

GOLD SMUGGLING



by

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

Ordinarily, smuggling means the importation of goods into a country in violation of the laws of that country. Gold is a regulated commodity and is governed by the laws of the *Bangko Sentral ng Pilipinas*.

Bangko Sentral ng Pilipinas

The following are the “gold” provisions under RA 7653, the New Central Bank Act:

“**Section 69 – Purchases and Sales of Gold.** – The Bangko Sentral **may buy and sell gold** in any form subject to such regulations as the Monetary Board may issue. The **purchases and sales of gold** authorized by this section shall be made in the national currency at the prevailing international market price as determined by the Monetary Board.

“**Section 70 – Purchases and Sales of Foreign Exchange** – The Bangko Sentral may buy and sell foreign notes and coins, and documents and instruments of types customarily employed for the international transfer of funds. The Bangko Sentral may engage in foreign exchange transactions with the following entities or persons only:

- a. banking institutions operating in the Philippines;
 - b. the government, its political subdivisions and instrumentalities;
-

- c. foreign or international financial institutions;
- d. foreign governments and their instruments; and
- e. other entities or persons which the Monetary Board is hereby empowered to authorize as foreign exchange dealers, subject to such rules and regulations as the Monetary Board shall prescribe.

"In order to maintain the convertibility of the peso, the Bangko Sentral may, at the request of any banking institution operating in the Philippines, buy any quantity of foreign exchange offered, and sell any quantity any foreign exchange demanded, by such institution, provided that the foreign currencies so offered or demanded are freely convertible into **gold** or United States dollars. This requirement shall not apply to demands for foreign notes and coins.

"Section 72 – Emergency Restrictions on Exchange Operations - In time of national emergency and to give the Monetary Board and the Government time in which to take constructive measures to forestall, combat, or overcome such a

crisis or emergency, the Monetary Board, may temporarily suspend or restrict sales of foreign exchange by the Bangko Sentral, and **may subject all transactions in gold** and foreign exchange by the Bangko Sentral.

"Section 75 – Operations with Foreign Entities - Upon authority of the Monetary Board, the Bangko Sentral may pledge any **gold** or other assets which it possesses as security against loans which it receives from foreign or international entities.

"Section 125. Tax Exemptions – Exemption from Customs Duties. – The provision of any general or special law to the contrary notwithstanding, the importation and exportation by the Bangko Sentral of notes and coins and **gold** and other metals to be used for purposes authorized under this Act, and the importation of all equipment needed for bank note production, minting of coins, metals refining and other refining and other security printing operations shall be fully exempt from all customs duties and consular fees and from all taxes, assessments and charges related to such importation or exportation."

International Monetary Fund (IMF)

Philippines: Technical Assistance Report on Road Map for a Pro-Growth and Equitable Tax System¹

The IMF evaluated the mining industry in the Philippines, giving insights and suggesting reforms towards the improvement of the industry. According to the IMF, the mining industry's contribution to the GDP was 1.4% in 2010. **The share of mining exports and investments continues to be low despite a wide range of incentives.**

Contribution of Mining Industry to the Philippine Economy

	2007	2008	2009	2010
Value added as share of GDP	1.4%	1.2%	1.3%	1.4%
Share of exports	4.4%	4.2%	3.0%	2.9%
Share of mining in total investment	2.7%	1.8%	2.6%	2.3%
Share of mining FDI in total investment	0.6%	0.5%	0.0%	0.7%
Share of FDI in total investment	11.3%	4.6%	7.0%	4.2%
GDP (billion of pesos)	6,892.7	7,720.9	8,026.1	9,003.5
Exports (billion of pesos)	2,981.8	2,849.9	2,587.0	3,133.5
Gross investment (billion of pesos)	1,195.0	1,489.2	1,331.7	1,849.4

Source: DOF and staff calculations

¹ Kiyoshi Nakayama, Secuk Caner, Peter Mullins, Philippines, Technical Assistance Report on Road Map for a Pro-Growth and Equitable Tax System, November 2011, IMF Country Report No. 12/60 (March 2012), e mail address (www.imf.org/external/pubs/ft/scr/2012/cr1260.pdf).

