

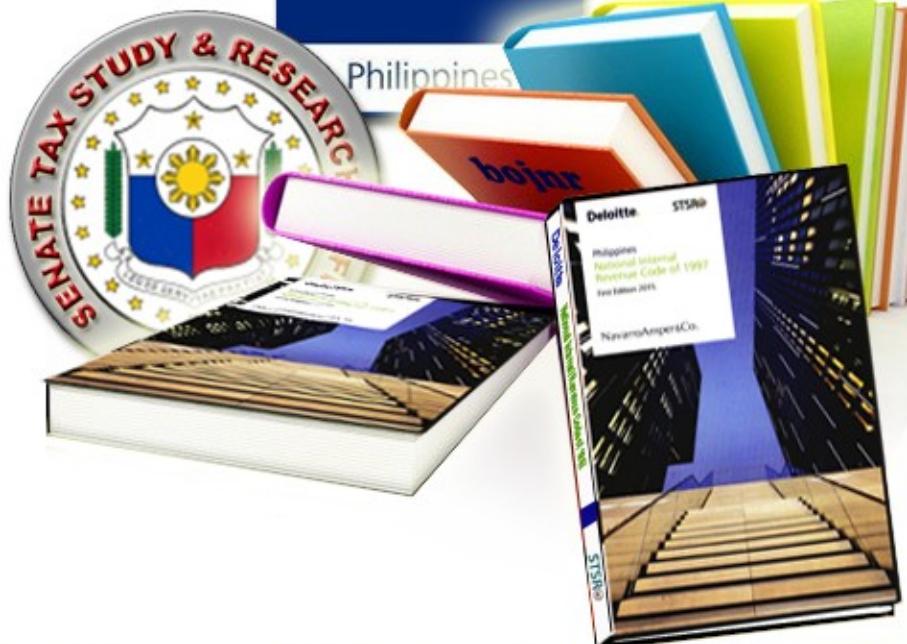
STSRO TAXBITS

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Deloitte.



**STSRO collaborates with NavarroAmper for 2015 edition of
National Internal Revenue Code of 1997, as amended**

by

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Literature defines public-private partnership as "a cooperative venture between the public and private sectors, built on the expertise of each partner, that best meets clearly defined public needs through the appropriate allocation of resources, risks and rewards".

Proceeding from this model, NavarroAmper & Co., the local practice of the Deloitte Touche Tohmatsu Limited Global Network, and Senate Tax Study and Research Office (STSRO) teamed up for the publication of the 2015 edition of the National Internal Revenue Code of 1997, as amended.

Both Deloitte and STSRO created their respective editorial teams to proofread the provisions of RA 8424 and the subsequent amendatory laws from 1997 to 2015, as well as the major revenue regulations for the effective implementation of the tax laws. On the part of the STSRO, the editorial



team comprised of Director General Rodelio T. Dascil, Dir. Maria Lucrecia R. Mir, Dir. Vivian A. Cabiling, Dir. Sherry Anne C. Salazar, SLSO Clinton S. Martinez, and LSO Angel M. Patag.

Thus, September 16, 2015 was a day to remember when the 2015 First Edition of the Philippine National Internal Revenue Code of 1997 was launched at the Makati Diamond Residences. Gracing the occasion were the guest of honor, Senator Sonny Angara, the business partners of Deloitte, government officials, and the officers and staff of Deloitte and STSRO.

During the 2-hour launch, a video clip of STSRO was shown on the wide screen courtesy of LSA Boni Joson.

Thereafter on September 21, complimentary copies of the Tax Code were distributed to the Senators' offices, major Senate offices and Senate Library, as well as offices of the government and private sector with whom STSRO has professional dealings.



