



By

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## Introduction

Living up to the campaign slogan of President Rodrigo Roa Duterte that “Change is Coming”<sup>1</sup>, Bureau of Internal Revenue (BIR) Commissioner Caesar “Billy” R. Dulay issued, on his first day in office, three (3) revenue issuances revoking or suspending those alleged “midnight issuances” by his predecessor, BIR Chief Kim Jacinto-Henares.

## Revenue Memorandum Order (RMO) No. 38-2016

First on the list is RMO 38-2016. This revokes RMO Nos. 24-2016 and 25-2016. These RMOs prescribe guidelines and procedures in the conduct of investigation on the capacity of a party to acquire properties. Henares issued these RMOs primarily to ensure that individuals have financial capacity to acquire assets, that they report such assets, and that they pay the correct taxes. She likened the additional requirements requested by BIR upon property buyers to the lifestyle checks made on some government officials.

A case in point was during the impeachment trial of then Chief Justice Corona, when his daughter Carla bought a piece of real estate worth P18 million when her taxable income was only P8,476.<sup>2</sup>

<sup>1</sup> Full Text: President Rodrigo Duterte inauguration speech. *Inquirer.net*. Retrieved from <http://newsinfo.inquirer.net/793344/full-text-president-rodrido-duterte-inauguration-speech#ixzz4F0aVx1Qe>

<sup>2</sup> Sy, M. (2012). BIR investigating Corona, Henares tells court. *The Philippine Star*. Retrieved from <http://www.philstar.com/headlines/771339/bir-investigating-corona-henares-tells-court>

The release of these issuances by Commissioner Henares stirred a negative reaction from the Tax Management Association of the Philippines (TMAP). According to Mr. Benedict Tugonon, President of TMAP, "BIR examiners (are) given wide latitude of discretion as to what constitute necessary documents to be submitted to determine capacity to acquire."<sup>3</sup> Tugonon also asserts that these RMOs make it inconvenient on the part of the buyers of properties, such as Overseas Filipino Workers (OFWs) and minimum wage earners, as they need to make an affidavit "stating their annual income, source of income and why they are buying the property."<sup>4</sup> Lastly, it is alleged that since these RMOs also cover estate tax, it is impossible to prove financial capacity of the deceased.

Henares defended these issuances stating, "the issuance said you execute an affidavit as to what is your source of revenue and show proof. So if they are OFWs, don't they have a pay slip or contract?"<sup>5</sup> Furthermore, she maintained that these are similar to the "net worth method wherein if one has assets and cannot show proof that the corresponding taxes were paid then there is presumption of tax evasion."<sup>6</sup>

Analyzing the issuances of both Henares and Dulay, the two assert the power and authority of the Commissioner as provided in the National Internal Revenue Code (NIRC) although these were not cited in their respective issuances. Furthermore, both of them did not explain in detail the rationale for issuing such RMOs.

Regarding TMAP's allegations, the following are observed:

The RMOs give too much discretion on the part of BIR examiners as they are not only allowed to request for additional requirements but also they can subject such documents to possible audit or investigation. This is shown in the phrase "and may be required thereafter as necessary, be evaluated for possible audit or investigation". This discretion by the BIR examiners may be abused and used as source of corruption. On its face, this is a ground for the revocation of the said RMO. After all, RMOs should be clear and specific as to avoid different interpretations and implementation.

TMAP also asserts that minimum wage earners and OFWs cannot comply with the requirement that Income Tax Return (ITR) should be submitted. However, Henares has a point when she said that even

the pay slip or contract can suffice to prove that they have a source of income enough to buy the subject property or asset.

While it is true that some, if not all, of the allegations by TMAP are valid and should be a ground for the revocation of RMO No. 24-2016 and RMO No. 25-2016, Commissioner Dulay only cited Sections 4 and 7 of the NIRC as bases for their revocation. The "fears" of TMAP should be verified. It is viewed that Commissioner Dulay should have discussed in his issuance the allegations made by TMAP and backed them up with the appropriate legal basis and justification.

### Revenue Memorandum Circular (RMC) No. 69-2016

Second on the list is RMC No. 69-2016. This was issued by Commissioner Dulay suspending the effectivity of all issuances promulgated within the period June 1 to 30, 2016.

Among the issuances affected by this Circular is RMC No. 61-2016, which provides policies and guidelines for accounting and recording transactions involving "netting" or "offsetting" of assets and liabilities.

It is instructive to note that there are no definitive policies for reporting assets and liabilities arising from offsetting transactions. Hence, questions have been raised for accounting and tax purposes. In fact, Mr. Marion D. Castañeda of Business World Online, asks whether BIR has the authority under the Tax Code to prescribe journal entries to be recorded for accounting purposes.

