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AN ANALYSIS OF TAX AND FISCAL POLICY PROVISIONS OF THE PROPOSED BANGSAMORO BASIC LAW (BBL) AS CONTAINED UNDER SENATE BILL NO. (SBN) 2408

This alludes to SBN 2408 entitled: "An Act Providing For The Basic Law For The Bangsamoro And Abolishing The Autonomous Region In Muslim Mindanao, Repealing For The Purpose Republic Act No. 9054, Entitled 'An Act To Strengthen And Expand The Organic Act For The Autonomous Region In Muslim Mindanao,' And Republic Act No. 6734, Entitled 'An Act Providing For An Organic Act For The Autonomous Region In Muslim Mindanao,' And For Other Purposes."

SBN 2408 was filed and read on First Reading on September 15, 2014. It was referred primarily to the Committee on Local Government and secondarily to the Committee on Peace, Unification and Reconciliation.

A. TERRITORY.

Proposed Territory. - The suggested area to be covered by the BBL is encompassed under Article III, viz:

"Section 1. Definition of Territory - Territory refers to the land mass as well as the maritime, terrestrial, fluvial and alluvial domains, and the aerial domain above it. The Bangsamoro territory shall remain a part of the Philippines."

by: Mr. Clinton S. Martinez
SLSO II - Indirect Taxes

* Photo credit: PhilStar : Willy Perez , <http://www.philstar.com/headlines/2014/09/11/1367724/bangsamoro-law-goes-congress>

"Section 2. Core Territory - The core territory of the Bangsamoro shall be composed of:

"a. the present geographical area of the Autonomous Region in Muslim Mindanao;

"b. the Municipalities of Baloi, Munai, Nunungan, Pantar, Tagoloan and Tangkal in the province of Lanao del Norte and all other barangays in the Municipalities of Kabacan, Carmen, Aleosan, Pigkawayan, Pikit and Midsayap that voted for inclusion in the ARMM during the 2001 plebiscite;

"c. the cities of Cotabato and Isabela; and

"d. all other contiguous areas where there is resolution of the local government unit or a petition of at least ten percent (10%) of the registered voters in the area asking for their inclusion at least two months prior to the conduct of the ratification of the Bangsamoro Basic Law and the process of delimitation of the Bangsamoro.

"In order to ensure the widest acceptability of the Bangsamoro Basic Law in the core areas above-mentioned, a popular ratification shall be conducted among all the Bangsamoro within the areas for their adoption.

"Section 3. Contiguous Territory - The areas which are contiguous and outside the core territory may opt at anytime to be part of the territory upon petition of at least ten percent (10%) of the registered voters and approved by a majority of qualified votes cast in a plebiscite."

Note however that under Article II, Bangsamoro Identity, Section 1, Bangsamoro People, the island of Palawan has been mentioned. The said proviso states:

"Section 1. Bangsamoro People. - Those who at the time of conquest and colonization were considered natives or original inhabitants of Mindanao and the Sulu archipelago and its adjacent islands including Palawan, and their descendants, whether of mixed or of full blood, shall have the right to identify themselves as Bangsamoro by ascription or self-ascription. Spouses and their descendants are classified as Bangsamoro."

While the core territory of the proposed Bangsamoro does not specifically mention the island of Palawan, certain residents of the latter "have the right to identify themselves as Bangsamoro by ascription or self-ascription."

In comparison, the 1987 Philippine Constitution provides:

ARTICLE I NATIONAL TERRITORY

"The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines."

Of note is the comment that a "constitution is not an international law but only a municipal law; as such, it is binding only on the state promulgating it."¹

B. TAX AND FISCAL POLICY. -

The proposed BBL is replete with tax and fiscal policy provisions. Article XII on Fiscal Autonomy, details these:

"Section 1. Fiscal Autonomy. - The Bangsamoro shall enjoy fiscal autonomy with the end in view of attaining the highest form of economic self-sufficiency and genuine development. It shall be entitled to all fund sources enumerated herein, and shall have the power to create its sources of revenues as provided in this law. It shall prepare its budget and shall allocate funds in accordance with an annual appropriations law passed by the Bangsamoro Parliament. The form, content, and manner of preparation of the budget shall be prescribed by law enacted by the Bangsamoro Parliament." (Underscoring provided)

This preliminary Section provides a hint as to the scope of the delegated taxing powers given to those under the territory of the proposed Bangsamoro. The fund sources are enumerated under Section 6, to wit:

¹ De Leon, Hector S.: Philippine Constitutional Law – Principles and Cases, Vol., p. 104.

CORE TERRITORY OF THE BANGSAMORO

A. The present geographical areas of the ARMM

- ★ PROVINCES: BASILAN, LANAو DEL SUR, MAGUINDANAO, SULU and TAWI-TAWI
- CITIES: LAMIFAN and MARAWI

B. Areas that voted YES to inclusion in the ARMM in the 2001 plebiscite

- Six Lanaو del Norte towns

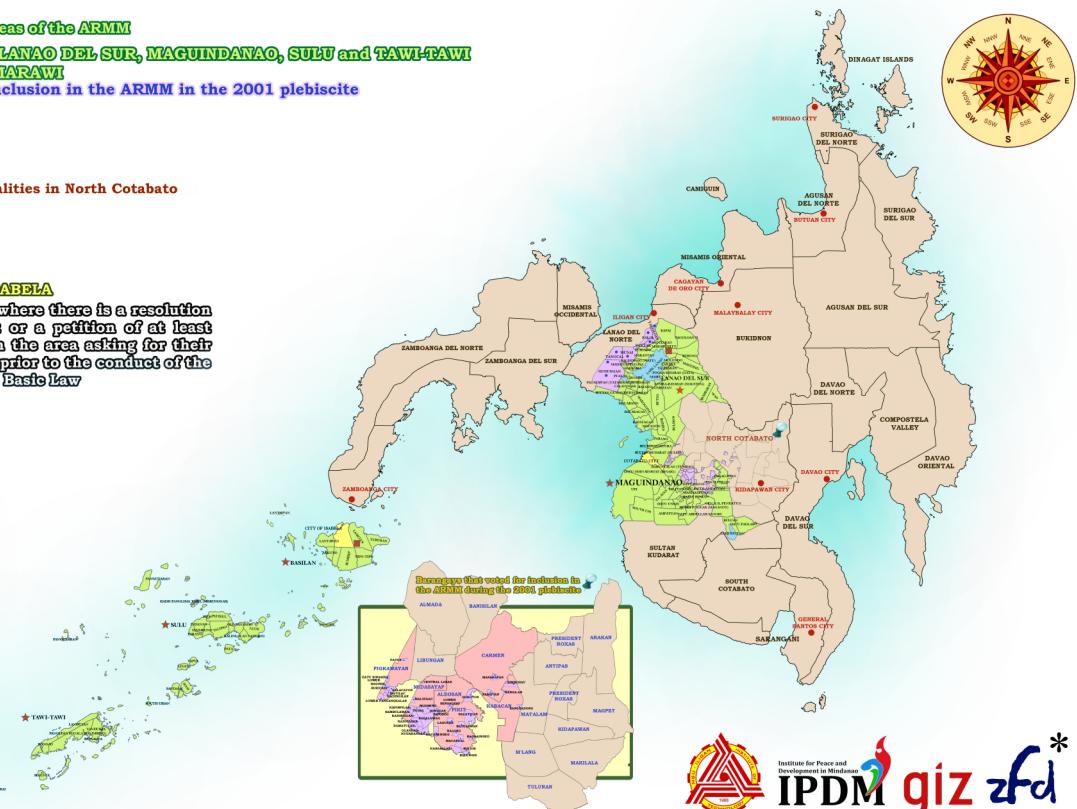
Baloí	Munai
Nunungan	Pantar
Tagoloan	Tangcal

39 barangays in six municipalities in North Cotabato

ALEOSAN(3 OF 19 BARANGAYS)
CARMEN(2 OF 28 BARANGAYS)
KABACAN (3 OF 24 BARANGAYS)
MIDSAYAP (12 OF 57 BARANGAYS)
PIGKAWAYAN (8 OF 40 BARANGAYS)
PIKIT (11 OF 42 BARANGAYS)

C. Cities of COTABATO AND ISABELA

D. All other contiguous areas where there is a resolution of the local government unit or a petition of at least 10% of the qualified voters in the area asking for their inclusion at least two months prior to the conduct of the ratification of the Bangsamoro Basic Law



"Section 6. Revenue Sources. - The Bangsamoro Government shall have the power to create its own sources of revenues and to levy taxes, fees, and charges, subject to the provisions of this law and consistent with the principles of devolution of powers, equalization, equity, accountability, administrative simplicity, harmonization, and economic efficiency, and fiscal autonomy. Such taxes, fees, and charges shall accrue exclusively to the Bangsamoro Government."

