Tax Bits

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VAT on Toll Fee: Legislative Intent Revisited

by

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August 16, 2010 would have gone down the road as an ignominiously tough day for the thousands of motorists who navigate the South Luzon Expressway (SLEX), North Luzon Expressway (NLEX), Manila-Cavite Expressway (Coastal Road), South Metro Manila Skyway (Skyway), Southern Tagalog Arterial Road (Star Tollway), Subic-Clark-Tarlac Expressway (SCTEX), and Subic-Tipo Expressway. For on this day, the Bureau of Internal Revenue (BIR) planned to slap motorists a 12% value-added tax (VAT) on top of the 250% increase in toll fees authorized by the Toll Regulatory Board.

Thanks to the Supreme Court who issued a temporary restraining order (TRO) on Friday, the 13th of August at the instance of former Nueva Ecija congressman Renato Diaz and former Trade assistant secretary Aurora Ma. Timbol.

On August 12, the Senate Committee on Ways and Means chaired by Senator Ralph G. Recto conducted a public hearing on the impending implementation of BIR Revenue Memorandum Circular 3-2010. According to BIR Commissioner Kim Jacinto-Henares, the 12% VAT is justified because "the service that the toll operator is providing is [equated to] operating a business. It is a sale of service for the use of the road". She further testified that "the general principle of taxation is that generally everyone is taxed unless you can point to an expressed exemption that will remove you from the taxation". She further stated that under Section 109 (a) to (v), "none of the section exempted toll [on] from VAT".

This was strongly countered by Senate President Juan Ponce Enrile, Senator Frank Drilon, Senator Recto and former Representative Diaz, claiming that it was never the intent of Congress to impose VAT on toll neither in 1994 when RA 7716 expanded the coverage of the VAT nor in 2005 when RA 9337 overhauled the VAT system.

Senator Recto said "Congress never intended to VAT [toll fees] because the wisdom of a toll operator [is] providing a public service – building roads. Nowhere did we discuss because it is understood".

For his part, the Senate President said that "it never occurred to our minds to VAT toll fees xxx and the people ought not to be burdened with an additional tax in the form of a VAT because it is a user's tax being imposed on the users of the road". The Senate President also said that a VAT thereon is "an illegal exaction on the people unwarranted and unsupported by any law".

Former Representative Diaz testified that as co-author of RA 9337, the Bicameral Conference Committee came out with a list of items that will be covered and that he is "100 percent sure [VAT on toll fees] was not included". He further emphasized that the essence of democracy is taxation with representation.

Commissioner Jacinto-Henares was also scored on the BIR's decision to forego the collection of the VAT on toll fees from 1994 to 2010 (Editor's note: the BIR assessed toll operators on the assumption that it had the legal basis to tax them but the BIR never collected). According to the Senate President, assuming that the toll fees are indeed VATable, why did the BIR forego the back taxes collectible from the tollway operators? He said that the Commissioner's power to compromise tax liabilities did not include a zero compromise.

Senator Recto also censured the BIR Commissioner for lack of authority when she issued Revenue Memorandum Circular 63-2010 disallowing tollway operators their input tax credits prior to August 16, 2010. He said that such compromise defies congressional wisdom since Section 111 of the Tax Code provides that a person becoming liable to the VAT for the first time is allowed a transitional input tax on his beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual VAT paid on such goods, materials and supplies, whichever is higher, which shall be creditable against his output tax.

As of this writing, the Supreme Court is reviewing the merits of the case.

Real Estate Practitioners, how can they be considered professionals?

by

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RA 9646, the law professionalizing the real estate practitioners, otherwise known as the RESA law, was approved by Congress on July 29, 2009. The legislative intent is to develop a group of real estate practitioners who are technically competent and responsible thereby providing a stimulus for the growth of the real estate industry in the Philippines.

The law covers the following professionals: (a) real estate consultants, (b) real estate appraisers/assessors, (c) real estate brokers, and (d) real estate salespersons. The law defines each real estate professional as:

1. ***Real Estate consultant*** *is a duly registered and licensed natural person who, for a professional fee, compensation or other valuable consideration, offers or renders professional advice and judgement on: (i) acquisition, enhancement, preservation, utilization or disposition of lands or improvements thereon; and (ii) the conception, planning, management and development of real estate projects.*

2. ***Real estate appraiser*** *is a duly registered and licensed natural person who, for a professional fee, compensation or other valuable consideration, performs or renders, or offers to perform services in estimating and arriving at an opinion of or acts as an expert on real estate values, such services of which shall be finally rendered by the preparation of the report in acceptable written form*

The law also defines an appraiser as follows: ***Appraiser*** *also known as* ***valuer****, refers to a person who conducts valuation/appraisal; specifically, one who possesses the necessary qualifications, license, ability and experience to execute or direct the valuation/appraisal of real property.*

