

STSRO TAXBITS

Volume VIII

44th Issue

May - June 2017



TAXATION & FEDERALISM

by

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The Senate Tax Study and Research Office (STSRO) held its 2nd tax forum entitled "*Taxation in a Federal Form of Government*" last 24 May 2017 at the Sen. Laurel Room, Senate of the Philippines, Pasay City. While there are many issues surrounding the proposal to shift to a federal form of government, this forum focused on the tax implications of such a move. In order to elucidate this matter, the following experts were invited, to wit:



Engr. Jose Arnold Tan, Ph.D.
Deputy Executive Director
Bureau of Local Government
Finance (BLGF)



Mr. Ronald Mendoza, Ph.D.
Dean
Ateneo School of Government



Ms. Trinidad Rodriguez
Executive Director
National Tax Research Center
(NTRC)



Mr. Benedikt Seemann
Country Representative
Konrad-Adenauer-Stiftung (KAS)



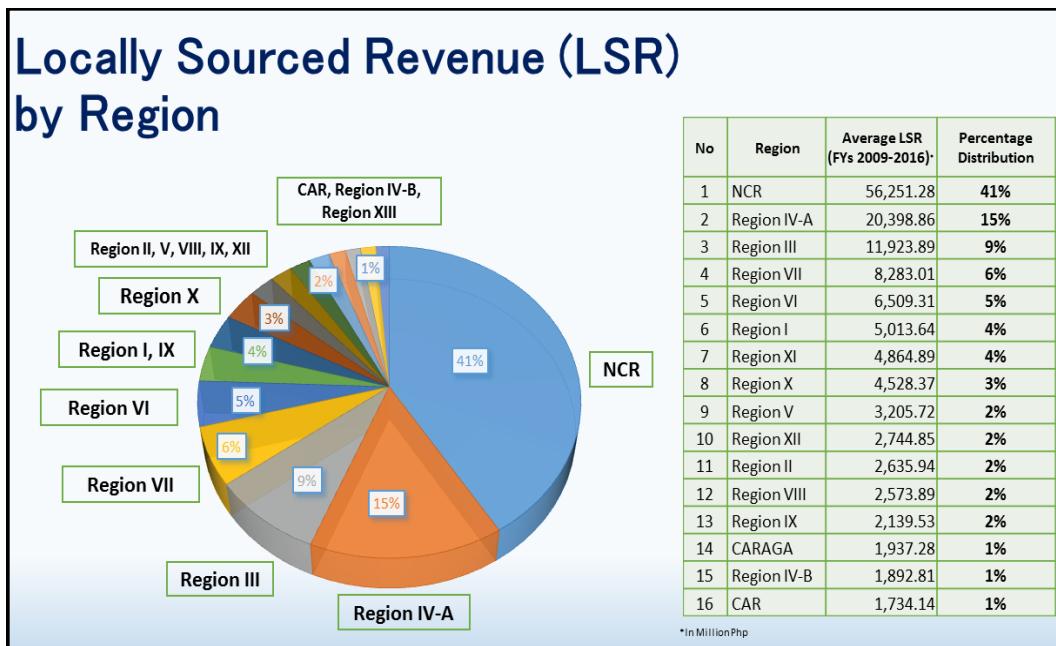
Ms. Rosario Manasan, Ph.D.
Senior Research Fellow
Philippine Institute of
Development Studies (PIDS)



Hon. Stella Luz Quimbo, Ph.D.
Commissioner
Philippine Competition
Commission (PCC)

The Current Fiscal Position of Local Government Units (LGUs)

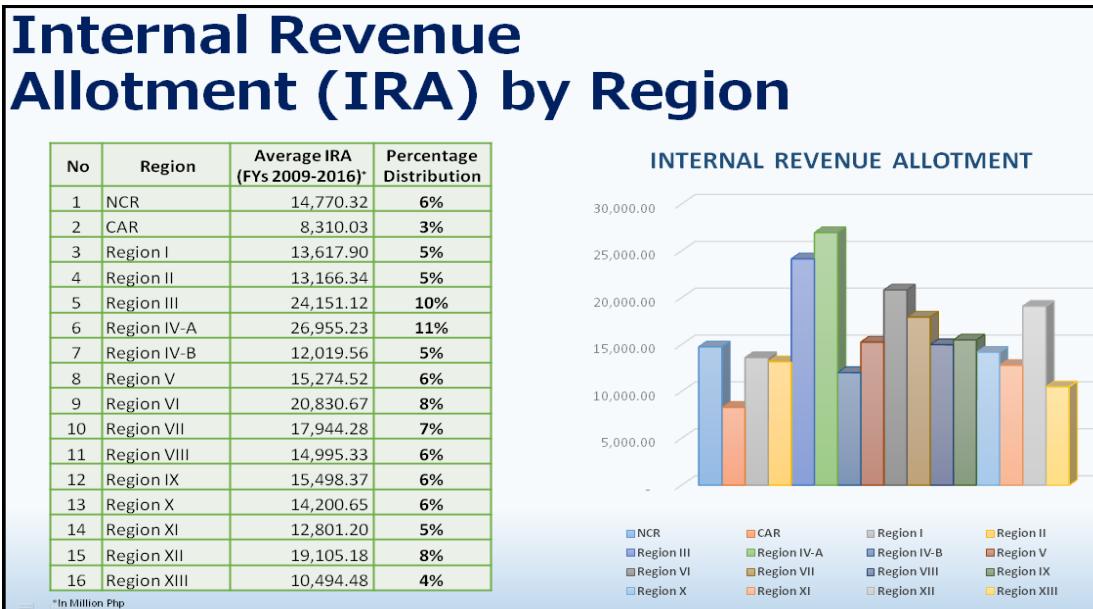
The first presentor, **Deputy Executive Director Tan** of the BLGF, discussed the current fiscal position of the different regions in the country particularly their tax and non-tax revenues. At the outset, Director Tan explained that local government units (LGUs) rely more on business taxes for their revenues than on real property taxes. Most local governments are hesitant in revising their schedule of market values. The focal point of his presentation was a table showing the *locally sourced revenue* (LSR) by region, to wit:



Source : BLGF Presentation on Tax Forum, Tax Revenue Implications of Adopting Federalist Form of Government (2017)

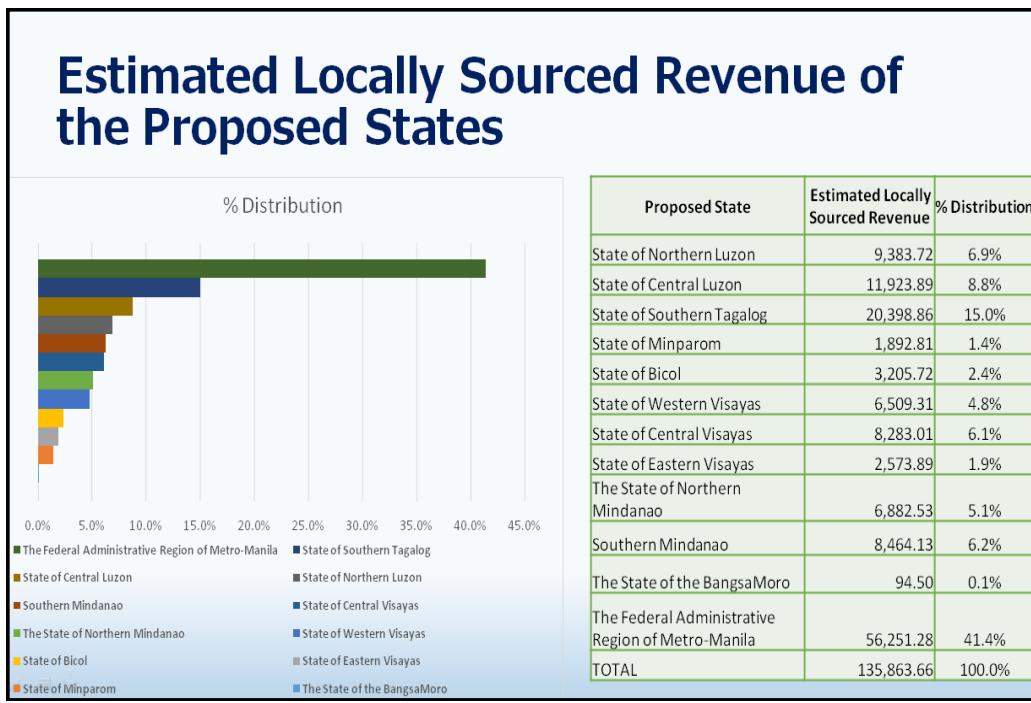
Based on the above table, the National Capital Region (NCR) is the biggest revenue collector with P56.251 billion followed by Region IV-A or CALABARZON (Cavite, Laguna, Batangas, Rizal and Quezon) with P20.399 billion in revenues. Tied at the bottom are CARAGA (Agusan del Norte, Agusan del Sur, Surigao del Norte, Surigao del Sur), Region IV-B or MIMAROPA (Occidental Mindoro, Oriental Mindoro, Marinduque, Romblon and Palawan), and CAR (Abra, Apayao, Benguet, Ifugao, Kalinga and Mountain Province) with revenues collected only at P1.937 billion, P1.893 billion, and P1.734 billion, respectively.

As the *Internal Revenue Allotment* or IRA remains to be a big component of the revenues of LGUs, Dr. Tan also shared a table which depicts the amount of IRA currently received by the different regions, to wit:



Source : BLGF Presentation on Tax Forum, Tax Revenue Implications of Adopting Federalist Form of Government

In conclusion, the BLGF used the above data in estimating the amount of revenues that will be generated by the proposed federal states, to wit:



Source : BLGF Presentation on Tax Forum, Tax Revenue Implications of Adopting Federalist Form of Government (2017)

The Current Government Structure vis-à-vis Federalism

Dr. Ronald Mendoza, Dean of the Ateneo School of Government, started his presentation by posing the question: "Fixing public finance: Is federalism the answer?" He candidly replied that federalism is not necessarily the answer but it can be one of the possible solutions to this problem. Dr. Mendoza is of the opinion that there is a need to fix our public finance system in order for the central government to have a better relationship with the LGUs.

The Dean also highlighted the apparent failure of the *Local Government Code of 1991* to match revenues with the "ambition of the countryside". He showed that according to a *Government Expenditure Breakdown in 2014*, 82% of the total government spending is channelled through national government agencies, and only 18% is left for local government expenditure. This immediately puts at a disadvantage most of the LGUs in the country except for the top 3 regions, i.e. NCR, Region III, and Region IV-A. These are the three regions in Luzon where 60% of the country's *gross domestic product* (GDP) is apparently concentrated. The Dean explained that alongside this concentration of public finance is the concentration of economic firepower in "mostly Imperial Manila".

Dr. Mendoza was quick to caution against immediately shifting to a federalist system because this will not change the concentration of wealth nor of economic activity. Manila will still be the focal point of public finance and expenditure. Hence, Dr. Mendoza suggested that there should be a *transition period* for

the concentration of both public finance and expenditure to be removed from Manila and distributed among the other regions. He believes that this is a necessary step since enough fiscal space must be given to the regions in order for them to catch up with NCR.

The concept of *tax competition* among the different LGUs was also brought up by the Dean when he discussed how federal states would use tax policies in attracting more businesses and people into their jurisdictions. This is especially true for investments, and individuals that can easily move across different borders. Again, Dr. Mendoza stated that engaging in a tax competition will not be helpful for LGUs unless we first resolve the problem of concentration in Imperial Manila.