According to Castañeda, "Essentially, the RMC requires taxpayers to look into the substance of their commercial arrangements and treat each identifiable transaction separately for both recording (accounting) and tax purposes, regardless if the eventual settlement between the parties will be at a 'net' amount. On this note, it may concern taxpayers whether the authority of the BIR under the Tax Code even includes prescribing journal entries to be recorded for accounting purposes."<sup>7</sup>

As a remedy, various financial reporting practices have been developed, however, giving rise to accounting treatments that result in offsetting which adversely affect the complete measurement of an asset or liability.

<sup>3</sup> Magtulis, P. (2016). BIR tightens rules on property deals Tax managers say new ruling 'unjust and unfair'. *The Philippine Star*. Retrieved from <http://www.philstar.com/business/2016/06/11/1591625/bir-tightens-rules-property-deals-tax-managers-say-new-ruling-unjust-an>

<sup>4</sup> Ibid.

<sup>5</sup> Magtulis, P. (2016). For issuing new rules in transition: Henares at loggerheads with tax managers' group. *The Philippine Star*. Retrieved from <http://www.philstar.com/business/2016/06/19/1594261/issuing-new-rules-transition-henares-loggerheads-tax-managers-group>

<sup>6</sup> Ibid.

<sup>7</sup> Castañeda, M. (2016). *Business World Online*. Offsetting arrangements: A disallowed tax practice. Retrieved from <http://www.bworldonline.com/content.php?section=Economy&title=offsetting-arrangements-a-disallowed-tax-practice&id=129398>

Given the admission by the BIR, as written in the second paragraph under “Background” of RMC 61-2016 that there are no definitive policies regarding netting/ offsetting, it is recommended that the NIRC be amended in order to insert a provision treating on the matter using the generally accepted accounting, auditing or tax principles. This will shield the BIR against being accused of wrongly interpreting the provisions of the Tax Code.

Another suspended issuance affected by this circular is RMC No. 62-2016 regarding the proper tax treatment of passed-on gross receipts tax of banks and non-bank financial intermediaries. Henares justified the issuance of this particular RMC stating, “She is simply following the law. Since they pass on the tax they should have been paying, then they are getting reimbursed for their cost.”<sup>8</sup> She added that “GRT is an indirect tax and therefore, if you pass it on, it forms part of the price of goods you are selling. This is a basic principle of taxes.”<sup>9</sup> However, tax managers and practitioners expressed strong opposition to this issuance. TMAP insists that it is a tax on tax. According to TMAP President, Mr. Tugonon, “Under the memo, financial institutions were told that since they are making their clients shoulder GRT on transactions such as loans, they ‘constructively’ gained additional income which should be charged with separate tax. This is on top of the levy on the interest income for their loans, makes it effectively ‘a tax on tax.’<sup>10</sup> Furthermore, “as a result of the new memorandum, lenders may resort to passing the cost to their clients through higher interest rates.”<sup>11</sup>

Not only TMAP is finding this RMC problematic. Ms. Lina Figueroa, Tax Partner at P&A Grant Thornton Auditing Firm, asserts, “charging different levies on interest income and passed-on GRT means more accounting work for banks. On the part of bank clients, it will likewise complicate accounting if (GRT) has to be in a different account. Even withholding taxes may have to be accounted for separately.”<sup>12</sup>

Evaluating the arguments for and against this issuance, it can be said that RMC No. 69-2016 made a sweeping suspension of all issuances for the month of June 2016 without explaining or discussing why such issuances are being suspended. However, it is understandable that all the issuances made by Henares before the change of leadership in the BIR should be studied first before either implementing or permanently revoking it by the new BIR Chief. Procedure wise, it should be suspended. But as to the

content or substance, the following are observed:

Henares issued RMC NO. 62-2016 citing several Sections of the NIRC such as Sections 32, 34, 121, and 122 as well as Section 2 of the Bangko Sentral ng Pilipinas Circular No. 730 and Revenue Regulation 12-2013 as legal bases for the issuance of the said RMO. Former BIR Chief Henares made sure that the issuance is consistent and not contrary with existing laws and regulations.

