



PHILIPPINES

Government efforts to cushion the impact of the worsening financial climate have largely dictated the direction of the Philippine legislation in 2008 where exemption from taxation and other tax perks were foremost in the agenda. Even before the start of the international financial meltdown in the latter part of 2008, the Philippine lawmakers were already concerned in solving the country's perennial problems — poverty and the rising prices of crude oil.

In a year where gasoline prices stood at a record high of USD147 per barrel, the policy of the government was to adopt measures that would lessen the effects of prohibitive fuel costs and the consequential rising prices of commodities. It became top priority to create more job opportunities by promoting and encouraging foreign investments and to make the Philippines more competitive in terms of investment opportunities among Southeast Asian countries. Affordable health care was addressed by the enactment of the Cheaper Medicines Law while the paranoia brought about by dwindling conventional sources of energy was deemed to be alleviated by the passage of the Renewable Energy Law.

The government seems to be willing to forego a huge portion of its revenue base by providing more tax concessions to the working class and enhancing tax benefits to foreign investors. The value-added tax (VAT) was however untouched as its continued imposition was justified by the executive department, stating that the VAT system is one of the reasons why interest rates remain stable in spite of the crisis.

Legislation

Tax laws continue to be the vital instruments to achieve the government's goals of alleviating poverty, beginning with Republic Act No. 9504 entitled "An act amending sections 22,24,34,35, 51 and 79 of Republic Act 8424 (RA 8424), as amended, otherwise known as the National Internal Revenue Code", which took effect in July 2008. This law exempts minimum wage earners in both the public and private sectors from the payment of income tax on their statutory minimum wages, including their holiday pay, overtime pay, night shift differential pay and hazard pay. This law also increases the optional standard deduction (OSD) for individuals earning non-compensation income from 10% to 40% of their gross sales or gross receipts. The OSD, as the name suggests, is an option given to non-compensation earners in lieu of the itemised deductions allowed under the Tax Code. The OSD also extends to corporations allowing them to claim an OSD of 40% of their gross income, also in lieu of the itemised deductions.

RA 8424 also provides tax relief to all compensation income earners, including those receiving more than the minimum wage, in the form of increased personal and additional exemptions. For instance, an individual taxpayer may claim a personal exemption (regardless of status) of PHP50,000, which was pegged previously at only PHP20,000, PHP32,000 and PHP25,000, depending on whether one is single, married or head of the family. The same law also provides for additional exemption for taxpayers with dependents in the amount of PHP25,000 for each qualified dependent regardless of whether the taxpayer is single or married, provided that the number of dependents shall not exceed four.

The underprivileged members of society are also given a much needed relief by the enactment of the Cheaper Medicines Law or Republic Act 9502 which mandates the promotion of generic drugs, which are much cheaper than branded counterpart drugs of which the costs are sometimes too steep to be affordable to the low income group. This law authorises the relevant government agencies to regulate the price of medicines and liberalises certain intellectual property laws to enable a local manufacturer, in some instances, to exploit a patented invention (of drugs) without the permission of the patent owner. This is of course subject to the limitations and rights provided under international agreements on intellectual property.

The threat of dwindling energy resources which is intertwined with rising prices of commodities made the passage of the Renewable Energy Law a necessity in 2008. Republic Act 9513, more popularly known as the Renewable Energy Law, which took effect on 30 January 2009, encourages the exploration and development of renewable energy from sources such as solar, wind, biomass and other non-conventional resources. Investors of the said exploration and development are given tax and other incentives under this law, aside from other government support. Several provisions of this law are geared towards enticing foreign firms to invest in the exploration of renewable energy by granting tax concessions including income tax holidays of up to seven years. It is believed that the growth of the renewable energy industry will help minimise the country's exposure to oil price fluctuations in the international markets, thus making the cost of power affordable and available to the majority of the Filipino people.