"The sources of revenue of the Bangsamoro Government shall include, among others, the following:

- "a. Taxes;**
- "b. Fees and charges;**
- "c. Annual block grant coming from Central Government;**
- "d. Revenues from the exploration, development and utilization of natural resources derived from areas/territories, land or water, covered by and within the jurisdiction of the Bangsamoro;**

"e. Revenues from Bangsamoro government-owned and/or controlled corporations (GOCCs), financial institutions and other corporations, and shares from the revenues of national GOCCs and its subsidiaries operating in the Bangsamoro, as may be determined by the intergovernmental fiscal policy board;²

"f. Grants from economic agreements entered into by the Bangsamoro Government and conventions to which the Central Government is a party;

"g. Grants and donations; and

"h. Loans and Overseas Development Assistance (ODA). (Emphasis supplied)

In the grant of taxing prerogatives, the following constitutional precepts must be observed:

"Section 24. All appropriation, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application, and private bills, shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments.

* Photo credit: MSU - Iligan Institute of Technology, <http://web.msuiit.edu.ph/ipdm/index.php>

² Section 35.

"Section 28. (1) The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.

"(2) The Congress may, by law, authorize the President to fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government.

"(3) Charitable institutions, churches and personages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation.

"(4) No law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of the Congress.

"Section 29. (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

(2) No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.

"(3) All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government." (Article VI, Legislative Department)

In this connection, it should be stressed that, unless sufficient standards are observed, Congress is prohibited from delegating its legislative powers. This rule on non-delegation of taxing authority is inapplicable: *"(1) Where the delegation to the president or to the people at large is expressly authorized by the Constitution and under specific conditions (see Secs. 23[2], 28[2], 32; Art. XVII, Sec. 2) and so there can no ground for legal objection; (2) Where delegation is made to local governments*

(Art. XI, Sec. 5); (3) Where delegation is made to administrative agencies." (De Leon, Supra, p. 14-15. Underscoring ours)

Expressed differently, the power to tax may be delegated "subject to such well-settled limitations as - (a) The delegation shall not contravene any constitutional provision or the inherent limitations of taxation; (b) The delegation is effected either by the Constitution or by validly enacted legislative measures or statute; and (c) The delegated levy power, except when delegation is by an express provision of the Constitution itself, should only be in favor of the local legislative body of the local or municipal government concerned" (Vitug and Acosta: Tax Law and Jurisprudence, p. 9).

The general provision of the BBL on taxation involves the following:

"Section 7. Taxation. - The Bangsamoro Government shall exercise the power to levy taxes, fees or charges that were already given to the Autonomous Region in Muslim Mindanao and/or allowed under Republic Act 6734 and Republic Act 9054, and other legislations, as well as those that are provided herein.

"In enacting revenue-raising measures, the Bangsamoro shall observe the principles of uniformity and equity in taxation. Revenues shall inure solely to the benefit of, and be subject to the disposition by, the Bangsamoro Government.

"Taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to public policy. The collection of Bangsamoro taxes, fees, charges and other impositions shall not be let to any private person.

"The power to impose a tax under this Basic law shall be exercised by the Bangsamoro Parliament, through an appropriate legislation, which shall not be enacted without any prior public hearing conducted for the purpose. The Bangsamoro Government shall, as far as practicable, evolve a progressive system of taxation.

"Section 11. Assessment and Collection of Taxes. - The Bangsamoro Parliament shall, by law, establish the Bangsamoro Tax Office within the Bangsamoro for the purpose of assessing and collecting Bangsamoro taxes. The Bangsamoro Government and the Central Government

may come to an agreement as to modalities for the collection and remittance of national taxes, including costs, in the Bangsamoro.

"Until such time that the Bangsamoro Tax Office is established, the collection shall be done by the Bureau of Internal Revenue (BIR). The share of the Bangsamoro Government shall be directly remitted to it.

"Corporations, partnerships, or firms directly engaged in business in the Bangsamoro shall pay their corresponding taxes, fees, and charges in the province or city, where the corporation, partnership, or firm is doing business.

"Corporations, partnerships, or firms whose central, main, or head offices are located outside the Bangsamoro but which are doing business within its territorial jurisdiction by farming, developing, or utilizing the land, aquatic, or natural resources therein, shall pay the income taxes corresponding to the income realized from their business operations in the Bangsamoro to the city, or municipality where their branch offices or business operations or activities are located. The BIR and the Bangsamoro Tax Office shall agree on modalities for the filing of income tax returns through the Intergovernmental Fiscal Policy Board."

In the exercise of the power of taxation, the Bangsamoro must be guided by the constitutional rules earlier mentioned. Adam Smith has advanced the *four (4) canons of taxation*, viz: (1) *Equity* - taxes must be paid by individuals based on their ability, measured by the amount of their income; (2) *Certainty* - taxpayers should know which taxes to pay and the manner or mode of payment; (3) *Convenience* - alludes to the time and manner of payment of taxes; and, (4) *Economy* - the cost of collection must be reasonable and not constitute a hindrance to production. (Romuladez, Yoingco and Casem: Philippine Tax System, p. 13-14 [1970])

The following standards have likewise been observed: (1) Fiscal Adequacy - the source of revenue, taken as a whole, should be sufficient to meet the expanding expenditures of the government regardless of business conditions, export taxes, trade balances, and problems of economic adjustment; (2) Equality or theoretical justice - taxes levied must be based upon the ability of the citizens to pay; (3) Administrative feasibility - the tax should be clear and plain, capable of enforcement, convenient and not unduly burdensome (Umali, Roman M.: Reviewer in

Taxation, p. 5).

It should be mentioned that the Department of Budget and Management (DBM) adheres to the principle of "one-fund" concept as enunciated under Presidential Decree No. 1177 (July 30, 1977)³. The same has been defined as:

"The "one-fund" concept is the policy enunciated through PD 1177 which requires that all income and revenues of the government must accrue to the General Fund and thus can be freely allocated to fund programs and projects of government as prioritized.

"The "one-fund" concept is a fiscal management policy requiring that as much as possible, all revenues and other receipts of the government must enter the General Fund and their utilization and disbursement subject to the budgeting process. The one-fund concept is significant in that it serves as an avenue through which fiscal authorities may properly allocate scarce government resources in accordance with the priorities in the over-all program of economic development.

"It likewise provides a mechanism to control drawdowns on pooled resources. Regularly, the level of funds disbursed are monitored against the level of revenues generated. This way, we are able to stick to the targeted level of disbursement for a given period and avoid incurring a deficit. It also alerts us of possible revenue shortfalls." (DBM website, viewed on 16 October 2014)

In relation to this, the Dividend Law (RA 7656⁴) requires GOCCs to remit a certain percentage of their income to the national government, viz:

"Sec. 3. Dividends. — All government-owned or controlled corporations shall declare and remit at least fifty percent (50%) of their annual net earnings as cash, stock or property dividends to the National Government. This section shall also apply to those government-owned or controlled corporations whose profit distribution is provided by their respective charters or by special law, but shall exclude those enumerated in Section 4 hereof: Provided, That such dividends accruing to the National Government shall be received by the National Treasury and recorded as income of the General Fund." (November 9, 1993)

In conjunction with its taxing powers under Section 7, a related proviso is Section 9 detailing the Bangsamoro's taxing powers, to wit:

³ Revising the Budget Process in Order to Institutionalize the Budgetary Innovations of the New Society.

⁴ An Act Requiring Government-Owned or Controlled Corporations to Declare Dividends Under Certain Conditions to the National Government, and for other purposes.

"Section 9. Taxing Powers. The following taxes in the Bangsamoro shall be levied by the Bangsamoro Government:

"a. Capital Gains Tax. - Tax imposed on the gains presumed to have been realized by the seller from the sale, exchange, or other disposition of capital assets, including pacto de retro sales and other forms of conditional sale;

"b. Documentary Stamp Tax. - Tax on documents, instruments, loan agreements and papers evidencing the acceptance, assignment, sale or transfer of an obligation rights or property incident thereto;

"c. Donor's Tax. - Tax on a donation or gift, and is imposed on the gratuitous transfer of property between two or more persons who are living at the time of the transfer. It shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect and whether the property is real or personal, tangible or intangible;

"d. Estate Tax. - Tax on the right of the deceased person to transmit his/her estate to his/her lawful heirs and beneficiaries at the time of death and on certain transfers, which are made by law as equivalent to testamentary disposition;

"e. Income tax levied on banks and other financial institutions;

"f. Registration fees of vessels which are registered by their owners with the Bangsamoro Government and wharfage on wharves constructed and maintained by the Bangsamoro Government or the local government unit concerned;

"g. Tolls on bridges or roads constructed and maintained by the provinces, cities, municipalities, or barangays concerned or by the Bangsamoro Government;

"h. Taxes, fees, or charges on agricultural and aquatic products, except when sold by marginal farmers or fisherfolk;

"i. Excise taxes on articles that are not enumerated under the National Internal Revenue Code;

"j. Taxes, fees, or charges on countryside, barangay enterprises and cooperatives not registered under Republic

Act No. 6810, the "Magna Carta for Countryside and Barangay Business Enterprises" and Republic Act No. 6938, the "Cooperatives Code of the Philippines," respectively; and

"k. Such other taxes that were allowed to be levied by the Government of the Autonomous Region in Muslim Mindanao under RA 6734, RA 9054, and other legislations and executive issuances.

