



## Here's the TRAIN



## where's the GAIN?

by:

**ATTY. SHERRY ANNE CALULO-SALAZAR**

Director III - Legal and Tariff Branch

2018 started on a high note with the effectivity of Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN) Law on the very first day of the year. Due to the collaborated efforts of Congress and the Executive Department, the first package in the Tax Reform Program of the Duterte Administration was signed into law on 19 December 2017. The TRAIN law promised several benefits for the people foremost of which is the lowering of the income tax rates, and the financing of the government's BUILD BUILD BUILD Program. However, with too short a time between the passage of the law and its actual effectivity, the people are left to grapple with the consequences that RA 10963 have on their lives once it is implemented.

The task of fully implementing the law falls heavily on the Department of Finance (DOF), mainly on the Bureau of Internal Revenue (BIR). Given the numerous amendments made in the Tax Code, the BIR is doing its best to issue all the necessary rules and regulations that will ensure a smooth implementation of the reforms embodied in the new tax law. However, given human limitations as well as other considerations, it cannot be helped that some issuances have been delayed in its publication.



In an attempt to shed light on the proper interpretation and implementation of the TRAIN law, the Senate Tax Study and Research Office (STSR) conducted its 3<sup>rd</sup> Tax Forum entitled "*Understanding Better the TRAIN Law*" last 8 March 2018 at the Senators Laurel and Pecson Rooms, Senate of the Philippines, Pasay City. The STSR invited **Atty. James R. Ferrer** as its main resource speaker, who is currently the *Officer-in-Charge of the Assessment Division of BIR Revenue Region No. 8 – Makati City*. To further elucidate on the matter, the office also invited the following tax experts as reactors:



1. **Ms. Ma. Victoria C. España**, CPA - Chairperson and CEO, P&A Grant Thornton;



2. **Atty. Alexander Cabrera** - Chairperson and Senior Partner, Pricewaterhouse Coopers (PWC) Philippines; and



3. **Atty. Romeo H. Duran** - Director and External Vice-President, Tax Management Association of the Philippines (TMAP); and Head, Corporate, Tax & Immigration Division, Sapalo Velez Bundang & Bulilan Law Offices.

**Atty. James Ferrer: "The TRAIN is a fulfillment of a promise – from the President to his beloved countrymen"**

Atty. Ferrer opened his discussion with the question: "Are you ready for the ride?" He emphasized that the TRAIN is the ride that will take us to a better destination. With the new law in place, Atty. Ferrer is confident that the inflow of collection will be faster. This will result to more revenues that the government can use for its programs and projects. However, Atty. Ferrer is also cognizant of the fact that the TRAIN might hike up the prices of some goods and services. He is quick to add though that not all goods and services should be affected. Only those that have a connection, either directly or indirectly, to the new taxes should experience any price increase. He also stated that the increase in the prices of some commodities will be worth the sacrifice if we know it's all for nation-building and for the betterment of the people.

One of the purposes of RA 10963 is to make our tax system simpler, fairer, and efficient. Atty. Ferrer highlighted the fact that the TRAIN was crafted in such a way that the rich will have a bigger contribution in terms of taxes, while the poor will reap the benefits of the law in terms of higher subsidies in the welfare programs of the government. The benefits of the TRAIN law emphasized by Atty. Ferrer are as follows:

#### Benefits from the TRAIN

- ◆ **Higher budget for Infrastructure development**
  - Job Creation
  - Lower cost of transporting goods and services

- ◆ **Higher efficiencies, increase in business activities and revenues**

- Attract investors
- Better quality of life for Filipinos

- ◆ **Higher budget for education**

- Competitive advantage for new graduates
- Better employment viability
- Higher pay potentials
- Attract investors
- Better quality of life for Filipinos

- ◆ **Higher budget for health**

- More public hospitals and clinics
- Better public access to better health care
- Stronger work force
- Attract investors
- Better quality of life for Filipinos

- ◆ **Higher budget for Social Protection, Welfare and Employment**

- Better government relief and assistance programs
- Better subsidies
- Better social security and overall peace and order
- Better quality of life for Filipinos

With respect to the required rules and regulations to implement RA 10963, Atty. Ferrer shared these tables on the issuances released by the BIR, to wit:

#### Issuance of the TRAIN IRR and Other Relevant BIR Issuances

ISSUANCE NO.	DATE	SUBJECT
RR 1-2018	January 05, 2018	Providing for the Revised Tax Rates on Mineral Products pursuant to the provisions of Republic Act No. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN) Law" amending for the purpose Revenue Regulations No. 13-94
RR 2-2018	January 05, 2018	Providing for the Revised Tax Rates and other Implementing Guidelines on Petroleum Products pursuant to Republic Act. No. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN) Law"
RR 3-2018	January 05, 2018	Providing for the Revised Tax Rates on Tobacco Products pursuant to the provisions of Republic Act No. 10963, otherwise known as "Tax Reform for Acceleration and Inclusion (TRAIN) Law", Amending for the purpose Revenue Regulations No. 17-2012
RR 4-2018	December 19, 2017	Rules and Regulations Implementing the Documentary Stamp Tax Rate Adjustment under Republic Act No. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN) Law"