International agreements which are in the nature of laws are one of the important government measures to counteract the effects of the current global recession. On this basis, the Philippine government forged economic partnership with Japan, one of the top investors in the country. The Japan-Philippines Economic Partnership Agreement (popularly known as JPEPA), was a controversial agreement that faced rough sailing in the Senate as it was passed amidst protests and objections from some concerned sectors of the society. On one side, the JPEPA aims at boosting Philippine exports to Japan and vice-versa by the elimination or reduction of tariffs on both industrial and agricultural products. It contains provisions making it possible for Filipino skilled workers especially nurses to obtain gainful employment in Japan. In addition, the agreement targets to increase Japanese investment in the country because of reduced tariff rates and import taxes. On the other side, the JPEPA is perceived to have negative effects such as the liberalised entry of Japanese products including hazardous and toxic wastes into the country, exploitation of Filipino labour employed in Japan because of stringent requirements for acquiring permanent employment status and lastly, the slow death of Philippine products due to the entry of goods made in Japan at prices at par with our own. The true test of JPEPA's effectiveness is in its implementation. Since the agreement was ratified only in the latter part of 2008, its effects can only be seen until after several years.

Another international agreement that was passed by the Senate is the revised Philippine-Japan tax treaty which amended certain provisions of the existing agreement between Japan and the Philippines for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes. Under the revised tax treaty, the shareholding requirement for qualifying the 10% preferential withholding tax rate on dividends is decreased from 25% to 10% and the withholding tax rate in other cases is reduced from 25% to 15% (Article 10(2)(b) of the revised tax treaty). In addition, the withholding tax rate on royalties is reduced from 25% to 10% except for the right to use cinematographic films or tapes for radio or television which remains to be taxed at the maximum rate of 15%. The revised tax treaty increases the tax benefits provided under the original treaty that was forged in 1980.

Consistent with the "anti-poverty" legislation is the passage of Republic Act 9505, an act establishing a provident personal savings plan known as the personal equity and retirement account. This law aims at encouraging workers not covered by any of the government insurance systems such as the Social Security System and the Government Service Insurance System to save for their retirement by providing a tax-free private pension plan. This law was enacted in June 2008.

Executive Issuances

In year 2008, the Bureau of Internal Revenue (BIR) had to balance between its goal of meeting collection targets and implementing new laws that will significantly reduce tax revenues such as the ones discussed above. Another challenge faced by the BIR is the manner in which the tax laws are implemented so as to ensure that they are easily understood and adequately enforced without violating its limitation as an implementing agency.

In July of 2008, the BIR issued Revenue Regulations (RR) No. 10-2008 which implemented RA 9504 (or the law which exempts minimum wage earners from income tax). A significant feature of this regulation is the clarification of the period of effectivity of this tax relief and the concomitant computation of the taxable base of this group of wage earners considering that the law took effect in the middle of the taxable year (i.e. July).

This was followed by another regulation, RR 16-2008, issued in November 2008 which contains the provisions pertaining to the OSD and the increased personal and additional exemptions.

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Some revenue issuances take the nature of laws, which violate the legal principle that administrative issuances should only implement laws and not creating them. Such was the situation when BIR issued Revenue Memorandum Circular (RMC) 30-08 in April 2008. The RMC expanded the scope and coverage of the 5% premium tax and the documentary stamp tax imposed on insurance contracts which are far different from the Tax Code provisions. The controversy caused by the RMC gave rise to its amendment by another RMC (RMC 59-2008) in August of 2008.

Another revenue issuance that violated the same principle is RMC 34-2008. The RMC imposed VAT on the payments received by directors of corporations of which they are not employees, based on the reasoning that the performance of their duties may be categorised as sale of services. Again, the protests from various sectors led the BIR to revoke this issuance thereby rendering invalid the VAT imposed therein. Now, under RMC 77-2008 (which revoked RMC 34-2008),

the fees, per diems, allowances and other income received by a director of a corporation cannot be considered as derived from an economic or commercial activity pursued in the “course of trade or business” and hence, are not subject to the 12% VAT or the 3% business tax.

During early 2008, the annual Investment Priority Plan (IPP) of the Board of Investments was released. The IPP lists several activities as preferred areas deserving tax benefits such as income tax holidays and other incentives. Listed among the preferred activities are industries engaged in agriculture/agribusiness and fishery; infrastructure; tourism; research and development; engineered products and strategic activities covering a minimum project investment cost of the peso equivalent of USD300 million and complying with either of the following:

1. generating at least 1,000 employment; or
2. use of internationally accepted high level of technology.