Another interesting concept discussed by Dr. Mendoza is the level of *inequality in human development* that is pervasive across the regions in the country. This, he said, is the product of the imbalance in the economic resource distribution between the regions and the NCR. According to their study, those living in the NCR are at par with Thailand in terms of the level of human development. However, for those born or living in Maguindanao or Tawi-tawi, the level of human development is already similar to that of Zimbabwe and Afghanistan. On top of this, Dr. Mendoza also mentioned the *inequality of life span*, which basically refers to the life expectancy of a person depending on the region where he/she lives. For instance, a woman residing in Region 1 is expected to live until 76 years old, while a female who lives in the ARMM is expected to live only until 63 years old. Given

this, it is worth pondering whether this disparity can be addressed by a shift to a federalist government.

Dean Mendoza also criticized the current structure of the IRA. He cited some inequality in the policy that allows fast growing cities such as Makati to receive P700-800 million pesos in IRA annually. He believes that the policy behind the IRA should be changed. At present, the Dean opines that the IRA acts as a

perverse incentive to LGUs such that more people will mean more funds at your disposal. But experience has shown that a high population is correlated with a high incidence of poverty for the LGU concerned. Thus, the Dean is proposing a different mechanism where the amount of funds for an LGU will depend on how well it has performed in terms of governance and economic activity. He refers to this as the *public finance graduation mechanism*, to wit:

Aligning Resources with Accountability: A Proposal for a Public Finance Graduation Mechanism			
	Poor Governance	Better Governance	Best Governance
Lower Income	Conditional Transfers / Grants		
Middle Income		Unconditional / Matching Grants	
Higher Income			Debt instruments for LGUs; Municipal Bond Markets

Source: Author's elaboration drawing on Lianto (2012) and Manasan (2004).

Source: Ateneo School of Government Presentation on Tax Forum, Fixing Philippine Public Finance: Is Federalism the answer? (2017)

The Basics of Fiscal Federalism

The next discussant was the Executive Director of the NTRC, Ms. Trinidad Rodriguez. Her presentation contained an introduction of the federal system. Director Rodriguez showed a table of the *tax assignment practices in various federations*, to wit:

Tax Assignment Practices in Various Federations

Tax	Tax Assignment	Basis of Assignment
Customs	F	International Trade
Personal Income Tax	F	Redistributive, mobile
Corporate Tax	F	Administrative simplicity, Mobile
Estate and Gift Taxes	F	Redistributive
Resource Tax	F	Unequally distributed
VAT	F	Administrative cost, stabilization
Gambling (lotteries, etc.)	S, L	State and local responsibility
Business tax	S	Benefit tax
Property taxes	L	Benefit tax, immobile
Fees and User charges	F,S,L	Payment for services received

Notes: F – Federal, S – State/Province, L – Local/Municipality

Gleaning from the above table, the Federal government still controls most of the taxing powers, as compared to those devolved to the individual States and the local governments. Given this tax assignment, it is no wonder that the national government owns a bigger share, at P1.8 trillion, of the tax revenues in the country. It is also interesting to note that city governments actually collect more than provinces or municipalities. This is probably the reason why most provinces and municipalities are more IRA-dependent than cities. To illustrate this sharing of tax and non-tax revenues among the different levels of government, please refer to the table below:

Sources	NG	P	C	M
Tax Revenues	1,815.48	8.76	96.53	16.98
Non-Tax Revenues	293.48	13.63	22.47	13.96
Total	2,108.96	22.39	119.00	30.94
Amount in billion pesos				

Source: NTRC Presentation on Tax Forum, Taxation in a Federal Form of Government, (2017)

The presentation made by the NTRC Executive Director was very detailed and comprehensive with respect to the figures on revenue collection by various regions. The Executive Director showed the potential revenue collections of the proposed federal states under different possible sharing schemes, to wit:

2017 IRA Under Present and Proposed Federal Setting, by Region (Amount in Billion Pesos)						
Particulars	Present		Proposed	20:80	30:70	40:60
Total Net National Internal Revenues	1,217.21	100%	Total Net Revenues	1,217.21	1,217.21	1,217.21
NG	730.32	60%	FG	243.44	365.16	486.88
LGUs	486.89	40%	States and CUs	973.77	852.05	730.33
			States	292.13	255.61	219.10
Region	486.89	100.00%	CUs	681.64	596.43	511.23
NCR	30.26	6.21%	NCR	42.36	37.06	31.77
CAR	14.87	3.05%	CAR	20.82	18.22	15.61
Region I	26.48	5.44%	Region I	37.07	32.43	27.80
Region II	24.87	5.11%	Region II	34.82	30.46	26.11
Region III	46.61	9.57%	Region III	65.26	57.10	48.94
Region IV-A	55.57	11.41%	Region IV-A	77.80	68.07	58.35
Region IV-B	21.15	4.34%	Region IV-B	29.62	25.91	22.21
Region V	29.93	6.15%	Region V	41.90	36.66	31.43
Region VI	38.99	8.01%	Region VI	54.58	47.76	40.93
Region VII	34.37	7.06%	Region VII	48.11	42.10	36.09
Region VIII	30.04	6.17%	Region VIII	42.06	36.80	31.55
Region IX	28.84	5.92%	Region IX	40.37	35.33	30.28
Region X	26.20	5.38%	Region X	36.68	32.09	27.51
Region XI	23.61	4.85%	Region XI	33.06	28.92	24.79
Region XII	36.11	7.42%	Region XII	50.55	44.23	37.91
CARAGA	18.99	3.90%	CARAGA	26.59	23.27	19.94

Note: State government = 30%, Constituent units = 70%

Source: NTRC Presentation on Tax Forum, Taxation in a Federal Form of Government, (2017)

Exec. Dir. Rodriguez stated that the proposal should not stop with simply adjusting the revenue shares of the different regions. This should be balanced with the new revenue assignments, and expenditure responsibilities. The Executive Director admits that fiscal federalism is really a complex system that must be thoroughly studied since there is no *best revenue assignment, revenue sharing method, and intergovernmental transfers*. Aside from this, there are also a lot of factors to consider under federalism such as the conditions, the needs, and the political realities in our country.