Historical Narrative of the Senate Committee on Ways and Means



by

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I. Narrative

The power of taxation is inherent in the State and is generally vested in the Legislature. The truth that this taxing power is not only of vital importance but is also essential to the existence of government is not necessary to re-affirm. Bernas (2003) claimed that this power need not be granted by the Constitution, as Section 28, in fact, is not a grant of power but an enumeration of limits on the inherent and otherwise almost unlimited power. Article I, Section 8, of the United States Constitution states: "The Congress shall have the power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States. xxx" It is at least this same power which the Congress of the 1935 Constitution had and which has been passed on to both the Batasan of the 1973 Constitution and to the present Congress.¹



William Howard Taft addressing the First Philippine Assembly in the Manila Grand Opera House. (<https://en.wikipedia.org/wiki/>)

The Congress of the Philippines traced its roots from the Philippine Assembly which was inaugurated on October 16, 1907 by then Secretary of War Howard H. Taft. Consequently, the burning desire of

¹ Bernas, Joaquin G. S.J. The 1987 Constitution of the Republic of the Philippines: A Commentary. 2003 Edition. Rex Bookstore, Inc. Manila. Pp 773-774.

² Tan, Samuel. Making of the Colonial Senate 1900-1935 - The Philippine Senate. DBE Enterprise, Manila. 1997. p. 18.

³ Pastrana, Reginal M. and Raval, Demaree J. B. (1998). Guide to the Senate. Senate of the Philippines



President Manuel Roxas's First State of the Nation Address delivered at the Temporary Congress building, (<http://www.gov.ph/the-state-of-the-nation-address-traditions-and-history/>)

independence fueled the strategic partnership between the Filipino elite and the various grassroots movements that contributed to the unique character of Filipino politics from the halls of the Assembly to the floor of the future Senate. Eventually, the silhouette of a bicameral legislative process between the Philippine Commission which served as the upper chamber and the Philippine Assembly as the lower house became evident.²

During the First Congress of the Republic of the Philippines which was under the presidency of Manuel A. Roxas (1946-1949), there were provisional rules of the Senate. Subsequently during the Fifth Congress (1962-1965), the Senate Committee on Finance was formed to answer all questions relating both to income and expenditures of all branches of the government and the bonded indebtedness of the Philippines together with other financial issues. However, legislation of revenue related issues was eventually separated from the Committee on Finance and later on tasked to the Committee on Ways and Means, with Senator Dominador R. Aytona as its first Chairman, which was created during the Sixth Congress (1966-1969)³. The Committee on Ways and Means was tasked to tackle all matters generally

relating to revenue; bonded indebtedness of the government; taxes and fees; tariffs; loans and other sources and other forms of revenues.

To provide technical assistance to the Committee on Ways and Means, Senator Mike M. A.



J. Tamano filed Resolution No. 52 creating the Senate Tax Study and Research Office (STSRO) on January 10, 1989 during the Eight Congress (1987-1992). Said resolution was adopted on May 5, 1989 and placed the Senate Tax Study and Research Office administratively under the Office of the Senate President and functionally under the Senate Committee on Ways and Means. The STSRO is tasked to assist the Chairman and Members of the Committee on Ways and Means, as well as other Members of the Senate with research, collation and analysis of pertinent fiscal, and management information for proper legislative action. More specifically, the STSRO is mandated to provide necessary relevant information relating to:

1. Revenues, receipts, estimated future revenues and receipts, and changing revenue conditions;
2. Revenue related matters under consideration by the Committee on Ways and Means; and
3. Other pertinent information as the Senate Committees may request.



² Tan, Samuel. Making of the Colonial Senate 1900-1935 - The Philippine Senate. DBE Enterprise, Manila. 1997. p. 18.

³ Pastrana, Reginal M. and Raval, Demaree J. B. (1998). Guide to the Senate. Senate of the Philippines



The Controversial Balikbayan Box Inspection

by

Atty. Emmanuel M. Alonzo

Director III, Legal and Tariff Branch

Sometime in September 2015, there was furor regarding the decision of the Bureau of Customs (BOC) to randomly inspect balikbayan boxes. The reason was that the boxes were allegedly used to smuggle illegal drugs, firearms, and other contrabands. The Overseas Filipino Workers (OFWs) protested because as far as they are concerned the boxes only contain personal items for their families.