"Where all taxable elements are within the Bangsamoro territory, taxes under letters (a) to (d) above shall no longer be imposed by the Bureau of Internal Revenue (BIR) of the Central Government. The Intergovernmental Fiscal Policy Board shall promulgate rules on the determination of taxable elements in relation to taxes (a) to (d) above and on the sharing of revenues from the collection of such taxes where the taxable elements are found within and outside of the Bangsamoro territory. Any dispute between the Bangsamoro Government and the Central Government arising from the imposition of taxes under (a) to (d) above shall be addressed by the Intergovernmental Fiscal Board."

It should be stressed that the present law, Republic Act (RA) No. 6734 (August 1, 1989), was enacted to among others, establish the *Autonomous Region in Muslim Mindanao* (ARMM). RA 9054 (March 31, 2001) which amended RA 6734 contains the following important provisions on fiscal autonomy:

ARTICLE IX

Fiscal Autonomy

"Section 1. Revenue Source. — The Regional Government shall have the power to create its own sources of revenues and to levy taxes, fees, and charges, subject to the provisions of the Constitution and this Organic Act.

"Sec. 2. Fiscal Autonomy. — The Regional Government shall enjoy fiscal autonomy in generating and budgeting its own sources of revenue, its share of the internal revenue taxes and block grants and subsidies remitted to it by the central government or national government or any donor.

"The utilization of its share of the internal revenue taxes and block grants or subsidies from the central government or national government shall be subject to a semi-annual and annual audits by the Commission on Audit

and to the rules and regulations of the Department of Budget and Management. All accountable officials of the Regional Government shall, upon demand, furnish the Commission on Audit all documents, papers, and effects necessary for the completion of the audit. Failure to do so shall empower the President or the Secretary of Finance to reduce, suspend, or cancel the release of funds intended for the autonomous region to the extent of the amounts that cannot be audited for reasons attributable to the officials of the autonomous region or are unaccounted for after audit.

"If more than half of the funds released to the autonomous region by the central government or national government remain unaccounted for six (6) months after the audit mentioned above, the Secretary of Finance may also suspend or cancel the release of any or all funds allocated by the central government or national government for the autonomous region. Officials of the Regional Government who fail to submit the documents, papers and effects demanded by the Commission on Audit within the period specified herein may be suspended or removed from office by the President upon recommendation of the Secretary of Finance.

"The utilization of the revenue generated by the Regional Government and block grants or subsidies remitted to it by foreign or domestic donors shall be subject to the rules and regulations of the Regional Government Department of the Budget and Management if any, and to audit by regional government auditors. In the absence of such rules and regulations, the audit of the said funds, block grants or subsidies shall be done by the Commission on Audit and the use thereof shall be in accordance with the rules and regulations of the Department of the Budget and Management of the central government or national government.

"The results of the audit mentioned in this Section shall be published in national newspapers of general circulation and in newspapers of regional circulation. The results shall also be announced over government-owned radio and television stations.

"Sec. 3. Regional Tax Code. — The Regional Assembly may enact a regional government tax code. Until the regional government tax code is enacted, the pertinent provisions of Republic Act No. 7160, the Local Government Code of 1991, shall apply to tax ordinances of the provinces, cities,

municipalities, and barangay within the autonomous region.

"Sec. 7. Extent of Tax Powers; Exceptions. — Unless otherwise provided herein, the taxing power of the regional government and of the provinces, cities, municipalities, and barangay located therein shall not extend to the following:

"(a) Income tax, except when levied on banks and other financial institutions;

"(b) Documentary stamps tax;

"(c) Taxes on estate, inheritance, gifts, legacies, and other acquisitions mortis causa except as otherwise provided by law;

"(d) Customs duties, registration fees of vessel and wharfage on wharves, tonnage dues, and all other kinds of custom fees, charges, and dues except vessels which are registered by their owners with the Regional Government and wharfage on wharves constructed and maintained by the Regional Government or the local government unit concerned;

"(e) Taxes, fees, or charges and other impositions upon goods carried into or out of, or passing through the territorial jurisdiction of the provinces, cities, municipalities, or barangay of the autonomous region in the guise of charges for wharfage, tolls for bridges, or otherwise, or other taxes, fees or charges in any form whatsoever upon such goods or merchandise except tolls on bridges or roads constructed and maintained by the provinces, cities, municipalities, or barangay concerned or by the Regional Government;

"(f) Taxes, fees, or charges on agricultural and aquatic products when sold by marginal farmers or fisherfolk;

"(g) Taxes on business enterprises certified by the Board of Investments or by the Regional Assembly as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively from the date of registration;

"(h) Excise taxes on articles enumerated under the national internal revenue code, and taxes, fees, or charges on petroleum products;

"(i) Percentage or value-added tax (VAT) on sales, barter, or exchanges or similar transactions on goods or services except as otherwise provided by law;

(j) Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land, or water except as provided in this Organic Act;

(k) Taxes on premiums paid by way of reinsurance or retrocession;

(l) Taxes, fees, or other charges on Philippine products actually exported, except as otherwise provided by law enacted by the Congress;

(m) Taxes, fees, or charges on countryside, barangay business enterprises and cooperatives duly registered under Republic Act No. 6810, the "Magna Carta for Countryside and Barangay Business Enterprises" and Republic Act No. 6938, the "Cooperatives Code of the Philippines", respectively; and

(n) Taxes, fees, or charges of any kind on the central government or national government, its agencies and instrumentalities and local government units except on government-owned or controlled corporations or entities that are primarily organized to do business."

"Sec. 8. Sources of Regional Government Revenue. — The sources of revenues of the Regional Government shall include, but are not limited to, the following:

(a) Taxes, except income taxes, imposed by the Regional Government;

(b) Fees and charges imposed by the Regional Government;

(c) Taxes, fees, or charges for the registration of motor vehicles and for the issuances of all kinds of licenses or permits for the driving thereof, except tricycles which shall be registered with the city or municipality within whose territorial boundaries they are operated;

(d) Shares and revenue generated from the operations of public utilities within the autonomous region;

(e) Appropriations, shares in the internal revenue taxes, block grants, and other budgetary allocations coming from the central government or national government; and

(f) Block grants derived from economic agreements or conventions entered into or authorized by the Regional Assembly donations, endowments, foreign assistance, and other forms of aid subject to the pertinent provisions of the Constitution.

"Sec. 9. Sharing of Internal Revenue, Natural Resources Taxes, Fees and Charges. — The collections of a province or city from national internal revenue taxes, fees and charges, and taxes imposed on natural resources, shall be distributed as follows:

(a) Thirty-five percent (35%) to the province or city;

(b) Thirty-five percent (35%) to the regional government; and

(c) Thirty percent (30%) to the central government or national government.

"The share of the province shall be apportioned as follows: forty-five (45%) percent to the province, thirty-five (35%) percent to the municipality and twenty percent (20%) to the barangay.

"The share of the city shall be distributed as follows: fifty percent (50%) to the city and fifty (50%) percent to the barangay concerned.

"The province or city concerned shall automatically retain its share and remit the shares of the Regional Government and the central government or national government to their respective treasurers who shall, after deducting the share of the Regional Government as mentioned in paragraphs (b) and (c) of this Section, remit the balance to the national government within the first five (5) days of every month after the collections were made.

"The remittance of the shares of the provinces, cities, municipalities, and barangay in the internal revenue taxes, fees, and charges and the taxes, fees, and charges on the use, development, and operation of natural resources within the autonomous

region shall be governed by law enacted by the Regional Assembly.

"The remittances of the share of the central government or national government of the internal revenue taxes, fees and charges and on the taxes, fees, and charges on the use, development, and operation of the natural resources within the autonomous region shall be governed by the rules and regulations promulgated by the Department of Finance of the central government or national government.

"Officials who fail to remit the shares of the central government or national government, the Regional Government and the local government units concerned in the taxes, fees, and charges mentioned above may be suspended or removed from office by order of the Secretary of Finance in cases involving the share of the central government or national government or by the Regional Governor in cases involving the share of the Regional Government and by the proper local government executive in cases involving the share of local government".

