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by

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Finally, twenty (20) years after the original law was passed granting tax exemption to 13<sup>th</sup> month pay, Christmas bonus and productivity incentives given to private and government employees up to Php30,000<sup>1</sup> and ten (10) years after the first legislative initiative<sup>2</sup> to adjust the said threshold to inflation, President Aquino III signed into law Republic Act 10653 on February 12, 2015. It increased the tax-exempt threshold from Php30,000 to Php82,000. The most distinct feature of the law is that the new President-elect in 2016 shall adjust the threshold in 2018 to its present value using the Consumer Price Index (CPI), as published by the National Statistics Office (NSO), and for future Presidents to do the same every three (3) years thereafter without the need for legislative fiat. The Philippine Star and Manila Bulletin published it on February 14, making the law effective on March 1. The Bureau of Internal Revenue (BIR) issued Revenue Regulations No. 3-2015 on March 9 to implement the provisions of RA 10653.

<sup>1</sup> R.A. 7833, entitled “An Act to Exclude the Benefits Mandated Pursuant to Republic Act No. 6686 and Presidential Decree No. 851, as Amended, and Other Benefits from the Computation of Gross Compensation Income for Purposes of Determining Taxable Compensation Income, Amending for the Purpose Section 28(B)(8) of the National Internal Revenue Code, as Amended”; approved December 8, 1994.

<sup>2</sup> Senate Bill 1335, entitled “An Act Increasing the Ceiling for Total Exclusion of 13<sup>th</sup> Month Pay and Other Benefits from the Computation of Taxable Income from Thirty Thousand Pesos (Php30,000.00) to Sixty Thousand Pesos (Php60,000.00), Thereby, Amending Section 32 of Republic Act 8424 Otherwise Known as the National Internal Revenue Code of 1997”, introduced by Sen. Ralph G. Recto on July 6, 2004.

The Senate Committee on Ways and Means chaired by Sen. Sonny M. Angara took pains to consider the sentiments of all sectors of society affected thereby. On the one hand, tax practitioners, the academe, and employee organizations underscored the need to keep pace with inflation in order to increase workers' disposable income. These groups hinged their argument on the non-exercise by the Secretary of Finance of his authority to adjust the threshold amid his selective application of such authority when he increased the VAT-exemption thresholds<sup>3</sup> under Revenue Regulations 16-2011<sup>4</sup>. On the other hand, the BIR and Department of Finance (DoF) research arm National Tax Research Center (NTRC), opposed the move for reasons of fiscal management, contending that the resultant revenue loss in the vicinity of Php27-40 billion would undermine the efforts of government to improve the country's economic status. It bears stressing, however, that independent estimates of the UP School of Economics put the revenue loss to roughly Php 6 billion.

As gleaned from Table 1, the movements in the CPI from 1994 to the 3<sup>rd</sup> quarter of 2014 show the adjustments in the Php30,000 threshold had the Secretary of Finance exercised his authority. This data was highly relied upon during the period of Committee amendments when Sen. Ralph G. Recto proposed to peg the figure at Php82,000 to restore the value of the peso which has been lost to inflation through the years.

On the assumption that all government and private workers receive only the 13<sup>th</sup> month pay (since this is mandatory under P.D. 851<sup>5</sup>), government workers occupying Salary Grade 17 Step 5 up to Salary Grade 30 Step 4 positions, to cite an example, will enjoy a 173-percent increase in their take-home pay come Christmas. Based on the December 2013 inventory of government personnel (including AFP but excluding PNP due to paucity of data), a total of 150,390 government personnel or 14.36% of total personnel on board, will benefit from R.A. 10653. The same story shall be replicated among private sector workers whose gross basic salary per month is between Php30,000 to Php82,000.

The law on 13<sup>th</sup> month pay is the first among the legislative initiatives to rationalize the tax scheme for individual taxpayers aimed at enabling the working class to have a take home pay that could take them

home. With R.A. 10653, we can look forward to a merrier Christmas 2015 and beyond.