During the tenure of BOC Commissioner Ruffy Biazon, firearms were indeed smuggled through balikbayan boxes. Cases were filed with the Department of Justice (DOJ). In March 2013, in Cebu, a balikbayan box containing baby armalite, a caliber 357 pistol, a 45 caliber pistol, 22 caliber pistol were discovered in one box. A case of Fil-Americans living in the United States were also caught sending firearms to the Philippines. Since they regularly send firearms to the Philippines, they were monitored and caught by the BOC though the cooperation of the US Homeland Security. They were discovered in 2011, resulting in their apprehension.

Since August 2010, the BOC filed 50 cases. However, there are no decisions for final judgement yet. Eleven (11) cases are still pending in the courts, while 39 are still pending in the DOJ.

The risk of smuggling is higher for balikbayan boxes coming from the US and other ASEAN countries than from the Middle East. The OFWs from the Middle East are afraid to put contraband inside their boxes, because the penalty for such activity is severe in the Middle East. Furthermore, they do not want to have bad records in order to return there to work.

Responding to the OFWs' clamor, the Senate Ways and Means Committee held a public hearing on September 3, 2015. However, before such hearing was held, the BOC abandoned its inspections of the balikbayan boxes.

Legal provisions

The Tariff and Customs Code of the Philippines (TCCP) provides for the following:

"Sec. 709. Authority of the Collector to Remit Duties. – A Collector shall have discretionary authority to remit the assessment and collection of customs duties, taxes and other charges when the aggregate amount of such duties, taxes and other charges is less than ten pesos, and he may dispense with the seizure of articles of less than ten pesos in value except in cases of prohibited importations or the

habitual or the intentional violation of the tariff and customs laws."

For an import valuation of ten pesos (P10.00), the BOC has the authority to inspect the contents of the balikbayan boxes. At present time, such value is considered unrealistically low.

Focusing on the Balikbayan boxes themselves, the TCCP provides the following provisions:

Section 105(f) of the TCCP, regarding personal and household effects belonging residents returning from abroad, states that –

"...That the personal and household effects shall neither be in commercial quantities nor intended for barter, sale, or hire and that the dutiable value of which shall not exceed Ten Thousand Pesos (P10,000.00): Provided, further, That the returning resident has not previously availed of the privilege under this section within three hundred sixty-five (365) days prior to his arrival, Provided, finally, That a fifty percent (50%) ad valorem duty across the board shall be levied and collected on the personal and household effects (except luxury items) in excess of Ten Thousand Pesos (P10,000.00). For Purposes of this section, the phrase "returning residents" shall refer to nationals who have stayed in a foreign country for a period of at least six (6) months."

On June 30, 1987, President Corazon Aquino issued Executive Order 206, which amends Sec. 105(f) and becomes Sec. 105 (f-1) stating that:

"In addition to the privilege granted under the immediately preceding paragraph, returning overseas contract workers shall have the privilege to bring in, duty and tax free, used home appliances, limited to one of every kind once in a given calendar year accompanying them on their return, or arriving within a reasonable time which, barring unforeseen and fortuitous events, in no case shall exceed sixty (60) days after the owner's return upon presentation of their original passport at the Port of Entry: Provided, That any excess of ten Thousand Pesos (P10,000.00) for personal and household effects and/or of the number of duty and tax-free appliances as provided or under this section and shall be subject to the corresponding duties and taxes provided under this Code..."

In other words, the total duty and tax exemptions for balikbayan boxes is currently P20,000.

Pre-shipment inspection

Pre-shipment inspection (PSI) is a controversial issue. It was contained in the previous anti-smuggling bills, but somehow deleted in the CMTA (Customs Modernization and Tariff Act) in both Houses of Congress. Not all exporting countries have PSI facilities, instead such facilities are located in the premises of the exporting companies. Furthermore, PSI entails an increased import cost begging the question as to - *"Who would shoulder such additional cost, the importer or the BOC?"*

Senator Cayetano is of the opinion that PSI should be an integral part of the CMTA, because only 200 out of 4,000 containers, or 5% of all incoming containers are being x-rayed/examined. There are (6) companies around the world offering PSI services, and that the countries availing of their services increased their government revenues by 30%.

