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Adjustment Delayed is Justice Denied ?

Congress Seeks to Increase Ceiling of Tax-Exempt 13th Month Pay, Christmas Bonus and Other Benefits

by

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The House of Representatives passed on Third Reading House Bill No. 4970 seeking to increase the tax-exempt ceiling for 13th month pay, Christmas bonus and other benefits from ₱30,000 to ₱70,000.

In the Senate, Senators Ralph Recto, Lito Lapid and Sonny Angara filed Senate Bill Nos. 256, 1944 and 2157 proposing to increase the ceiling to ₱75,000 with automatic indexation to the Consumer Price Index (CPI) every three (3) years while SBN 452 and 1838 propose to remove the ₱30,000 cap altogether.

Photo credit : Albert Calvelo (22 September 2014)

A historical background

Section 32 (B)(7)(e) of the National Internal Revenue Code (NIRC) of 1997, as amended, enumerates the gross benefits received by officials and employees of public and private entities that are excluded from gross income such as:

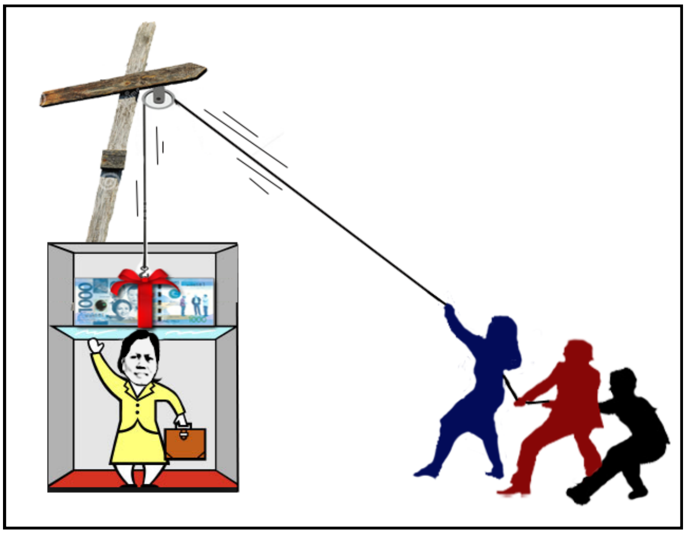
a) Benefits received by officials and employees of the national and local government pursuant to RA 6686;[1]

b) Benefits received by employees pursuant to PD 851[2], as amended by Presidential Memorandum Order 28[3] dated August 13, 1986;

c) Benefits received by officials and employees not covered by PD 851, as amended by MO 28;

d) **Other benefits such as productivity incentives and Christmas bonus**[4] (underscoring supplied)

However, the Tax Code provides that the total exclusion shall not exceed Thirty thousand pesos (₱30,000).



The same section also provides that the ceiling of ₱30,000 **may be** increased through rules and regulations issued by the Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, after considering, among others, the effect on the same of the inflation rate at the end of the taxable year.

The ceiling for "other benefits such as productivity incentives and Christmas bonus" mentioned above was initially capped in an amount not exceeding Twelve thousand pesos (₱12,000) under RA 7833, **although** the same law provides that in totality, the exclusion shall apply only to the first ₱30,000.

When the NIRC of 1997 was enacted, the cap of ₱12,000 for "other benefits such as productivity incentives and Christmas bonus" was deleted but retained the ceiling of ₱30,000 overall exclusion from gross income under the particular paragraph.

It is instructive to note that there had been various adjustments in the legislated pay scale of private and government employees through the years since the ₱30,000 ceiling took effect.

It also bears stressing that despite the authority given to the Secretary of Finance to increase the ceiling, the same has not been exercised since the authority was granted in 1998.

However, this authority has been exercised on certain provisions in the Tax Code governing transactions subject to VAT. The Secretary of Finance, through the recommendation of the BIR Commissioner, issued BIR Revenue Regulations No. 16-2011[5], effective January 1, 2012, increasing the threshold amounts pursuant to Sections 109 (P), (Q) and (V) of the NIRC of 1997, as amended, viz:

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1 Entitled "An Act Authorizing Annual Christmas Bonus to National and Local Government Officials and Employees Starting CY 1988", approved December 14, 1988.

2 Entitled "Requiring All Employers to Pay their Employees a 13th-Month Pay", December 16, 1975.

3 Removed the salary ceiling of ₱1,000. With the removal of the salary ceiling of ₱1,000, all rank and file employees are now entitled to a 13th month pay regardless of the amount of basic salary that they receive in a month if their employers are not otherwise exempted from the application of P.D. No. 851. Such employees are entitled to the benefit regardless of their designation or employment status, and irrespective of the method by which their wages are paid, provided that they have worked for at least one (1) month during a calendar year. (quoted from http://wiki.lawcenter.ph/index.php?title=13th_month_pay)

4 The entire sub-paragraph was originally inserted into the Tax Code via RA 7833, approved on December 8, 1994 (entitled "An Act to Exclude the Benefits Mandated Pursuant to Republic Act No. 6686 and Presidential Decree No. 851, as Amended, and Other Benefits from the Computation of Gross Compensation Income for Purposes of Determining Taxable Compensation Income, Amending for the Purpose Section 28(B)(8) of the National Internal Revenue Code, as Amended").

5 Entitled "Increasing the Amount of Threshold Amounts for Sale of Residential Lot, Sale of House and Lot, Lease of Residential Unit and Sale or Lease of Goods or Properties or Performance of Services Covered by Section 109 (P), (Q) and (V) of the Tax Code of 1997, as Amended, Thereby Amending Certain Provisions of RR No. 16-2005, as Amended, Otherwise Known as the "Consolidated VAT Regulations of 2005", issued October 27, 2011.