"Sec. 11. Economic Agreements. — Subject to the provisions of the Constitution, the Regional Government shall evolve a system of economic agreements and trade compacts to generate block grants for regional investments and improvements of regional economic structures which shall be authorized by law enacted by the Regional Assembly. Pursuant to specific recommendations of the Regional Economic and Development Planning Board, the Regional Government may assist local government units in their requirements for counterpart funds for foreign-assisted projects.

"Sec. 12. Donations or Grants; Tax Deductible. — The Regional Government may accept donations or grants for the development and welfare of the people in the autonomous region. Such donations or grants that are used exclusively to finance projects for education, health, youth and culture, and economic development, may be deducted in full from the taxable income of the donor or grantor.

"Sec. 13. Regional Tax Exemptions. — The Regional Assembly, by a vote of absolute majority of all its members, may grant

exemptions from regional taxes.

"Sec. 14. Foreign or Domestic Loans. — The Regional Governor may be authorized by the Regional Assembly to contract foreign or domestic loans in accordance with the provisions of the Constitution. The loans so contracted may take effect upon approval by a majority of all the members of the Regional Assembly.

"Sec. 15. Collection and Sharing of Internal Revenue Taxes. — The share of the central government or national government of all current year collections of internal revenue taxes, within the area of autonomy shall, for a period of five (5) years be allotted for the Regional Government in the Annual Appropriations Act.

"The Bureau Of Internal Revenue (BIR) or the duly authorized treasurer of the city or municipality concerned, as the case may be, shall continue to collect such taxes and remit the share to the Regional Autonomous Government and the central government or national government through duly accredited depository bank within thirty (30) days from the end of each quarter of the current year;

"Fifty percent (50%) of the share of the central government or national government of the yearly incremental revenue from tax collections under Section 106 (value-added tax on sales of goods or properties), 108 (value-added tax on sale of services and use or lease of properties) and 116 (tax on persons exempt from value-added tax) of the National Internal Revenue Code (NIRC) shall be shared by the Regional Government and the local government units within the area of autonomy as follows:

"(a) twenty percent (20%) shall accrue to the city or municipality where such taxes are collected; and

"(b) eighty percent (80%) shall accrue to the Regional Government.

"In all cases, the Regional Government shall remit to the local government units their respective shares within sixty (60) days from the end of each quarter of the current taxable year. The provinces, cities, municipalities, and barangays within the area of autonomy shall continue to receive their respective shares in the Internal Revenue Allotment (IRA), as provided for in Sec. 284 of Republic

Act No. 7160, the Local Government Code of 1991. The five-year (5) period herein abovementioned may be extended upon mutual agreement of the central government or national government and the Regional Government.

It should be noted that the BIR, as provided under the National Internal Revenue Code (NIRC) as amended, has among others, the following mandate:

"SEC. 2. Powers and Duties of the Bureau of Internal Revenue - The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws."

Corollary to the above, other provisos of the Tax Code state:

"SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

"The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals."

"SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. -

"(A) Examination of Returns and Determination of Tax Due. - After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination

of any taxpayer and the assessment of the correct amount of tax: Provided, however; That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

"Any return, statement of declaration filed in any office authorized to receive the same shall not be withdrawn: Provided, That within three (3) years from the date of such filing, the same may be modified, changed, or amended: Provided, further, That no notice for audit or investigation of such return, statement or declaration has in the meantime been actually served upon the taxpayer.

"(B) Failure to Submit Required Returns, Statements, Reports and other Documents. - When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.

*"In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be *prima facie* correct and sufficient for all legal purposes.*

"(C) Authority to Conduct Inventory-taking, Surveillance and to Prescribe Presumptive Gross Sales and Receipts. - The Commissioner may, at any time during the taxable year, order inventory-taking of goods of any taxpayer as a basis for determining his internal revenue tax liabilities, or may place the business operations of any person, natural or juridical, under observation or surveillance if there is reason to believe that such person is not declaring his correct income, sales or receipts for internal revenue tax purposes. The findings may be used as the basis for assessing the taxes for the other months or quarters of the same or different taxable years and such assessment shall be deemed *prima facie* correct.

"When it is found that a person has failed to issue receipts and invoices in violation of the requirements of Sections 113 and 237 of this

Code, or when there is reason to believe that the books of accounts or other records do not correctly reflect the declarations made or to be made in a return required to be filed under the provisions of this Code, the Commissioner, after taking into account the sales, receipts, income or other taxable base of other persons engaged in similar businesses under similar situations or circumstances or after considering other relevant information may prescribe a minimum amount of such gross receipts, sales and taxable base, and such amount so prescribed shall be *prima facie* correct for purposes of determining the internal revenue tax liabilities of such person.

"(D) Authority to Terminate Taxable Period. - When it shall come to the knowledge of the Commissioner that a taxpayer is retiring from business subject to tax, or is intending to leave the Philippines or to remove his property therefrom or to hide or conceal his property, or is performing any act tending to obstruct the proceedings for the collection of the tax for the past or current quarter or year or to render the same totally or partly ineffective unless such proceedings are begun immediately, the Commissioner shall declare the tax period of such taxpayer terminated at any time and shall send the taxpayer a notice of such decision, together with a request for the immediate payment of the tax for the period so declared terminated and the tax for the preceding year or quarter, or such portion thereof as may be unpaid, and said taxes shall be due and payable immediately and shall be subject to all the penalties hereafter prescribed, unless paid within the time fixed in the demand made by the Commissioner.

"(E) Authority of the Commissioner to Prescribe Real Property Values. - The Commissioner is hereby authorized to divide the Philippines into different zones or areas and shall, upon consultation with competent appraisers both from the private and public sectors, determine the fair market value of real properties located in each zone or area. For purposes of computing any internal revenue tax, the value of the property shall be, whichever is the higher of;

(1) the fair market value as determined by the Commissioner, or

(2) the fair market value as shown in the schedule of values of the Provincial and City Assessors.

"(F) Authority of the Commissioner to inquire into Bank Deposit Accounts. - Notwithstanding any contrary provision of Republic Act No. 1405 and other general or special laws, the Commissioner is hereby authorized to inquire into the bank deposits of:

(1) a decedent to determine his gross estate; and

(2) any taxpayer who has filed an application for compromise of his tax liability under Sec. 204 (A) (2) of this Code by reason of financial incapacity to pay his tax liability.

In case a taxpayer files an application to compromise the payment of his tax liabilities on his claim that his financial position demonstrates a clear inability to pay the tax assessed, his application shall not be considered unless and until he waives in writing his privilege under Republic act No. 1405 or under other general or special laws, and such waiver shall constitute the authority of the Commissioner to inquire into the bank deposits of the taxpayer.

"(G) Authority to Accredit and Register Tax Agents. - The Commissioner shall accredit and register, based on their professional competence, integrity and moral fitness, individuals and general professional partnerships and their representatives who prepare and file tax returns, statements, reports, protests, and other papers with or who appear before, the Bureau for taxpayers. Within one hundred twenty (120) days from January 1, 1998, the Commissioner shall create national and regional accreditation boards, the members of which shall serve for three (3) years, and shall designate from among the senior officials of the Bureau, one (1) chairman and two (2) members for each board, subject to such rules and regulations as the Secretary of Finance shall promulgate upon the recommendation of the Commissioner.

Individuals and general professional partnerships and their representatives who are denied accreditation by the Commissioner and/or the national and regional accreditation boards may appeal such denial to the Secretary of Finance, who shall rule on the appeal within sixty (60) days from receipt of such appeal. Failure of the Secretary of Finance to rule on the Appeal within the prescribed period shall be deemed as approval of the application for accreditation of the appellant.

"(H) Authority of the Commissioner to Prescribe Additional Procedural or Documentary Requirements. - The Commissioner may prescribe the manner of compliance with any documentary or procedural requirement in connection with the submission or preparation of financial statements accompanying the tax returns."



Muslim girls participate in celebrations in Cotabato City ahead of the signing of the Comprehensive Agreement on the Bangsamoro (photo by Dennis Arcon, InterAksyon.com)

It is submitted that the above powers of the Commissioner of Internal Revenue (CIR) would be jeopardized with the enactment of SBN 2408 into law.

Additionally, the Bangsamoro Government also has the power to offer tax incentives to attract investors into its fold. The applicable section provides:

"Section 8. Tax Incentives. - To encourage investments and other economic activities, the Bangsamoro Government shall have the power to grant tax exemptions, rebates, tax holidays and other incentives including those granted to the Regional Board of Investment of the ARMM. As part of incentives to investors, the Bangsamoro may opt instead to impose a flat rate lump sum tax on said small and medium enterprises."

In relation to the above prerogative, it is suggested that the cooperation and assistance of the Board of Investments (BOI) be constantly sought particularly at the onset of this endeavor by the Bangsamoro entity.