Waste is not imported through balikbayan boxes but through containerized van, as in the case of imported wastes from Canada. Around 65% of our cargos are brought in through bulk and break bulk and they undergo PSI. Around 35% of containerized vans are without inspection, however, 90% of smuggling are from containerized cargo. Inspection of containerized cargo at the point of origin (PSI) by one of the six accredited global inspection companies are already implemented for bulk and break bulk.

Former BOC Commissioner Ruffy Biazon is also in favor of the PSI. According to him, the government revenue loss would be around P3 to P5 billion, if balikbayan boxes were not inspected. In addition to the random investigation of the boxes, the BOC will subject the boxes to x-ray even before arriving in the Philippines. There should be a pre-clearing procedure at the port of origin (PSI), the results of which, will be communicated to the BOC in order that the freight forwarders and the brokers will avoid the payment of demurrage.¹ In this manner the data in the invoices and the packing list will be known to the BOC even before the arrival of the boxes. According to Commissioner Biazon through PSI, BOC revenue will increase by 25 to 30%.

BOC practices related to balikbayan boxes

In practice, the BOC imposes a "tara" system from P80,000 to P120,000 per container. If the "tara" is paid, it covers for the cost of freight² only, not the payment of taxes and duties. Unfortunately, no law backs up the system, it is only a management tool imposed by the BOC. Such system is also practiced in the United States, Hong Kong, and other parts of Asia,

¹ Demurrage – (1) penalty for exceeding free time (usually 72 hours) allowed for taking delivery of a shipment from the shipping or transporting company's warehouse, (2) penalty assessed against a consignor, consignee, or other such party responsible for the delay in loading or unloading of a shipping vessel or for undue detention (usually 48 hours) of the transportation equipment. It is also called detention charge. (www.businessdictionary.com/definition/demurrage.html).

² Freight is the charge paid for carriage or transportation of goods by air, land, or sea. (www.businessdictionary.com/definition/freight.html).

but their customs authorities imposes only an equivalent of P40,000 per container.

Subjecting the boxes in x-rays take 20 minutes, meaning that 40 containers may be inspected per day, or 1,200 containers in a month. By subjecting the containers through x-rays, the BOC will already know whether the boxes contain contrabands like illegal drugs, or ammunitions.

Balikbayan boxes are informal entries³, hence subjected to manual processing. The BOC inspection procedure are not the same, because it depends on the country of origin. Low rates are applied to boxes from Asia, especially Hong Kong, and the Middle East Higher rates are imposed if the country of origin is Europe, or the United States. The presumption is that the value of the contents of the balikbayan boxes are higher from these countries.

The general rule is that every import is dutiable and taxable, unless it is exempted under a provision of law. At present, an import has an average tariff of 5% ad valorem, added to the burden is the payment of the VAT which is 12% ad valorem.

The prevailing “*de minimis*” (minimum value of imports) is P10, any import valuing above P10 must pay taxes and duties, whether it is a balikbayan box or not. According to Sec. 709 of the TCCP, the *de minimis* applies to all cargos like mails, parcels by express couriers, as well as balikbayan boxes. The problem is that the BOC exercises discretion in the application of the rules. It is a case of liberal law application on the part of the BOC. Such law has been amended since the 70's, but it is applicable only to balikbayans. A balikbayan who has worked abroad and decides to return back to the Philippines, bringing along a container full of personal effects (excluding luxury items, not in commercial quantity), the value the exemption is only P10,000.00. Anything above P10,000 should be collected a duty at the rate of 50%. The duty rate is very high because the average duty rate on importation is now only 5%⁴.

Airfreight shipments, hand carried goods and shipments

Around 1,000 containers of seafreight or commercial consolidated cargo arrive in the ports every month. For non-commercial cargos, they are opened in the pier, and then go directly to the consolidators. If a cargo is missing, it is no longer the responsibility of the BOC.

A variation of the imports is the door-to-door consolidator. There is only one company offering this kind of service.