Tax Code Section	2005 Threshold	Adjusted Threshold
109 (P)	₱1,500,000	₱1,919,500
109 (P)	₱2,500,000	₱3,199,200
109 (Q)	₱10,000	₱12,800
109 (V)	₱1,500,000	₱1,919,500

This means that the Secretary of Finance and Commissioner of Internal Revenue could increase the ₱30,000 ceiling if they choose to, as evidenced by their action with regard to the VAT thresholds. It is therefore understandable that the Senate bills provide that the ceiling be automatically increased every three (3) years sans the DOF authority.

The CPI movement and what the ceiling "should be" over time

Based on the movement of the CPI with 2006 as the base year, the ₱30,000 ceiling should have been in the vicinity of ₱62,000 today if the reckoning period is 1998 when the authority of the DOF Secretary was legislated or ₱82,000 if the reckoning period is 1994 when the ₱30,000 ceiling took effect, viz.:

CPI	All Items (2006=100)	Reckoning Period	
		1994	1998
1994	50.7	30,000	
1995	54.1		
1996	58.6		
1997	62.0		
1998	67.8	40,118	30,000
1999	71.9	42,544	31,814
2000	76.7	45,385	33,938
2001	80.8	47,811	35,752
2002	83.0	49,112	36,726
2003	84.9	50,237	37,566
2004	89.0	52,663	39,381
2005	94.8	56,095	41,947
2006	100.0	59,172	44,248
2007	102.9	60,888	45,531
2008	111.4	65,917	49,292
2009	116.1	68,698	51,372
2010	120.5	71,302	53,319
2011	126.1	74,615	55,796
2012	130.1	76,982	57,566
2013	134.0	79,290	59,292
2014 (as of Aug)	138.9	82,189	61,460

Some views from the public and private sector

Department of Finance

Understandably, the DOF strongly opposes the proposals on the following grounds:

(1) Fund available would be reduced by around ₱1.4 billion to ₱61.7 billion.

(2) Even if the foregone revenue increases the spending ability of individual taxpayers, the government can only recover an estimated ₱0.3 billion to ₱12.5 billion through consumption tax (that is, VAT).

(3) The proposals impinge on the government's efforts in sustaining the virtuous cycle of better governance and fiscal performance to further propel growth in the country.

(4) The proposals go against the deficit-neutral principle being upheld by the DOF. There should be countervailing measures to offset the reduction in revenue.

National Economic and Development Authority

(1) If the reckoning point is the 1998 effectivity of the NIRC and taking into account the value-eroding effect of inflation since 1998, the ₱30,000 today would have been only worth ₱15,709 in 1998, that is, 52.4% of the value of the original exemption ceiling in 1998. If the 1998 ceiling were to be allowed to adjust according to the annual change in price levels, then the value of the ceiling in 2011 (date of estimate) would have been ₱57,291.

(2) If the reckoning point is the 1994 effectivity of RA 7833 when the ₱30,000 ceiling was first introduced and taking into account the value-eroding effect of inflation since 1998, the ₱30,000 today would have been only worth ₱11,876 in 1998, that is, 39.6% of the value of the original exemption ceiling in 1994. If the 1994 ceiling were to be allowed to adjust according to the annual change in price levels, then the value of the ceiling in 2011 (date of estimate) would have been ₱75,785.

(3) Overall, there are two (2) opposing effects of the proposal to increase the ₱30,000 ceiling. On one hand, raising it would have the effect of increasing disposable income. On the other hand, it would leave government with lesser amount to finance spending.

Tax Management Association of the Philippines (TMAP)

Endorses the proposal to increase the ceiling to ₱70,000. An immediate increase only requires a recommendation from the BIR similar to the increase in the VAT exemption threshold in 2012 based on changes in the CPI.

UP School of Economics

Endorses the proposal to increase the ceiling to ₱70,000 on the ground of horizontal equity, that is, it protects the salary-and-wage workers. Revenue foregone as a result of improved equity comes at a small price between ₱4.3 billion and ₱5.6 billion.

Philippine Government Employees' Association (PGEA)

The proposal to increase the ceiling to ₱75,000 is endorsed considering the economic conditions when the NIRC provision was enacted in 1998 vis-à-vis the present. The basket of goods for Juan dela Cruz worth ₱100 in 1998 now costs ₱196.

Center for Strategic Reforms

It promotes inclusive growth. It will move towards overhauling our tax system and it will mean lower income taxes for employees. And hopefully, it will make it more equitable in the long run.

Conclusion

The 13th month pay, Christmas bonus and productivity incentives are normally given to personnel in the private and government sectors only once a year.

The ₱30,000 ceiling in the Tax Code was prescribed as early as 1994 under RA 7833 when the lowest monthly basic salary for government employees (Salary Grade 1, Step 1) was ₱2,800 and that of the President of the Philippines (Salary Grade 33) at ₱25,000.

Over the course of 20 years, the ₱30,000 ceiling has not been adjusted while the basic salaries of private and government personnel increased either through corporate policies and legislation such that in the case of government employees, the monthly salary effective June 1, 2012 under SG-1 step 1 is ₱9,000 while that of SG-33 is ₱120,000.

With the foregoing circumstances, the ₱30,000 ceiling is no longer responsive to the needs of the work force since once-a-year benefits such as the 13th month pay, Christmas bonus and productivity incentives are eventually captured by the tax net when their aggregate amounts exceed the ceiling.

We understand the dilemma of our revenue collection agencies and we also believe that in these trying times particularly the recurring collection deficit and the ₱360.9 billion post-typhoon Yolanda rehabilitation efforts, we need ample sources of revenue to finance development and rehabilitation. As such, we favor increasing the ceiling instead of outright total exclusion from gross income.