The allegation that it is a tax on tax is not valid since “double taxation means taxing for the same tax period the same thing or activity twice, when it should be taxed but once, for the same purpose and with the same kind of character of tax.”<sup>13</sup> In this case, it is different since the levy imposed is 1) on “the actual loan interest,” and 2) on “the income they supposedly generated for passing the GRT first to borrowers.”<sup>14</sup>

In conclusion, while it is logical that Commissioner Dulay suspended all the issuances released during the period June 1 to 30, 2016, including RMC No. 62-2016, to give time for him and his team to study the pros, cons, and even legality of the issuances, he should immediately release another issuance, based on a study or review, whether he would implement or revoke such issuance by Henares on Proper Tax Treatment of Passed-on Gross Receipts Tax. It is presumed that the technical staff of the BIR are the same under the two BIR Chiefs, hence, the matter should be resolved in order not to create undue tension in the business sector.

RMC No. 65-2016 is another issuance suspended by Commissioner Dulay. This clarifies the appropriate due date of filing tax returns and payment of taxes in case the exact due date falls on a Saturday, Sunday, or a holiday. For electronic and manual tax filers and payers of taxes, the due date shall be on the next business day.

Thus, it is deemed that this RMC should not have been suspended since it simply clarifies the appropriate due date of filing and/or payment when the actual due date falls on a Saturday, Sunday or holiday just like in the case of banks where there is already a specific rule when this scenario happens. It is instructive to note that there is no opposition to this RMC.

Also suspended is RMO No. 26-2016 that prescribes policies and guidelines in handling disputed assessments. The issue against this RMO is that it

<sup>8</sup> Magtulis, P. (2016). For issuing new rules in transition: Henares at at loggerheads with tax managers’ group. *The Philippine Star*. Retrieved from <http://www.philstar.com/business/2016/06/19/1594261/issuing-new-rules-transition-henares-loggerheads-tax-managers-group>

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Magtulis, P. (2016). BIR treatment of passed-on gross receipt tax more tedious – TMAP. *The Philippine Star*. Retrieved from <http://www.philstar.com/business/2016/06/17/1593655/bir-treatment-passed-gross-receipt-tax-more-tedious-tmap>

<sup>13</sup> [http://sc.judiciary.gov.ph/jurisprudence/2006/september2006/G.R.%20No.%20139786.htm#\\_ftn26](http://sc.judiciary.gov.ph/jurisprudence/2006/september2006/G.R.%20No.%20139786.htm#_ftn26) and Tax Law and Jurisprudence, by Justice Jose C. Vitug and Judge Ernesto D. Acosta, Second Edition, 2000.

<sup>14</sup> Magtulis, P. (2016). BIR treatment of passed-on gross receipt tax more tedious – TMAP. *The Philippine Star*. Retrieved from <http://www.philstar.com/business/2016/06/17/1593655/bir-treatment-passed-gross-receipt-tax-more-tedious-tmap>

differs significantly from its predecessor (RR 12-99, as amended by RR 18-2013) with regard to the issuance of Formal Letter of Demand and Final Assessment Notice (FLD)/(FAN). In the old ruling, the taxpayer is given fifteen (15) days upon receipt of Preliminary Assessment Notice (PAN) to respond versus issuance of FLD/FAN fifteen (15) days after receipt of PAN. Therefore, in order to uphold taxpayers' rights, a public hearing should be conducted before an RMO, RMC or RR is issued. In many instances, a BIR issuance is overruled by the courts because of certain excesses.

Commissioner Dulay also suspended RMO No 27-2016. This is issued primarily to adopt the new procedure of "automatic withholding of taxes on income of nonresidents deriving Dividend, Interest and Royalty from sources within the Philippines at applicable tax treaty rates subject to regular audit." This is consistent with the treaties to which the Philippines is a signatory and even with the United Nations' policy which "recognizes that the single most important factor bearing on the compliance by nonresidents with domestic tax law is the use of source withholding by the source State<sup>15</sup>" and that "the use of final withholding taxes to collect tax from nonresidents is widespread and recognized internationally as a legitimate mechanism to collect tax."<sup>16</sup>

Allegations on this RMO include the fact that it became more tedious on the part of taxpayers in relation to the procedures in availing the preferential tax treaty rates and the dividend tax sparing rates. In fact, "the BIR required a separate application for a BIR ruling on the taxpayer's availment of the reduced fifteen percent (15%) tax rate on inter-corporate dividends under the tax sparing provision of the 1997 Tax Code, as amended [Section 28(B)(5) of the Tax Code]."<sup>17</sup>

If Commissioner Dulay is concerned in making the procedures in the BIR easy and comfortable on the part of the taxpayers just like what the Duterte Administration is advocating, then this RMO should be permanently revoked as this new procedure is more tedious for the taxpayers.