**Table 1. Adjustments in the Php30,000 Threshold Based on Movements in CPI Reckoning Period: 1994 vis-à-vis 1998<sup>6</sup>**

Year	CPI All Items	Amount at Reckoning Period	
	(2006=100)	1994	1998
1994	50.7	30,000	
1995	54.1		
1996	58.6		
1997	62.0		
1998	67.8	40,118	30,000
1999	71.9	42,544	31,814
2000	76.7	45,385	33,938
2001	80.8	47,811	35,752
2002	83.0	49,112	36,726
2003	84.9	50,237	37,566
2004	89.0	52,663	39,381
2005	94.8	56,095	41,947
2006	100.0	59,172	44,248
2007	102.9	60,888	45,531
2008	111.4	65,917	49,292
2009	116.1	68,698	51,372
2010	120.5	71,302	53,319
2011	126.1	74,615	55,796
2012	130.1	76,982	57,566
2013	134.0	79,290	59,292
Aug 2014	138.9	82,189	61,460

Source of Basic Data: Philippine Statistics Authority



<sup>3</sup> R.A. 8424, entitled "An Act Amending the National Internal Revenue Code, as Amended, and for Other Purposes"; approved December 11, 1997.

<sup>4</sup> RR 16-2011, entitled "Increasing the Amount of Threshold Amounts for Sale of Residential Lot, Sale of House and Lot, Lease of Residential Unit and Sale or Lease of Goods or Properties or Performance of Services Covered by Section 109 (P), (Q) and (V) of the Tax Code of 1997, as Amended, Thereby Amending Certain Provisions of Revenue Regulations No. 16 -2005, as Amended Otherwise Known as Consolidated VAT Regulations of 2005"; issued October 27, 2011.

<sup>5</sup> P.D. 851, entitled "Requiring All Employers to Pay Their Employees a 13th-Month Pay"; issued December 16, 1976.

<sup>6</sup> Reckoning period: 1994 when the tax exemption was first granted; 1998 when the authority of the Secretary of Finance was legislated.





## A solution to port congestion?

by

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### A little history<sup>1</sup>

Cabotage is an old law instituted in the 1700s by the British in order to ensure that trade in the British Isles was not carried out by potential enemy states like Spain, France, and the Netherlands. It also ensured that the British shipping fleet was present in times of war, national disaster, and economic sabotage by an enemy state.

Other countries followed the British example. The United States has one of the strictest cabotage laws requiring the shipping industry to be owned 90% by American citizens, that ships must be built in the United States, and must be crewed by Americans. Canada, Japan, China and Indonesia have their own cabotage laws. In China, the prime consideration in its cabotage law is national security.

Indonesia<sup>2</sup> initially liberalized its cabotage policy prompting it to pass a cabotage law. Later, it amended the law as a result of the complaints by the oil exporters who were not able to transship their petroleum products because of the cabotage law. Now, Indonesia allows foreign vessels to deal directly in coastwise trade. The Philippines may learn from the Indonesian experience in the sense that the cabotage policy depends on the

<sup>1</sup> Excerpts from the presentation of : (a) Ms. Doris Magsaysay-Ho, President and Chief Executive Officer, Magsaysay Maritime Corporation, (b) Atty. Max Cruz, General Manager, Association of International Shipping Lines, and (c) Atty. Pedro G. Aguilar, Executive Director, Philippine Interisland Shipping Association, during the Senate public hearings on January 9, 2014 and September 17, 2014 (Committees of Trade, Commerce and Entrepreneurship/Public Services/Ways and Means).

<sup>2</sup> Atty. Luis Catibayan, Bureau of Import Services, Department of Trade and Industry.



particular objective of the country. The concern seems to be about high domestic shipping costs and the lack of incentives to modernize the domestic shipping industry. Citing Indonesia's experience, its cabotage policy is accompanied by port development, port modernization, and port regulation. The Philippines cannot afford to approach the issue in a partial manner. Fuel costs are slapped Value Added Tax (VAT) on fuel, the purchase of machineries and ships. These taxes do not necessarily apply to foreign shipping lines.