We believe that freeing the said benefits from the tax net by increasing the ceiling to, say, a conservative figure of ₱60,000 or to a realistic figure of ₱75,000, would have ripple effects in the form of disposable income which may be used to purchase VATable goods and services, or as savings in banking institutions. In other words, what the government may forego on one hand, it could recoup in some other ways.

The workers are simply asking what is due them under the Tax Code. Adjustment delayed is akin to social justice denied.

by

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As individual income tax rates in ASEAN vary across jurisdictions, so are the types and amounts of personal exemptions and deductions. They range from personal allowances deducted from salaries earned from employment to costs associated with pensions of taxpayers. This article provides a glimpse of such exemptions and allowable deductions for comparison purposes.

In the Philippines, a personal exemption amounting to ₱50,000 is allowed for each individual taxpayer. In the case of married individuals where only one of the spouses is deriving gross income, only such spouse shall be allowed the personal exemption. In addition, an amount of ₱25,000 is allowed as an additional exemption for each dependent not exceeding four (4).[1] Similarly, premium payments on health and/or hospitalization insurance of individual taxpayer in an amount not exceeding ₱2,400 per family with gross income not exceeding ₱250,000 during the taxable year is allowed as deduction.[2]

In Cambodia,[3] spouse allowance and that of minor dependent children in the amount of KHR 75,000 (equivalent to ₱828) each person per month is deductible from assessable income. In terms of deductions, repayments made by employees of advances or loans are deductible from assessable income.

In Indonesia[4], an individual taxpayer is given a personal allowance of IDR 24.30 million (₱92,327). In addition, a married person is given an allowance of IDR 2.025 million (₱7,694). In case a wife's income is combined with her husband, or if income received is not related to husband's or other family member's income, then she receives an additional allowance of IDR 24.30 million (₱92,327). Likewise, an allowance of IDR 2.025 million (₱7,694) is given to each dependent family member in the direct blood line and for adopted children, up to maximum of three (3).

1 Section 35. National Internal Revenue Code of 1997, as Amended
2 Section 34. National Internal Revenue Code of 1997, as Amended
3 www.ey.com/Global Tax Guides, p. 179
4 www.ey.com/Global Tax Guides, pp. 553-554

The following deductible expenses are also allowed:

- Standard deduction at a rate of 5% of gross income, up to a maximum of IDR 6 million (₱22,797) a year.
- Contributions to a pension fund approved by the Minister of Finance and to TASPEN (Pension Insurance Savings Agency), as well as old-age savings or old-age allowance contributions to TASPEN and to the Employees' Social Guarantee Program (Jaminan Sosial Tenaga Kerja, or JAMSOSTEK), paid by employees.

A pensioner is allowed a deduction of 5% of the gross pension, up to a maximum of IDR 2.40 million (₱9,119) a year.[5]

In Laos[6], moneys withheld for pension funds and certain other welfare funds are allowed as deduction from income.

In Malaysia[7], tax deductions on personal income tax for resident individuals are as follows:

Allowances and Deductions	Malaysian Ringgit	Philippine Peso
For the taxpayer	9,000	125,077
Additional deduction for disabled individual taxpayer	6,000	83,384
Wife/ husband of taxpayer	3,000	41,692
Additional deduction for disabled wife/husband of taxpayer	3,500	48,641
Purchase of supporting equipment for disabled self, spouse, child or parent	5,000	69,487
Medical expense for parents	5,000	69,487
Education fees (taxpayer)	5,000	69,487
Medical expenses on serious disease for taxpayer, spouse or child	5,000	69,487
Purchase of books/journals/magazines/similar publications	1,000	13,897
Purchase of personal computer (allowed once every 3 years)	3,000	41,692
Net deposit in Skim Simpanan Pendidikan National	3,000	41,692
Purchase of sports equipment	300	4,169
Interest on housing loans	10,000	138,974
Broadband subscription fees	500	6,949
Unmarried child of taxpayer, below 18	1,000	13,897
Unmarried child of taxpayer, 18 years and above		
a. Schooling	1,000	13,897
Studying in any institution of higher learning		
- In Malaysia	4,000	55,589
- Outside Malaysia	4,000	55,589
Unmarried disabled child	5,000	69,487
Employees Provident Fund (EPF) and life insurance	6,000	83,384.45
Annuity scheme premium	1,000	13,897.26
Education and medical insurance	3,000	41,692.22

5 Deloitte Taxation and Investment in Indonesia 2013, p.18

6 www.ey.com/Global Tax Guides, p. 705

7 Tax System in Malaysia, The ASEAN Tax System Seminar 2010, Bangkok, Thailand, October 15-17, 2010, pp. 14-15

In Myanmar[8], annual standard allowance of 20% is provided for each class of income which should not exceed MMK 1.444 million (₱65,154). In addition, MMK 300,000 (₱13,640) is given as relief for taxpayer's spouse as well as MMK 200,000 (₱9,093) per child for children of the taxpayer under the age of 18 who do not earn income, and for those above 18 who are students. Lastly, personal deductions allowed are the following:

- Premiums paid for the life insurance policy of a taxpayer or his or her spouse;

- Sums contributed by a taxpayer into the government provident fund or a provident fund recognized by the Myanmar Income Tax Act; and

- Sums contributed to any form of savings under an arrangement made by the government.

In Singapore[9], allowable deduction is given in terms of tax relief distinguished between normal and handicapped individual. They are classified as (a) earned income relief, (b) aged dependent relief, and (c) National Serviceman Relief.