² The IMF study covers the Philippine mining industry as a whole, not gold mining in particular.

Low revenues from mining may be due to continued exploration activities by many firms while only few firms are engaged in production. **Given the current level of production and taxes and royalties paid, mining yields disappointingly little revenue for the government.**

Revenues from Mining Industry as Share of GDP

	2007	2008	2009	2010
Total Royalties and fees MGB (Mines and Geosciences Bureau)	0.01%	0.01%	0.00%	0.01%
Royalties –MGB	0.01%	0.01%	0.00%	0.01%
Fees –MGB	0.00%	0.00%	0.00%	0.00%
Excises	0.01%	0.01%	0.01%	0.01%
Total taxes – National government	0.12%	0.08%	0.08%	0.06%
Taxes – Local government	0.01%	0.01%	0.01%	0.01%
Total taxes	0.13%	0.08%	0.08%	0.07%

Source: DOF and staff calculations

The IMF suggested the following reforms to the Philippine mining industry³:

1. **A separate section on mining taxation should be introduced in the Corporate Chapter of the NIRC.** Because corporate income taxation is often applied to mining with special provisions, it would help clarify the treatment of components of income and deductions of the mining companies in deriving their liabilities in addition to royalties. For example, dividend withholding taxes, loss carry forwards, deductible expenses and depreciation allowance can be different for mining companies than the tax treatment of regular corporations.
2. **Management fees paid to related parties are often used to shift income and, therefore, a special tax rule is needed.** To avoid income shifting, transfer price rules applicable to all taxpayers should be enforced for mining companies as well. However, it is often difficult for the tax administration to establish just what services the management fees cover and whether the charges for these services are arm's length. Given the importance of the mining sector and the need to protect government revenue, management fees, say in excess of 2% of revenue, are in many countries disallowed as a business expense. A separate mining section in Chapter IV of the National Internal Revenue Code (NIRC) on tax corporations could include this special rule.
3. **Ring fencing means a limitation on consolidation of income and deductions for tax purposes across different activities, or different projects, undertaken by the same**

taxpayer. Some countries ring-fence mining (and petroleum) activities from other activities of the taxpayer; other ring-fence individual license areas or projects. Ring-fencing rules matter because the absence of ring-fencing by project can seriously postpone government tax revenue: an investor who undertakes a series of projects will be able to deduct exploration or development expenditures from each new project against the income of projects that are already generating taxable income. Ring-fencing is particularly important if the government is to impose a profit-based surcharge should be ring-fenced by mining license. However, failed explorations and mines that require joint operations may be exempted from ring-fencing. In general, expenses at Mine B incurred by a company already producing at Mine A should not be deductible against the income from Mine A. It is quite possible that one company may own many mines or operate mines through subsidiaries.

The IMF also suggested the following characteristics of a mining fiscal regime:

- Maximize the net present value of tax revenue, subject to providing adequate incentives for the exploration and development;
- A system based on profitability capturing more revenues during periods of high profits;
- Providing predictable and stable tax revenues;
- Protect against tax avoidance;

³ The suggestions towards the improvement of the Philippine mining industry were directly copied from the IMF study.

- Encourage exploration and expansion of the tax base; and
- Low administrative fees and transaction charges.