With respect to revenue sharing scheme, SBN 2408 proposes the following:

"Section 10. Share in Taxes of the Central Government. - Central Government taxes, fees, and charges collected in the

Bangsamoro, other than tariff and customs duties, shall be shared as follows:

a. Twenty-five percent (25%) to the Central Government; and

b. Seventy-five percent (75%) to the Bangsamoro, including the shares of the local government units.

The aforementioned twenty-five percent (25%) share of the Central Government shall, for a period of ten (10) years, be retained by the Bangsamoro Government. The period for retention may be extended upon mutual agreement of the Central Government and the Bangsamoro Government.

As earlier alluded to, the present formula is: (1) 35% goes to the province or city; (2) 35% to the Regional Government; and (3) 30% to the NG (Section 8, RA 9054). Finally, the Bangsamoro is also given the power to collect fees and charges in consonance with its taxing powers detailed in the proposed BBL (Section 14).

The immediate problem seen is on the administrative side of the proposal. Administrative feasibility, as alluded to at the outset, is one tenet of taxation that must be observed. This hindrance however, is not without a solution. The Bangsamoro Transition Authority (BTA), pursuant to its mandate under Section 2, Article XVI, must conceptualize ways and means for a smooth transition of power. As spelled-out in Article V, Section 3 (*Exclusive Powers*), the Bangsamoro's power is wide-ranging. Among others, it has the prerogative to establish economic zones and industrial centers; free ports; to receive grants and donations; regulate the manufacture and distribution of foods, drinks, drugs and tobacco; establish Awqaf (endowment) and charitable trusts; foreign investment; operate public utilities.



by

Atty. Sherry Anne Calulo-Salazar

Director II, Indirect Taxes Branch

The Government of the Philippines and the Moro Islamic Liberation Front (MILF) have signed the *Comprehensive Agreement on the Bangsamoro* on 27 March 2014¹. With this Agreement in place, the next step was the submission of the Bangsamoro Basic Law (BBL) to Congress. In the Senate, **Senate Bill No. 2408** was read on first reading on 15 September 2014². Said bill was referred to the Committee on Local Government as the *primary committee*, and to the Committee on Peace, Unification and Reconciliation as *secondary committee*³. Although there are substantial provisions on taxation and fiscal policies, said measure was not referred to the Committee on Ways and Means as mandated under Section 15 of the Rules of the Senate, to wit:

SEC. 15. Although a measure covers subject matters falling within the jurisdiction of more than one (1) committee, it shall be referred to not more than two (2) committees: Provided, however, That a motion for referral to a third committee shall be referred to the Committee on Rules: Provided, further, **That measures involving the appropriation of funds or embodying tax or revenue proposals shall respectively be referred also to the Committee on Finance for the appropriation aspect or to the Committee on Ways and Means for the tax or revenue aspect.** XXX (*Emphasis supplied*).

Be that as it may, a careful scrutiny of the tax provisions found in SBN 2408 is warranted given the extensive provisions on taxation and fiscal matters found in Article XII on Fiscal Autonomy of this particular bill. However, in order to better understand the possible implications of the tax provisions found in the BBL, it is submitted that the tax provisions of the two (2) previous laws concerning the Autonomous Region in Muslim Mindanao (ARMM), namely Republic Act No. 6734 and 9054, should be identified and jointly studied.

* Photo credit: Danny Pata, GMA News, April 14, 2014, <http://www.gmanetwork.com/news/photo/57896/muslim-group-backs-bangsamoro-basic-law>.

¹ Retrieved from <http://www.gov.ph/2014/03/27/document-cab/> on 18 November 2014.

² Retrieved from http://www.senate.gov.ph/lis/bill_res.aspx?congress=16&q=SBN-2408 on 18 November 2014.

³ *Id.*

⁴ Retrieved from <http://www.gmanetwork.com/news/story/112847/news/armm-history-and-organization> on 10 October 2014.

⁵ *Id.*

RA 6734 entitled “**An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao**” was enacted on 1 August 1989. This is the law that created the ARMM. Under this law, a plebiscite was held in November 1989 wherein only **four provinces** opted to be a part of the ARMM, i.e. Maguindanao, Lanao del Sur, Tawi-Tawi and Sulu⁴.

On 31 March 2001, RA 9054 was passed in order to sustain the peace and development in the province of Mindanao. This also paved the way for the expansion of the area of coverage of the ARMM. With the enactment of this law and the subsequent plebiscite, the ARMM became the provinces of **Maguindanao, Lanao del Sur, Sulu, Tawi-Tawi, Basilan, and the Islamic City of Marawi**⁵.

These two previous laws also contained tax provisions aimed at providing the Regional Government its own funding source. However, it is clear that the tax provisions found in the proposed BBL is more extensive than those in the existing laws. It is also noted that some of the sections on taxation in SBN 2408 are similar to those found in RA Nos. 6734 and 9054. Some of the most notable points of comparison are as follows:

A. Fiscal Autonomy

Under RA 6734 and 9054, the definition of *fiscal autonomy* provides that the ARMM has the power to create its own sources of revenues and to levy taxes, fees, and charges, subject only to the provisions under the Constitution and the Organic Act.

RA 9054 further added that the Regional Government shall enjoy fiscal autonomy in **generating and budgeting its own sources of revenue, its share of the internal revenue taxes and block grants and subsidies remitted to it by the National Government**.

It is worth noting that while the Regional Government enjoys fiscal autonomy, the Organic Act also gives the Commission on Audit (COA) power to audit the ARMM’s utilization of its share from the National Government.

The definition of fiscal autonomy under **SBN 2408** is more extensive than that found in the two previous laws. This is because emphasis is given on its right to **“attain the highest form of economic self-sufficiency and genuine development”**. Note should also be given to the proviso regarding an annual appropriations law that must be passed by the Parliament. Is this proviso to be interpreted to the effect that if no appropriation law is passed then the national government is not required to provide funding to them?

It is also worth noting that while the auditing power under the previous laws is with the COA, under SBN 2408 the Bangsamoro will create its own auditing body (BCA) who will have the power to audit all the funds of the Bangsamoro. In short, the Bangsamoro has its own entities that will govern the spending, and the auditing of their funds.

B. Sources of Revenue

RA 6734 enumerates five (5) sources of revenues of the ARMM, to wit:

1. Taxes, except income taxes, imposed by the Regional Government;
2. Fees and charges imposed by the Regional Government;
3. Appropriations, internal revenue allotments and other budgetary allotments from the National Government;
4. Shares in revenues generated from the operations of public utilities within the Autonomous Region; and
5. Block grants derived from economic agreements or conventions, donations, endowments, foreign assistance, and other forms of aid.

RA 9054 amended said provision by adding another source of revenue, which is “taxes, fees or charges for the registration of motor vehicles, and for the issuances of all kinds of licenses or permits for the driving thereof.”

SBN 2408 listed eight (8) sources of revenues for the Bangsamoro Government, to wit:

- a. Taxes;
- b. Fees and charges;
- c. Annual block grant coming from Central Government;
- d. Revenues from the exploration, development and utilization of natural resources derived from areas/territories, land or water, covered by and within the jurisdiction of the Bangsamoro;
- e. Revenues from Bangsamoro government-owned and/or controlled corporations (GOCCs), financial institutions and other corporations, and shares from the revenues of national GOCCs and its subsidiaries operating

- in the Bangsamoro, as may be determined by the intergovernmental fiscal policy board;
- f. Grants from economic agreements entered into by the Bangsamoro Government and conventions to which the Central Government is a party;
 - g. Grants and donations; and
 - h. Loans and Overseas Development Assistance (ODA).

It is interesting to note that while the *block grant* was already included in the two previous laws, its meaning was changed in SBN 2408. Under RA 6734 and 9054, the block grant only referred to those derived from economic agreements or conventions, donations, or other forms of aid. In SBN 2408, the term *block grant* took a different meaning such that it now refers to “**the share of the Bangsamoro in the national internal revenue of the Government**⁶”. It shall be equivalent to **4% of the net national internal revenue collection** of the BIR less the **internal revenue allotment (IRA) of LGUs**. It should be noted that this block grant is **automatically appropriated and automatically released** in favor of the Bangsamoro government⁷. Although the bill only refers to “*regular release*” of the block grant, Section 18, Article XII provides that **no further action** shall be required for the release thereof. It is submitted that this is tantamount to saying that said fund shall be *automatically released* to the Bangsamoro Parliament.

C. Taxing Power

Both laws provide that the Regional Government shall observe the principles of uniformity and equity in taxation in enacting tax measures. Confiscatory taxes and fees are prohibited under the Organic Act. Moreover, RA 6734 is explicit in stating that **income taxes cannot be imposed by the Regional Government**. This is beyond the taxing power granted to the Autonomous Region. Only the National Government has the right to levy income taxes. It should be noted, however, that RA 9054 amended this section such that the Regional Government can only impose **income taxes on banks and other financial institutions**. Beyond that, the Regional Government is still prohibited from levying income taxes other than those already being collected by the National Government.