Allowances and Deductions	Singapore Dollar		Philippine Peso	
	Normal	Handicapped	Normal	Handicapped
EARNED INCOME RELIEF				
- Taxpayer below age 55	1,000	4,000	35,609	142,459
- Taxpayer aged 55 to 59	6,000	10,000	213,688	356,147
- Taxpayer aged 60 and above	8,000	12,000	284,917	427,376
- Spouse relief	2,000	3,500	71,229	124,652
- Dependent child relief	4,000	5,500	142,459	195,880
AGED DEPENDENT RELIEF				
- Aged parent and grandparent living in Singapore but not with the taxpayer, maximum of 2 dependents	4,500 each	8,000 each	160,264	284,917
- Aged parent and grandparent if living with the taxpayer subject to maximum of 2 dependents	7,000 each	11,000 each	249,303	391,762
- Handicapped dependent sibling		3,500 each		124,652
NATIONAL SERVICEMAN RELIEF				
- Active reservist	3,000		106,844	
- Non-active reservist but completed National Service	1,500		53,422	
- Relief granted to wife and parents of National Servicemen	750 each		26,711	
- Key appointment holders, in addition to above	2,000		71,229	

8 www.ey.com/Global Tax Guides, p. 862

9 www.pwc.com Taxation of International Assignees Country-Singapore, p.20; ey.com/Global Tax Guides

In Thailand, taxpayer's exemptions and deductions consist of personal allowances and deductible contributions as follows[10]:

Allowances and Deduction	Thailand Baht	Philippine Peso
Taxpayer personal allowance	30,000	41,277
Taxpayer's spouse allowance	30,000	41,277
Child allowance, Baht 15,000 per child, maximum of three (3) children	15,000	20,639
Additional educational allowance for each child studying in Thailand, maximum of three (3) children	2,000	2,752
Parental support allowance to each parent over 60 years old with income of less than Baht 30,000 per year	30,000	41,277
A Thai resident who is 65 years of age or older is entitled to personal income tax exemption on income not exceeding 190,000	190,000	261,421
Life insurance premiums for taxpayer	100,000	137,590
Life insurance premiums for taxpayer's unemployed spouse without income	10,000	13,759
Pension life insurance premiums, not exceeding 15% of income capped at Baht 200,000	200,000	275,180
Parental health insurance allowance	15,000	20,639
Provident fund (PF) allowance with contribution not exceeding 15% of assessable income, maximum of Baht 500,000	500,000	687,949
Retirement Mutual Fund (RMF) contribution not exceeding 15% of assessable income (sum of RMF and PF allowance), maximum Baht 500,000	500,000	687,949
Long Term Equity Fund contribution not exceeding 15% of assessable income, maximum Baht 500,000	500,000	687,949
Interest allowance (housing loans), maximum amount Baht 100,000	100,000	137,590
Donations allowance up to 10% of the adjusted income (Gross Income less deductible expenses, personal expenses, life insurance premiums, dividends, provident fund and interest allowances)	10% of adjusted income	
Social security fund allowance, actual amount. For 2013, 4% of basic salary not exceeding Baht 7,200 per year	7,200	9,906
Disabled person or incompetent person support for caring handicapped and disable person	60,000	82,554

Finally in Vietnam[11] personal and family deductions consist of:

Allowances and Deduction	Vietnamese Dong	Philippine Peso
Taxpayer's personal relief, VND 4 million per month	48,000,000	99,670
Dependent relief, VND 1.6 million per month for each dependent	19,200,000	39,868

10 www.pwc.com; ey.com/Global Tax Guides, pp. 12-17

11 www.pwc.com Taxation of International Assignees Country-Vietnam, p. 7

12 Eligible dependents shall include:

a. Children under 18 yrs old, or over 18 yrs old but are disabled and do not have the ability to work; or children who are studying at colleges, junior colleges, secondary vocational schools or vocational schools, and have no income or have income not exceeding the minimum level of VND 500,000 (₱ 687,949) per month.

b. Spouse, parent whose age is beyond the working age, or whose age is within the working age in accordance with the law but is disabled, has no ability to work, has no income, or who has income which does not exceed the minimum level of VND 500,000 (₱687,949) per month.

c. Other relative and individual who is beyond the working age, or within the working age and is disabled, has no ability to work, has no income, or who has income which does not exceed the minimum level of VND 500,000 (₱687,949) per month and being taken care of directly by the taxpayer.

THE VAT: ASEAN STYLE

by

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With the advent of the ASEAN regional integration in 2015, most economies are undertaking various reforms in their tax structures. One such reform has been in their indirect tax system, particularly the *value added tax* (VAT) or the *Goods and Services Tax* (GST). Given the lowering of the corporate income tax rates as a consequence of the ASEAN Economic Community (AEC) 2015, member states are looking to VAT/GST to make up for the resulting revenue losses[1]. On a global scale, indirect taxes have increased by as much as 0.17% to a 15.5% average since January 2012.[2]

The growing dependence on indirect taxes is seen as a more neutral and transparent manner in raising revenue[3]. In fact, indirect taxes have gained a lot of popularity among various governments that these are now being seen as the "preferred type of taxation".[4] The trend being seen, however, is for member states to "zero rate, exempt or concessionally tax 'needs', while applying full indirect taxation treatment to 'wants'".[5] Among the ASEAN countries, there are seven countries which are currently imposing VAT/GST, to wit:

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1 Warrick Cleine and Brahma Sharma. "The ASEAN Economic Community," ASEAN Tax Guide, November 2013: 3. KPMG Asia Pacific Tax Centre. 23 September 2014. (https://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/Documents/asean-tax-guide-v2.pdf.)

2 *Id. citing* "Corporate and Indirect Tax Survey 2012," KPMG International, January 2013 at p. 2.

3 "The Growth of Indirect Taxes in the Asia Pacific", October 2013, Powerhouse Coopers New Zealand, 24 September 2014 (http://www.pwc.co.nz/KenticoFiles/0b/0bc408c1-c7b6-434f-9115-199fc073f85e.pdf) .

4 Tim Gillis and Lachlan Wolfers. "Will the Asian Century also see the rise of indirect taxes?", Asia Pacific Indirect Tax Country Guide. April 2013: 3. KPMG International Cooperative. 23 September 2014 http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/taxnewsflash/Documents/ap-indirect-tax-country-guide.pdf>.