Gold smuggling Small scale gold mining

The Mines and Geosciences Bureau, the govern-



ment agency regulating the Philippine mining activities in the Philippines made the following observations:⁴

- approximately 90% of gold small scale mining production is smuggled to Hong Kong, which ultimately enters mainland China. Smuggled Philippine gold also finds its way to Malaysia;
- the Bureau is looking into the involvement of organized crime groups in the loss of an estimated amount of 24 tons;
- the black market activities are usually based in Manila;
- Hong Kong's top source of gold imports from 2005 to 2010 was the Philippines, according to Hong Kong statistics. Philippine gold shipments to Hong Kong hit a peak of 81,471 kgs. in 2010, way above imports of just 11 kilos nine years earlier, and were steady at 81,291 kgs. In 2011, however, the official Philippine statistics show that gold exports to Hong Kong in 2010 and 2011 was just 3% of the total volume recorded by Hong Kong authorities;
- Gold export data represents shipments by big mining firms with supply contracts, because **exports of gold from small scale mines are banned**;
- Gold prices, which have been trending at or near historic highs for several years, have spurred illegal gold mining around the world.

According to Canada based Artisanal Gold Council, illegal mining now accounts for 15% of the global gold output;

- Small scale mining accounts for more than two thirds (2/3) of the total output of the Philippines, the main source of the reserves of the Bangko Sentral which hit a record high of US\$ 10.4 billion early this year;
- The Philippines is the world's 18th largest gold producer, according to precious metals consultancy Thomson Reuters GFMS. It produced just over 1 million troy ounces of gold in 2011 – worth US\$ 1.6 billion dollars at current prices and about 56% of that came from small scale miners; and
- While gold production did not slow down, the volume of legal purchases plummeted. This year, **the amount of gold sold by small scale miners and traders to the Bangko Sentral in the second quarter fell 98% from a year earlier**. Production is the same as the previous year, but the gold produced was either black marketed or smuggled out of the country.

Taxation

Decline in gold purchases (by the Bangko Sentral) started during the second semester of 2011, when the BIR imposed a collection of 2% excise tax and 5% creditable withholding tax (CWT) from the sale of small scale miners and traders. The withholding tax was further reduced to 5% from 10% in April 2, 2012 Revenue Regulation No. 6-2012.

Traders and officials say the biggest factor behind the gold smuggling in the past is the newly imposed taxes. **Since 2011, every sale of gold has been subject to a 2% excise tax, and a 5% withholding tax, usually borne by traders.**

On April 2, 2012, the BIR issued Revenue Regulations No. 6-2012 clarifying the taxation on the sale of gold and other metallic materials to the BSP. The BIR likewise issued the following explanations⁵:

- 2% excise tax** - Metallic minerals are subject to 2% excise tax rate based on either the actual market value of the gross output thereof at the time of removal, in case of those locally extracted or produced; or the value used by the BOC in computing tariffs and duties, in case of importation.
- 12% VAT** - Sale of metallic minerals to persons and entities, except sale of gold to the BSP, is subject to 12% value-added tax (VAT) if the value thereof exceeds the threshold set by the 1997 Tax Code and existing issuance.

⁴ www.gmanetwork.com/news/story/270724/economy/business/phl-black-market-yields-gold-for-china, posted on August 22, 2012, 2.52 pm).

⁵ www.bir.gov.ph/iss_rul/reg2012.htm.

Sale of gold to the BSP is subject to 0% VAT if the seller is a VAT registered taxpayer.

- c. **Income tax** - Sellers are subject to income tax at the rate prescribed under Section 24 (A), in case of individual taxpayers, and under Section 27 (A) of the Tax Code, in the case of corporations. Further, buyers of said metallic minerals are required to withhold 5% of gross payments made and remit the same to the Government.
- d. **Allowance of costs and expenses** – In order for a seller/possessor of said metallic mineral to be able to claim the costs of said metallic mineral, said seller/possessor must be able to show proof of withholding and remittance of the 5% withholding tax on said product, otherwise all claimed costs and expenses associated therewith shall be disallowed.
- e. **Collecting agents** – All buyers of metallic minerals are hereby constituted as agents for the collection of 2% excise tax on metallic minerals and the 5% creditable withholding tax thereon. All penalties under existing laws and regulations shall attach to buyers who fail to withhold and/or pay said taxes.
- f. **The role of the BSP** – The BSP, regardless whoever is selling, is obliged to collect the 2% excise tax on the actual market value of the gold sold to it, regardless of the purchase price it paid for the transaction, and remit the same to the BIR. If the seller is able to produce payment of excise taxes on said goods, the BSP shall not be liable anymore for payment of excise tax.