RA 9054 also provided for a list of taxes that the Regional Government cannot impose/levy on its

constituents, to wit:

1. Income taxes, except when levied on banks and other financial institutions;
2. Documentary Stamp Tax;
3. Taxes on estate, inheritance, gifts, legacies, and other acquisitions mortis causa;
4. Customs duties, registration fees of vessel and wharfage on wharves, tonnage dues, and all other kinds of customs fees, charges and dues except vessels which are registered by their owners with the Regional Government and wharfage on wharves constructed and maintained by the Regional Government or the local government unit (LGU) concerned;
5. Taxes, fees or charges and other impositions upon goods carried into or out of, or passing through the territorial jurisdiction of the ARMM;
6. Taxes, fees or charges on agricultural and aquatic products when sold by marginal farmers or fisherfolk;
7. Taxes on business enterprises certified by the Board of Investments or by the Regional Assembly as pioneer or non-pioneer for a period of six (6) and four (4) years respectively;
8. Excise taxes;
9. Percentage or Value-Added Tax (VAT);
10. Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land or water;
11. Taxes on premiums paid by way of reinsurance retrocession;
12. Taxes, fees or other charges on Philippine products actually exported;
13. Taxes, fees or other charges on countryside barangay business enterprises and cooperatives duly registered under RA 6810 or the “Magna Carta for Countryside and Barangay Business Enterprises”, and RA 6938 or the “Cooperatives Code of the Philippines”; and

⁶ Section 15, Article XII of SBN 2408.

⁷ See Sections 17 and 18, Article XII of SBN 2408.

14. Taxes, fees or other charges of any kind on the central government or national government, its agencies and instrumentalities, and LGUs except on GOCCs.

SBN 2408 grants the Bangsamoro the taxing powers already given to the ARMM under the current laws. Similar to the ARMM laws, the principles of uniformity and equity shall also be observed by the Bangsamoro. It is also observed that SBN 2408 now requires a **prior public hearing** before the enactment of tax laws. To put otherwise, this provision implies that before the Bangsamoro Government can impose any taxes in its territory, there should be an appropriate tax legislation authorizing the same. The appropriate tax legislation being referred to here may be the *Bangsamoro Tax Code* provided under Section 13, Article XII of this bill. Thus, without this law in place, the Bangsamoro government cannot exercise its taxation power.

It is also significant to note that while RA 9054 explicitly prohibits the ARMM from levying Documentary Stamp Tax (DST), estate taxes, and excise taxes, among others, SBN 2408 grants such power to the Bangsamoro Government. More importantly, SBN 2408 takes away the power from the BIR to levy capital gains tax, DST, donor's tax and estate tax when all the "taxable elements" are within their jurisdiction. Although there is the possible safeguard in the form of the "**Intergovernmental Fiscal Policy Board**", still questions should be asked as to the possible implications of this particular provision. The Fiscal Board shall promulgate rules on the determination of taxable elements in relation to the mentioned four taxes, and on the sharing of revenues from the collection of such taxes where the taxable elements are found within and outside of the Bangsamoro territory.

D. Sharing in the National Government Revenues

Both laws provide for a mechanism on the allocation of the total collections of a province or city from the national internal revenue taxes, fees and charges, including the taxes imposed on natural resources. The sharing under RA 6734 is more conservative, to wit:

- 30% to the province or city;
- 30% to the Regional Government; and
- 40% to the National Government.

This sharing scheme was later on amended by RA 9054 wherein the share of the National Government was diminished, to wit:

- 35% to the province or city;
- 35% to the Regional Government; and
- 30% to the Central or National Government.

It is also interesting to note that RA 9054 provides that the **share of the national government of all current year collections of internal revenue taxes within the area of autonomy shall be allotted for the Regional Government within a period of 5 years**. Said period may also be extended upon mutual agreement of the central government and the regional government.

Moreover, RA 9054 also states that **50%** of the share of the National Government in the yearly incremental revenue from tax collections under Section 106 (VAT on sales of goods or properties), 108 (VAT on sale of services and use or lease of properties), and 116 (tax on persons exempt from VAT) of the National Internal Revenue Code (NIRC) shall be shared by the Regional Government and the LGUs within the area of autonomy as follows:

- 20% shall accrue to the city or municipality where such taxes are collected; and
- 80% shall accrue to the Regional Government.

It should also be noted that the LGUs within the ARMM shall **continue to receive their respective shares in the Internal Revenue Allotment (IRA)**.

Under the proposed BBL, the share of the National Government was further reduced in favor of the Bangsamoro, to wit:

- 25% to the Central Government; and
- 75% to the Bangsamoro.

Moreover, this 25% share of the National Government in the taxes, fees and charges collected within the Bangsamoro shall be retained by the Parliament for a period of ten (10) years. Such period can be further extended by mutual agreement between the two governments. In effect, for the first ten years all taxes, fees, and charges collected within their territory shall be retained by the Bangsamoro Parliament.

These are just some of the provisions on taxation that deserve to be looked into by both Houses of Congress during the deliberation of this very important piece of legislation. It is hoped that adequate attention be given to the sections concerning taxation so that questions regarding revenue impact, and other related concerns are resolved before the bill is submitted to the plenary.



Sen. SONNY ANGARA

Chairperson, Committee on Ways and Means

Sponsorship speech on SB No. 2437 under Committee Report No. 84
October 22, 2014

I rise today as chairperson of your Committee on Ways and Means to sponsor Senate Bill No. 2437 as embodied in Committee Report No. 84, entitled "An Act Adjusting the 13th Month Pay and Other Benefits Ceiling Excluded from the Computation of Gross Income for Purposes of Income Taxation Amending for the Purpose Section 32(B), Chapter VI of the National Internal Revenue Code, as Amended".

Mr. President, this bill is a consolidation of five Senate bills with three bills: Senate Bill Nos. 256, 452, 1944 filed by no less than our Senate President Pro Tempore, Sen. Ralph Recto, who also happens to be the longest serving chairman of the committee which I now head, the Committee on Ways and Means, as well as Senate Bill No. 1838 filed by Sen. Lito Lapid, as well as Senate Bill No. 2157 filed by this representation.

In the House of Representatives, the counterpart measure is House Bill No. 4970 authored by House Ways and Means Committee Chair Miro Quimbo and several other congressmen which they have passed on third and final reading, Mr. President.

Your Committee on Ways and Means conducted three public hearings: in December 2013, in August and September 2014, to put the proposals on the table and thereby listened to the voice of various stakeholders from the government and private sectors.

My distinguished colleagues the issue confronting us lies on extreme ends of the spectrum. On the one hand, our fiscal managers are concerned about the potential revenue that our government is poised to forego. As we all know, taxes can support development in enabling government to provide key services. This is the very basis of the social contract between government and its people.

On the other hand, Mr. President, the State has the obligation towards its citizens to ensure that social justice



is accorded to them, belated as it may be. May obligasyon po ang Estado sa ating mamamayan na tiyakin na nakakamit nila ang katarungang panlipunan.

Mr. President, I am referring to the proposal to increase the tax exempt threshold of the 13th month pay, Christmas bonus and other benefits which at present stand at P30,000. Sa ilalim ng kasalukuyang batas at polisiya, walang buwis na ipinapataw sa lahat ng 13th month pay, Christmas bonus, productivity incentives at iba pang benepisyos basta't hindi ito hihigit sa P30,000.

Panukala po namin nila Senator Recto at Senator Lapid ay itaas ang ceiling na ito sa P75,000 para mas malaking kita ang maiuuwi ng ating mga kababayan para sa sarili nila at para sa kanilang mga mahal sa buhay.

Noong 1994 pa kasi nailagay ang ceiling na ito sa P30,000 buhat ng R.A. No. 7833. Hindi na po ito narapat sa panahon, lalo na dahil sa inflation, iba na po ang halaga ng P30,000 ngayon.

As a little backgrounder, it was in 1994 through Republic Act No. 7833 that the total exclusion of P30,000 was legislated. In 1997, under the Comprehensive Tax Reform Program, the ceiling was retained at P30,000, but Congress authorized the Secretary of Finance to increase the ceiling upon the recommendation of the commissioner of the Bureau of Internal Revenue after considering, among others, the effect of the same on the inflation rate at the end of the taxable year.

Unfortunately, Mr. President, this recommendation from the Commissioner of the Bureau of Internal Revenue never came. And, likewise, the move to increase the ceiling of the exemption never came, as well. The ceiling was never adjusted despite the movements in the Consumer Price Index, the rise in the cost of living. The ceiling was never adjusted despite increases in the legislated minimum wage and basic salaries in both the private and public sectors. The ceiling was never adjusted despite the passage of 20 long years. Although a law was passed some years back to increase personal exemption for taxpayers and their dependents.