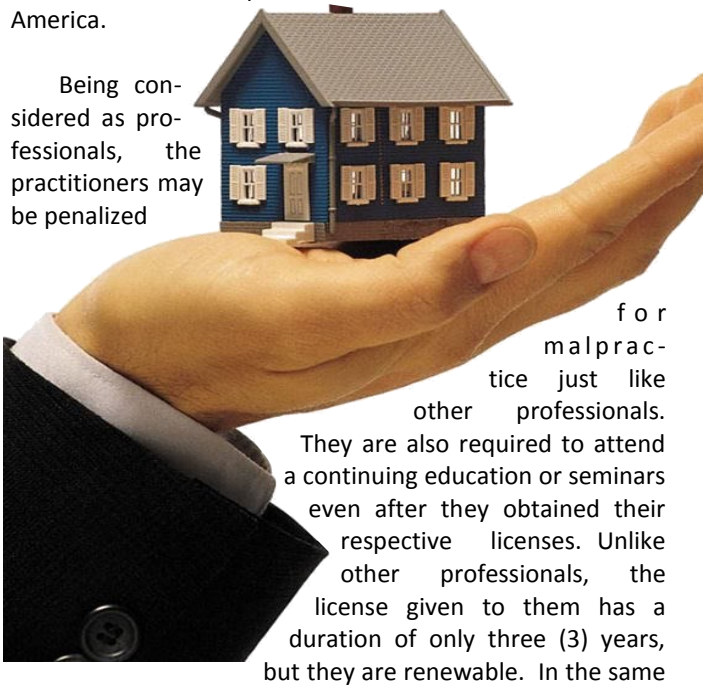
Real estate assessor *is a duly registered and licensed natural person who works in a local government unit and performs appraisal and assessment of real properties, including plants, equipment, and machineries, essentially for taxation purposes. This definition also includes assistant assessors.*

3. ***Real estate broker*** *is a duly registered and licensed natural person who, for a professional fee, commission or other valuable consideration, acts as an agent of a party in a real estate transaction to offer, advertise, solicit, list, promote, mediate, negotiate or effect the meeting of the minds on the sale, purchase, exchange, mortgage, lease or joint venture, or other similar transactions on real estate or any interest therein.*

4. ***Real estate salesperson*** *is a duly accredited natural person who performs service for, and in behalf of, a real estate broker who is registered and licensed by the Professional Regulatory Board on Real Estate service for or in expectation of a share in the commission, professional fee, compensation or other valuable consideration.*

The RESA law is patterned after the Philippine Institute of Certified Public Accountants (PICPA) for accountants and the Integrated Bar of the Philippines (IBP) for lawyers. Note that in PICPA and the IBP, their members belong to a single profession. In the case of RESA there are four (4) different related professions under it. These professions are as follows: (a) real estate consultant, (b) real estate appraiser/ assessor, (c) real estate broker, and (d) real estate salesperson. It is interesting to know that the word ***realtor*** is not used by the law; instead it uses a more cumbersome term ***real estate practitioners.*** The reason is because

the word *realtor* is a patented term in the United States of America.



Being considered as professionals, the practitioners may be penalized for malpractice just like other professionals. They are also required to attend a continuing education or seminars even after they obtained their respective licenses. Unlike other professionals, the license given to them has a duration of only three (3) years, but they are renewable. In the same manner, they are unlike other professions because a single person may have the four licenses under the law. In other words, a practitioner may be a consultant, an appraiser, assessor, or broker, at the same time; provided that he passed the requirements like passing the needed examination and paying the professional fee.

As an offshoot of the RESA law, any single act or transaction performed by a real estate practitioner shall constitute an act in the practice of real estate service. No person may practice if he is not licensed.

Real estate appraises may be divided into those practicing privately and those practicing in the government. Assessors are appraisers doing land valuation functions for local government units. Under RA 7160, the Local Government Code of 1991, assessors are needed for the following purposes:

a. eminent domain (Sec. 19),

b. reclassification of lands (Sec. 20),

c. closure and opening of roads (Sec.21),

d. maintenance of ecological balance (Sec. 26), and

e. taxation (Book II, Article One – for Provinces; Book II, Article Two – Municipalities; and Book II, Article Three – for Cities).

During one of the public hearings of the RESA Board for the purpose of drafting an Implementing Rules and Regulations (IRR) for the law, some issues regarding the role of the appraisers were discussed.

An employee from the Land Management Bureau inquired as to why government appraisers with a plantilla position would be exempted from the licensure requirement of the RESA law. The Board replied that if a government appraiser is performing the role of an appraiser under a plantilla position, he can apply for a license in order to respect the acquired security of tenure even prior to the effectivity of the RESA law. However, if such an employee would wish to be promoted to the position of an incumbent appraiser he shall be covered by the requirements of RESA. The issue is now included in the RESA's IRR.