Executive Order No. 79, s. 2012

Issued on July 6, 2012

(Institutionalizing and implementing reforms in the Philippine mining sector providing policies and guidelines to ensure environmental protection and responsible mining in the utilization of mineral resources)

The following are the highlights of the EO 79⁶:

- a. **Revenue sharing scheme** – It is the most contentious aspect of EO 79. The government will work to **legislate a rationalization of the current schemes and mechanisms**. The EO imposes a moratorium on the approval of new mineral agreements – *“No new mineral agreements shall be entered into until a legislation rationalizing existing revenue sharing schemes and mechanisms shall have taken effect.”*

Limitation of small scale mining activities

Small scale mining activities shall be limited to areas declared as *“minahang bayan”*, in effect also limiting most areas where there are nickel operations. Most nickel miners operate on

small scale permits as they await approval for their permits for medium or large scale operations – *“Small scale shall not be applicable for metallic minerals, except **gold**, silver and chromite.”*

- c. **Environmental concerns** - It bans the use of mercury in small scale mining, which, in turn, will have to be part of a specific *“minahang bayan”* area – *“We need to obtain the waste so we can treat them effectively,”* DENR Paje explained.

Three types of areas will be added to the current **no-go zones for mining**. These are (a) tourism destinations, which total around 78 sites identified by the Department of Tourism based on the National Tourism Development Plan, (b) agricultural lands, including an area in Leyte, and (c) island ecosystems identified by the National Integrated Protected Areas System (NIPAS).

- d. **Mining Industry Coordinating Council (MICC)** – In order to implement EO 79 and other industry reforms, the MICC is created which will conduct dialogues with stakeholders, and review all existing mining-related laws and rules. The MICC will be co-chaired by the chairpersons of the Climate Change Association and Mitigation and the Economic Development clusters of the Cabinet. Other members will include the Justice Secretary, the Chairperson of the National Commission on Indigenous Peoples (NCIP) and the president of the Union of Local Authorities of the Philippines (ULAP). The MICC will work with the DENR to complete the implementing rules and regulations to be completed within 60 days.
- e. **Harmonization of existing laws** – RA 7492, the Philippine Mining Act of 1995, the local government units that host mining operations are *“directed to...conform to the regulations decisions and policies...promulgated and taken by the National Government.”*
- f. **Existing contracts** – All existing mining contracts, agreements and concessions approved before the effectivity of EO 79 are considered valid. However, the DENR shall likewise undertake a review of existing mining contracts and agreements for possible renegotiation of the terms and conditions of the contract which shall in all cases be mutually acceptable to the government and the mining contractor.
- g. **Transparency** – For better transparency and governance, the DENR will commit to participate in and implement global standards specified by the Extractive Industries Transparency Initiative (EITI), and create a

⁶ A direct quote from www.rappler.com/business/8301-eco-no-new-mining-contract.

centralized industry database and a map system.

Observation

Gold smuggling continues because it is a precious commodity. It is used as an economic indicator, a hedge against the US dollar and as measure to inflation. It is also used in most electronic devices such as computers and cell phones, although in a small scale.

Gold standard is when the value of a country's money is tied to the amount of gold a country possesses. The good aspect of a gold standard is that money is backed by a fixed asset, which has self-regulating and stabilizing effect on the economy. The government can only print as much money as its country has in gold. As they export more goods, they can accumulate more gold. They can then print more money, which can be used for investing in and increasing their profitable businesses.

The disadvantages of using the gold standard are as follows: (a) the size and health of a country's economy is dependent on its gold supply, (b) it causes countries to be obsessed with keeping their gold, rather than improving the business climate, and (c) government actions to protect their gold reserves caused large fluctuations in their economy.