It is noteworthy, Mr. President, that in 1994 when the ceiling was first legislated, the basic salary of a government employee in the lowest rank of government or Salary Grade step 1 was P3,800, while that of the President of the Republic of the Philippines, at Salary Grade 33, was P25,000.

It is noteworthy Mr. President that in 1994 when the ceiling was first legislated, the basic salary of a government employee in the lowest rung or Salary Grade Step 1 was ₱3,800 while that of the President of the Republic at Salary Grade 33 was ₱25,000. On the other hand, the daily minimum wage of a private sector worker in 1994 in the NCR or National Capital Region was P145.00 a day or approximately P3,100 a month, based on 22 days a month.

If we fast-forward to present day 2014, Mr. President, based on the latest Salary Standardization Schedule, a government employee in Salary Grade 1, step 1, receives a basic monthly salary of P9,000 a

month while the President of the Republic has P120,000 from previously P25,000. The minimum daily wage in NCR is now P466 from P145 in 1994, or roughly P10,000 a month.

In other words, even without being promoted, these salaried workers in government find themselves being taxed more because as their salaries rise, the tax exempt ceiling for bonuses, 13th month pay, *et cetera*, has remained unchanged.

As of January 1, 1995, the 13th month pay of all government officials and employees up to the rank of the President of the Republic was exempt because the ceiling was higher than their basic salaries. As of current date, Mr. President, the 13th month pay of an employee under Salary Grade 17, step 5, is already above the P30,000-ceiling. In our very own backyard, that is at the level of our Legislative Staff Officer III or LSO III, a position which is often given to new graduates who just applied to their jobs in senators' offices.

Republic Act No. 8424 or the Comprehensive Tax Reform Program of 1997 gave the Secretary of Finance the authority to adjust the P30,000-ceiling upon the recommendation of the commissioner of the Bureau of Internal Revenue based on the effect of the inflation rate at the end of the taxable year. But as I have said, this authority has never been used. But we must note that this authority has been used to adjust the Value-Added Tax thresholds under BIR Revenue Regulations No. 16-2011, effective on January 1, 2012, which increased the threshold amounts pursuant to Sections 109 (P), (Q) and (V) of the Tax Code of 1997, as amended. These adjustments which were made by the Secretary of Finance pertain to the sale or lease of real property, sale of house and lot, lease of residential dwellings and sale of goods and services.

This only means that the Secretary and the Commissioner could have increased the P30,000-ceiling if they had chosen to, as evidenced by their action, with regard to the value-added tax thresholds.

Mr. President, Article XI, Section 1 of the 1987 Constitution states that

"Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives."

And let me add, Mr. President, this modest life is due in part to the take home pay that has been reduced to the bare minimum because it has been eaten up by income taxes and high cost of living. As one of our resource persons at the committee level termed it, "This is the take home pay that cannot take the employee home".

The Committee is not deaf to the fiscal needs of the government. It also recognizes that over the course of 20 years when the P30,000-ceiling was not increased, we did legislate measures that ensured our workers have bigger paychecks, such as increasing the personal and additional exemptions as mentioned earlier as well as the exemption of minimum wage earners from income tax. But then, Mr. President, what we are asking today is simply to put the P30,000-ceiling to its present value. Further, the Consumer Price Index (CPI) data from the National Statistics Office or the Philippine Statistics Administration (PSA) now, the P30,000-ceiling is worth approximately P82,000 as of August 2014 with 1994 as the reckoning period for this increase in value.

Mr. President, my esteemed colleagues, the Committee is simply asking that we adjust the ceiling to what was intended by Congress in the 1990s, over two decades ago or two decades ago. In fact, this bill only asks for adjustment up to P75,000. And since the Secretary of Finance has not exercised the power delegated to him by Congress, we propose in this bill that the authority to raise the ceiling in succeeding years shall be vested in the President of the Republic and that the adjustment be made mandatorily every three years to coincide with the major surveys conducted by the Philippine Statistics Administration such as the Family and Income Expenditure Survey (FIES) which is done every three years. The Department of Finance computes the revenue loss at P39 billion using 2011 data that it could not substantiate at the last hearing conducted by the Committee.

On the other hand, the UP School of Economics puts the figure between P1.6 billion and P5.6 billion. This is the revenue loss, Mr. President. Another expert has put the figure at P2.97 billion.

Mr. President, social justice implies fairness and mutual obligation in our free society. The workers toil in order to live. The government taxes the fruits of their labor in order to provide basic services for the workers and their family. Nakasaad po sa ating Saligang-Batas na dapat pag-ukulan ng Kongreso na pinakamataas na priority ang pagsasabatas ng mga hakbangin na mangangalaga sa mamamayang Pilipino at palalawigin ang katarungang panlipunan or social justice at karapatang pantao or human rights, kasama na po rito ang isang living wage o sahog na sapat ikabuhay. What the government loses on the one hand, it could recoup on the other hand through consumption taxes and taxes or investment. But today, the workers cry out for social justice and the living wage. Pakigangan po natin sila.

Marami pong salamat, distinguished colleagues. Thank you, Mr. President.



Raise the tax exemption on 13th month pay

**Sen. RALPH G. RECTO
Senate President Pro-Tempore**

Co-sponsorship speech on SB No. 2437 under Committee Report No. 84
October 22, 2014

No tax law is chiseled in stone. Revenue laws get amended or changed overtime.

Economic developments trigger revisions in our tax code. So does technological advancement.

For tax laws to be relevant, they must respond to, not resist, the changing social landscape.

The only two constants are that citizens obey them. And for lawmakers whom they elected, to change these laws when these become obsolete.

Because if our tax code were a fossilized document, then we would still be collecting taxes on opium.

A hundred years ago an opium addict, upon paying the Commissioner of Internal Revenue a fee as little as one peso, can secure a license, issued in quadruplicate, allowing him to smoke, chew, swallow or inject opium.

In 1914, there was also a specific tax on matches. Our first internal revenue code, Act 1189, written under American tutelage, slapped a tax of 40 centavos per 120 sticks.

It was also when carabaos were still taxed. So when an addict went to an opium den for his regular fix, then he paid a tax on his drug, on the match he used for lighting the pipe, and, if he was chauffeured there in a carabao-drawn carromata, on his ride.



Looking back, we may dismiss those levies as novelties. Today the mere thought of a tax on a match is already incendiary. But at that time, those who wrote those laws saw wisdom in them and the common good they serve.

It is the same wisdom that led subsequent legislatures to prune our thicket of revenue laws of dead parts.

The Senate, for one, is a huge paper-shredder of antiquated tax laws - and even tax proposals.

Always it has followed the "elevator rule" in taxation. Rates can go up - or down. The power to tax is not exclusive to raising tax rates; it includes lowering them, not just to impose taxes on goods and income, but to exempt certain ones.

And if taxation is compulsion, then compassion lies in the exceptions to the rule.

Exemptions and deductions are what distinguish taxation from taxidermy.

Taxation is the art of plucking the most amount of feathers from the goose with the least hissing. Taxidermy leaves only the skin.

In 1994, those in this chamber - Senator Tito is a member of Class '92 - pondered long and hard on how much of the 13th month pay and other bonuses shall be kept outside the reach of the taxman.

Republic Act 7833 which they passed that year placed P30,000 as the no-tax zone. Ibig sabihin lahat ng ito pwedeng iregalo sa inaanak. Ano mang lampas, may kaltas na ang BIR.

We combed through the debate records to learn how they arrived at that figure. We found out that there were no esoteric econometric models behind the amount.

The *raison d'être* was simple: Because the salary of the President then was P25,000 a month, then P30,000 was presumed to be enough to cover all civil servants.

The buffer of P5,000 was installed in the event that the public sector pay will be increased.

In fact, in anticipation of this, the 10th Congress included a provision in RA 8424 which states that the Secretary of Finance may raise the threshold.

As we all know, in legal construction, there is a whale of a difference between "shall" and "may". The

* Photo credit: Philsense.com (02/19/2014) - <http://philsense.com/2014/02/19/13th-month-pay-christmas-bonus-tax-exemption-limit-to-be-raised-to-p75000/>

former is mandatory, the latter optional. Often, the synonym of "may" is "never".

When it came to the P30,000 threshold, the provision to raise it based on inflation was never invoked.

Who would have thought that the DoF would love the word "may" when "shall" is a favorite word in the BIR vocabulary as its demand letters are peppered by "shall pay," "shall remit", "shall comply"?

For its inaction, we are stuck with a threshold, carbon-dated to 1 generation, 20 years and 3 presidents ago.

The peso has lost 2/3rds of its value over the past 20 years. One peso in 1994 is worth 36 centavos today.