However, if a government employee is holding a manager position, supervising appraisers and brokers as well as reviewing the reports of the real estate practitioners under him, he is not required to take the RESA examination. He is not considered a real estate practitioner because he is performing a management function. However, his subordinates, the appraisers and the brokers are real estate practitioners and must secure the necessary licenses.

The IRR requires that *within three (3) years from the effectivity of the RESA law* (after July 28, 2011), *all existing and new positions in the national and local governments whether career, permanent, temporary or contractual; primarily requiring the services of any real estate service practitioner, shall be filled only by registered and licensed real estate service practitioners.*

The law requires the ratio of twenty (20) salespersons for every broker. Aims to eliminate the practice of having unlimited salespersons under the supervision of a single broker. The broker is responsible for the activities of all the salespersons under him. In return, the salespersons are compensated for their efforts from the consummated sales through the initiative of the broker. The twenty (20) to one (1) ratio is patterned after the Malaysian practice.

The ratio requirement is absolute. If a broker practicing in Manila wishes to also practice in another place like Davao, he is not permitted by the RESA law to maintain two (2) sets of salespersons, that is, twenty (20) each for Manila and Davao. In this particular case, the only solution is to hire another broker to take care of the Davao real estate practice. Only the real estate salespersons need not take the continuing professional education (CPE) and the subsequent examination. The only requirement for them is an accreditation from the RESA Board. All the other real estate professionals must undergo the CPE and the examination.

The law necessarily covers only natural persons because only natural persons can practice professions. The real estate practitioners, being professionals are accredited by the RESA Board and the Philippine Regulatory Commission (PRC) and may have a seal accredited by the BIR. Furthermore, a RESA-accredited practitioner is equivalent to Civil Service eligibility holder, whenever such qualification is needed.

Juridical persons, like partnerships and corporations, may not engage in the business of real estate service unless

they are duly registered with the Securities and Exchange Commission (SEC). The persons authorized to act on behalf of such juridical persons shall be duly registered and licensed real estate brokers, appraisers, or consultants as the case may be.

Section 34 of the law provides for the following:

> *Sec. 34.* ***Accreditation and Integration of Real Estate Service Association.*** *- All real estate service associations shall be integrated into one (1) national organization, which shall be recognized by the Board, subject to the approval of the Commission, as the only accredited and integrated professional organization of real estate practitioners.*
>
> *A real estate practitioner duly registered with the Board shall automatically become a member of the accredited and integrated professional organization of real estate service practitioners, and shall receive the benefits and privileges appurtenant thereto. Membership to the accredited and integrated professional organization of real estate service practitioners shall not be a bar in other associations or real estate service practitioners.*

As a result of the aforequoted provision an umbrella organization was recognized by the RESA Board and the PRC, i.e, the Federation of Real Estate Service Association (FRESA). FRESA recognition was through Resolution No. 2009-538, Series of 2009 as promulgated by the PRC on November 23, 2009, even prior to the issuance of the RESA IRR on July 21, 2010.

Even before the IRR was issued some issues arose, among them are the following:

1. The RESA law recognizes only natural persons. The existence of FRESA is an anomaly because it is only a juridical person;

2. It is an additional layer of bureaucracy because the different real estate practitioners are already recognized by the RESA Board, and the existence of the FRESA becomes superfluous;

3. The FRESA does not have real power to discipline the real estate practitioners. Real power rests in the RESA Board;

4. Membership to FRESA is automatic for real estate practitioners. The same is true to the membership of the RESA Board. In this regard, these is no distinction between FRESA and the RESA Board when it comes to the membership requirement; and

5. Considering the overall effect of the existence of the FRESA, it rivals the RESA Board.

Illogical it may seem, the law is the law. The Latin maxim – *Dura lex, sed lex.* – fits perfectly, the law may be hard, but it is the law. For unless the RESA law is amended, the law has to be fully enforced.

The RESA law was approved by Congress on July 29, 2009, one year before the IRR was approved. Somehow, the delay in the issuance of the IRR violates the RESA law because the law provides that the IRR should be in place within six months after such approval. The delay was caused by the following events:

(a) President Gloria Macapagal Arroyo appointed the required RESA Board members only in January 2010;

(b) as a result of such late appointment, only the members of the RESA Board were granted licenses by the PRC;

(c) Sec. 20 of the law, the grandfather clause, requires the following: *…Those so exempt under the aforementioned categories shall file their applications* ***within two years from the effectivity of this Act…*** The concerned real estate practitioners were not able to do so because the IRR came into force only on July 2010. In this regard the deadline for the application under the grandfather clause (Section 20- Registration without examination) was set on July 30, 2011; and

(d) before the effectivity of the IRR, there is only one representative from the government sector. The law requires two (2) representatives from the government sector. It is the RESA Board decision to wait for the expiration of the term of a Board member who will be replaced by a representative from the government sector.