It is said that the global price of gold is an indication of the world economy. The worse, the economic situation becomes, the higher the price of gold. Unfortunately, economic forecasts worldwide tell of dwindling economies, particularly in the United States and Europe, therefore, the price of gold shoots up. Therefore, the incentive to smuggle gold out of the Philippines would continue.

Policy direction

Consolidating the various comments and recommendations from several sectors, the following measures are recommended:

1. **Further reduction of the taxes imposed on gold traders selling its produce to the BSP.** - The price of gold is higher in the international market than the price set by the Bangko Sentral ng Pilipinas (BSP). Furthermore, the BSP imposes a 2% excise tax and a 5% withholding tax on its gold acquisition further burdening the traders. Considering that it is mandatory for small scale miners to sell its gold to the BSP, it therefore recommended to evaluate the merits the tax impositions on gold sold to the BSP.
2. **Rationalization of the current schemes and mechanisms.** – It is the recommendation of

EO 79 issued on June 6, 2012. The aim of the recommendation is to rationalize existing revenue sharing schemes and mechanisms under existing mining agreements.

3. **Participation in the EITI (Extractive Industries Transparency Initiative)** – It is a recommendation from the EO 79 in order to create a centralized industry database and a map system.
4. **A separate mining section in the National Internal Revenue Code (NIRC)** – This is the recommendation of the IMF (International Monetary Fund) in order to clarify the treatment of components of income and deductions of the mining companies in deriving their liabilities in addition to royalties.
5. **Passage on the Anti-Smuggling bill** – The anti-smuggling focuses on the illegal entry of imports from a foreign country to the Philippines. In the case of gold smuggling the situation is different, i.e., the illegal exportation of gold. Separate provisions regarding illegal exportation should be included in the anti-smuggling bill.





**DIGEST OF
SUPREME COURT CASES IN
TAXATION**



mercury drug
NAKASISIGURO GAMOT AT LAGING BAGO

MERCURY DRUG CORPORATION, Petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, Respondent. G.R. No. 164050, July 20, 2011. Perez, J.

Facts:

This case involves the interpretation of the word “cost” as found under Section 4(a) of Republic Act (RA) No. 7432 – *An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and for other purposes*.

Petitioner Mercury Drug Corporation (MDC) is a retailer of pharmaceutical products which extended twenty percent (20%) sales discounts to qualified senior citizens, pursuant to RA No. 7432.

From April to December 1993 and January to December 1994, MDC’s 20% sales discounts amounted to P3,719,287,68 and P35,500,593.44, respectively. Said amounts were claimed by MDC as deductions from its gross income. Petitioner filed with the Commissioner of Internal Revenue (CIR) claims for refund in the amounts of P2,417,536.00 for 1993 and P23,075,386.00 for 1994, presenting a computation of its alleged overpayment of income tax.

The CIR failed to act upon MDC’s assertions, hence the latter filed a petition for review with the Court of Tax Appeals (CTA). The CTA handed down its decision, viz:

“WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, Revenue Regulations No. 2-94 of the Respondent is declared null and void insofar as it treats the 20% discount given by private establishments as a deduction from gross sales.

Respondent is hereby ORDERED to GRANT A REFUND OR ISSUE A TAX CREDIT CERTIFICATE to Petitioner in the reduced amount of P1,688,178.43 representing the latter's overpaid income tax for the taxable year 1993. However, the claim for refund for taxable year 1994 is denied for lack of merit."

The CTA further averred:

"Thus the cost of the 20% discount represents the actual amount spent by drug corporations in complying with the mandate of RA 7432. Working on this premise, it could not have been the intention of the lawmakers to grant these companies the full amount of the 20% discount as this could be extending to them more than what they actually sacrificed when they gave the 20% discount to senior citizens." (Underscoring supplied)

The CTA issued on December 20, 2000 a Resolution which modified its earlier ruling by increasing the creditable tax to P18,038,489.71 for the years 1993 and 1994. On the basis of the cash slips presented by MDC, the CTA finally acceded to the claim of refund for 1994 in the amount of P16,350,311.28.