5 Id. At pg. 2.

ASEAN Countries Implementing the VAT/GST[6] (As of 24 January 2014)

COUNTRY	GDP PER CAPITA (World Bank, 2011, in USD)	YEAR OF IMPLEMENTATION	INITIAL RATE (%)	CURRENT RATE (%)
Indonesia	3,495	1984	10	10
Thailand	4,972	1992	7	7
Singapore	46,241	1993	3	7
Philippines	2,370	1998	10	12
Cambodia	897	1999	10	10
Vietnam	1,407	1999	10	10
Laos	1,320	2009	10	10

The countries of Brunei, Myanmar and Malaysia are currently not imposing any VAT or GST on their goods or services. However, it was reported that there is a probability that Myanmar may implement a VAT system in the near future.[7] On the other hand, Malaysia is expected to implement its own GST system to replace its current sales tax and service tax regime.[8] It is speculated that the initial GST rate will be pegged at 6% although some Malaysian economists were proposing the adoption of a 4% revenue neutral rate.[9] The new GST rates will most probably be implemented in 2015 instead of the initial target of 2014.[10]

Below is a survey of the VAT/GST rates being imposed by ASEAN member nations:[11]

1. **Cambodia**

   a. Standard VAT Rate: 10%

   b. Goods & Services Covered: Supplies of domestic goods and services, and imported goods.

   c. Zero Rated Goods: exported goods and services, and certain charges in relation to international transportation of people and goods.

   d. Exempt Goods: public postal services; certain medical and dental goods and services; wholly state-owned public transportation services; insurance services; primary financial services; importation of articles for personal use that are exempt from customs duties; and non-profit activities in the public interest recognized by the Ministry of Economy and Finance.

6 Retrieved from http://gst.customs.gov.my/en/gst/Pages/gst_ci.aspx on 23 September 2014.

7 Retrieved from http://www.doingbusinessthailand.com/myanmar-blog/doing-business-in-myanmar/doing-business-in-myanmar-commercial-taxes-and-vat.html on 24 September 2014.

8 Supra note 3, at 7.

9 Retrieved from http://www.vatlive.com/asia-pacific/malaysian-gst-implementation-miss-2014/ on 24 September 2014.

10 Retrieved from http://www.vatlive.com/asia-pacific/malaysia-introduces-6-gst-1-january-2015/ on 24 September 2014.

11 Asia Pacific Indirect Tax Country Guide. April 2013: 3. KPMG International Cooperative. 23 September 2014 http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/taxnewsflash/Documents/ap-indirect-tax-country-guide.pdf> .

2. **Indonesia**

   1. Standard VAT Rate: 10%
   2. Goods & Services Covered: The delivery of taxable goods by an entity in Indonesia; the importation of taxable goods; the rendering of taxable services in Indonesia; utilization in Indonesia of intangible taxable goods from outside Indonesia; utilization of offshore taxable services in Indonesia; export of taxable goods and services by an entity in Indonesia; self-construction activities; and the disposal of fixed assets.
   3. Zero Rated Goods: exports of goods; and exports of certain services, including toll manufacturing services, repair and maintenance services, and construction services.
   4. Exempt Goods: Deliveries and/or import of taxable goods designated as strategic goods by the government; and certain goods or other services in order to support the achievement of certain national objectives.

3. **Laos**

   a. Standard VAT Rate: 10%

   b. Goods & Services Covered: Goods and services produced and consumed domestically or being imported into Laos.

   c. Zero Rated Goods: goods and services for export.

   d. Exempt Goods: crop seeds and animals for breeding, pesticides, vaccines, organic, and chemical fertilizers, certain imports related to air transport, certain educational operations, specified financial services operations, specified medical services, and certain vehicles for specific purposes.

4. **Philippines**

   a. Standard VAT Rate: 12%

   b. Goods & Services Covered: Sale, barter, exchange of goods and/or properties; sale of services in the Philippines; and importation of goods into the Philippines.

   c. Zero Rated Goods: services rendered in the Philippines to a non-resident person/entity not engaged in business in the Philippines, wherein the service fee is paid for in foreign currency in accordance with the rules and regulations of the Philippines' Central Bank; and sale of power or fuel generated through renewable sources of energy.

   d. Exempt Goods: transactions include certain residential sales or leases; educational services; employment; services rendered by regional or area headquarters established in the Philippines by multinational corporations; and the sale, importation or lease of passenger or cargo vessels and aircraft, including engine, equipment, and spare parts for domestic or international transport operations.

5. **Singapore**

   a. Standard GST Rate: 7%

   b. Goods & Services Covered: Taxable supplies of goods and services made in Singapore by taxable persons, and all imports of goods into Singapore, unless import relief or GST scheme applies.

   c. Zero Rated Goods: these are as follows –

      i. export of goods from Singapore;

      ii. provision of international services;

      iii. the supply of a prescribed tool or machine used in the manufacture of goods in Singapore;

      iv. including the development of prototypes of the tool or machine, as well as any services;

      v. rendered directly in connection with the tool or machine to an overseas person;

      vi. goods supplied for use on board or installation on a qualifying ship; goods sold or rented to; and

      vii. 'Approved Marine Customers' for use or installation on a 'commercial ship' wholly for international travel.

   d. Exempt Goods: the sale/lease of residential properties, supply of investment-grade gold, silver and platinum, and most financial services.