The German Experience

The Country Representative of *Konrad-Adenauer-Stiftung*, Mr. Benedikt Seemann, shared his first-hand experience of living in a federal country like Germany. Being an advocate for federalism, he clarified that shifting to a federal form of government is not the *single and sole solution to all problems in the world*. Mr. Seemann emphasized that federalism must be tied to a sound and prudent system of taxation and revenue sharing. As an introduction to the German style of federalism, Mr. Seemann informed the body that they have a total of 16 states or *Länder*. Each state has its own state assembly, government, constitution, and judicial system.

Mr. Seemann shared this slide to illustrate their system of tax policy and collection, to wit:



Source: Konrad-Adenauer-Stiftung Presentation on Tax Forum, Federalism & Its Implications for the Tax System, the German Example, (2017)

Mr. Seemann explained the sharing of tax collections as follows:

1. Corporate taxes: Federal Government gets 50% and the *Länder* also gets 50%;
2. VAT/Sales taxes: Federal gets 53.9%, *Länder* gets 44.1% and the LGUs get 2%;
3. Income taxes: Federal gets 42.5%, *Länder* gets 42.5% and the LGUs get 15%;
4. Death/Inheritance tax: *Länder* gets 100%.

To further equalize the distribution of wealth among the different levels of government in Germany, they instituted what they refer to as *equalization payments* or *Länderfinanzausgleich*. This is a mechanism for the redistribution of financial means between the federation and the *Länder* (vertical), and also among the *Länder* (horizontal). Aside from this, they also have supplementary federal grants. Mr. Seemann shared that this system is currently in the process of reform as well. The proposed reform, termed as the new *federalism deal*, will do away with the horizontal

sharing or that among the *Länder*. Instead, the distribution of VAT/sales tax to the *Länder* will be done according to their population. In addition, allotments will be given to some *Länder* according to their financial capacity. To put it simply, the share of the *Länder* will be increased due to the proceeds from the VAT/sales tax.

It is interesting to consider whether this type of equalization payments can also be done in our country. The sharing mechanism may also be similar to that under the new federalism deal of Germany. This is definitely an area that is worth exploring as we continue our study on the federalism proposal.

Mr. Seemann ended his presentation by stating that in all federations, the richer states always help out the poorer ones. There is not a single country in the world where its regions all stand on equal footing. As the Konrad representative puts it, there will always be differences, discrepancies, and variations in income or natural resources. Mr. Seemann suggested that the proposed equalization payment be seen as a form of solidarity with one's neighbors instead of a dole-out.

Designing the Fiscal Features of a Federal Form of Government

Another renowned expert on fiscal federalism is Dr. Rosario Manasan of PIDS. She began her presentation by stating that the potential benefits of shifting to a federal government comes in the form of increased efficiency, better societal welfare, and improved local accountability. In order to accomplish these goals, it is necessary that LGUs have some degree of revenue autonomy. By this, Dr. Manasan refers to their ability to raise a substantial amount of revenues from local taxes and user charges. She emphasized the need for LGUs to be fiscally responsible, that is, they should be able to spend within their budget constraints, and assume responsibility for fiscal policy. In relation to this, Dr. Manasan also discussed about tax competition or what she termed as *interjurisdictional competition*, wherein the people have the ability to vote with their feet to get a better public service tax package from their local government.

Dr. Manasan also enumerated the guiding principles with respect to the allocation of taxing powers, to wit:

1. Each level of government must have some degree of revenue autonomy since this is important in promoting local accountability;
2. State governments must exercise authority over the determination of tax rates, the definition of the tax base, and the tax collection/administration;
3. A clear determination of which taxes should be ideally assigned to the federal government, to the local governments, and which should be concurrent to both; and

4. Most federations assign in their constitutions the specific revenue raising powers of both the federal and state governments.

In reference to the different types of taxes, Dr. Manasan went into a discussion of the possible assignment of the major taxes such as the VAT and the income tax to the State governments. She asked: "If income taxes were to be assigned to the LGUs, then who will collect these taxes?" With respect to corporate income taxes, Dr. Manasan stated that some federations do assign this type of taxes to State governments. However, there are several issues attached to this option such as the tax *situs*. Moreover, Dr. Manasan also stated that only a few number of cities will benefit if corporate income taxes were to be assigned to LGUs. The head offices of the major corporations are found in Makati, Taguig, Pasig, and Quezon City. She believes that the matter of the tax *situs* of the major corporations should also be looked into. She added that the administrative feasibility of this option should be studied.

Given the thoughts shared by Dr. Manasan on the possibility of redistributing tax assignments, would it be possible to relocate the main offices of the major corporations? Or will it be better to simply divide the business/economic activity of the major corporations among the locations where they operate? This is another aspect that would be worth studying considering the substantial amount of corporate taxes these major corporations bring to the government's coffers.