### Revenue Memorandum Circular (RMC) No. 70-2016

Last on the list of issuances released by Commissioner Dulay is RMC No. 70-2016 suspending all field audits and other field operations of the BIR relative to examinations and verifications of taxpayers' books of accounts, records, and other transactions. Reports have reached Commissioner Dulay that "probes conducted under Letters of Authority (LOAs) are being abused and could last for two (2) to three (3) years."<sup>18</sup>

The Commissioner can issue LOAs as he/she has the power to obtain information and has the authority to conduct inventory-taking and surveillance as provided in Sections 5 and 6 of the NIRC. However, what is illegal is when the audit or investigation lasts from two (2) to three (3) years as reported. Under the General Audit Procedures and Documentation, "a Revenue Officer is allowed only one hundred twenty (120) days from the date of receipt of a Letter of Authority by the Taxpayer to conduct the audit and submit the required report of investigation. If the Revenue Officer is unable to submit his final report of investigation within the 120-day period, he must then submit a Progress Report to his Head of Office, and surrender the Letter of Authority for revalidation." Therefore, it is reasonable if those Letters of Authority that were suspended were the ones whose audits and probes exceeded the 120-day period and not those within the valid audit period.

As of this writing, there are around forty (40) regulations and orders that TMAP asked BIR to be reviewed or revoked.

### Conclusion

Indeed, change has immediately been enforced at the BIR with the suspension and revocation of the so-called "midnight issuances" by Henares. However, let us be reminded that change will not be truly felt if implemented for the sake of replacing the remnants of the previous BIR administration. The guiding principle should be "Tinud-anay nga kabag-uhan. Mao kana ang tumong sa atong pang-gobyerno."<sup>19</sup> It would have been more prudent had the issuances been carefully studied first in lieu of a sweeping suspension and revocation of the issuances by Henares. In the name of good judgement, we believe that the issuances made by Henares were also a product of meticulous study and deliberation. It is safe to presume that the technical staff who prepared the issuances in the previous administration were still part of the current administration, thereby having full knowledge of the rationale behind their issuance. After all, the issuances are not products of mere imagination. They were issued for a specific reason and based on a sound justification.

The allegations and opposition of tax managers and practitioners such as TMAP should be considered but not the sole guiding principle.

In the end, for real change to become a reality at the BIR, those that are beneficial to the general population should be implemented and those that negatively affect the majority should be scrapped. That is the only time we can say that "real change" has truly arrived and has materialized at the BIR.

<sup>15</sup> United Nations Handbook on Selected Issues in Administration of Double Tax Treaties for Developing Countries (2013)

<sup>16</sup> Ibid.

<sup>17</sup> Mandac, A. (2016). BIR Chief's first order of business: Review previous tax issuances. Business World Online. Retrieved from <http://www.bworldonline.com/content.php?section=Economy&title=bir-chief&8217s-first-order-of-business-review-previous-tax-issuances&id=129935>

<sup>18</sup> Magtulis, P. (2016). On 1<sup>st</sup> day of Duterte administration: BIR to halt tax probes. The Philippine Star.

<sup>19</sup> Full Text: President Rodrigo Duterte inauguration speech. Inquirer.net. Retrieved from <http://newsinfo.inquirer.net/793344/full-text-president-rodrigo-duterte-inauguration-speech#ixzz4F0aVx1Qe>

# TAX NEWS DIGEST

## ***“Legislators asked to pass bills supporting export industry”***



*“The Export Development Council (EDC) has drafted a list of recommended legislative priorities for the 17th Congress that would help Philippine exporters advance in the international market.*

*“To address transport and logistics concerns, the Networking Committee on Legislative Advocacy and Monitoring of the EDC asked for amendments to the Philippine Ports Authority and Civil Aviation Authority of the Philippines charters in order to separate the regulatory and operator functions of the agencies. It also asked to repeal Presidential Decree (PD) 1221 that required mandatory dry-docking on Maritime Industry Authority (Marina)-registered shipyards.*

*“On trade financing, EDC said it supported proposed amendments to Republic Act 9501 or the Magna Carta for Micro, Small and Medium sized Enterprises (MSMEs) to include a 10-year extension to a mandatory lending provision contained therein.*

*“Also on the list of EDC is the proposed revision on the implementing rules and regulations of Republic Act 8172 (Asin Law). EDC cited the need to clarify a provision requiring all producers to iodize the salt they manufacture and trade.” (PDI, 24 May 2016)*



## ***“Expert sees great PH potential in mini-hydro development”***



Photo by : [www.pureenergy.com.ph](http://www.pureenergy.com.ph)

*“A finance expert in clean energy generation said the Philippines had great investment potential in mini-hydroelectric power projects and has called for more support and investments in renewable energy projects.*