In the Philippines, shipping is carried on small ships because the volume of trade is small. Ships coming from Kaohsiung, Hong Kong and Singapore are bigger. These ships have 2,000 to 3,000 TEUs (twenty foot equivalent units) as compared to interisland ships with capacities of only 30 to 500 TEUs. Ships that trade across the Pacific (trans-Pacific trade) average 6,000 TEUs. The biggest company in the world, Maersk, has a capacity of 18,000 TEUs. All shipping companies are trying their best to develop large ships in order to lower per unit cost.

There is an imbalance of trade in the Philippines. A lot of our domestic trade is southbound, while the northbound trade has very low domestic ship utilization. It is desirable to develop economic clusters on industrial logistics, tourism, and housing, with a big port to support such clusters.

The Philippines has an infrastructure limitation in the ports and roads. The Port of Manila has only one crane hence cannot serve ships of more than 500 TEUs, otherwise it will touch the sea bottom. Philippine ports are built on shallow waters because they were originally fishing villages. During typhoons, the Port of Cebu would be full to capacity within a minute.

### The problem of port congestion

In a Senate public hearing<sup>3</sup>, the problem of port congestion was discussed, resulting in the following comments:

1. *The Manila South and North Harbors handle 3 million TEUs per year. As of January 2014, before the truck ban took effect, Manila's harbors were operating in excess of their design capacities. When the truck ban was imposed, the containers accumulated because the trucks cannot leave the two ports. Actually, the port capacity was only 5,000 containers daily, but they were processing 6,000 in the two ports. As a result of the truck ban, processing went down from 6,000 to 3,500 daily. As a consequence, the containers accumulated in the ports. As far as container yards were concerned, they were operating at around 45 to 50% capacity as of January. After the truck ban, the containers accumulated, even the empty ones had nowhere to go. (Secretary Gregory Domingo, Department of Trade and Industry)*
2. *The Cavite Export Processing Zone can handle 4,500 TEUs, with another 1.5 hectares that will operate soon to handle 2,000 TEUs. Port congestion affected 20,000 PEZA workers through temporary lay-offs, reduced work days and forced leaves. Companies resulted to shipping by air costing 5 to 10 times more. Head offices of companies award new orders to other Asian countries, resulting in cancelled orders and loss of clients. Companies had deferred their new and expansion investment*

\* Photo credit : INQUIRER FILE PHOTO

<sup>3</sup> Senator Aquino, August 13, 2014, Senate Committees on Trade and Commerce/Ways and Means.



plans for the country. Delays in the release and delivery from the port of imported machinery and equipment resulted in difficulty in meeting company targets. They cannot start up because their equipment cannot leave the port.

The situation resulted in increased trucking cost. One company reported that the cost went up to P25,000 per trip, whereas before the truck ban, the cost was only P8,000 per trip. Shipping cost also increased from P20,000 to P30,000 per trip. The additional fees were container fee, terminal handling fee, delivery order fee, emergency cost recovery fee, and port congestion charges, among others. [Ms. Lilia de Lima, Director-General, Philippine Export Processing Zone Authority, (PEZA)].

3. Nationwide, the LTO (Land Transportation Commission) registered 310,000 trucks, 80% of which (around 240,000) were for hire. As of June 2014, the LTFRB (Land Transportation Franchising and Regulatory Board) issued 38,000 franchises, making 210,000 trucks nationwide without a franchise.

In the NCR (National Capital Region), 10,000 trucks were involved in port operation, and the number is still increasing. Around 10,000 trucks applied for a franchise. They had the PA (provisional authority) to operate, leaving 4,000 trucks without a franchise. The number of trucks with franchises does not match the number that was needed to decongest the ports, or even have regular operations.