Another way is when the parcel is taken from the door of the exporter, another receives the parcel to be processed by the BOC, and will be in charge of the trucking and delivery, depending on the arrangements of each consolidators. In this case, It is not the BOC that opens the boxes.

During the September 13, 2015 public hearing, BOC Commissioner Lina is concerned, the BOC opened balikbayan boxes only once and it was in a container of a Makati transport. Upon inspection, the container contained 15 television sets, and a refrigerator. For a balikbayan wanting to import televisions, all they have to do is to report them through the invoice. They can send anything, all they have to do is to declare such cargo. However, the freight forwarders declare only who are the forwarders and consolidators, provided that the value is not more than US\$ 500 (as provided by a Memorandum Order way back 25 years ago)⁵. The BOC Memorandum Order is not applicable to returning residents. According to the BOC, the US\$ 500 limit is still subject to taxes and duties. Such limit was set to assure the BOC that the cargo contains only personal effects and not luxury goods.

For returning residents, the maximum value is P10,000.00, “only if accompanied by a returning resident or arriving within a reasonable time”. All imports of returning residents are taxable.

An OFW is liable to the payment of taxes and duties if the value of the imports exceed P10,000.00, which is applicable to returning residents and OFWs. If the value is less than P10,000.00, it is exempted from the payment of taxes and duties. A Filipino who went abroad and returned after buying goods, may not avail of the tax and duty exemption.

The CMTA (Customs Modernization and Tariff Act) Senate Bill No. 2968⁶

The CMTA has a partial solution to the OFWs' clamor regarding the status of the BOC random inspection of balikbayan boxes. It raises the *de minimis* value of imports from the current P10.00 to P100,000.00. It means that the boxes will tax and duty free if the value of the imports is above P100,000.00. In order to adjust the value due to inflation, the

³ Informal entry refers to goods at the customs border that do not need to have an entry bond because their value is less than US\$ 2,500. (www.acelyn.com/importing-formal-vs-informal-entry)

⁴ Comments from BOC Deputy Commissioner Agaton Uvero.

⁵ Statement of BOC Commissioner Lina during the Senate Public hearing.

⁶ SB 2968, An Act Modernizing the Customs and Tariff Administration, is in substitution of SB Nos. 168, 442, 456, 741, 882, 2348, 2373 and 2913, taking into consideration P.S. Res. Nos. 444, 1339, 1533, 1534, 1536, 1537, 1538, 1539, 1549, and 1581.

Secretary of the Department of Finance, upon the recommendation of the BOC Commissioner shall review and adjust the value every three (3) years using the Consumer Price Index (CPI), as published by the Philippine Statistics Authority (PSA).⁷

The personal and household effects of returning OFWs is raised from the current P10,000.00 to P350,000.00. However, the boxes shall neither be in commercial quantities nor intended for barter, sale, or for hire and has not previously availed of the privilege within 365 days prior to returning OFWs arrival. For those who only stayed in a foreign country (but not returning to the Philippines for good) for at least five (5) years, it shall not exceed P250,000.00 and to be adjusted every three (3) years using the Consumer Price Index (CPI), as published by the Philippine Statistics Office (PSA).⁸

The CMTA also updates the dutiable value of balikbayan boxes from P10,000.00 to P150,000.00, if the boxes only contain personal and household effects, renewable every three (3) years and shall be adjusted using the Consumer Price Index (CPI), as published by the Philippine Statistics Authority (PSA). Residents of the Philippines, or OFWs can only avail of this privilege up to three (3) times in a calendar year, and any amount in excess of the allowable non-value shall be subject to its corresponding duties and taxes.⁹

Observations and Recommendations

The following recommendations were made during the Senate public hearing:

1. Increasing the *de minimis* for balikbayan boxes

The provisions regarding the increase in the *de minimis* value of imports in the balikbayan boxes is already contained in the CMTA (SB 2968).

2. Increasing the *de minimis* for imports sent through PHILPOST

The recommendation applies to imports through the mail and is covered by the CMTA provisions on *de minimis*.