ISSUANCE NO.	DATE	SUBJECT
RR 5-2018	January 05, 2018	Revenue Regulations Implementing the Adjustment of Rates on the Excise Tax on Automobiles pursuant to the provisions of Republic Act No. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN) Law" amending for the Purpose Revenue Regulations No. 25-2003
RR 8-2018	February 20, 2018	Implementing the Income Tax Provisions of Republic Act No. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN)" Act
RR 9-2018	February 26, 2018	Rules and Regulations Implementing the Increase in the Stock Transfer Tax under Republic Act No. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion (Train) Law"

### 1. IRRs - Revenue Regulations

### 2. Other BIR Issuance Made:

#### b. Revenue Memorandum Order (RMO) 1-2018

dated December 22, 2017

Subject: Creation of Alphanumeric Tax Code (ATC) for Sweetened Beverages

#### c. Revenue Memorandum Circulars (RMCs)

- i. RMC 1-2018, January 04, 2018
- ii. RMC 2-2018, January 04, 2018
- iii. RMC 3-2018, January 04, 2018
- iv. RMC 4-2018, January 08, 2018

ISSUANCE NO.	DATE	SUBJECT
RMC 1-2018	January 04, 2018	Prescribes the Procedures on the use of Withholding Tax Table on Compensation Income and Advises on the Change of Creditable Withholding Tax Rate on Certain Income Payments to individuals
RMC 2-2018	January 04, 2018	Transition Procedures for All Taxpayers Filing Tax Returns Affected by the Revised Tax Rates Pursuant to the Provisions of Republic Act (RA) No. 10963, Otherwise Known as the Tax Reform for Acceleration and Inclusion (TRAIN)
RMC 3-2018	January 04, 2018	Transition Procedures for All Taxpayers Affected by the Revised Tax Rates on Documentary Stamp Tax Pursuant to the Provisions of Republic Act (RA) No. 10963, Otherwise Known as the Tax Reform for Acceleration and Inclusion (TRAIN)
RR 4-2018	December 19, 2017	Rules and Regulations Implementing the Documentary Stamp Tax Rate Adjustment Under Republic Act No. 10963, otherwise Known as the "Tax Reform For Acceleration and Inclusion (TRAIN) Law"

The main speaker also clarified the apparent confusion of many taxpayers with respect to the filing of the *Income Tax Return* (ITR). Atty. Ferrer explained that there are no changes in this year's filing forms – the old form and the old rate will be used, and the deadline for filing – April 15 for all individual taxpayers.

Atty. Ferrer ended his discussion by stating that the BIR is doing its best to release all the needed issuances and at the same time educate the people on the new tax system. He also underscored the equally relevant roles of the other *stakeholders* of the TRAIN law for its effective implementation. These stakeholders are the Congress, other implementing agencies, and the taxpayers, to wit:

In what ways can they help?

1. On the part of **Congress**, there must be openness and willingness to amend possible loopholes and introduce more effective provisions
2. On the part of the **implementing agencies**, more care, focus and effort in its implementation.
3. On the part of the **taxpayers**, more input so that the government will have a greater grasp of what it must do for their welfare.

#### First Reactor: Ms. Maria Victoria España

Ms. España started by posing two questions – (1) Is the BIR complying with the spirit of the law; and (2) are the regulations clear enough to understand even if one is not a lawyer? The first reactor also stated that there is a need to remove all unnecessary requirements that do not add any value and simply increase the risk of penalties for the taxpayer. She gave the example of imposing a penalty of one thousand pesos (Php1000) for failure to file a return even if there is zero tax.

Some of the notable points raised by Ms. España are as follows:

- **VAT Threshold** – The possible difficulty that will be faced by those taxpayers who initially started the year below the P3 million threshold and therefore chose the 8% option. However, at some point within that year exceeded said threshold and thus must change his registration from non-VAT to VAT. According to Ms. España, the problem lies on the reckoning period when the taxpayer can pass on the VAT to his clients. Moreover, when can he also claim for input VAT? She pointed out that these are some difficulties that will be encountered in the real world.
- **Gross Receipts** – The likelihood that some taxpayers may overpay their taxes for their failure to understand the true meaning of **gross receipts**, which is defined as gross revenue less discounts and returns.
- **Financial Statements** – It should be made clear that an audited financial statement is no longer required by the new tax law.
- **Optional Standard Deduction (OSD) and General Professional Partnerships (GPP)** – There is a difference between what is stated in the regulation and what is provided under the law. According to Ms. España, the regulation says, "the allocable portion of the share of the partner in the GPP is his taxable income." She

emphasized that the provision of the law on this topic has not been changed, i.e. in Section 32(A), item 11, "share in a GPP by a partner is gross income." The implication is that from the gross income, the individual partner, if he has expenses that were not reported as part of the expenses of a GPP, can still claim deductions, under the Code, either itemized or OSD.

- *Joint Income Tax Return* – Ms. España asserts that the requirement to file *joint returns* for married individuals should be looked into considering that there are no more personal exemptions.