Traditionally, cargo movements in the ports occurred from Monday to Friday. A lot of cargo owners prefer not to move their cargos during Saturdays and Sundays because of additional expensed on their part due to overtime pay. Transactions start at 9:00 in the morning on Mondays, but there were instances that the documents reach the BOC Monday afternoons. Bear in mind that the BOC (Bureau of Customs) was open Saturdays and Sundays but nobody transacts with the BOC on weekends. (Mr. Alberto Suansing, Confederation of Truckers Association of the Philippines)

4. After the LTFRB implemented its "anti-colorum" policy, it relaxed the application process for franchising because almost 90% of the truckers were for hire, and the rest were colorum. Around 70,000 trucks were for hire, and 38,000 of them already had franchises. There were 32,000 applicants were issued PAs

(provisional authorities) to operate. The LTFRB had an agreement with the DOTC (Department of Transportation and Communication) and the MMDA (Metro Manila Development Authority) for the affected Mayors to honor the PAs until the LTFRB issues the franchises on or before October 17, 2014. After August 17, all trucks for hire that had not applied for franchise and had not been issued PAs were subjected to apprehension. The LTFRB issued 31,617 PAs as of August 8, 2014 and 11,000 franchises. Around 70 to 90% of all trucks providing services to general trade were colorum. (Chairman Winston Ginez, LTFRB)

5. Currently, the BOC does not operate 24/7, but once a particular shipment is cleared during the normal office hours, there is no impediment to taking that shipment out of the ports even when the BOC is not operating. The reason is that imports cleared by the BOC are electronically tagged and may leave the port premises. The idea of working 24/7 is not new to the BOC. It was tried before but was discontinued due to very low volume of transactions during weekend and night time. However, the BOC is open to the idea of operating on weekends when needed. (Commissioner John Sevilla, BOC)
6. The annual domestic trade is about 700,000 containers due to inbound and outbound movement of goods in Manila's piers. For domestic movements, the North Harbor Domestic Port is used. The ICTSI (International Container Terminal Services, Inc.) and the ATI (Asian Terminals) are for international cargos. The percentage of cargo originating from Manila and are destined for Manila is around 55 to 65% of all cargo movements. Cargos bound and originating from the north is about 14 to 19% and the rest are for Batangas and "LABARZON" (Laguna, Batangas, and Quezon).

The comment – Let us decongest Manila and move elsewhere – is impractical because Manila is the key. The center of population is Manila. There is an urgent need to have strategic approaches on how to ensure that capacity coming in and going out of the ports, both international and domestic, are able to go and not have a funnel

It is hoped that 10 years from now, we would be commenting that Batangas port is too small with 2 cranes. Subic is likewise too small. Long term planning is necessary. The

*country needs to aggressively improve its infrastructure, especially the roads because it can no longer absorb the demands of increased importations. (Ms. Doris Magsaysay-Ho, President and Executive Officer, Magsaysay Maritime Corporation)*

7. *Mondays is always a ghost town because banks start at 9:00 a.m. when people start working and process the payments. Work really starts around 2:00 p.m.. The BOC does not make electronic payments to the banks Monday mornings. There should be more inland container depots for those incoming loaded containers so that people would process documents somewhere outside Manila. [Mr. Johnny Cheung, Federation of Filipino Chinese Chamber of Commerce and Industry (FFCCCI)]*

## Legislative proposals

SB 1359 proposes<sup>4</sup> that the right to engage in the Philippine coastwise trade shall no longer be limited to vessels carrying a certificate of Philippine registry. Foreign vessels may be allowed to transport passengers and cargos between ports or places within the Philippine territorial waters even when a domestic vessel is available or suitable to provide the needed shipping service and whenever public interest warrants. Passengers or articles arriving from abroad on a foreign vessel may be carried by the same vessel through any port of entry to the port of destination in the Philippines. Passengers departing from the Philippines or articles intended for export may likewise be carried in a foreign vessel through a Philippine port; provided that the country where the foreign vessel is registered affords the same privileges to Philippine registered vessels.

Another bill, SB 2364 allows the following circumstances<sup>5</sup>:

1. A foreign container van carrying foreign cargo arriving from a foreign port on a foreign vessel, such foreign vessel, after being cleared at its port of entry, shall be allowed to carry the foreign container van to its domestic port of final destination;
2. A foreign container van carrying foreign cargo arriving from a foreign port on a foreign vessel may be carried by another foreign vessel calling at the same port of entry to the

domestic port of final destination of such foreign cargo;

3. A foreign container van carrying foreign cargo intended for export may be carried on a foreign vessel from its domestic port of origin through another Philippine port to its foreign port of final destination;
4. A foreign container van carrying foreign cargo intended for export may be transshipped in any foreign vessel which shall carry it to its foreign port of final destination; and
5. An empty foreign container van going to or coming from any domestic port or going to or coming from a foreign port.