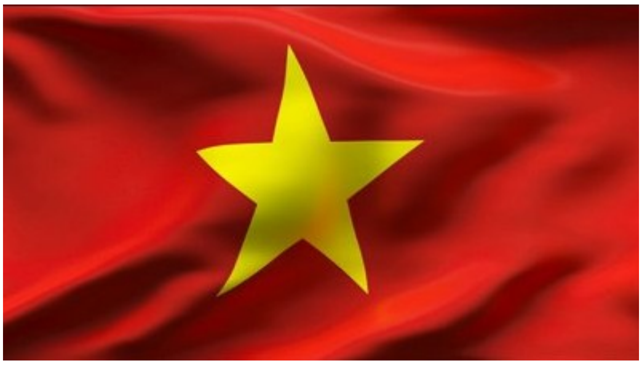
6. **Thailand**

   a. Standard VAT Rate: 7%

   b. Goods & Services Covered: Importation of goods into Thailand; sale of goods in Thailand; provision of services which are performed and used in Thailand; and provision of services outside Thailand and used in Thailand.

   c. Zero Rated Goods: the export of goods; bringing domestic goods, into a duty free zone; provision of services performed in Thailand but used outside Thailand; provision of services for the manufacture of goods within a duty free zone or provision of services within a duty free zone for the manufacturing of goods in Thailand for export; certain provision of international transport services; sale of goods and provision of services to government authorities under a foreign loan or assistance project; and sale of goods and provision of services between a bonded warehouse and other bonded warehouses or between a duty free zone and other duty free zones.

   d. Exempt Goods: fertilizers; fish meals; animal feeds; newspapers, magazines or textbooks; educational services; healthcare services; services of domestic transport; services of international transport by land; rent of all immovable property; and the import of goods brought into a duty free zone when re-exported.



7. **Vietnam**

   a. Standard VAT Rate: 10%

   b. Goods & Services Covered: Goods and services used for the purposes of production, trading, and consumption in Vietnam.

   c. Zero Rated Goods: exported goods or services; construction and installation in non-tariff zones; international transportation; and certain airline and marine services.

   d. Exempt Goods: there are 26 categories of VAT

exempt supplies including, but not limited to, certain agricultural products; water supply and drainage; salt products; transfer of land use rights; life insurance, financial, medical, public postal, telecommunications, public hygiene services; construction work related to cultural work; education and vocational training; radio and television broadcasting; publication; and public transportation.

e. VAT Ignorable Transactions: (5%) The provision of certain essential goods and services including, but not limited to, clean water; fertilizer; agricultural activities, products and equipment; fresh foodstuffs; medical and education equipment; and scientific and technology services.

f. Not Required to Charge VAT But Can Claim Input VAT: transactions include, but are not limited to, supplies of specified goods or services to overseas buyers; payments of indemnities, bonuses; financial assistance or other financial receipts, specified services rendered by foreign contractors in Vietnam; disposal of assets owned by non VAT-registered owners; certain intercompany transfer of fixed assets; capital contributions in the form of assets; receipts from insurance claims against a third party; receipts on behalf of a third party.

Based on the above information, it is significant to note that the lowest VAT rate in the region so far is **7%** imposed by Singapore and Thailand. Note, however, that this 7% for Thailand is a temporary rate valid only until **30 September 2014** by virtue of a special Royal Decree.[12] The **standard VAT rate** is 10%. On the other hand, it is very clear that the Philippines imposes the highest VAT rate among the ASEAN nations at 12%. At present, there is a pending bill with the Senate Committee on Ways and Means that aims to reduce the present VAT rate to 10%. This is **Senate Bill No. 462**[13]filed by the Honorable Senator Ralph G. Recto. However, the current average of VAT/GST rates in the Asia Pacific region is approximately 12.5%.[14]

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[12] Supra note 11.

[13] An Act Authorizing The President Of The Philippines To Lower The Rate Of Value Added Tax To Ten Percent (10%), Amending For The Purpose Sections 106 (A), 107 (A), And 108 (A) Of The National Internal Revenue Code Of 1997, As Amended By Republic Act (R.A.) No. 9337.

[14] Supra note 4.

Synopsis:

This is a petition for Prohibition and Mandamus filed pursuant to Rule 65 of the Revised Rules of Court. Under protest is Revenue Memorandum Order (RMO) No. 23-2014 issued by the Bureau of Internal Revenue (BIR) Commissioner Kim Jacinto Henares on June 20, 2014. The RMO instructs the concerned government officials to, among others, withhold creditable tax on compensation paid to government employees. Specifically, the petition seeks to:

(1) (a) "*prevent the Respondents' unlawful and unwarranted imposition of taxes, and their illegal and illicit collection thereof through the RMO concerned, on the non-taxable allowances, bonuses, compensations for services, and other benefits that had been enjoyed by the Petitioners for some time now*"; and (b) "*the penalties defined therein for the supposed violations of the said RMO*";

(2) "*ultimately, to nullify the said RMO, especially the sections that place duties on certain persons, define offenses and offenders, and impose penalties for violations thereof under Sections III, VI, and VII*"; and

(3) "*to compel the Respondents to upgrade the ceiling of P30,000 placed on the said benefits by the RMO in question*".

[1] Prepared by: Clinton S. Martinez, SLSO-II.

Rule 65 of the Revised Rules of Court states:

RULE 65
CERTIORARI, PROHIBITION AND MANDAMUS

*"**Section 1. Petition for certiorari**. When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.*

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

*"**Sec. 2. Petition for prohibition**. When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.*

"The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

*"**Sec. 3. Petition for mandamus**. When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.*

"The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

*"**Sec. 4. Where petition filed**. The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.*

*"**Sec. 5. Respondents and costs in certain cases**. When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person*

or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.

"Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein.