*“At the 3rd Annual Power & Electricity World Philippines Conference, Victor Lee, CFO of Repower Energy Development Corp. (REDC), called on fellow investors to give priority to mini-hydropower*

*projects.*

*“Investors are showing signs of more interest in small hydropower investments in the country, Lee said, due to a feed-in tariff (FIT) system and the government’s desire to cultivate its renewable sector and achieve its commitment in the 2015 United Nations Climate Change Conference or COP21.*

*“In July 2012, the ERC approved FIT rates for run-of-river hydro (P5.90 per kilowatt-hour or kWh) for an installation target of 250 megawatts (MW), biomass (P6.63/kWh) for 250 MW, solar (P9.68/kWh) for 50 MW and wind (P8.53/kWh) for 200 MW.” (PDI, 24 May 2016)*



## ***“Foreign investors predict rosy future for PH”***

*“The foreign business community expects the Philippine economy to accelerate by more than 10 percent a year starting 2018, with foreign direct investment inflows seen reaching as much as \$12 billion annually.*



*“Meeting such targets under the Arangkada Philippines project, however, will hinge on the next*

*administration’s ability to carry out reform measures that business groups have long been clamoring for, officials of the Joint Foreign Chambers said in a briefing Tuesday.*

*“That’s our vision as far as the GDP (gross domestic product) growth is concerned. The other side of this is that if everything goes well, then the FDIs will also be higher and this will lead to more jobs in the agriculture and manufacturing sectors being created,” explained Henry J. Schumacher, vice president for external affairs at the European Chamber of Commerce of the Philippines Inc.*

*“That’s the Arangkada project putting more gas and driving faster. I don’t see any reason why [these targets] can’t be achieved. But without these reforms, these [targets] are not going to happen. And it’s not just the foreign investors—even the local organizations such as the Management Association of the Philippines and the Makati Business Club are also on the same avenue,” Schumacher said.” (PDI, 9 February 2016)*



#### **“SEC commits to study PSE, PDS merger anew”**



*“The Securities and Exchange Commission (SEC) aims to resolve within two months the proposed merger of the country’s stock and bond markets, deemed as a vital step to strengthening the local capital market infrastructure in a competitive global environment.*

*“After receiving on Jan. 26 the reply of the Philippine Stock Exchange (PSE) on the proposed acquisition of a controlling stake in Philippine Dealing Systems Holdings Corp. (PDS) Group, the SEC said it was now carefully studying the proposed acquisition considering that the movements in capital at the fixed income market were very significant.*

*“PDS is the holding firm for fixed income trading platform Philippine Dealing and Exchange Corp. (PDEX), Philippine Depository and Trust Corp. (PDMC) and Philippine Securities Settlement Corp. The PSE earlier signed a deal to raise its stake in PDS to more than 67 percent, subject to closing*

*conditions. In 2015, value turnover at fixed income platform PDEX amounted to P3.42 trillion while turnover at the PSE totaled P4.3 trillion.*

*“The commission will endeavor to make a final action on PSE’s application within 60 days from receipt of PSE’s submission,” the SEC said in an update issued Friday.” (PDI, 15 February 2016)*



#### **“NEDA sees more job prospects for OFWs”**



*“The government is closely monitoring external developments seen impacting on overseas job markets, although prospects for deployment of more Filipino workers are expected to abound in the United Arab Emirates, according to a National Economic and Development Authority (Neda) official.*

*“Neda Assistant Director-General Rosemarie G. Edillon told reporters last week that cheaper global oil prices coupled with geopolitical developments in the Middle East as well as the slowing Chinese economy were being seen as risks not only to trade but also the employment of overseas Filipino workers (OFWs).*

*“As far as China’s slower growth is concerned, Edillon said they were hopeful that economic recovery in the United States and Japan—the latter being the Philippines’ largest export market—would compensate for the expected global trade slowdown.*

*“According to Edillon, they were also closely coordinating with the Department of Labor and Employment (DOLE) to substantiate risks to OFW jobs, especially in the Middle East.” (PDI, 16 February 2016)*



#### **“Gov’t lowers 2016 GDP growth target”**

*“External risks brought on by a slowing Chinese economy and cheaper oil led the government to cut the economic growth target for this year to 6.8-7.8 percent from the previous 7-8 percent.*

*“According to Rosemarie G. Edillon, National Economic and Development Authority (NEDA) assistant director general, the target average growth*



range for 2017 is projected between 6.6 and 7.6 percent; for 2018, 7-8 percent; and for 2019, 6.9-7.9 percent.

“External developments were the primary reason for

the slight downgrade in the growth goal for this year, especially the slowdown in China and the decline in the price of oil, Edillon said in a press conference following a meeting among representatives of the interagency Development Budget Coordination Committee.