MDC elevated the case to the Court of Appeals (CA) raising the issue of the computation of tax credit. "Petitioner contended that the actual discount granted to the senior citizens, rather than the acquisition cost of the item availed by senior citizens, should be the bases for computation of tax credit."

On October 20, 2003, the CA handed down its ruling sustaining the CTA. The latter interpreted the word "cost" as used in Section 4(a) of RA 7432 to mean "the acquisition cost of the medicines sold to senior citizens".

Issue:

Where is the 20% discount granted under RA No. 7432, as amended, based?

Held:

The SC declared that the main issue under this case "is to determine whether the claim for tax credit should be based on the full amount of the 20% senior citizens' discount or the acquisition cost of the merchandise sold."

The SC declared: "Preliminarily, Republic Act No. 7432 is a piece of social legislation aimed to grant benefits and privileges to senior citizens. Among the highlights of this Act is the grant of sales discounts on the purchase of medicines to senior citizens. Section 4 (a) of Republic Act No. 7432 reads:

"SEC. 4. Privileges for Senior Citizens. The senior citizens shall be entitled to the following:

"a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of transportation services, hotels and similar lodging establishments, restaurants and recreation centers and purchase of medicines anywhere in the country; Provided, That private establishments may claim the cost as tax credit;"

"X x x.

"The foregoing proviso specifically allows the 20% senior citizens' discount to be claimed by the private establishment as a tax credit and not merely as a tax deduction from gross sales or gross income. X x x.

"In Bicolandia, we construed the term 'cost' as referring to the amount of the 20% discount extended by a private establishment to senior citizens in their purchase of medicines. X x x.

"We reiterated this ruling in the 2008 case of Cagayan Valley Drug by holding that petitioner therein is entitled to a tax credit for the full 20% sales discounts it extended to qualified senior citizens. This holds true despite the fact that petitioner suffered a net loss for than taxable year. We finally affirmed in M.E. Holding that the tax credit should be equivalent to the actual 20% sales discount granted to qualified senior citizens."

The SC mentioned that RA No. 7432 has undergone two amendments. The first was in 2003 by RA No. 9257 and the second by RA No. 9994 in 2010. The SC stressed that "the 20% sales discount granted by establishments to qualified senior citizens is now treated as tax deduction and not as a tax credit."

The SC concluded:

"Based on the foregoing, we sustain petitioner's argument that the cost of discount should be computed on the actual amount of the discount extended to senior citizens. However, we give full accord to the factual findings of the Court of Tax Appeals with respect to the actual amount of the 20% sales discount, i.e., the sum of P3,522,123.25. for the year 1993 and P34,211,769.45 for the year 1994. Therefore, petitioner is entitled to a tax credit equivalent to the actual amounts of the 20% sales discount as determined by the Court of Tax Appeals."

Hence, respondent CIR was ordered to issue tax credit certificates (TCTs) in favor of MDC in the amounts of P2,289,381.71 for 1993 and P22,237,650.34 for 1994.



PRUDENTIAL BANK, Petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, Respondent.
G.R. No. 180390, July 27, 2011. Del Castillo, J.

Facts:

Petitioner Prudential Bank (PB) on July 23, 1999 received from respondent Commissioner of Internal Revenue (CIR) a Final Assessment Notice (FAN) No. ST-DST-95-0042-99 and a Demand Letter for deficiency Documentary Stamp Tax (DST) for the taxable year 1995 on its Repurchase Agreement with Bangko Sentral ng Pilipinas (BSP), purchase of Treasury Bills from the latter, and on its Savings Account Plus (SAP) product, totaling P18,982,734.38.