4. Sen. Cayetano proposed that “pre-shipment inspection” (PSI) should be included in the CMTA in order to reduce or eliminate smuggling.

This proposal is controversial in the sense that although it will decrease the incidence of smuggling through balikbayan boxes, it will also mean additional cost.

OG&B

TAX NEWS DIGEST

“Gov’t to review 2015 tax-collection goals”



“The government will review the revenue targets of its top tax-collection agencies as cheaper oil as well as higher tax-exemption caps would likely drag down this year’s take, Budget Secretary Florencio B. Abad said on Tuesday.

“But despite possibly lower tax collections this year, Abad told reporters that the government’s top priority in the fiscal space remained ramping up public spending.

“According to Abad, government spending improved toward the end of last year and the faster disbursement of funds for public goods and services spilled over last January, especially for the rehabilitation of areas flattened by Super-typhoon “Yolanda” as well as the earthquake that shook central Visayas in 2013.

⁷ Sec. 423, Determination of the Minimis, Sec. 243.

⁸ CMTA, Sec. 800(f), Conditionally-Free and Duty-Exempt Importation.

⁹ CMTA, Sec. (800 f-1), Conditionally-Free and Duty Exempt Importation.

"It's very likely that we could have spent more coming into the first quarter," Abad said, without disclosing figures.

"Abad said measures have been put in place to make operations of government agencies more efficient while increasing expenditures by transferring the responsibility to spend on infrastructure projects to implementing agencies such as the departments of public works and highways and of transportation and communications." (PDI, February 18, 2015)



"BIR plans to implement alcohol tax stamp in H2"



"The Bureau of Internal Revenue (BIR) hopes to start affixing tax stamps on alcoholic beverages by the second half of the year, Revenue Commissioner Kim S. Jacinto-Henares said.

"Henares told reporters last week that the BIR should start implementing the Internal Revenue Stamps Integrated System (IRISIS) for alcohol products and distilled spirits in the "latter part" of the year.

"The BIR chief earlier identified IRSIS on alcohol products as one of the agency's priority programs for 2015.

"It would entail affixing tax stamps on liquor, similar to an ongoing program on tobacco, "to ensure the collection of correct excise taxes on alcohol products" under the Sin Tax Reform Law.

"Henares said the BIR would seek a different printer for the stamp on alcoholic goods. The agency hopes to avoid confusion by seeking a design for alcohol tax different from that of tobacco stamps." (PDI, February 23, 2015)



"Foreign investors push changes to BOT law. Move seen crucial to sustaining PH infrastructure dev't"

"The Joint Foreign Chambers (JFC) has reiterated its call for 'swift enactment' of amendments to the Build-Operate-Transfer (BOT) Law as this is deemed crucial in sustaining investor confidence in the country.



"In a letter to Rep. Ronald M. Cosalan, chair of the House Committee on Public Works and Highways, the JFC noted that the private sector was cognizant of the great need for massive infrastructure investments to support and boost the growth of the Philippine economy.

"We recognize that the government's Public-Private Partnership (PPP) Program provides the framework by which infrastructure development can be accelerated and properly tendered to interested and capable parties," the JFC said in a letter. This was why it would be highly critical for the government to institutionalize the processes that have improved the PPP program over the past four years." (PDI, February 24, 2015)



"Imports up 2.4% to \$63.9B in 2014"



"The value of imported goods that entered the country last year totaled \$63.92 billion, up 2.4 percent compared with 2013, as shipments slid by a tenth in December due to lower importation of capital and consumer goods as well as lower prices of oil products.

"The imports increase posted in 2014 was below the 9-percent growth target set by the government, but nonetheless brought the gap between export revenues and import receipts closer. Philippine-made goods shipped overseas rose 9 percent to \$61.81 billion last year.

"The full-year growth of the country's merchandise imports relative to our strongly performing merchandise exports reduced trade-in-goods deficit in 2014 to \$2.1 billion from \$5.7 billion in 2013. This by far is the narrowest trade gap recorded since 2001," Economic Planning Secretary Arsenio M. Balisacan said.