Dr. Manasan also emphasized the importance of intergovernmental transfers and equalization. She opines that regardless of the way we maneuver the tax assignments, this will still be leaning towards the federal government. Having said that, Dr. Manasan provided several guiding principles, to wit:

Intergovernmental transfers and equalization - Guiding principles

- Vertical and horizontal imbalances prevalent in most federations
 - Vertical fiscal gap – results from concentration of financial resources in the FG and concentration of expensive expenditure responsibilities to SGs
 - If not addressed, may result in unfunded mandates and under-provision of essential public services

Intergovernmental transfers and equalization – Guiding principles

- Role of intergovernmental transfers
 - to correct vertical imbalances - transfers in the form of revenue-/ tax-sharing, unconditional block grants or specific purpose conditional grants (with the last tending to reduce autonomy of SGs)
 - to remove horizontal imbalances to assist SGs with low fiscal capacity relative to their expenditure responsibilities
- Design of good intergovernmental transfers – key to addressing risk of wider disparities in human development outcomes under more decentralized form of government

Source: Dr. Manasan Presentation on Tax Forum, Designing the Fiscal Features of a Federal Form of Government for the Philippines: Focus on Tax Aspects , (2017)

Dr. Manasan shared the view of Dean Mendoza that the present sharing system under the IRA should be changed. Both experts viewed the IRA as a disincentive to LGUs. Given the political conditions surrounding the IRA, it might be very difficult to reform its current structure. Dr. Manasan stressed that equalization can be accomplished by distributing the transfers on the basis of fiscal capacity, i.e. LGUs having less or a smaller fiscal capacity will get more transfers as compared to those who are already more progressive. We note, however, that this proposed system varies from Dean Mendoza's *graduation mechanism*, wherein the key elements in the grant of transfers are governance and performance of the LGU concerned.

The Forum's Sole Reactor

The last speaker was Commissioner Stella Quimbo, who also served as the sole reactor of the forum. The Commissioner started her piece by defining that *federalism* is simply having a central federal government and the local governments. She stated that those public goods with a national character, such as defense and foreign policy, should naturally belong to the central government. Thus, she views local governments as the residual claimant of all the other functions that are not federal in nature.

Dr. Quimbo emphasized that given the current conditions, only 5 out of 81 provinces, only 65 of the 144 cities, and only 107 from the 1,485 municipalities, would be able to fully finance their expenditures and manage on their own. Based on these numbers, the main concern really is how LGUs will survive if we shift to a federalist government tomorrow. However, the Commissioner also clarified that aside from survival, another important aspect of federalism is *equalization*.

The Commissioner picked up the concept raised by Dr. Manasan regarding *tax competition* among LGUs

or what is internationally referred to as *voting with the feet*. This is the phenomenon wherein taxpayers move to another LGU with better public services and tailored to fit the needs of the residents. Dr. Quimbo further explained that in the case of our country, the challenge of economic development lies in the apparent geographical variations. This problem must be addressed before a shift to a federal government can be made. Otherwise, the *economic gap* among the LGUs will only grow more severe. Dr. Quimbo offers two possible ways to address this problem – *first*, the LGUs must be properly defined and grouped in such a way that initial and potential inequities are minimized; and *second*, the grants must be equalized among the LGUs. Like the previous speakers, the Commissioner also questioned the present system of the IRA. She floated the question whether the IRA is to be blamed for the poor performance of LGUs; she noted that whether LGUs do good or not, they will receive their shares anyway.

Dr. Quimbo also discussed the possibility of shifting the tax assignment of some major taxes to LGUs. She opined that a good standard would be to analyze the nature of the public good required for a particular tax. If the public good is local in nature, then the tax should be collected by the local government. But if the public good is nationally provided, then the tax should go to the central government. However, in situations where it appears to be both local and national in character, then the local tax can be a surcharge on the national tax. The Commissioner gave several examples to illustrate this point, to wit:

- Payroll tax – Federal or local? How does the worker create income? The worker's education may be a mix of a local public school and a national university. The worker goes to work using both local and national roads. In this sense, it is a mix of local and national then the tax should be collected nationally then a local tax can be a surcharge on the national tax;
- Excise taxes on Cigarettes and Alcohol – Cigarettes and alcohol products can be brought anywhere so in that sense it has a national character. But when smokers get sick, they will use district hospitals for their treatment. So again, it is a mix of local and national taxes;
- Corporate Income taxation – It can be national since profits of corporations are not necessarily linked to local public goods. Plus, it is also difficult to determine the geographic source of income of corporations. She concluded that given these potential issues, it might be better to make it a national tax instead of local;
- VAT –Inputs can be sourced anywhere so it is properly a national tax; and

- Car taxes –Cars may be bought anywhere but as motorists often use local roads then it can also be a mix of local and national taxes.

Open Forum



Ms. Dideth Urbano from the Legislative Budget and Research Management Office (LBRMO) on the cost estimates for establishing a federal government

Reaction:

- Dr. Manasan stated that insofar as the proposed number of federal states does not exceed the current number of administrative regions then the bureaucratic costs will not be that much. She added that the incremental costs will probably go to the Legislature and Judiciary.

Ms. Marvee Ann Felipe from the STSRO on the limitations on the taxing powers of the proposed States to avoid overlaps or excessive taxation



Reaction:

- Dr. Manasan replied that the principle of *double taxation* has to be observed. Second, there should be a list of taxes assigned to the different levels of government.
- Mr. Seemann emphasized that federalism should not be used as an opportunity to invent random new taxes. He added that double taxation must not only be avoided but should be ruled out in all the levels of government.
- Mr. Seeman also stated that there are two concepts of federalism *per se* – *cooperative federalism* and *competitive federalism*. He believes that a good compromise somewhere in between highly competitive and highly cooperative federalism is a good mix that enables a level playing field and fairness for the taxpayer.
- Comm. Quimbo echoed the point made by Mr. Seemann. She stated that the concept of *voting with the feet* is very important in keeping local tax policies in check. She believes that it acts as a built-in control mechanism for local tax policy makers. This is because when local

governments compete for taxpayers, there is a tendency to lower tax rates. Also, an increase in tax rates or a new tax imposed in a certain LGU can reduce that locality's tax base.



Ms. Cristina Pardalis from the Senate Economic and Planning Office (SEPO) on the new federalism deal to be implemented in Germany

Reaction:

- Mr. Seemann pointed out that there is no new set of incentives *per se*. He explained that the underlying concept is that no matter how many competencies or powers for revenue generation given to the states, regions or local governments, at the end of the day, they will still depend on the fair sharing of tax and revenue system. The objective is to create comparable living standards all over the Federal Republic of Germany.

