



PHILIPPINES

Government issuances and legislation in 2007 primarily focused on intensified and efficient tax collection. The thrust is to address the continuous shortfalls in the Government's projected revenue targets which continues to stall the economic recovery of the country. Complimentary to this were also a number of administrative issuances and legislations aimed at attracting more foreign investments to the country by expanding the priority areas of economic investments and simplifying the registration procedures and requirements for establishment of businesses in the Philippines.

EXECUTIVE ISSUANCES

Beset by increasing collection targets to help balancing the Government's Budget, the Bureau of Internal Revenue (BIR) decided to plug the perceived tax leaks by adopting a paradigm shift that lays down stricter implementation of tax laws and a less than liberal view on the granting of tax refunds and tax exemptions. This new paradigm shift in tax collection was embodied in Revenue Memorandum Circular (RMC) No. 32-2007 issued on 27 April 2007, which set out the following measures to be adopted by revenue officers in ensuring efficient tax administration and collection:

1. Strict evaluation of all claims for cash refund/issuance of tax credit certificates and claims for tax exemptions.

2. Prompt action on protests filed by taxpayers against tax deficiency assessments and immediate denial of those protests which do not contain any substantial arguments.
3. Intensified tax mapping operations.
4. Top priority audit of businesses which are apparently earning more revenues during taxable year 2007 than in prior year.
5. Closure of establishments violating provisions of the Philippine Tax Code.
6. Intensified stocktaking and surveillance activities on business establishments reporting loss performance, i.e., income /sales reported and tax payments made in current year are reduced compared to prior year.
7. Intensified development of fraud cases.
8. Encouraging taxpayers to avail of the various programs of the BIR pertaining to the Improved Voluntary Assessment Program and Voluntary Assessment and Abatement Programs.

To further strengthen the prosecutorial and enforcement mechanism of the Government's national internal revenue generation program, the Run After Tax Evaders (RATE) Program launched in 2005 has been placed under the direct administration of the Office of the Deputy Commissioner for Legal and Inspection Group of the BIR through Executive Order (EO) No. 625-A dated 12 June 2007.

Due to the increased annual tax collection targets imposed upon the BIR (Php 433.42 billion in 2006 to Php765.9 billion in 2007), several administrative circulars and orders were issued by the BIR in 2007 to maximise tax compliance and increase tax collections. Among those issued were Revenue Memorandum Orders Nos. 30-2007 dated 28 September 2007 and 39-2007 dated 12 December 2006, both of which provide the mechanisms by which the BIR can expediently convert delinquent accounts or pending accounts into revenue through the summary issuance of warrants of distraint/levy and/or garnishment even before the appeal period lapses or the assessment becomes final and executory.

Moreover, through RMC 13-2008 dated 21 January 2008, the BIR also re-circularised EO 53 which was previously issued in 1993, reminding the government agencies concerned (e.g., Department of Trade and Industry, Department of Transportation and Communication, Bangko Sentral ng Pilipinas, Securities and Exchange Commission, local government units) of their existing mandate to provide the BIR with the relevant information which would help the latter to improve the effectiveness of tax collection.

To address the rising inventory of pending disputed/litigated assessments the BIR adopts a pragmatic approach of encouraging voluntary tax compliance by taxpayers under the existing abatement programs, i.e., the One-Time Abatement of Penalties (OTAP) and the Improved Voluntary Assessment Program (IVAP) which were extended to 29 June 2007 by the BIR. In addition, a new abatement program covering deficiency taxes pertaining to taxable years ended 31 December 2005 and before was also launched and is to be effective up to 29 February 2008. Under these abatement programs, taxpayers with pending assessments during the covered years are allowed to settle their deficiency tax liabilities by paying only the basic tax due without penalties, i.e., 20% interest, 25% surcharge and compromise penalty.

Year 2007 also proved to be robust in terms of investment incentives starting with the approval of the 2007 Investments Priorities Plan (IPP) which contains a list of priority areas for investment, e.g., agriculture/agribusiness and fishery; information and communications technology; electronics; motor vehicle products; energy; infrastructure; tourism; shipbuilding/shipping; iron and steel; R&D/training institutions and machinery and equipment.

Mandatory inclusions under the 2007 IPP include the priority areas and activities covered under the existing laws such as industrial tree plantation; exploration, mining, quarrying and processing of minerals; publication or printing of books and textbooks; refining, storage, marketing and distribution of petroleum products; ecological solid waste management; clean water; and rehabilitation, self-development and self-reliance of disabled persons.

Export activities under the 2007 IPP refer to the production/manufacture of non-traditional export products and services in support of exporters as identified under the Medium-Term Development Plan of 2004 to 2010 and/or the Philippine Export Development Plan for 2005 to 2007.

In the case of the Autonomous Region of Muslim Mindanao (ARMM), the IPP includes priority activities which have been independently identified by the Regional Board of Investments of the ARMM in accordance with EO 458.

Priority investments listed in the 2007 IPP are entitled to the fiscal and non-fiscal incentives provided under EO No. 226, otherwise known as the "Omnibus Investments Code of 1987", subject to the General Policies and Guidelines issued by the Board of Investment.

With regard to the efficient monitoring of incentives available to enterprises registered with the Philippine Economic Zone Authority (PEZA) under Republic Act (RA) 7916 (Special Economic Zone Act of 1995), the BIR and PEZA entered into a Memorandum of Agreement (MOA) on 1 March 2007 which was supplemented by PEZA Memorandum Circular No. 2007-011 dated 7 May 2007. Under the said MOA and Memorandum Circular, PEZA shall conduct a pre-screening of the availability of income tax incentives both for income tax holiday and 5% gross income tax of the registered enterprises. The pre-evaluation results shall then be forwarded by the PEZA to the BIR. PEZA-registered enterprises on the other hand, are required to submit copies of their income tax returns and audited financial statements to PEZA within 30 calendar days from the date of their filing with the BIR.