"Philippine Statistics Authority data showed that imports last December dropped by 10.6 percent to \$4.87 billion from \$5.44 billion in the same month of 2013 mainly on the decline in shipments of five major commodities—transport equipment; mineral fuels and lubricants; cereals; miscellaneous manufactured articles, and industrial machinery and equipment.

"Balisacan, who is also director general of the National Economic and Development Authority (Neda), said the "tepid growth of imports for December 2014 was generally pulled down by plunging oil prices, a trend which was more conspicuous during the last three months of 2014." (PDI, February 25, 2015)



"Merger of stock, bond, forex bourses set. Financial transactions to go through single platform"



"The Philippine Stock Exchange (PSE) may complete its long-overdue takeover of the country's bond bourse before the end of the first semester, bringing closer to fruition the creation of a single market for all financial instruments in the country.

"Lorenzo V. Tan, president of the Bankers Association of the Philippines (BAP), said more than half of the Philippine Dealing System (PDS) Group's shareholders have agreed to the merger with PSE.

"We'd like to turnover my chairmanship to Hans in the next three months if possible," Tan said, referring to PSE president Hans Sicat.

"The PDS Group is made up of parent company Philippine Dealing Systems Holdings Corp. and operating subsidiaries Philippine Dealing and Exchange Corp. (PDEx), Philippine Depository and Trust Corp. (PDTC), and Philippine Securities Settlement Corp. (PSSC). The group controls the country's markets for fixed-income securities and foreign exchange.

"The PSE, meanwhile, is the sole market for equity securities in the Philippines.

"The BAP and Singapore Exchange Ltd., operator of Singapore's financial markets, are two of PDS Group's biggest shareholders, with about half of its stock. Tan said 54 percent of PDS' former shareholders, including BAP, have sold their holdings to the PSE. He declined to reveal other details." (PDI, February 26, 2015)



"BIR collection up 9.64% in '14, missing goal. Total tax take 8.41% below the full-year target of P1.46T"



"Tax collections of the Bureau of Internal Revenue (BIR) in 2014 grew by almost a tenth, but fell short of the goal.

"The BIR collected P1.334 trillion in taxes last year, up 9.64 percent from P1.217 trillion in 2013, preliminary data presented by Commissioner Kim S. Jacinto-Henares at a forum hosted by the Center for Philippine Futuristics Studies and Management Inc.

"The 2014 take, however, was 8.41-percent below the target of P1.46 trillion.

"Henares later told reporters that since the figure she had presented was still "tentative" and unreconciled with the official figures to be released by the Bureau of the Treasury, the 2014 tax collection figure of the BIR could still go up.

"When asked why the BIR missed last year's goal, Henares said "mataas 'yong target (the target was high)."

"The preliminary data based on 1,209 reports of the BIR's revenue district offices showed that the bulk or P1.297 trillion in collections last year was contributed by BIR operations." (PDI, March 2, 2015)





CS GARMENT, INC, Petitioner, vs. COMMISSIONER OF INTERNAL REVENUE (CIR), Respondent (G.R. No. 182399; March 12, 2014).

Facts:

Petitioner CS Garment, Inc is a domestic corporation registered with PEZA. Petitioner received five (5) formal demand letters with Assessment Notices from the Bureau of Internal Revenue (BIR) Regional Office. Within the 30-day period under the law, petitioner filed a formal written protest with respondent. Within the 60-day period, CS Garment submitted additional documents.

The case was raffled to the 2nd Division of the Court of Tax Appeals (CTA) for decision. Under the ruling, the 2nd Division: "*x x x cancelled respondent's assessment against CS Garments for deficiency expanded withholding taxes for CY 1998 amounting to P47,880.00, and partially cancelled the deficiency DST assessment amounting to P1,963.00. However, the Second Division upheld the validity of the deficiency income tax assessments by subjecting the disallowed expenses in the amount of P14,851,478.83 and a portion of the undeclared local sales P1,541,936.60 (amounting to P1,500,000.00) to income tax at the special rate of 5%. The remainder of undeclared local sales of P1,541,936.06 (amounting to P41,936.60) was subjected to income tax at the rate of 34%. The Second Division found that total tax liability of CS Garments amounted to P2,029,570.12, plus 20% delinquency interest pursuant to Section 249(C)(3).*"

Petitioner appealed to the CTA En Banc. The latter affirmed the Decision and Resolution of the CTA 2nd Division. While on appeal to the Supreme Court (SC), petitioner filed a Manifestation and Motion stating that it had availed of the government's tax amnesty program of 2007.