The bill likewise mandates the BOC to do the following:

1. Clear any foreign vessel for any domestic port and authorize the conveyance therein of a foreign container van containing foreign cargo brought from abroad upon such foreign vessel;
2. Allow a foreign vessel to take a foreign container van containing import or export articles or cargo at any port and convey the same upon such foreign vessel to a foreign port;
3. Authorize the transshipment of such foreign cargo intended for export through another Philippine port of its conveyance by another foreign vessel to the cargo's foreign port of final destination;
4. Take measures to ensure that no foreign vessel carries any domestic cargo; and
5. Take measures to address illegal activities, including smuggling.

## Legal constraints

Section 11, Article XII of the Constitution provides for the following:

*“Sec. 11. No franchise, certificate, or any form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty percentum of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be*

<sup>4</sup> Section 4, SB 1359, sponsored by Senator Trillanes.

<sup>5</sup> SB 2364, sponsored by Senator Aquino.

*exclusive in character or for a longer period than fifty years. Neither shall such franchise nor right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by Congress when the common good requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all executive and managing officers of such corporation or association must be citizens of the Philippines.”*

The current cabotage law reserves the movement of domestic cargo to national carriers to the exclusion of foreign vessels from transshipment of foreign cargo between ports of the Philippines, thus:

*“Section 810. Privileges Conferred by Certificate of Philippine Registry – A certificate of Philippine registry confers upon the vessel the right to engage, consistently with law, in Philippine coastwise trade and entitles it to the protection of the authorities and the flag of the Philippines in all ports and on high seas, and at the same time secures to it the same privileges and subjects it to some disabilities as, under the laws of the Philippines, pertain to foreign built vessels transferred abroad to citizens of the Philippines.”*

*“Section 902. Vessels Eligible for Coastwise Trade – The right to engage in the Philippine coastwise trade is limited to vessels carrying a certificate of Philippine registry.”*

In spite of Section 11, Article XII of the Constitution, and Sections 810 and 902 of the TCCP, the following provision is also contained in Section 1009 of the TCCP:

*“Section 1009. Clearance of Foreign Vessels To and From Coastwise Ports - Passengers and articles arriving from abroad upon a foreign vessel may be carried by the same vessel through any port of entry to the port of destination in the Philippines; and passengers departing from the Philippines or articles intended for export may be carried in a foreign in a foreign vessel through a Philippine port.*

*Upon such reasonable condition as he may impose, the Commissioner may clear foreign vessels for any port and authorize the conveyance therein of either articles or passengers brought from abroad upon such*

*vessels, as he may likewise, upon such conditions as he may impose, allow a foreign vessel to take cargo and passenger at by port and convey the same upon such vessel to a foreign port.”*

Reactions to the cabotage bills from the affected sectors include the following:

1. Philippine Ports Authority – All tariff rates are being subjected to public hearings. Tariffs are competitive compared to other ASEAN countries, although government revenues imposed by the PPA accrues to it, and only 10% of such revenue is the government share. There were efforts to lower the cost, especially the PPA and the MARINA in order to make local shipping competitive. From the point of view of the domestic shipping industry, they are willing to pay a fair share if port operation is efficient and productive.

The European Chamber of Commerce sees a conflict of interest in institutions like the PPA, being a regulator and an operator at the same time. Even if public hearings are held, whenever the rates are increased, the conflict of interest still persists. The same conflict of interest applies to CAAP (Civil Aeronautics Administration of the Philippines). The Chamber of Commerce recommends a review of bidding rules for infrastructure requirements of the public and the government. The tendency of awarding infrastructure projects is purely on the amount of recovery by the government, while it is the general public that pays the bill.

2. Department of Transportation and Communication (DOTC) – A deeper analysis of the shipping cost of our local shippers should be made as there is a big difference with respect to the expenses incurred in an interisland voyage compared to the shipping cost from another state bound to or from Philippine ports.