Another significant development was the issuance of EO 619 by President Gloria Arroyo on 26 April 2007 which clarifies the entitlement of enterprises registered and operating within the Clark Freeport Zone under RA 7227 to the same fiscal and non-fiscal incentives granted to PEZA registered enterprises pursuant to RA No. 7916.

In the area of renewable energy and alternative sources of fuel, the implementing rules and regulations of the Biofuels Act of 2006, i.e., Department Circular Number DC 2007-05-0006, was issued in 2007. The Biofuels Act was enacted to address the rising costs of oil in the world market and the worsening environmental conditions brought about by the use of conventional sources of fuel.

LEGISLATIVE MEASURES

On 24 May 2007, RA 9480 which provided for the Tax Amnesty Program, was passed into law. Under the Tax Amnesty Program, delinquent taxpayers are allowed to come clean and settle their tax deficiencies for the year 2005 and before, by paying an amnesty tax or a minimum prescribed amount in exchange for immunity from investigation of their books and records for the taxable years covered and cancellation of any pending tax assessments. The program, which covers all kinds of internal revenue taxes excluding withholding taxes, is intended to accumulate base data of taxpayers and at the same time to help the Government to recover unpaid taxes for the years covered by the amnesty through voluntary compliance by taxpayers.

Individuals and corporate taxpayers (local or foreign) could avail themselves of the program except those with pending criminal cases for tax evasion; cases involving violations of the Anti-Money Laundering Act; violations of the Anti-Graft and Corrupt Practices Act and ill-gotten wealth cases filed with the Presidential Commission on Good Government.

Corporations and individuals who avail themselves of the tax amnesty are entitled to the following benefits:

1. Immunity from the payment of taxes as well as penalties and interests, for taxable year 2005 and prior years.
2. Inadmissibility of the Tax Amnesty Return and all documents submitted as a consequence of availment of the program, as evidence against the taxpayer in all proceedings pertaining to the covered years in any judicial, quasi-judicial or administrative bodies.

The Tax Amnesty Program was offered for a limited period of six months from the effectivity of the implementing rules and regulations of RA 9480, i.e., until 6 March 2008. RA 9480 further contains a provision that bars the grant of any subsequent amnesty by the Congress.

Also passed in 2007 were two important legislations which address the legal issue raised in regard to investment incentives granted to enterprises operating within certain special economic and freeport zones, other than the Subic Bay Freeport Zone, pursuant to RA 7227. In the cases of *John Hay People's Coalition vs. Lim*, G.R. No. 119775 dated 23 October 2003 and *Coconut Oil Refiners Association, Inc. vs. Torres, et.al.*, G.R. No. 132527 dated 29 July 2005, the Philippine Supreme Court considered ineffectual the granting of the incentives under RA 7227 to enterprises registered with and located in the Clark Special Economic Zone, John Hay Special Economic Zone, Poro Point Special Economic and Freeport Zone, and Morong Special Economic Zone on grounds of constitutional limitations.

1. The first law, RA 9400, which took effect in April 2007, reinstates the incentives and privileges enjoyed by the affected enterprises. In particular, specifically, the 5% preferential tax on gross income in lieu of all other taxes (i.e., national and local); and the tax free importation of raw materials and capital equipment.
2. The second law was RA 9399 which also took effect in April 2007. To cushion the negative impact of the nullification of the incentives previously enjoyed by the other freeport zone enterprises prior to RA 9400, the lawmakers considered that it is best to offer a one-time tax amnesty on all applicable tax and duty liabilities incurred by the said enterprises during the period that the incentives were rendered ineffective. The one-time tax amnesty under RA 9399 required the filing of a notice and tax amnesty return and payment of an amnesty tax of PHP25,000 with the BIR within six months from the effectivity of RA 9399. The tax amnesty relieved the affected enterprises from any civil, criminal and/or administrative liabilities arising from non-payment of taxes, duties and charges.

A new special economic zone was created in Aurora Province by virtue of RA 9490 which took effect on 4 October 2007. Enterprises registered and operating within this zone are entitled to various fiscal and non-fiscal incentives such as income tax holiday, net operating loss carry over, accelerated depreciation, deferred minimum corporate income tax and the 5% final tax on gross income earned in lieu of local and national taxes after the income tax holiday period.

RA 9485, otherwise known as the Anti-Red Tape Act, was also passed in 2007 to encourage the flow of investments into the country by lessening or mitigating the so-called bureaucratic red tape in the registration process of new businesses in the Philippines. Under this law, the relevant government offices and agencies including local government units and government-owned and controlled corporations are mandated to act on all applications or requests not longer than five working days in the case of simple transactions and not longer than 10 working days for complex transactions from the date the request or application is received. Violations of RA 9485 shall result in penalties ranging from the payment of fine/work suspension to dismissal and perpetual disqualification from public service.

There are other significant legislative initiatives that have not been made into law under the current Philippine Congress. One important bill that is still pending in the Lower House of Congress is the Renewable Energy Bill which is intended to counteract the worsening effects of climate change and to help the government in meeting its surging energy requirements. It is expected that this bill, which has been declared a priority bill by President Arroyo, would be passed into law within the year.

While the present political situation in the country remains to be volatile amidst calls for better governance and more transparency in government transactions, foreign investments in the Philippines continue to increase and, in fact, a 154% growth was recorded during the first quarter of 2007. The quality of the recent legislations and programs on tax and investments implemented by the government is expected to further promote foreign investors' confidence in the country and make the Philippines continue to be one of the best investment destinations in Asia.