In spite of the problems encountered in the drafting of the IRR, the full law implementation the RESA is undoubtedly necessary to professionalize the different real estate practitioners in order to establish a reliable basis for

[1]The Federation of Real Estate Association (FRESA) is composed of the following organizations:

(1) NAR, PHILIPPINES, INC (NARPHIL),
(2) PHILIPPINE ASSOCIATION OF REALTOR BOARDS, INC (PAREB),
(3) REAL ESTATE BROKERS ASSOCIATIONS OF THE PHILIPPINES (REBAP),
(4) INSTITUTE OF PHILIPPINE REAL ESTATE APPRAISERS,INC (IPREA),
(5) PHILIPPINE ASSOCIATION OF REALTY APPRAISERS, INC. (PARA),
(6) PHILIPPINE ASSOCIATION OF REAL ESTATE CONSULTANTS AND SPECIALISTS, INC. (PARKS),
(7) CHAMBER OF REAL ESTATE BUILDERS ASSOCIATION (CREBA); and
(8) NATIONAL REAL ESTATE ASSOCIATION (NREA).

land valuation.

The RESA law is only one side of the same coin to attain the complete picture towards the improvement of the current real estate system in the Philippines. The complementary side of the RESA law is the proposed Valuation Reform Act (VRA). The VRA bill was filed during the last fourteenth (14th) Congress but was not legislated because it was overtaken by the national elections of May 2010.

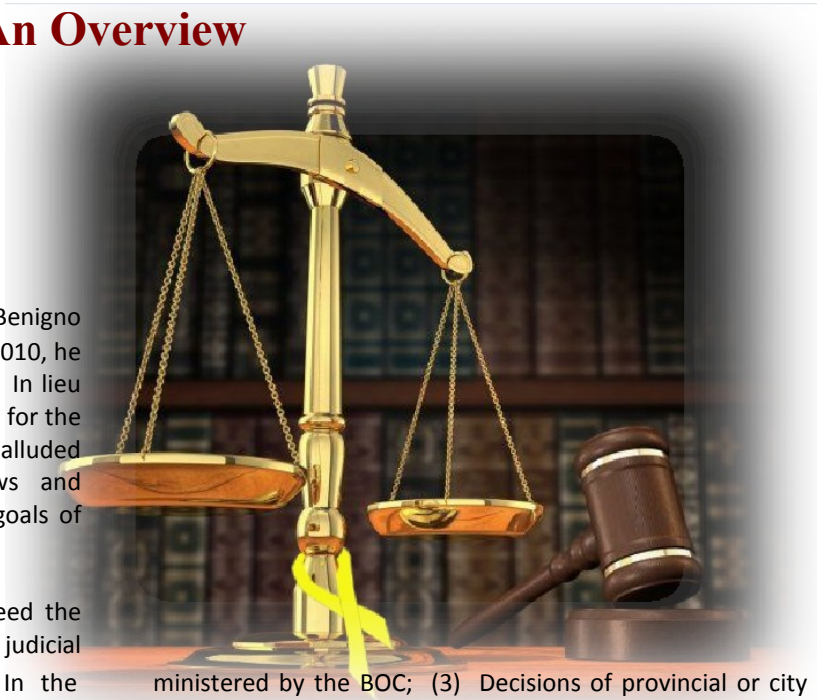
The main purpose of the VRA bill is to establish a single date base, a single land value for all purposes. At present, there are different land valuations as dictated by who is declaring such valuation and for what purposes. Once the VRA bill passes into law, a single value will be used for eminent domain, taxation purposes, and selling.

With the RESA in place, it is hoped the VRA would also become a law in the near future.

The Court of Tax Appeals: An Overview

by:

Mr. Clinton S. Martinez



P-NOY On Tax

In the inaugural speech delivered by President Benigno Simeon "Noynoy" Cojuangco Aquino, III on June 30, 2010, he made mention that no new taxes shall be imposed. In lieu thereof, he prodded those concerned to exert efforts for the collection of proper taxes. In other words, what he alluded to is the religious implementation of tax laws and regulations to raise revenue for the development goals of the government.

To go after tax evaders, the country would need the assistance and concomitant participation of the judicial system for the prosecution of those charged. In the handling of the cases, the Court of Tax Appeals (CTA) would play a vital role. CTA is the main government agency tasked to decide cases brought to it by the Bureau of Internal Revenue (BIR) and Bureau of Customs (BOC) for the prosecution of those charged with violations of tax law, rules and regulations. The expedient resolution of these cases is of paramount concern to any government, needless to state, for the generation of revenue and to serve as deterrent to others. Of course, the final arbiter is still the Supreme Court (SC). But, the faster the cases reach the SC, the faster it would hopefully be concluded.