PB protested the assessment alleging that the documents are not subject to DST. The CIR denied the protest on December 28, 2001. Subsequently, PB filed a Petition for Review at the Court of Tax Appeals (CTA). The CTA First Division affirmed the assessment for deficiency DST of the SAP, but nullified the assessment on PB's repurchase agreement and purchase of treasury bills with the BSP. PB's motion for partial reconsideration was denied by the First Division. Hence, PB appealed to the CTA *En Banc*. The latter affirmed the decision of the First Division that PB's SAP is a certificate of deposit bearing interest subject to DST.

PB moved for reconsideration but subsequently sought to withdraw the same due to its use of the Improved Voluntary Assessment Program (IVAP). The CTA *En Banc* issued a Resolution which denied PB's motion to withdraw due to non-compliance with the requirements for abatement. The CTA held that the amount paid for abatement purposes was not in accordance with the circular that provides that the amount should be based on the original assessment or the

court's decision, whichever is higher. Also, the CTA noted that petitioner did not comply with requirement to submit the letter of termination and authority to cancel assessment signed by the CIR.

Issues:

1. Whether PB's SAP is subject to DST.
2. Whether the CTA *En Banc* committed a mistake in not allowing the withdrawal of the petition and/or cancellation of the DST assessment on PB's SAP on the ground that PB has already paid and substantially complied with existing regulation and order.

Held:

The Supreme Court (SC) ruled that the petition of PB is devoid of merit and proclaimed that petitioner's SAP is subject to DST. The SC quoted Section 180 of the old NIRC, viz:

"Sec. 180. Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand. - On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines; bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities or certificates of deposits drawing interest, or orders for the payment of any sum of money otherwise than at the sight or on demand, or on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each Two hundred pesos, or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note: Provided, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory note issued to secure such loan, whichever will yield a higher tax: provided, however, that loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (P250,000.00) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this section." (Emphasis supplied.)

The SC defined a certificate of deposit as “a written acknowledgment by a bank or banker of the receipt of a sum of money on deposit which the bank or banker promises to pay to the depositor, to the order of the depositor, or to some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created.”

The SC did not assent with the view of PB that its SAP is not a certificate of deposit. Said the Court:

“In China Banking Corporation v. Commissioner of Internal Revenue, we held that the Savings Plus Deposit Account, which has the following features:

“1. Amount deposited is withdrawable any-time;

“2. The same is evidenced by a passbook;

“3. The rate of interest offered is the prevailing market rate, provided the depositor would maintain his minimum balance in thirty (30) days at the minimum, and should he withdraw before the period, his deposit would earn the regular savings deposit rate;

“is subject to DST as it is essentially the same as the Special/Super Savings Deposit Account in Philippine Banking Corporation v. Commissioner of Internal Revenue, and the Savings Account-Fixed Savings Deposit in International Exchange Bank v. Commissioner of Internal Revenue, which are considered certificates of deposit drawing interests.

“Similarly, in this case, although the money deposited in a SAP is payable anytime, the withdrawal of the money before the expiration of 30 days results in the reduction of the interest rate. In the same way, a time deposit withdrawn before its maturity results to a lower interest rate and payment of bank charges or penalties.

“The fact that the SAP is evidenced by a passbook likewise cannot remove its coverage from Section 180 of the old NIRC, as amended. A document to be considered a certificate of deposit need not be in a specific form. Thus, a passbook issued by a bank qualifies as a certificate of deposit drawing interest because it is considered a written acknowledgement by a bank that it has accepted a deposit of a sum of money from a depositor.”

As to the second issue, the SC ruled that the CTA *En Banc*'s denial of PB's motion to withdraw is proper because it was not able to comply with the require-

ments of IVAP. The SC asserted that “to avail of the IVAP, a taxpayer must pay the 100% basic tax of the original assessment of the BIR or the CTA Decision, whichever is higher and submit the letter of termination and authority to cancel assessment signed by the respondent.” Moreover, the Court decided that PB's payment of P5,084,272.50 sans the documents in support of the same “X x x cannot be deemed substantial compliance as tax amnesty must be construed strictly against the taxpayer and liberally in favor of the taxing authority.” However, petitioner's payment was considered as partial settlement of its tax liability by the SC.