Adjusted to inflation, the P30,000 then should be P82,300 today.

But instead of retracing the Consumer Price Index back to the era when the Senate was still squatting in the National Museum, when express mail to senators was called telegram, when they were summoned to meetings through SMS in their pagers, it would be better to recite grocery receipts than to show how much the peso has lost value.

When the 17-year-old Bam Aquino sipped his first beer in 1994, Pale Pilsen cost P8.50 a bottle. If he rode a jeepney from Katipunan to the Cubao beer garden, he paid P1.50.

Of course, Sonny Angara, on vacation from his London studies, wouldn't be caught taking public transpo. If he borrowed one of his dad's cars, he would have paid P8.50 for a liter of gasoline.

When the other Sonny was an Upperclassman in PMA, a kilo of rice in the Baguio market was P13, bread at Star Cafe can be had at P7 a loaf.

When Alan was a first-term 23-year-old councilor in Taguig his lakeshore constituents were selling tilapia at P64 a kilo, bangus at P69, and duck eggs at P2.70 each.

At kung nag-go-grocery si Nancy sa Cash and Carry noon, ang kilo ng baboy ay P86, ang isang litro ng mantika ay P25, ang kalahating kilo ng oatmeal ay P55, isang kilo ng longganisa ay P85, ang kilo ng mangga ay P34, at ang sardinas ay P6 isang lata.

Sa Batangas, naalala ko pa na 20 years ago, pwede kang bumarik ng gin na may kasamang isang platitong mani sa halagang P10.

Ito yung presyo ng mga bilihin sa panahong itinakda na P30,000 ang 13th month pay at iba pang benepisyong di nabubuwisan. Ang treinta mil noon, P10,800 na lang ang halaga ngayon.

May ilang nagbabala na P42 billion daw ang malulugi sa pamahalaan kung maipapasa ang panukalang batas na ito na naglalayong itaas sa P75,000 ang 13th month pay na di na bubuwisan.

Wala pong basehan ang ganung pangamba. Una, ang binayad na income tax sa buong Pilipinas noon 2013 ay P214 bilyon.

Kung paniniwalaan natin ang ganung haka-haka, ibig sabihin po ba na one-fifth ng sweldo o kita ng mga taxpayers sa bansang ito ay galing sa 13th month pay at Christmas bonus or binibigay kung malapit na ang Pasko? Mahirap naman yatang paniwalaan 'yon.

Sapagkat numero ang pinagbabasehan sa pagbubuwis, mas kapani-paniwala siguro ang estimate ng foregone revenues na binigay ng PIDS at ni Dr. Stella Quimbo ng UP School of Economics.

Tinataya ng PIDS na P2.6 bilyon lamang ang kabawasan sa taunang koleksyon at ayon naman sa komputasyon ni Dr. Quimbo, na hindi basta namitas ng numero sa ere at sa halip ay ipinakita ang kanyang formula, sagad na ang P5.6 bilyon bilang revenue loss.

But whatever is the revenue loss for the government is actually income gained for the workingman. And even if his 13th month pay is tax exempt upon receipt, it will be taxable when spent, so tax not withheld at source will later be captured in the form of sales tax at points of sale.

This is the season of rising prices of commodities.

'Yung pork pata na pwedeng pang-Noche Buena na P63 a kilo noong 1994 ay P170 na ngayon. 'Yung bigas na tig-trese pesos noon, P42 na ngayon.

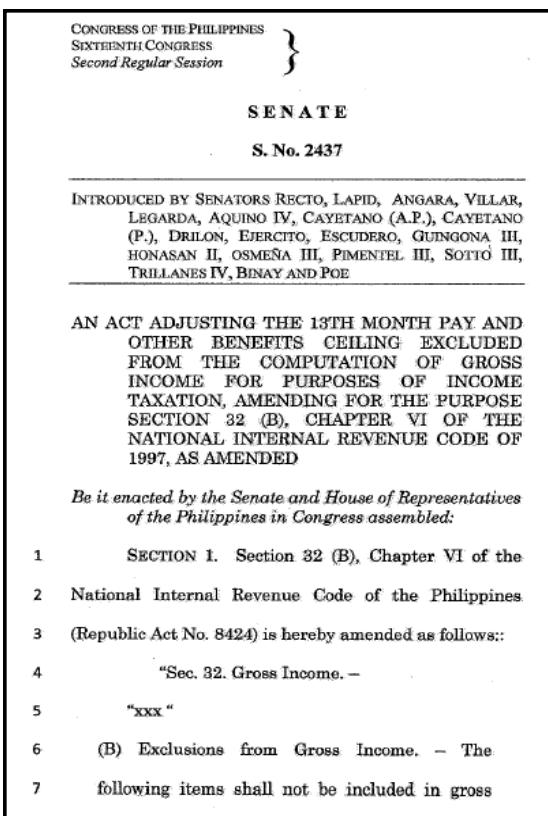
We can't pass a law prohibiting food inflation as much as we can't repeal the law of supply and demand.

Lower price tags can't be legislated.

But there's something else we can do to ease the plight of our consumers, and perhaps add a little cheer to their Christmas, and that is to pass this law.

In its enrolled form, this bill can be our Christmas card to them.

On December 1, 2014, the House of Representatives adopted the version of the Senate on the 13th month pay exemption. Senate Bill 2437 is reproduced below:



2

1 income and shall be exempt from taxation under
2 this Title:
3 “xxx”
4 “(7) Miscellaneous Items. –
5 “(e) 13th Month Pay and Other Benefits. –
6 Gross benefits received by officials and
7 employees of public and private entities:
8 Provided, however, That the total exclusion
9 under this subparagraph shall not exceed
10 EIGHTY TWO THOUSAND PESOS (P82,000)
11 [Thirty thousand pesos (P30,000)] which shall
12 cover:
13 “xxx”
14 (iv) Other benefits such as productivity
15 incentives and Christmas bonus: Provided,
16 [further, That the ceiling of Thirty thousand
17 pesos (P30,000) may be increased through
18 rules and regulations issued by the Secretary
19 of Finance, upon recommendation of the

3

1 Commissioner, after considering, among
2 others, the effect on the same of the inflation
3 rate at the end of the taxable year.] THAT
4 EVERY THREE (3) YEARS AFTER THE
5 EFFECTIVITY OF THIS ACT, THE
6 PRESIDENT OF THE PHILIPPINES SHALL
7 ADJUST THE AMOUNT HEREIN STATED
8 TO ITS PRESENT VALUE USING THE
9 CONSUMER PRICE INDEX (CPI), AS
10 PUBLISHED BY THE NATIONAL
11 STATISTICS OFFICE (NSO).
12 “xxx”
13 SEC. 2. *Implementing Rules and Regulations.* –
14 The Secretary of Finance shall promulgate the
15 necessary rules and regulations for the faithful and
16 effective implementation of the provisions of this Act:
17 Provided, That, the failure of the Secretary of Finance
18 to promulgate the said rules and regulations shall not

4

1 prevent the implementation of this Act upon its
2 effectivity.
3 SEC. 3. *Repealing Clause.* – All laws, orders,
4 issuances, circulars, rules and regulations or parts
5 thereof, which are inconsistent with the provisions of
6 this Act are hereby repealed or modified accordingly.
7 SEC. 4. *Separability Clause.* – If any provision of
8 this Act is declared unconstitutional or invalid, other
9 parts or provisions hereof not affected thereby shall
10 continue to be in full force and effect.
11 SEC. 5. *Effectivity.* – This Act shall take effect
12 fifteen (15) days following its publication in at least two
13 (2) newspapers of general circulation.

Approved,

STSRO ACTIVITIES

INTER-OFFICE BOWLING TOURNAMENT

Philippine Sports Commission (PSC)

December 4, 2014



STSRO ACTIVITIES

1ST INTER-OFFICE TABLE TENNIS DOUBLES TOURNAMENT

4th Floor Senate Building
October 16, 2014



SEMINARS / TRAININGS

INTERNATIONAL TAX FORUM

Fairmont Hotel, Makati City

November 12-14, 2014



Participants:

- Dir. Maria Lucrecia R. Mir
- Dir. Rechilda B. Gascon
- Dir. Julieta M. Fontiveros
- Dir. Atty. Sheanne C. Salazar



STSRO COMMENDATION:

From the Office of Senator Ferdinand R. Marcos Jr.

November 13, 2014

Xxx

Thank you for your memorandum dated 11 November 2014.

The Committee on Local Government chaired by Sen. Ferdinand R. Marcos Jr. respectfully takes note of your additional study on taxation and other related provisions of the proposed Bangsamoró Basic Law (BBL).

Sen. Marcos is one with the whole Filipino nation in the quest for peace and development of our country and people.

Xxx

Very truly yours,


RAMON B. CARDENAS
 Chief of Staff
 Office of Sen. Marcos



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