“As a result, the government has also cut its exports and imports growth targets to 5 percent (from 6 percent) and 10 percent (from 12 percent), respectively, based on the Bangko Sentral ng Pilipinas’ Balance of Payments and International Investment Position Manual projection. (PDI, 16 February 2016)



### “PPP seen key to sustaining growth, P108.6B in annual construction activity”



“The next president could add 1.7 percentage points to annual growth rate over the medium term, thus hastening the country’s economic takeoff, if the public-private partnership (PPP) agenda on infrastructure-building would be continued, economists from American banking giant Citigroup said.

“A Feb. 18 research titled “Surveying Asean’s Infrastructure Gap” authored by Wei Zheng Kit, Jun Trinidad and Helmi Arman warned, however, that further progress in tackling corruption could not be guaranteed in a post-Aquino government. “Weak governance, should it recur post-Aquino, could discourage private sector participation in PPP projects,” the research said.

“The research noted that the abolished “pork barrel” system, which funded discretionary projects

of lawmakers, along with other corruption cases had weakened the government’s effort to widen the base for tax compliance and collections, undermining its ability to fund infrastructure spending.

“Yet for an archipelagic country like the Philippines, Citi said the infrastructure challenges and associated budgetary and investment costs might be significant and multifaceted—ranging from transport/logistics inadequacies, to basic sanitation/electricity supply.” (PDI, 22 February 2016)



### “Henares sets BIR agenda beyond Aquino’s term”



“The Bureau of Internal Revenue (BIR) has come out with its medium-term plan aimed not only at shoring up tax revenues but also at further easing payment processes.

“The BIR’s Strategic Plan 2016-2020, made public through Revenue Memorandum Order No. 6-2016 issued last Feb. 15, “provides the bureau’s strategy roadmap and a five-year overview of the seven high-level strategic objectives,” Commissioner Kim S. Jacinto-Henares said.

“The BIR’s seven strategic objectives are: Attain collection targets and sustained collection growth; improve taxpayer satisfaction and compliance; strengthen good governance; improve assistance and enforcement processes; build and deploy contemporary information technology (IT) systems, processes and tools; improve integrity, competence, professionalism and satisfaction of human resources; and optimize management of resources.

“Henares said the overall goal was “to build on the investment we have made in improving our business processes and our IT systems, and further transform the administration of the tax system.” (PDI, 22 February 2016)





**CHINA BANKING CORPORATION, *Petitioner*, v. COMMISSIONER OF INTERNAL REVENUE, *Respondent***  
(G.R. No. 172509, February 04, 2015) / (Sereno, CJ)



[www.bworldonline.com](http://www.bworldonline.com)

**Facts:**

This case involves the application of the principle of prescription in the collection of internal revenue taxes. In the words of the Supreme Court (SC), this will “address the question of prescription of the government’s right to collect taxes.” In this case, deficiency documentary stamp tax (DST).

China Banking Corporation (CBC), petitioner in this case, questions the decision of the (Court of Tax Appeals) CTA En Banc which affirmed the decision of the CTA Second Division, requiring petitioner to pay the amount of P11,383,165.50, plus increments accruing thereto, as deficiency DST for the taxable years 1982 to 1986.

Petitioner alleged the following in support of its claim:

(1) *double taxation*, as the bank had previously paid the DST on all its transactions involving sales of foreign bills of exchange to the Central Bank; (2) *absence of liability*, as the liability for the DST in a sale of foreign exchange through telegraphic transfers to the Central Bank falls on the buyer in this case, the Central Bank; (3) *due process violation*, as the bank’s records were never formally examined by the BIR examiners; (4) *validity of the assessment*, as it did not include the factual basis therefore; (5) *exemption*, as neither the tax-exempt entity nor the other party was liable for the payment of DST before the effectivity of Presidential Decree Nos. (PD) 1177 and 1931 for the years 1982 to 1986. In the protest, the taxpayer requested a reinvestigation so as to substantiate its assertions. CBC also interposed prescription forwarding that the government had three (3) years from April 19, 1989, the date the former received the assessment of the CIR, to collect the tax. During said span of time, however, neither a warrant of distraint or levy was issued, nor a collection case filed in court by the Commissioner of Internal Revenue (CIR).



**Issue:**

Has prescription set in? In other words, is the CIR barred from collecting the tax?

**Held:**

The SC declared that the claim is barred by the Statute of Limitations. The latter is based on equity and fair play.