*"**Sec. 6. Order to comment**. If the petition is sufficient in form and substance to justify such process, the court shall issue an order requiring the respondent or respondents to comment on the petition within ten (10) days from receipt of a copy thereof. Such order shall be served on the respondents in such manner as the court may direct, together with a copy of the petition and any annexes thereto.*

"In petitions for certiorari before the Supreme Court and the Court of Appeals, the provisions of section 2, Rule 56, shall be observed. Before giving due course thereto, the court may require the respondents to file their comment to, and not a motion to dismiss, the petition. Thereafter, the court may require the filing of a reply and such other responsive or other pleadings as it may deem necessary and proper.

*"**Sec. 7. Expediting proceedings; injunctive relief**. The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case.*

*"**Sec. 8. Proceedings after comment is filed**. After the comment or other pleadings required by the court are filed, or the time for the filing thereof has expired, the court may hear the case or require the parties to submit memoranda. If after such hearing or submission of memoranda or the expiration of the period for the filing thereof the court finds that the allegations of the petition are true, it shall render judgment for the relief prayed for or to which the petitioner is entitled.*

"The court, however, may dismiss the petition if it finds the same to be patently without merit, prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration.

*"**Sec. 9. Service and enforcement of order or judgment**. A certified copy of the judgment rendered in accordance with the last preceding section shall be served upon the court, quasi-judicial agency, tribunal, corporation, board, officer or person concerned in such manner as the court may direct, and disobedience thereto shall be punished as contempt. An execution may issue for any damages or costs awarded in accordance with section 1 of Rule 39."*

On the issue of taxability of their benefits, petitioners rely on the following points to negate the BIR's move:

1] ***The benefits that are proposed to be taxed are deemed property within the purview of the Bill of Rights, of which the said government officials and employees may not be deprived without due process of law***;

2] ***The additional duties on certain local government officials under the RMO thrash the principles of decentralization and local autonomy that is enunciated in the Local Government Code of 1991 or Republic Act (RA) No. 7160***; *and*

3] ***The imposition of penalties or fines was done without authority of law and with grave abuse of discretion***.

In addition to the above, salaries of government employees are also subjected to the additional burden of contributions and deductions for Government Service Insurance System (GSIS), Pag-IBIG and Philhealth (Medicare). It should also be stated that the RMO, under IV (G) provides that "X x x ***voluntary contributions to these institutions in excess of the***

amount considered mandatory/compulsory are not excludible for the gross income of the taxpayer and hence, not exempt from Income Tax and Withholding Tax."

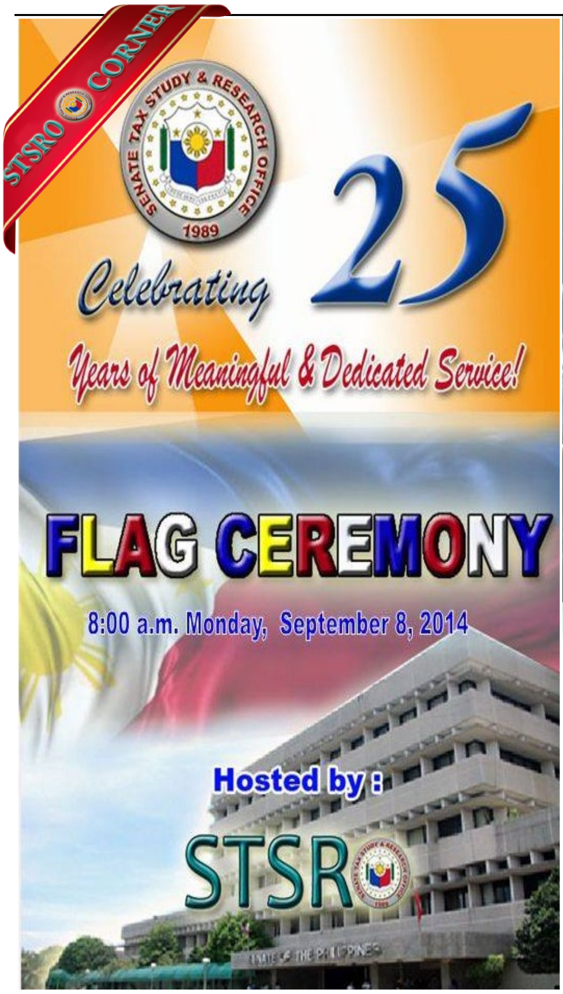
With due respect, it is believed that the Commissioner of Internal Revenue (CIR) and/or the Secretary of Finance (SOF) does not have the power to arrogate upon herself/himself the rendering of said pronouncement. The mentioned government institutions were created to provide social services to the Filipinos in general and to government employees in particular. Government financial institutions (GFIs) have inherent prerogatives to raise funds in support of their undertakings, limited only by the laws or charters which established them. Another government entity, like the BIR, also belonging to the executive department, does not have the right, in our opinion, to render such discriminatory orders.

To allow the BIR to exclude the excess contributions from the gross income and hence not exempt from income and withholding tax would contravene the efforts of these GFIs to raise revenues for their socially relevant projects. It is without question that the GSIS, Medicare (Philhealth) and Pag-IBIG render important services to the populace. The funds generated by these GFIs are being utilized by the government in their numerous endeavors.

In this connection, it should be said that not a few individuals have additional placements in stated GFIs. They were encouraged to do so due to the belief that their investments are tax-exempt. More importantly, applying the RMO retroactively to cover earlier placements would contravene a tenet that tax laws should be applied prospectively, as the same is burdensome.

Furthermore, the P30,000.00 ceiling of the 13th month pay and other benefits of the government officials have not been adjusted for the past twenty (20) years. Said amount has been overtaken by economic factors and should be adjusted for it to be in tune with the times. Inflation and its appurtenant effects have caught up with it.