The Court of Tax Appeals' Mandate

The CTA was created by virtue of Republic Act (RA) No. 1125, approved on June 16, 1954. Under said law, the CTA shall exercise appellate jurisdiction to review by appeal: (1) Decisions of the Commissioner of Internal Revenue (CIR) in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the Tax Code, as amended, or other law or part of law administered by the BIR; (2) Decisions of the Commissioner of Customs (COC) in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected; fines, forfeitures or other penalties imposed in relation thereto; or other law or part of law administered by the BOC; (3) Decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law (C.A. No. 470 [1920]), including rules and regulations relative thereto. As regards decisions of the Board of Assessment Appeals it has been impliedly repealed by the Real Property Tax Code (RPTC, P.D. No. 466 [1974]). The present Local Government Code (LGC, RA No. 7160 [Oct. 10, 1991]) repealed the RPTC but adopted certain provisions thereof with respect to the rate and assessment levels.

The Court of Tax Appeals' Vision

The CTA was established to answer the clamor for a specialized body or tribunal to handle cases in taxation, since the latter is a subject that needs the knowledge of experts. Moreover, the dockets of regular courts are, more often than not, clogged with regular cases. According to the website of the CTA, its vision is: A specialized tax court that is impartial, competent, transparent, and worthy of public trust and confidence, ensuring faithful compliance with tax laws. To attain its vision, the court shall be guided by the following: (1) to ensure the fair collection of taxes by the Government; (2) to provide adequate remedies to taxpayers against unreasonable and unjustified tax assessments and through the refund of excess taxes paid; (3) promotion of the common good through the proper interpretation of tax

statutes; (4) adherence to the independence of the judiciary; and (5) enhancement of the public trust and confidence in the judiciary.

In the case of **CIR vs. Arete, GR No. 164152 [Jan. 21, 2010]**, the Supreme Court (SC) opined: "Generally, the findings of fact of the CTA, *a court exercising expertise on the subject of tax,* are regarded as final, binding, and conclusive upon this Court, x x x." (Emphasis supplied)

On March 30, 2004, Congress has enacted RA 9282 which expanded the jurisdiction of the CTA and elevated its rank to the level of a collegiate court (Court of Appeals [CA]). The new law gives CTA with special jurisdiction and enlarged its membership. From its original membership of three (3) Judges under RA 1125 (1 Presiding Judge and 2 Associate Judges), its membership was expanded to six (6), i.e., one (1) Presiding Justice and five (5) Associate Justices (Sec. 1). Subsequently on June 12 2008, Congress passed RA 9503 which further expanded the membership of the CTA. The CTA is now composed of one (1) Presiding Justice and eight (8) Associate Justices, for a total of nine (9) magistrates (Sec. 1).

CTA's Proceedings

As to its proceedings, the CTA now conducts its sessions in this wise:

> "SEC. 2. *Sitting En Banc or Division; Quorum; Proceedings*. - The CTA may sit *en banc* or in three (3) Divisions, each Division consisting of three (3) Justices.
>
> Five (5) Justices shall constitute a quorum for sessions *en banc* and two (2) Justices for sessions of a division. Provided, That when the required quorum cannot be constituted due to any vacancy, disqualification, inhibition, disability, or any other lawful course, the Presiding Justice shall designate any Justice of other Divisions of the Court to sit temporarily therein.
>
> The affirmative votes of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division but a simple majority of the Justices present necessary to promulgate a resolution or decision in all other cases or two (2) members of a Division, as the case may be, shall be necessary for the rendition of a decision or resolution in the Division Level."

The present set-up of the CTA is deemed appropriate to handle the expected increase in cases as a result of the presidential directive. The BIR and BOC are expected to double their efforts to achieve the collection goals put in place. Initially the performance of the CTA must be judged by the expediency by which it shall dispose of the cases filed before it, although ultimately it will still be the Supreme Court who shall decide the issues, in cases of appeal.

CTA's Jurisdiction

The jurisdiction of the CTA is as follows:

The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue (CIR) in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by the BIR;
2. Inaction by the CIR in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the NIRC or other laws administered by the BIR, where the NIRC provides a specific period of action, in which case the inaction shall be deemed a denial;
3. Decisions, orders or resolutions of the Regional Trial Courts (RTC) in local taxes originally decided or resolved by them in the exercise of their original or appellate jurisdiction;
4. Decisions of the Commissioner of Customs (COC) in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the BOC;
5. Decisions of the Central Board of Assessment Appeals (CBAA) in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;
6. Decisions of the Secretary of Finance (SOF) on customs cases elevated to him automatically for review from decisions of the COC which are adverse to the Government under Section 2315 of the Tariff and Customs Code (TCC);
7. Decisions of the Secretary of Trade and Industry (STI), in the case of nonagricultural product, commodity or article, and Secretary of Agricultural (SA) in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302 respectively, of the TCC, and safeguard measures under RA No. 8800 [The Safeguard Measures Act, July 19, 2000], where either party may appeal the decision to impose or not to impose said duties. Note that under RA 8800, "The State shall promote the competitiveness of domestic industries and producer based on sound industrial and agricultural

development policies, and technical resources. In pursuit of this goal and in the public interest the State shall provide safeguard measures to protect domestic industries and producers from increased imports, which caused or threaten to cause serious injury to those domestic industries and producers." (Sec. 2. Declaration of Policy)

b. Jurisdiction over cases involving criminal offenses:

1. Exclusive original jurisdiction over all criminal offenses arising from violations of the NIRC and TCC and other laws administered by the BIR or the BOC: Provided, however, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.

2. Exclusive appellate jurisdiction in criminal offenses:

   a. Over appeals from the judgments, resolutions or orders of the RTC in tax cases originally decided by them, in their respective territorial jurisdiction.
   b. Over petitions for review of the judgments, resolutions or orders of the RTC in the exercise of their appellate jurisdiction over tax cases originally decided by the Metropolitan Trial Courts (MeTC), Municipal Trial Courts (MuTC) and Municipal Circuit Trial Courts (MCTC) in their respective jurisdiction.
   c. Jurisdiction over tax collection cases as herein provided:

      1. Exclusive original jurisdiction in tax collection cases involving final and executor assessments for taxes, fees, charges and penalties: Provided, however, That collection cases where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) shall be tried by the proper MuTC, MeTC and RTC.

      2. Exclusive appellate jurisdiction in tax collection cases:

         a. Over appeals from the judgments, resolutions or orders of the RTC in tax collection cases originally decided by them, in their respective territorial jurisdiction.
         b. Over petitions for review of the judgments, resolutions or orders of the RTC in the exercise of their appellate jurisdiction over tax collection cases originally decided by the MeTC, MuTC and MCTC, in their respective jurisdiction. [Sec. 7, RA 9282]

The CTA's Role

The purpose of the instruction to both the BOC and BIR to improve on their collection efforts is to rein in the huge budget deficit which is estimated to hit P300 billion this year (Source: Business World, July 5, 2010). The CTAs role would be to see to it that the cases filed before it are disposed expeditiously for the benefit of both the government and the business sector. The investment climate would get an added boost in the fast resolution of cases, aside from the usual incentives extended to them. In this regard, redundant come-ons must be reviewed as they may not be necessary anymore considering that these investors may be willing to invest here despite the absence thereof, taking into consideration other factors which are inherently and exclusively found here such as English-speaking work force, among others. Surely, the expedient solution of tax cases would put the Philippines in a better position, instead of said cases languishing in the dockets of courts. Whatever revenue due to the Department of Finance (DOF) must be collected immediately in order for the government to have the resources for the projects it has planned.

It needs little emphasis to state that the CTA should do its part in the endeavors of the new administration. RA 1125, as amended, gives the Court enough powers to pursue its mandate under its charter. The CTA is required to decide on the cases before it in accordance with Section 15, paragraph (1), Article VIII of the 1987 Constitution which states: "All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts." Said directive of the Constitution leaves no doubt that the CTA should decide pending cases at the soonest possible time. Of course, alternative modes of settling disputes may be resorted to, if only to fast track the collection of taxes. Compromises may be entered into, taking into consideration the attendant circumstances peculiar to each case. In fact, the CIR is authorized under the

National Internal Revenue Code (NIRC), as amended, to enter into compromises, viz:

"SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. – The Commissioner may –

(A) Compromise the payment of any internal tax, when –
(1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or
(2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

The compromise settlement of any tax liability shall be subject to the following amounts:

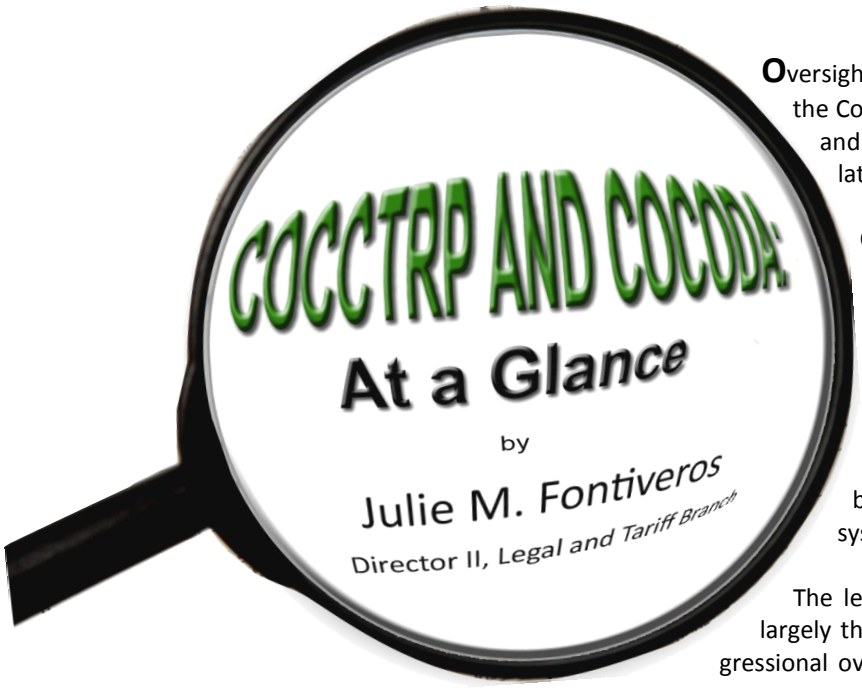
For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and

For other cases, a minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.

Where the basic tax involved exceeds One million pesos (P1,000,000) or where the settlement offered is less than the prescribed minimum rates, the compromise shall be subject to the approval of the Evaluation Board which shall be composed of the Commissioner and the four (4) Deputy Commissioners."

Under the Tariff and Customs Code (TCC), Section 401 (Flexible Tariff Clause) it is provided: "(a) In the interest of national economy, general welfare and/or national security, and subject to the limitations herein prescribed, the President, upon recommendation of the National Economic Development Authority (hereinafter referred to as NEDA), is hereby empowered: (1) to increase, reduce or remove existing protective rates of import duty (including any necessary change in classification). The existing rates may be increased or decreased to any level, in one or several stages but in no case shall the increased rate of import be higher than a maximum of one hundred (100) per cent ad valorem; (2) to establish import quota or to ban imports of any commodity, as may be necessary; and (3)to impose an additional duty on all imports not exceeding ten (10) per cent ad valorem whenever necessary: Provided, That upon periodic investigations by the Tariff Commission and recommendation of the NEDA, the President may cause a gradual reduction of protection levels granted in Section One Hundred and Four of this Code, including those subsequently granted pursuant to this section." Section 104 deals with Rates of Import Duty. The prerogatives of the President under the above-quoted section show that what is foremost under the TCC is the protection of the local industries in particular and the economy in general. This can also be surmised from the provisions of the tax code earlier cited. As part of the judicial process, the CTA is expected to be fair in its rendition of decisions. It must not only protect the coffers of the government but should likewise defend the business interests of investors, both domestic and foreign. The latter two, without need of further emphasis, provide jobs to most of our work force.

Lest it be misunderstood that we are putting the CTA on the spot, this is far from our intention. We are merely shedding light on the importance of its role in the effort of the government to gather the correct revenue for its duty of giving the people the very basic of services that can be extended, *i.e*., food and shelter.



Oversight function is an inherent power that is implied in the Constitution to simply carry out the system of checks and balances between and among the executive, legislative and judicial branches of the government.

Congressional oversight provides the legislative branch with an opportunity to inspect, examine, review, study and check, on a continuing basis, the application, administration and execution of laws under the jurisdiction of the executive branch and its agencies. According to U.S. House Majority Leader Louise Slaughter, a congressional oversight is one of the most important responsibilities of Congress and forms an integral part of the system of checks and balances.[1]

The legislative branch exercises the power of oversight largely through its congressional committee system. A congressional oversight committee's statutory basis and powers

are usually vested in the very legislative fiat it will keep an eye on.

Each and every oversight committee is primarily created to perform a specific function, *i.e.*, to act as a legislative watch dog that would improve the efficiency, economy, and effectiveness of governmental operations; evaluate programs and performance; detect and prevent poor administration, waste, abuse, arbitrary and capricious behavior, or illegal and unconstitutional conduct; protect civil liberties and constitutional rights; inform the general public and ensure that executive policies reflect the public interest; gather information to develop new legislative proposals or to amend existing statutes; ensure administrative compliance with legislative intent; and prevent executive encroachment on legislative authority and prerogatives.[2]

To all intents and purposes, it can be construed that through the judicious exercise of its oversight function, Congress can *ideally* trim down bribery and fraud, and at the same time improve transparency in government transactions.

Philippine Congress' Committee on Ways and Means

Under the Committee on Ways and Means are two congressional oversight committees which were organized to review, assess and ensure the truthful implementation of laws under its jurisdiction. These are the Congressional Oversight Committee on the Comprehensive Tax Reform Program (COCCTRP) and the Congressional Oversight Committee on the Official Development Assistance (COCODA) which draw their annual budget solely from the approved budget of the Philippines Senate under locally funded projects as provided in the General Appropriations Act.