It is not clear whether or not the cargoes that foreign vessels carry to or from principal ports of entry or sub-ports in the country are exclusively limited to export and import cargo. There is no definition of terms or mechanism that would set limitations. An import cargo that is brought into the Philippines from one port may be brought to another port and can be traded therein. It is questionable if the bills would pass scrutiny as far as Article XII, Section 11 of the Constitution is concerned.

The final concern of the DOTC is on national security. The cabotage bills do not

mention how they would address any threat to national security once foreign vessels engage in Philippine coastwise trade.

3. Department of Finance (DOF) – The PPA remitted 50% of its collections to the national government amounting to P8 billion in 2013. The reason that the DOF supports the bills is to help address the problem of port congestion. It is foreseen that allowing foreign vessels to carry these cargoes will reduce the number of vessels loading and unloading in the ports of Manila and in the MICP (Manila International Container Port). It will be addressed by allowing the foreign vessels to carry the cargoes to and from the ports of Subic and Batangas.
4. European Chamber of Commerce of the Philippines (ECCP), Mr. Michael Raeuber – The ECCP recommends to lift cabotage on freight as proposed in HB 2863 (sponsored by Cong. Marcelino Teodoro). Indeed Indonesia had its own experiences in lifting and then re-enforcing cabotage because they went too far. Here we are talking about a limited and partial lifting of the cabotage restrictions for the purpose of lowering costs and increasing competition.

It is interesting concept with respect to potentially allowing transshipment or code sharing just like the airlines. If for example, an imported cargo comes from Japan and it is shipped to Manila, the foreign ship can transport it further to a provincial city like Davao. The nature of the cargo is foreign, perhaps there would be some interpretation allowing the practice of code sharing, making transactions more efficient without touching on some provisions of the Philippine Constitution.

It is also recommended to require foreign shipping lines operating domestic routes to pay the same fees and taxes as domestic shipping lines, or alternatively waive the fees and taxes paid by domestic shipping lines, but not the foreign lines. Lowering the shipping costs in the Philippines is the main policy reform objective, not excluding competitive foreign ships on reciprocity grounds.

It is proven that international competition controls cost and improves efficiency. The cooperation among Maersk Lines/MCC Transport/Aboitiz to a certain extent improves efficiency and lower cost. With the advent of the ASEAN integration, it is well spent effort

and money to make local shipping lines competitive not only within the Philippines but later on the larger ASEAN context. It is also recommended that there should be a bareboat chartering by domestic shipping lines which will make them more competitive.

The domestic shipping lines are mandated to use Philippine shipyards. It promotes Philippine shipyards, but it prohibits competition and increases cost. There are complaints from the domestic shipping lines would prefer a foreign shipyard in spite of increased travelling cost, because in the long run, it is cheaper to do so. This happens because of insufficient competition.

Another issue is the high sulphur content of the fuel used by domestic shipping lines, which is higher than that in Europe, or the United States.

Another problem is the procurement and tender policies of the Philippines. Right now, the single goal of any tender with respect to the infrastructure of ports and airports is directed towards the revenue generation of the government. It is absolutely wrong, the government goal should be focused on the lowering of costs than revenue generation. Infrastructure has to serve, not to generate revenue. It is uncompetitive when the PPA sets port charges without taking into consideration competition. Likewise, it is uncompetitive for the BOC to set warehousing rates at the airports and seaport when in fact they are not operating warehouses.

In order to lower cost, the following are recommended: (a) allow bareboat chartering, (b) stop MARINA from mandating overgrowing of Philippine domestic vessels, (c) allow shipyards to be freely chosen by the domestic ship owners, not limited only to Philippine shipyards because that is increasing their costs, and (d) review the sulphur content requirement used domestically because the international standard is more stringent.







### **“Tax effort rose to 14.1% in November”**

“The level of tax revenues as a percentage of economic output further inched up to 14.1 percent as of the end of November in 2014 on the back of robust collections, Department of Finance (DOF) data showed.

