2002	June 30, 2002	June 30, 2004			
“P55,234,736.15, 3 rd quarter of 2002	September 30, 2002	September 30, 2004			
“P30,494,993.51, 4 th quarter of 2002	December 31, 2002	December 31, 2004”			

According to this schedule, petitioner’s predicament is a case of late filing. The SC elucidated:

“The petitioner timely filed its administrative claim on April 11, 2003, within the two-year prescriptive period after the close of the taxable quarter when the zero-rated sales were made. The respondent had 120 days, or until August 9, 2003, to decide the petitioner’s claim. Considering that the respondent did not act on the petitioner’s claim on or before August 9, 2003, the latter had until September 8, 2003, the last day of the 30-day period, within which to file its judicial claim. However, it brought its petition for review in the CTA only on March 10, 2004, or 184 days after the last day for the filing. Clearly, the petitioner belatedly brought its judicial claim for refund, and the CTA did not acquire jurisdiction over the petitioner’s appeal. We note, however, that the petitioner’s judicial claim was brought well within the two-year prescriptive period. Be that as it may, it must be stressed that the two-year prescriptive period refers to the period within which the taxpayer can file an administrative claim, not the judicial claim with the CTA. Accordingly, the CTA should have denied petitioner’s claim for tax refund or credit for lack of jurisdiction.

“Nonetheless, the CTA did not err in denying the claim for refund on the ground that the petitioner had not established its zero-rated sales of services to PIATCO through the presentation of official receipts.”

The High Court reiterated the difference between a receipt and an invoice, as evidence of an administrative claim, viz:

A "sales or commercial invoice" is a written account of goods sold or services rendered indicating

the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services.

A "receipt" on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer.

In this case, Takenaka submitted sales invoices and not official receipts. This is inadequate and cannot qualify for VAT zero-rating and cannot claim the sales as not subject to output tax.

Even if entitled to tax refund or credit under substantive law, claimant must likewise “show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit.”

The SC emphasized: *“Hence, the mere fact that petitioner’s application for zero-rating has been approved by the CIR does not, by itself, justify the grant of a refund or tax credit. The taxpayer claiming the refund must further comply with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue regulations implementing them.*

STSR ACTIVITIES

MARCH TO APRIL 2023

GAD FUN RUN



Mr. Jeffry Tyrone Sanders of STSRO won 1st place in the 3 km marathon for the 46 years old and above category on March 27, 2023.



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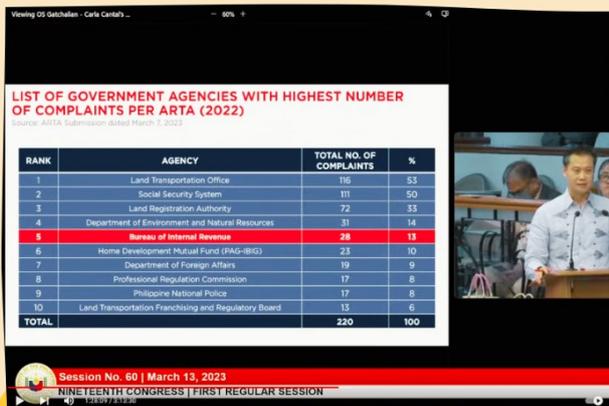
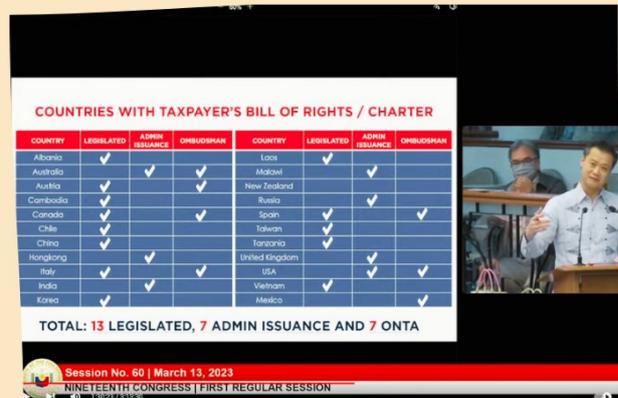
STSR ACTIVITIES MARCH TO APRIL 2023

REGULAR SESSION

SBN 1806

AN ACT PROVIDING FOR THE BILL OF RIGHTS AND OBLIGATIONS OF TAXPAYERS, CREATING THE OFFICE OF THE NATIONAL TAXPAYER ADVOCATE, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

Plenary Session, Sponsorship Speech and Interpellation on
March 13 and 14, 2023



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CHAIRPERSON'S REPORT

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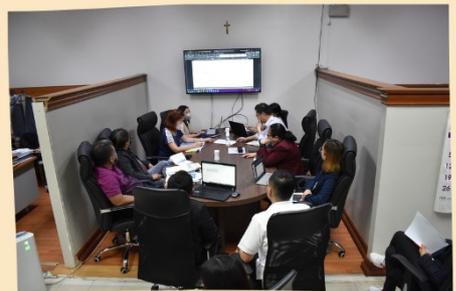


STSRO ACTIVITIES

MARCH TO APRIL 2023

CONSULTATIVE MEETING ON PENDING BILLS AND BIRTHDAY OF SENATOR WIN GATCHALIAN

April 12, 2023



STSR ACTIVITIES

MARCH TO APRIL 2023

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Public Hearings on March 2 and 9, 2023

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