**The Court said:**

*“The attempt of the BIR to collect the tax through its Answer with a demand for CBC to pay the assessed DST in the CTA on 11 March 2002 did not comply with Section 319(c) of the 1977 Tax Code, as amended. The demand was made almost thirteen years from the date from which the prescriptive period is to be reckoned. Thus, the attempt to collect the tax was made way beyond the three-year prescriptive period.*

*“The BIR’s Answer in the case filed before the CTA could not, by any means, have qualified as a collection case as required by law. Under the rule prevailing at the time the BIR filed its Answer, the regular courts, and not the CTA, had jurisdiction over judicial actions for collection of internal revenue taxes. It was only on 23 April 2004, when Republic Act Number 9282 took effect, that the jurisdiction of the CTA was expanded to include, among others, original jurisdiction over collection cases in which the principal amount involved is one million pesos or more.*

*“Consequently, the claim of the CIR for deficiency DST from petitioner is forever lost, as it is now barred by time. This Court has no other option but to dismiss the present case.”*

Further, the running of the prescriptive period was not suspended by the request of CBC for a reinvestigation. Said the SC:

*“The fact that the taxpayer in this case may have requested a reinvestigation did not toll the running of the three-year prescriptive period. Section 320 of the 1977 Tax Code states:*

*“Sec. 320. Suspension of running of statute. —The running of the statute of limitations provided in Sections 318 or 319 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in*

*court and for sixty days thereafter; when the taxpayer requests for a re-investigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, That if the taxpayer informs the Commissioner of any change in address, the running of the statute of limitations will not be suspended; when the warrant of distraint and levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines. (Emphasis supplied)*

Finally, the SC pronounced:

*“In this case, the fact that the claim of the government is time-barred is a matter of record. As can be seen from the previous discussion on the determination of the prescription of the right of the government to claim deficiency DST, the conclusion that prescription has set in was arrived at using the evidence on record. The date of receipt of the assessment notice was not disputed, and the date of the attempt to collect was determined by merely checking the records as to when the Answer of the CIR containing the demand to pay the tax was filed.*

“X x x.

*“Republic v. Ker & Co. Ltd. involved a collection case for a final and executory assessment. The taxpayer nevertheless raised the prescription of the right to assess the tax as a defense before the Court of First Instance. The Republic, instead of objecting to the invocation of prescription as a defense by the taxpayer, litigated on the issue and thereafter submitted it for resolution. The Supreme Court ruled for the taxpayer, treating the actuations of the government as a waiver of the right to invoke the defense of prescription. Ker effectively applied to the government the rule of estoppel. Indeed, the no-estoppel rule is not absolute.*

*“The same ingredients in Ker - procedural matter and injustice - obtain in this case. The procedural matter consists in the failure to raise the issue of prescription at the trial court/administrative level, and injustice in the fact that the BIR has unduly delayed the assessment and collection of the DST in this case. The fact is that it took more than 12 years for it to take steps to collect the assessed tax. The BIR definitely caused untold prejudice to petitioner, keeping the latter in the dark for so long, as to*

whether it is liable for DST and, if so, for how much.”

The validity of the assessment was not tackled considering that the government’s claim for deficiency DST is barred by prescription. Petition was granted.



**NORTHERN MINDANAO POWER CORPORATION, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondents. G.R. No. 185115, February 18, 2015 / (Sereno, CJ)**

#### Facts:

Petitioner Northern Mindanao Power Corporation (NMPC) allegedly incurred input value-added tax (VAT) on its domestic purchases of goods and services employed in its transaction with the National Power Corporation (NPC). NMPC filed an administrative claim for refund on June 20, 2000 for taxable year 1999 with the Commissioner of Internal Revenue (CIR). On July 25, 2001, another administrative claim for refund was filed for taxable year 2000. Subsequently, on September 28, 2001, alleging inaction on the part of the CIR, NMPC filed a petition with the Court of Tax Appeals (CTA).

The CTA First Division denied the Petition and Motion for Reconsideration (MR) for lack of merit and discovered that the term ‘zero-rated’ was not imprinted on the receipts/invoices NMPC presented. The CTA En Banc denied the appeal. It declared that imprinting ‘zero-rated’ on the receipts is mandatory.