Congressional Oversight Committee on the Comprehensive Tax Reform Program (COCCTRP)

Mandate

The statutory basis of the Congressional Oversight Committee on the Proper Implementation of the National Internal Revenue Code of 1997, also known as the Congressional Oversight Committee on the Comprehensive Tax Reform Program (COCCTRP), is found in Section 290, Title XII of the National Internal Revenue Code of 1997[3], as amended, *viz:*

"Section 290. Congressional Oversight Committee. -

"A Congressional Oversight Committee, hereinafter referred to as the Committee, is hereby constituted in accordance with the provisions of this Code. The Committee shall be composed of the Chairmen of the Committee on Ways and Means of the Senate and House Representatives and four (4) additional members from each house, to be designated by the Speaker of the House of Representatives and the Senate President, respectively."

COCCTRP, including its secretariat, was formally organized on October 26, 2005 under the chairmanship of Senator Ralph G. Recto. The oversight committee is mandated to fulfill the following primary functions: [4]

(1) to monitor and ensure the proper implementation of Republic Act No. 8240;

(2) to determine that the power of the Commissioner to compromise and abate is reasonably exercised;

(3) to review the collection performance of the Bureau of Internal Revenue; and

(4) to review the implementation of the programs of the Bureau of Internal Revenue.

To effectively discharge its primary functions, COCCTRP is empowered to require of the Bureau of Internal Revenue, submission of all pertinent information, including but not limited to: industry audits; collection performance data; status report on criminal actions initiated against persons; and submission of taxpayer returns.[5]

Membership:

The present composition of the COCCTRP-Senate panel for the 15th congress are the following:[6]

Senator Ralph G. Recto	-	Chairman
Senator Franklin M. Drilon	-	Member
Senator Francis M. Pangilinan	-	Member
Senator Alan Peter S. Cayetano	-	Member

1. *Message of the Chairperson of the Committee on Rules, www.house.gov/rules, browsed on September 14, 2010*
2. *"Congressional Oversight - A How to Series of Workshops", 106th Congress Rules Committee Print, June 28, July 12, and 26, 1999; www.house.gov/rules) browsed on September 14, 2010*
3. *Republic Act No. 8424 approved on December 11, 1997*
4. *Second paragraph, Section 290 of RA 8424, as amended*
5. *Third paragraph, Section 290 of RA 8424, as amended*
6. *Journal of the Senate dated August 04, 2010, as amended by the Journal of the Senate dated September 07, 2010*

The Congressional Oversight Committee on Official Development Assistance (COCODA)

Mandate:

The Congressional Oversight Committee on Official Development Assistance (COCODA) was created by virtue of Section 8 (*Oversight*), paragraph (c) of Republic Act No. 8182[7], *viz:*

> *"(c) There shall be a Congressional Oversight Committee composed of the Chairmen of the Committee on Ways and Means of both the Senate and the House of Representatives, five (5) members each from the Senate and the House representing the majority and two (2) members each from the Senate and the House representing the minority to be designated by the leaders of the majority and minority in the respective chambers."*

Notwithstanding its conception in 1996, COCODA was officially organized on September 09, 2010. Its secretariat and organizational structure was also approved on the same date. The main function of COCODA is to oversee, monitor, assess and ensure, in aid of legislation, the proper implementation and performance of individual ongoing projects as well as the overall performance of all projects which are funded in whole or in part by Official Development Assistance (ODA). Specifically, it is tasked to perform the following:[8]

1. Set the guidelines and over-all framework to monitor and ensure the proper implementation of Republic Act No. 8182;
2. Determine that the proceeds of all ODA loans or loans and grants are equitably distributed and that the utilization of ODA funds to all provinces is consistent with the provisions of RA 8182
3. To review ODA contracts and projects, and monitor/ assess its proper implementation
4. Determine the inherent weaknesses in the law and recommend necessary remedial legislation; and
5. Submit periodic reports to Congress.

Membership

The present members of the COCODA-Senate Panel for the 15th congress are the following:[9]

Majority - Senator Ralph Recto - Chairman
Senator Franklin Drilon
Senator Teofisto Guingona III
Senator Miguel Zubiri
Senator Francis Escudero

Minority - Senator Alan Peter Cayetano
Senator Pia Cayetano

7. Entitled: "An Act Excluding the Official Development Assistance (ODA) from the Foreign Debt Limit in Order to Facilitate the absorption and Optimize the Utilization of ODA Resources, amending for the Purpose Paragraph 1, Section 2 of Republic Act No. 4860, as Amended", approved on June 11, 1996.
8. COCODA Rules of Procedures, adopted on September 10, 2010
9. Journal of the Senate dated August 04, 2010. The Minority composition was amended on September 07, 2010

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