“Finance Undersecretary Gil S. Beltran noted that the country’s end-of-November tax effort—or tax collection as a percentage of the gross domestic product (GDP)—was higher than the 13.95 percent posted in the first 11 months of 2013.

“The end-November figure was also an improvement from the end-of-September’s tax-to-GDP ratio of 14.08 percent.

“The DOF’s two revenue collection agencies, the Bureaus of Customs (BOC) and Internal Revenue (BIR), both saw their collections growing strong during the January-to-November period.

“In the case of the BOC, its end-of-November collections of duties and taxes jumped by 17.8 percent to P331.2 billion from P281.1 billion during the same 11-month period in 2013.

As for the BIR, tax collections, meanwhile, from January to November grew 9 percent to P1.22 trillion from P1.12 trillion in the previous year.” (Source: Philippine Daily Inquirer, January 20, 2015)

\* This ‘Tax News Digest’ shall endeavor to provide the reader the latest information and events relevant to taxation and appurtenant issues, as published in leading daily newspapers and other pertinent sources. Compiled by Clinton S. Martinez, Indirect Taxes Branch.



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### **“Abad: No more underspending”**

“The Department of Budget and Management (DBM) said yesterday that anemic public spending—which slowed economic growth last year—would be a thing of the past as the government aims to pour more money into vital infrastructure this year.

“Last year’s underspending issue will be addressed by the increase in our infrastructure investments, which is equivalent to 4 percent of our projected GDP [gross domestic product] for this year. Ultimately, we’re targeting an infrastructure spending level of 5 percent by 2016,” Budget Secretary Florencio B. Abad said in a statement.

“Abad said it helped that the 2015 national budget was approved as early as December last year, hence there was an earlier release of funding for “massive infrastructure programs” to be rolled out this year.

“Under the 2015 budget, the Department of Public Works and Highways (DPWH) got the second biggest share among government agencies at P303.2 billion. This year’s DPWH budget posted the biggest year-on-year increase of 37.9 percent from P219.9 billion last year, the DBM noted.” (Philippine Daily Inquirer, February 3, 2015)



### **“Banks’ lending rules to stay relatively liberal. Cheap cash expected to fuel further economic growth”**

“Cash is seen to remain cheap in the coming year as banks stay relatively liberal in lending, with the financial system still awash in liquidity, in line with the needs of the country’s growing economy.

“Bangko Sentral ng Pilipinas Governor Amando M. Tetangco Jr. said authorities were ready to act in case tighter lending standards would threaten to hinder the country’s performance.

“I think lending growth would continue to ensure that there’s sufficient support,” Tetangco said. “We’re monitoring this of course, and if we see there is some tightness ... we can review [our policies],” he told reporters.

“This follows the release of data last week that showed lending growth moderating to its slowest point in a year, indicating that banks had become more selective with borrowers. This also reflects the effects of recent moves of the central bank to keep banks from taking excessive risks.

“Inclusive of placements with the BSP, loans extended by universal and commercial banks grew by 16.8 percent in December of 2014, slower than the 20.1-percent expansion recorded at the end of November.” (Philippine Daily Inquirer, February 3, 2015)



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**1. TEAM ENERGY CORPORATION (FORMERLY MIGRANT PAGBILAO CORP.),  
Petitioner, vs. COMMISSIONER OF INTERNAL REVENUE (CIR), Respondent, G.R.  
No. 190928; January 13, 2014.**

**Facts:**

Petitioner asserts that it filed its judicial claim for refund timely or within the two-year period prescribed under the National Internal Revenue Code, as amended, involving its 2002 value-added tax (VAT) returns. The dates are as follows: 1<sup>st</sup> Quarter – April 25, 2002; 2<sup>nd</sup> Quarter – July 23, 2002; 3<sup>rd</sup> Quarter - October 25, 2002; 4<sup>th</sup> Quarter - January 27, 2002. Petitioner filed its administrative claim for 2002 on December 22, 2003.

**Issue:**

Whether petitioner timely filed its judicial claim for refund of input VAT for the first quarter of 2002.