#### Issue:

*“Petitioner’s appeal is anchored on the following grounds:*

*“Section 4.108-1 of Revenue Regulations (RR) No. 7-95 which expanded the statutory requirements for the issuance of official receipts and invoices found in Section 113 of the 1997 Tax Code by providing for the additional requirement of the imprinting of the terms “zero-rated” is unconstitutional.*

*“Company invoices are sufficient to establish the actual amount of sale of electric power services to the National Power Corporation and therefore sufficient to substantiate Petitioner’s claim for refund.”*

#### Held:

The Supreme Court (SC) decided that both claims for refund must be denied. On the first issue,

the Court said:

*“Petitioner’s claim for the 3<sup>rd</sup> and the 4<sup>th</sup> quarters of taxable year 1999 was filed 319 days after the expiration of the 30-day period. To reiterate, the right to appeal is a mere statutory privilege that requires strict compliance with the conditions attached by the statute for its exercise. Like Philex, petitioner failed to comply with the statutory conditions and must therefore bear the consequences. It already lost its right to claim a refund or credit of its alleged excess input VAT attributable to zero-rated or effectively zero-rated sales for the 3<sup>rd</sup> and the 4<sup>th</sup> quarters of taxable year 1999 by virtue of its own failure to observe the prescriptive periods.”*

The Tax Code allows only one hundred twenty (120) days. Clearly, 319 days is a case of late filing.

With respect to the second bone of contention, the Court declared that NMPC was erroneous in not following the law and waiting for the 120 day period to expire before filing its judicial claim for refund with the CTA. It was prematurely filed and hence fatal to its case.

As to the imprinting of the term ‘zero-rated’, the SC proclaimed:

*“RR 7-95, which took effect on 1 January 1996, proceeds from the rule-making authority granted to the Secretary of Finance by the NIRC for the efficient enforcement of the same Tax Code and its amendments. In Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue, we ruled that this provision is “reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services.” Moreover, we have held in Kepco Philippines Corporation v. Commissioner of Internal Revenue that the subsequent incorporation of Section 4.108-1 of RR 7-95 in Section 113 (B) (2) (c) of R.A. 9337 actually confirmed the validity of the imprinting requirement on VAT invoices or official receipts – a case falling under the principle of legislative approval of administrative interpretation by reenactment.*

*“In fact, this Court has consistently held as fatal the failure to print the word “zero-rated” on the VAT invoices or official receipts in claims for a refund or credit of input VAT on zero-rated sales, even if the claims were made prior to the effectivity of R.A. 9337. Clearly then, the present Petition must be denied.”*

The SC likewise added that a company invoice is not sufficient to prove the sale of services to NPC by NMPC. The Court declared that a VAT invoice is necessary. The SC went on to differentiate an 'invoice' from a 'receipt', viz:

*“A “sales or commercial invoice” is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services.*

*“A “receipt” on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and*

*buyer of goods, debtor or creditor, or person rendering services and client or customer.*

*“A VAT invoice is the seller’s best proof of the sale of goods or services to the buyer, while a VAT receipt is the buyer’s best evidence of the payment of goods or services received from the seller. A VAT invoice and a VAT receipt should not be confused and made to refer to one and the same thing. Certainly, neither does the law intend the two to be used alternatively.”*

Petition of NMPC is denied.



Directors Vivian A. Cabiling, Norberto M. Villanueva and Maria Lucrecia R. Mir

Seminar on  
BDB Law’s Mid-Year Tax Forum  
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***“National and Regional Taxation:  
Insights and Foresights”***

*Held at Mayuree 1, Grand Ballroom,  
Dusit Thani,  
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**Senators Manny “Pacman” Pacquiao and Joel Villanueva to Play for Senate Defenders**



During opening of the 17th Congress on July 25, 2016. Sen. Manny Pacquiao said he will play for the Senate Defenders in the 5th Season of the UNTV Cup. Sen. Manny Pacquiao is a member of the Committee on Ways and Means for the 17th Congress. Shown in the photo welcoming Sen. Pacquiao to the Senate Defenders are Atty. Rodelio T. Dascil, Director General of STSRO and Coach of Senate Defenders; Atty. Oscar G. Yabes, former Secretary of the Senate; and Ronald Golding, Director General of SEPO and player of Senate Defenders.

Shown in photo welcoming the No. 1 draft pick of the Senate Defenders, Sen. Joel Villanueva, (Vice-chairman of the Committee on Ways and Means), are Director General of STSRO Atty. Rodelio T. Dascil and Coach of Senate Defenders; Director General of SEPO Ronald Golding; Sen. Sonny Angara (Chairman of the Committee on Ways and Means), Captain Ball of the Senate Defenders; and Senate Defenders Players.



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## A Plaque of Appreciation for Sen. Sonny Angara

Workaholic Chairman of the Committee on Ways and Means. The Officers and Staff of STSRO presented a Plaque of Appreciation to Sen. Sonny Angara for enriching our country's treasury of laws in the field of taxation during the 16th Congress.

Eager to work for the comprehensive income tax reform in the 17th Congress.



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