Conclusion

The idea of decentralization and local autonomy has long been envisioned by the government through the enactment of Republic Act No. 7160 or the Local Government Code (LGC) of 1991. It is regrettable that the LGC was not able to realize its objectives and full potential. With the advent of the federalism proposal, advocates of decentralization are raising their voices once again in the hopes of finally achieving the reform they desire to see in our local governments. However, as correctly pointed out by the forum speakers, the revenue or taxation aspect of this proposal must be thoroughly discussed and studied. Axiomatic to the success of any proposal is the sustainability and feasibility of any planned action. Absent any real change in the present IRA structure, tax assignments, and distribution of expenditure responsibilities to the LGUs, true and meaningful local autonomy is still a long way to go for our country.

ADDITIONAL

Atty. Sherry Anne Calulo-Salazar: Atty. Salazar is the Asst. Service Chief of the Indirect Taxes Branch of the STSRO, which is the branch in charge of this tax forum. She served as the *Master of Ceremonies* in the 2nd Tax Forum. She also introduced two of the presentors – Deputy Executive Director Jose Arnold Tan of the BLGF and Executive Director Trinidad Rodriguez of the NTRC. She



likewise handled the introduction of the forum sole reactor, the Hon. Commissioner Stella Luz Quimbo.



Ms. Angelique Patag: Ms. Patag, a technical staff of the STSRO, gave the invocation during the Tax Forum.



Mr. Johann Guevarra: Mr. Guevarra, a technical staff of the Indirect Taxes Branch of the STSRO, introduced Mr. Benedikt Seemann, Country Representative of Konrad-Adenauer-Stiftung.



Director Vivian Cabiling: Director Cabiling, Service Chief of the Indirect Taxes Branch of STSRO, gave the introduction for two of the forum speakers – Dean Ronald Mendoza of the Ateneo School of Government and Dr. Rosario Manasan of PIDS.



Director Norberto Villanueva: Director Villanueva, Assistant Service Chief of the Tax Policy and Administration Branch of the STSRO, was the forum Moderator.



Director General Rodelio Dascal: DG Dascal, as head of the STSRO, gave the concluding remarks during the said forum. To quote a portion of his closing remarks: "*I believe a federal form of government suited to our demography, to our culture and learning could be an answer to our country's further development.*"

Thank you and we hope you can join us again in our 3rd Tax Forum!

Sights and Action in the Tax Forum on Taxation in a Federal Form of Government



Registration Committee

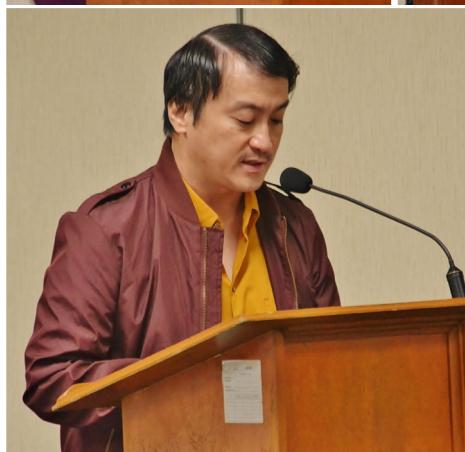
Guests, Participants and Speakers



Staff and Friends



Resource Persons, Reactors, Organizers and Moderator







Awarding of Plaques and Certificates of Appreciation





Snippets*

On Qatar. -



Source: www.visitqatar.qa

“Qatar has the third biggest OFW population in the Middle East. Para sa mga maapektuhang OFWs, may nakahandang karampatang tulong ang ating pamahalaan para sa kanila. Ito ay nakapaloob sa bagong OWWA law na ating ipinasa,” X XX.

“Sa ilalim ng batas na ito, inaatasan ang OWWA na pagkalooban ng kinakailangang suporta ang OFWs na nahaharap sa matinding krisis sa ibang bansa. Una sa mga ipagkakaloob na tulong ang repatriation assistance at libreng tiket na magagamit nila pauwi ng bansa,” he explained.

“Sa pagbabalik Pinas, maaari silang mag-avail sa iba’t ibang programa na makatutulong sa kanila sa paghahanap ng trabaho o kaya’y ng mga posibleng pagkakitaan. Kabilang din sa matatanggap nilang suporta ang credit assistance, education and training benefits, skills-for-employment scholarship program at education for development scholarship program,” the senator added. (June 6, 2017)

On Marawi. -



Source: Inquirer News - INQUIRER.net

“As the siege by extremist groups continues to drag on in Marawi City, our brave soldiers need all the support they can get.”

“It’s unfortunate that this conflict has cost the lives of many of our troops. We condole with their families,” Angara said. (manilastandard.net. Viewed on 13 June 2017)

*

Prepared by: Dir. Clinton S. Martinez, Legal and Tariff Branch



REPUBLIC OF THE PHILIPPINES, REP. BY THE COMMISSIONER OF CUSTOMS, *Petitioner*, v. PHILIPPINE AIRLINES, INC. (PAL), *Respondent*. [G.R. Nos. 209353-54]

and

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, v. PHILIPPINE AIRLINES, INC. (PAL), *Respondent*. [G.R. Nos. 211733-34], July 06, 2015, SERENO, C.J.

Facts:

The controversy arose from a claim of refund by respondent Philippine Airlines, Incorporated (PAL) in the amount of P4,469,199.98 representing the alleged wrong payment of excise tax for the period encompassing July 2005 up to February 2006. Subsequently, on January 18, 2007, PAL filed its written claims for refund with the Bureau of Internal Revenue (BIR). The latter failed to act on said claims, hence respondent filed two (2) distinct Petitions for Review with the Court of Tax Appeals (CTA) on July 30, 2007 and December 21, 2007.