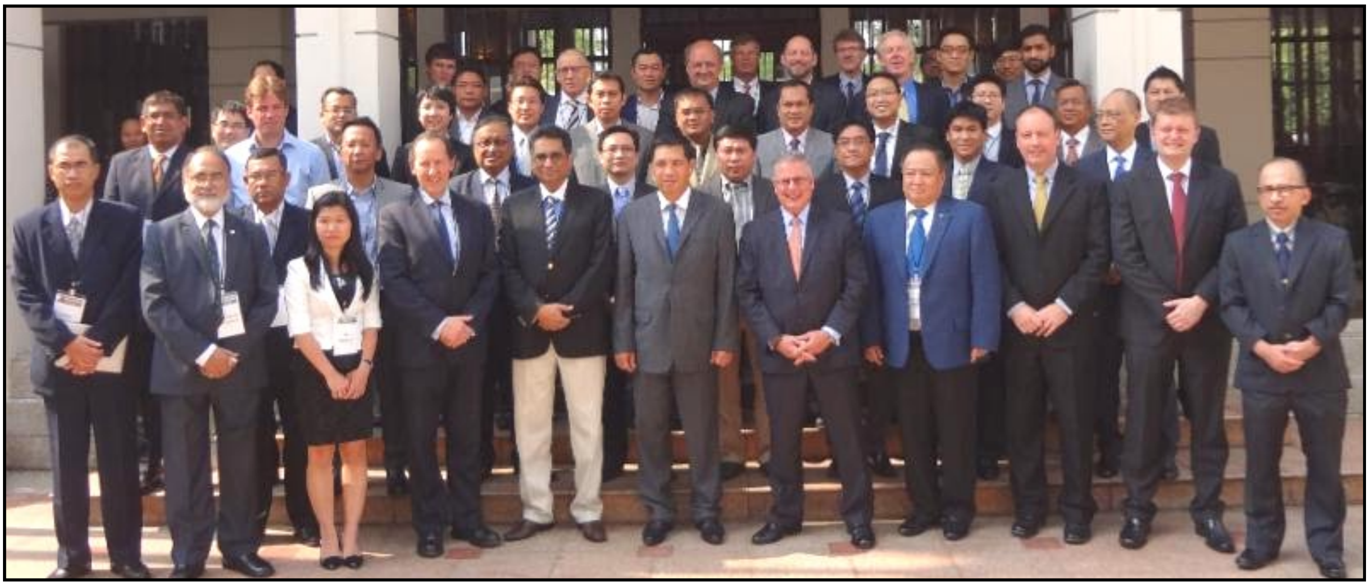
The prayer of Courage, et al, that the petition be given due course and for issuance of a temporary restraining order (TRO), among others, remain pending with the Supreme Court (SC).



11th Annual Meeting of the Asia-Pacific Tax Forum (APTF)

Hanoi, Vietnam

October 1 - 3, 2014

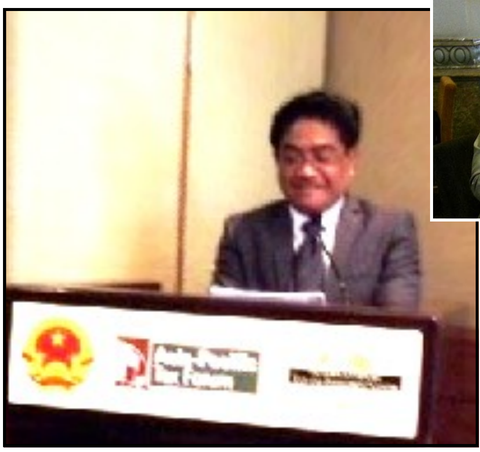


STSRO Director General Atty. Rodelio T. Dascil (3rd row,6th from right) and Director Norberto M. Villanueva (2nd row, 3rd from right) pose with 80 other participants representing 18 countries in the 11th Annual Meeting of the Asia-Pacific Tax Forum (APTF) held at Sheraton Hotel, Hanoi, Vietnam from October 1-3, 2014.

Atty. Dascil, stresses some points as a panelist on the topic "Wider Stakeholder Community and Tax Reforms" at said forum on October 3, 2014.

DG Dascil who was elected as member of the APTF Steering Committee, delivers his remarks during the "Round Table Discussion of Public Sector Participants" on the issues affecting taxation in the Asia-Pacific region on October 1, 2014.

DG Dascil and Dir. Villanueva during a working lunch discussion at the 11th APTF Meeting in Hanoi, Vietnam.



Director Villanueva of the Tax Policy and Administration Branch of the STSRO, delivers his presentation on the topic "Structure and Design of Tourism-Related Taxes in the Philippines" at said APTF Meeting on October 2, 2014.

Director Villanueva sits on the discussion panel during the 11th APTF Meeting in Hanoi, Vietnam on October 2, 2014.

STSRO CORNER

STSRO's Commendations:

"To Mr. Atty. Rodelio T. Dascil: Rodelio Dascil <attydascil@yahoo.com>
From the desk of Dr. Arthur B. Laffer:

August 25, 2014

Dear Rodelio,

I had a wonderful visit to Hong Kong and was glad to have met you. The delegation from the Philippines was extremely impressive. I hope I can visit your country on my next trip. Thank you for being so kind to this old professor.

Lux et Veritas,

Arthur B. Laffer "

Note: Dr. Laffer is a well known Economist and proponent of Laffer curve in taxation

"From the Office of Senator Ferdinand R. Marcos, Jr.
September 23, 2014
Xxx

We deeply appreciate the comprehensive report on the implementation of Republic Act No. 10351, otherwise known as the Sin Tax Law of 2012, prepared by the Senate Tax Research Office.

Senator Ferdinand r. Marcos, Jr., has been consistently advocating the promotion of the rights and interest of tobacco farmers, and has been consistently monitoring the implementation of this law.

STSRO's report will definitely be a valuable reference material, as Senator Marcos and his staff continue to study the economic and social impact of this tax/health measure. Xxx

Very truly yours

RAMON B. CARDENAS
Chief of Staff

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