**Held:**

The SC decided in favor of petitioner Team Energy Corporation. The Court ruled:

“X x x, it is clear that the two-year prescriptive period provided in Section 112 (A) of the

*NIRC of 1997, as amended, should be counted not from payment of the tax, but from the close of the taxable quarter when the sales were made.”*

With respect to the thirty (30)-day period under paragraph (C), the Court ruled:

*“There are three compelling reasons why the 30-day period need not necessarily fall within the two-year prescriptive period, as long as the administrative claim is filed within the two-year prescriptive period.*

*“First, x x x. In short, the law states that the taxpayer may apply with the Commissioner for a refund or credit ‘within two (2) years,’ which means at anytime within two years. X x x”*

*“Second, x x x. In short, the two-year prescriptive period in Section 112 (A) refers to the period within which the taxpayer can file an administrative claim for tax refund or credit. X x x.”*

*Third, x x x. The taxpayer can file his administrative claim for refund or credit at any time within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is till filed on time. The Commissioner will have 120 days from such filing to decide the claim. X x x.”*



**2. TEAM ENERGY CORPORATION (FORMERLY MIGRANT PAGBILAO CORP.), Petitioner, vs. COMMISSIONER OF INTERNAL REVENUE (CIR), Respondent, G.R. No. 197760; January 13, 2014.**

**Facts:**

Petitioner filed with the Bureau of Internal Revenue (BIR) its Quarterly VAT Returns for the first three quarters of 2005 on April 25, 2005; July 26, 2005; and October 25, 2005. It filed its Monthly VAT Declaration for the month of October on November 21, 2005, which was amended on May 24, 2006.

*“On December 20, 2006, petitioner filed an administrative claim for cash refund or issuance of tax credit certificate corresponding to the input VAT reported in its Quarterly VAT Returns for the first three quarters of 2005 and Monthly VAT Declaration for October 2005 in the amount of P80,136,251.60, citing as legal bases Section 112 (A), in relation to Section 108 (B)(3) of the NIRC of 1997, Section 4.106-2(c) of Revenue Regulations No. 7-95, Revenue Memorandum Circular No. 61-2005, and the case of Maceda v. Macaraig.”*

Issue/s:

Whether or not the Court of Tax Appeals (CTA) has jurisdiction to take cognizance of the case.

**Held:**

In this case, petitioner relied on BIR Ruling No. DA-489-03 when it filed its judicial claim on April 18, 2007 or after the ruling’s issuance and before the *Aichi* case was promulgated by the SC. Hence, *“even though petitioner’s claim was prematurely filed without waiting for the expiration of the 120-day mandatory period, the CTA may still take cognizance of the x x x case as it was filed within the period exempted from the 120-30-day mandatory period.”*

The SC, in deciding in favor of petitioner, ruled that *“BIR Ruling No. DA-489-03 is a general interpretative rule because it is a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance.”* It is a general interpretative rule. It is an equitable estoppel in favor of taxpayers. Ponente: Peralta, J.

The case was remanded to the CTA for the determination of the amount refundable.





# ENGAGEMENTS



**FOCUS GROUP DISCUSSION (FGD) ON TAX MATTERS**

Held at Tañada Room, Senate of the Philippines  
Pasay City

January 7, 2015

Participant : **Mr. CLINTON S. MARTINEZ, SLSO II**

**LAUNCH OF 1st PHILIPPINE EXTRACTIVE INDUSTRIES  
TRANSPARENCY INITIATIVE (PH-EITI) COUNTRY REPORT**

Held at Sofitel Manila Hotel  
Pasay City

February 3, 2015

Participants :  
**Atty. RODELIO T. DASCIL, MNSA**  
Director-General

**Dir. VIVIAN A. CABILING**  
Indirect Taxes Branch



**ASSESSMENT/PLANNING WORKSHOP OF S.E.N.A.D.O.**

Held at Piña Colina Resort  
Tagaytay City, Cavite  
February 5 - 7, 2015

Participants :  
**Ms. ELIZABETH M. AGAS, LSO IV**  
**Mr. JOHANN F.A. GUEVARRA, LSO I**



# Bonding with the Chairman!

February 26, 2015







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