The CTA consolidated the Petitions and ordered the Commissioner of Internal Revenue (CIR) and Commissioner of Customs (COC) to refund PAL the said amount. The Motions for Reconsideration (MR) filed by the CIR and COC were denied. The CTA *En Banc* decided in favor of respondent and held, among others that:

"X x x R.A. 9334 was not expressly repealed by P.D. 1590. The tax court also emphasized that P.D. 1590 is a special law that governs the franchise of PAL, while R.A. 9334 is a general law, and therefore P.D. 1590 must prevail. "X x x respondent PAL was entitled to a refund of excise taxes paid on the latter's commissary supplies. The appellate court explained that the exemption granted to PAL under P.D. 1590 was not expressly repealed by R.A. 9334. The CTA found that PAL had opted to pay the latter's basic corporate income tax for the fiscal year ending 31 March 2006. The court also found that the articles imported were intended for the operations of PAL and were not locally available in reasonable quantity, quality or price."

Issue:

Whether Sections 6 and 10 of Republic Act (RA) No. 9334 repealed Section 13 of Presidential Decree (PD) No. 1590.

Held:

The Supreme Court (SC) declared that the issue before them is not new. In an earlier case, it has decided on the same controversy involving the same parties, but having a different taxable period and amount. Hence, the SC denied the Petitions. The SC sided with the CTA *En Banc* decision.

The Court said:

"We have held in that case that it is a basic principle in statutory construction that a later law, general in terms and not expressly repealing or amending a prior special law, will not ordinarily affect the special provisions of the earlier statute. A reading of the pertinent provisions of P.D. 1590 and R.A. 9334 shows that there was no express repeal of the grant of exemption:

**PRESIDENTIAL DECREE NO. 1590
REPUBLIC ACT NO. 9334**

"x x x x

"SECTION 6. Section 131 of the National Internal Revenue Code of 1997, is amended, is hereby amended to read as follows:

"SEC. 131. Payment of Excise Taxes on Imported Articles. —

"(A) Persons Liable. — Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

"In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

"The provision of any special or general law to the contrary notwithstanding, the importation

of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: Provided, further, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: Provided, still further, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': Provided, finally, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed on introduction into the Philippine customs territory.

"x x x x

"SECTION 10. Repealing Clause. — All laws, decrees, ordinances, rules and regulations, executive or administrative orders, and such other presidential issuances as are inconsistent with any of the provisions of this Act are hereby repealed, amended or otherwise modified accordingly.

The SC further stressed:

"Indeed, as things stand, PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, the tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec. 131 of the NIRC of 1997, as amended by Sec. 6 of RA 9334. X x x.

"To be sure, the manner to effectively repeal or at least modify any specific provision of PAL's franchise under PD 1590, as decreed in the aforequoted Sec. 24, has not been demonstrated. And as aptly held by the

CTA en banc, borrowing from the same Commissioner of Internal Revenue case:

"While it is true that Sec. 6 of RA 9334 as previously quoted states that "the provisions of any special or general law to the contrary notwithstanding," such phrase left alone cannot be considered as an express repeal of the exemptions granted under PAL's franchise because it fails to specifically identify PD 1590 as one of the acts intended to be repealed."

"Noteworthy is the fact that PD 1590 is a special law, which governs the franchise of PAL. Between the provisions under PD 1590 as against the provisions under the NIRC of 1997, as amended by 9334, which is a general law, the former necessary prevails. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted only to supply deficiencies in the former. In addition, where there are two statutes, the earlier special and the later general — the terms of the general broad enough to include the matter provided for in the special — the fact that one is special and other general creates a presumption that the special is considered as remaining an exception to the general, one as a general law of the land and the other as the law of a particular case. X x x.

"However, upon the amendment of the 1997 NIRC, Section 22 of R.A. 9337 abolished the franchise tax and subjected PAL and similar entities to corporate income tax and value-added tax (VAT). PAL nevertheless remains exempt from taxes, duties, royalties, registrations, licenses, and other fees and charges, provided it pays corporate income tax as granted in its franchise agreement. Accordingly, PAL is left with no other option but to pay its basic corporate income tax, the payment of which shall be in lieu of all other taxes, except VAT, and subject to certain conditions provided in its charter.

"In this case, the CTA found that PAL had paid basic corporate income tax for fiscal year ending 31 March 2006. Consequently, PAL may now

claim exemption from taxes, duties, charges, royalties, or fees due on all importations of its commissary and catering supplies, provided it shows that 1) such articles or supplies or materials are imported for use in its transport and non-transport operations and other activities incidental thereto; and 2) they are not locally available in reasonable quantity, quality, or price.

"As to the issue of PAL's non-compliance with the conditions set by Section 13 of P.D. 1509 for the imported supplies to be exempt from excise tax, it must be noted that these are factual determinations that are best left to the CTA. The appellate court found that PAL had complied with these conditions. The CTA is a highly specialized body that reviews tax cases and conducts trial de novo. Therefore, without any showing that the findings of the CTA are unsupported by substantial evidence, its findings are binding on this Court."

The Court denied the Petitions for lack of merit.



**COMMISSIONER OF INTERNAL REVENUE,
Petitioner, v. LA TONDEÑA DISTILLERS, INC. (LTDI)
[NOW GINEBRA SAN MIGUEL], Respondent. G.R.
No. 175188, July 15, 2015 (Del Castillo, J.)**

Facts:

This is a Petition for Review on Certiorari. Under the Plan of Merger between La Tondeña Distillers, Inc., Sugarland Beverage Corporation (SBC), SMC Juice, Inc. (SMCJI), and Metro Bottled Water Corporation (MBWC), the surviving corporation was Ginebra San Miguel, Inc. (GSMI). SBC, SMCJI and MBWC were absorbed by GSMI.