Issue/s:

"The threshold question before this Court is whether or not CS Garment is already immune from paying the deficiency taxes stated in the 1998 tax assessments of the CIR, as modified by the CTA."

Held:

"We cull from the aforementioned provisions that neither the law nor the implementing rules state that a court ruling that has not attained finality would preclude the availment of the benefits of the Tax Amnesty Law. Both R.A. 9480 and DOF Order No. 29-07 are quite precise in declaring that

"[t]ax cases subject of final and executory judgment by the courts" are the ones excepted from the benefits of the law. In fact, we have already pointed out the erroneous interpretation of the law in Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue, viz:

"The BIR's inclusion of "issues and cases which were ruled by any court (even without finality) in favor of the BIR prior to amnesty availment of the taxpayer" as one of the exceptions in RMC 19-2008 is misplaced. RA 9480 is specifically clear that the exceptions to the tax amnesty program include "tax cases subject of final and executory judgment by the courts." The present case has not become final and executory when Metrobank availed of the tax amnesty program.

"While tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority, it is also a well-settled doctrine that the rule-making power of administrative agencies cannot be extended to amend or expand statutory requirements or to embrace matters not originally encompassed by the law. Administrative regulations should always be in accord with the provisions of the statute they seek to carry into effect, and any resulting inconsistency shall be resolved in favor of the basic law. We thus definitively declare that the exception "[i]ssues and cases which were ruled by any court (even without finality) in favor of the BIR prior to amnesty availment of the taxpayer" under BIR RMC 19-2008 is invalid, as the exception goes beyond the scope of the provisions of the 2007 Tax Amnesty Law."

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MIRAMAR FISH COMPANY, INC., Petitioner, vs. COMMISSIONER OF INTERNAL REVENUE (CIR) (G.R. No. 185432; June 4, 2014).

Facts:

Petitioner is a duly organized corporation under Philippine laws. It is registered with the Bureau of Internal Revenue (BIR) and Board of Investments (BOI). Miramar filed its administrative claim for refund in years 2003 and 2004 with the BIR. The latter did not take action on the claims, hence Miramar filed a Petition for Review with the Court of Tax Appeals (CTA) on March 30 2004.

The CTA denied the petition stating that Miramar failed to imprint the word "zero-rated" on the invoices or receipts.

Issue:

Is Miramar entitled to the issuance of a tax credit certificate (TCC)?

Held:

The SC ruled that petitioner filed its judicial claim for refund insofar as to the four quarters of taxable year 2002 beyond the 30-day period. The Court explained:

"We summarize the rules on the determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT as provided in Section 112 of the 1997 Tax Code, as follows:

"(1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

"(2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.

"(3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.

*"(4) All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods."*

In denying the Petition for Review on Certiorari, the Court stressed:

"By way of reiteration, the CTA has no jurisdiction over petitioner's judicial appeal covering its refund claim for taxable year 2002 on the ground of prescription, consistent with the ruling in the San Roque

case. While as to its refund claim for taxable year 2003, the same shall likewise be denied for failure of petitioner to comply with the mandatory invoicing requirements provided for

under Section 113 of the NIRC of 1997, as amended, and Section 4. 108-1 of RR No. 7-95."

80♦CS



**Congratulations!
Mr. Clinton Martinez
1st Runner-up, 50 years old & above Category**



Bonding and bowling with the Officers and Staff of the Committee on Ways and Means of House of Representatives

E-Lanes Bowling, Greenhills, October 15, 2015



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