As an added information, it should be emphasized that under the present Tax Code, as amended, the following provision appears concerning the consequence of not complying with the rules on DST, to wit:

“SEC. 201. Effect of Failure to Stamp Taxable Documents. - An instrument, document or paper which is required by law to be stamped and which has been signed, issued, accepted, or transferred without being duly stamped, shall not be recorded, nor shall it or any copy thereof or any record of transfer of the same be admitted or used in evidence in any court until the requisite stamp or stamps shall have been affixed thereto and cancelled.

“No notary public or other officer authorized to administer oaths shall add his jurat or acknowledgment to any document subject to documentary stamp tax unless the proper documentary stamps are fixed thereto and cancelled.”

The DST is a tax on the privilege of issuing documents. Under the NIRC, as amended, the DST is imposed on the following: [1] Documents, loan agreements, instruments, and papers (Sec. 173); [2] Original issue of stock (Sec. 174); [3] Sales, agreements to sell, memoranda of sales, deliveries or transfer of shares or certificates of stock (Sec. 175); [4] bonds, debentures, certificates of stock or indebtedness issued in any foreign country (Sec. 176); [5] Certificates of profits or interest in property or accumulations (Sec. 177); [6] Bank checks, drafts, certificates of deposit not drawing interest, and other instruments (Sec. 178); [7] Debt instruments (Sec. 179); [8] Bills of exchange or drafts (Sec. 180); [8] Acceptance of bills of exchange and others (Sec. 181); [9] Foreign bills of exchange and letters of credit (Sec. 182); [10] Life insurance policies (Sec. 183); [11] Property insurance (Sec. 184); [12] Fidelity bonds and other insurance policies (Sec. 185); [12] Policies of annuities and pre-need plans (Sec. 186); [13] Indemnity bonds (Sec. 187); [14] Certificates (Sec. 188); [15] Warehouse receipts (Sec. 189); [16] Jai-alai, horse race tickets, lotto or other authorized

numbers games (Sec. 190); [17] Bills of lading or receipts (Sec. 191); [18] Proxies (Sec. 192); [19] Powers of attorney (Sec. 193); [20] Leases and other hiring agreements (Sec. 194); [21] Mortgages, pledges, and deed of trust (Sec. 195); [22] Deeds of sale and conveyances of real property (Sec. 196); [23] Charter parties and similar instruments (Sec. 197); and, [24] Assignments and renewals of certain instruments (Sec. 198). Under Section 199 of the Tax Code, the documents and papers that are not subject to stamp tax are enumerated. Pursuant RA 9648 (June 30, 2009), the five (5) year period under paragraph (e) has been deleted, hence the sale, barter or exchange

of shares of stock listed and traded in the Philippine stock exchange, the local bourse, are now exempt. The removal of the same will hopefully minimize the “frictional cost” of trading, and improve economic activity.



TAX BITS is an official publication of the Senate Tax Study and Research Office (STSR) located at Rm. 524, Senate of the Philippines, Financial Center, Pasay City.
 Website: <http://www.senate.gov.ph>
 Email: attydascil@yahoo.com, taxbits@yahoo.com
 Telefax No.: 552-6849 ; Tel. No. : 552-6850

Editors and Contributing Writers

Atty. RODELIO T. DASCIL, MNSA
 Director General

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

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

MARIA LUCRECIA R. MIR, MNSA
 Director III, Direct Taxes

VIVIAN A. CABILING
 Director III, Indirect Taxes

JULIETA M. FONTIVEROS
 Director II, Legal & Tariff

NORBERTO M. VILLANUEVA
 Director II, Tax Policy & Admin

ELVIRA P. CRUDO
 Director II, Direct Taxes

Atty. SHERRY ANNE C. SALAZAR
 Director II, Indirect Taxes

BONIFACIO R. JOSON
 LSA-III, ODG - Layout Artist

CLINTON S. MARTINEZ
 SLSO II, Indirect Taxes

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