GSMI subsequently requested a confirmation of the tax-free status of the merger with the Bureau of Internal Revenue (BIR). The latter issued a ruling *"stating that pursuant to Section 40(C)(2) and (6)(b) of the 1997 National Internal Revenue Code (NIRC), no gain or loss shall be recognized by the absorbed corporations as transferors of all assets and liabilities. However, the transfer of assets, such as real properties, shall be subject to DST imposed under Section 196 of the NIRC."*

Pursuant to said decision, respondent paid documentary stamp taxes (DST) to the BIR. Subsequently, GSMI filed with petitioner CIR an administrative claim for tax refund or tax credit, representing the DST it allegedly erroneously paid on

the occasion of the merger. On the same day, respondent filed with the Court of Tax Appeals (CTA) a Petition for Review, and raffled to the Second (2nd) Division of the CTA.

On January 6, 2006, the 2nd Division of the Supreme Court rendered a decision finding respondent entitled to its claim for tax refund or tax credit representing its erroneously paid DST for the taxable year 2001. The Division ruled that Section 196 of the NIRC does not apply because there is no purchaser or buyer in the case of a merger.

The CTA En Banc rendered the assailed Decision, finding no reversible error on the part of the Division in granting the claim for tax refund or tax credit. The CTA *En Banc* opined that Section 196 of the NIRC does not apply to a merger as the properties subject of a merger are not sold, but are merely absorbed by the surviving corporation.

Issue:

Whether the CTA En Banc erred in ruling that respondent is exempt from payment of DST.

Held:

The Supreme Court (SC) declared that the *Petition must fail*. Referring to an earlier case, the Court said:

[W]e do not find merit in petitioner's contention that Section 196 covers all transfers and conveyances of real property for a valuable consideration. A perusal of the subject provision would clearly show it pertains only to sale transactions where real property is conveyed to a purchaser for a consideration. The phrase "granted, assigned, transferred or otherwise conveyed" is qualified by the word "sold" which means that documentary stamp tax under Section 196 is imposed on the transfer of realty by way of sale and does not apply to all conveyances of real property. Indeed, as correctly noted by the respondent, the fact that Section 196 refers to words "sold", "purchaser" and "consideration" undoubtedly leads to the conclusion that only sales of real property are contemplated therein.

"X x x.

It should be emphasized that in the instant case, the transfer of SPPC's real property to respondent was pursuant to their approved plan of merger. In a merger of two existing corporations, one of the corporations survives and continues the business, while the other is dissolved, and all its rights, properties, and liabilities are acquired by the surviving corporation. Although there is a dissolution of the absorbed or merged corporations, there is

no winding up of their affairs or liquidation of their assets because the surviving corporation automatically acquires all their rights, privileges, and powers, as well as their liabilities. Here, SPPC ceased to have any legal personality and respondent PSPC stepped into everything that was SPPC's, pursuant to the law and the terms of their Plan of Merger.

"X x x.

In a merger, the real properties are not deemed "sold" to the surviving corporation and the latter could not be considered as "purchaser" of realty since the real properties subject of the merger were merely absorbed by the surviving corporation by operation of law and these properties are deemed automatically transferred to and vested in the surviving corporation without further act or deed. Therefore, the transfer of real properties to the surviving corporation in pursuance of a merger is not subject to documentary stamp tax. As stated at the outset, documentary stamp tax is imposed only on all conveyances, deeds, instruments or writing where realty sold shall be conveyed to a purchaser or purchasers. The transfer of SPPC's real property to respondent was neither a sale nor was it a conveyance of real property for a consideration contracted to be paid as contemplated under Section 196 of the Tax Code. Hence, Section 196 of the Tax Code is inapplicable and respondent is not liable for documentary stamp tax.

Following the doctrine of stare decisis, which dictates that when a court has reached a conclusion in one case, it should be applied to those that follow if the facts are substantially the same, even though the parties may be different, we find that respondent is not liable for DST as the transfer of real properties from the absorbed corporations to respondent was pursuant to a merger. And having complied with the provisions of Sections 204(C) and 229 of the NIRC, we agree with the CTA that respondent is entitled to a refund of the DST it erroneously paid on various dates between October 31, 2001 to November 15, 2001 in the total amount of P14,140,980.00."

It must be repeated that the transfer of real property to a surviving entity by virtue of a merger is not subject to DST. The SC, in finally disposing of the case, reminded that:

"X x x, We must stress that taxes must not be imposed beyond what the law expressly and clearly declares as tax laws must be construed strictly against the State and liberally in favor of the taxpayer."



To Tax or Not To Tax Sugar Sweetened Beverages?




REPUBLIC OF THE PHILIPPINES
SENATE

COMMITTEE ON WAYS AND MEANS
NOTICE OF PUBLIC HEARING
AGENDA

SUGAR SWEETENED BEVERAGES (SSB) TAX



House Bill No. 5636 - "Tax Reform for Acceleration and Inclusion Act" focusing on
Section 26 on the proposed provision for the SSB tax, and
Section 36 on the insertion of a Health Promotion Fund in Section 288 of the
National Internal Revenue Code, As Amended

15 June 2017, Thursday, 11:00 am
Senators Laurel and Recto Rooms, Senate of the Philippines

STSRO Technical Arm of the Committee on Ways and Means

Public Hearing even during Senate recess on the topic "To Tax or Not To Tax Sugar Sweetened Beverages?"

In the photos are Senators Sonny Angara, Minority Leader Franklin Drilon, Joel Villanueva, JV Ejercito, Juan Miguel Zubiri, Congresswoman Estrellita Suansing (Author of House Bill), Congressman Raneo E. Abu and Atty. Rodelio T. Dascil, Director General of STSRO.



TAXBITS is an official publication of the Senate Tax Study and Research Office (STSRO)
located at Rm. 524, Senate of the Philippines, Financial Center, Pasay City.

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