### **Second Reactor: Atty. Alexander Cabrera**

At the outset, Atty. Cabrera remarked on the possible *price increases* of goods and services discussed by the main speaker. He admits that aside from the misinformation being spread around, businesses will generally grab the opportunity to increase their prices whenever they can. Although he was quick to add that some of the price increases may be due to the increases in the taxes on oil and coal. Atty. Cabrera also pointed out that lowest income earners were the hardest hit by the TRAIN law since there is no increase in their take home pay but they have to contend with the recent price increases of commodities. On the other hand, for those whose take home pay has increased, the question is whether such increase is enough to offset the mentioned price increases.

Some of the observations made by Atty. Cabrera:

- *Income Tax Liability of ROHQ Employees* – Reconciling the vetoed provision on the 15% tax of individuals employed by *regional operating headquarters* (ROHQs) who are already enjoying said rate as of 1 January 2018 (but not for those who will come after) with the other provisions in the TRAIN law that still mention the 15% tax for managerial and technical staff of ROHQs. Atty. Cabrera thinks that this will pose some legal problems for ROHQs in the future.
- *Regulation on the Tax Exemption of Minimum Wage Earners* – There should be a BIR regulation stating that minimum wage earners will continue to remain tax exempt including their bonuses and other incentives following the Supreme Court decision in the *Soriano* case. Atty. Cabrera opines that since the said case is not inconsistent with the TRAIN, the BIR should uphold the exemption of minimum wage earners even if there will be future legislation that will increase the minimum wage cap.
- *Penalty on Pending Assessments* – With the reduced rate on penalty under the TRAIN law (from 20% to 12%), Atty. Cabrera believes that

for as long as the resolution of the pending assessments is promulgated starting this year then the penalty rate should already be 12% regardless of the year when the subject assessment was made.

### **Third Reactor: Atty. Romeo H. Duran**

Atty. Duran stated that he shares the sentiments and observations made by the two earlier reactors. However, he wants to add the other concerns identified by the Tax Management Association of the Philippines (TMAP), to wit:

- *Preferential Income Tax of Particular Percentage Tax Filers* – The disqualification of taxpayers subject to other percentage taxes from the 8% income tax rate should be looked into. Atty. Duran explained that this situation is peculiar since a taxpayer whose gross receipts is below the P3 million threshold but is VAT exempt or are subject to other percentage tax in lieu of VAT cannot avail of the 8% option.
- *Regulation on OSD and the GPP* – The TRAIN law provides that GPP may avail of the OSD only once either by the partnership or by the partners themselves. However, the regulation only states that the share of the partners in the net income shall be reported as the taxable income of the partner and the partners cannot claim further deduction. This inconsistency should be looked into again by the BIR.
- *Transition from Non-VAT and VAT Filers* – Atty. Duran believes that this is really a potential problem and urges the BIR to set a clear cut-off or a grace period for a smoother transition of the business activities of the taxpayer from being non-VAT to VAT registered.

### **Conclusion**

The forum proved to be a very effective way of threshing out the different issues surrounding the implementation of RA 10963 or the TRAIN law. All of the speakers were able to elaborate on the important aspects of the law as well as identify the problem areas that need further correction and study. Moreover, the forum was able to reach a lot of stakeholders such as students, professors, private practitioners, as well as representatives from both the private and public sectors.

The TRAIN has been envisioned as a law that will yield numerous benefits for the people. Such benefits may not be readily felt by our countrymen given that the law has only been made effective at the start of the year. However, let us remain optimistic and in the meantime do our share as stakeholders in ensuring the efficient implementation of this new tax law.





## Summary of CAO 02-2016 issued by the Bureau of Customs in the Implementation of the Customs Modernization and Tariff Act (RA 10863)

by:

**ELSIE T. JESALVA**

LSO III, Legal and Tariff Branch

As the BOC is still conducting public hearings/consultations on the implementation of the different provisions of the Customs Modernization and Tariff Act (CMTA) RA 10863, the Bureau issued Customs Administrative Order (CAO) 02-2016 on September 28, 2016, the salient points of which are as follows:

### Concerning Imported Goods with *De Minimis* Value Not Subject to Duties and Taxes:

- 1) All importations below P10,000 shall be treated as '*de minimis importation*'. The *de minimis* importation value under the old Tariff and Customs Code of 1978, which was in effect until May 30, 2016, was only P10, which meant that almost all importations were subject to tax. The *de minimis* threshold value has now been increased to Php10,000 (previously, Php10) in response to the clamor of foreign business groups. Thus, if the value of an importation does not exceed Php10,000, there will be no duties and taxes that will be collectible by the BoC. The new threshold value is subject to review by the Finance Secretary every three years.
- 2) Importations at *de minimis* value shall be lodged and processed using a simplified and enabled electronic system to allow advance clearance and ensure proper customs monitoring and control to capture and preserve pertinent data on *de minimis* importation. The CMTA acknowledges the e-commerce trend of increasing number of small value consignments and thus, retained the provision on *de minimis* values (small value importations) below which no duties and taxes will be collected and with minimal clearance procedures, including data requirements.
- 3) *De minimis* importations shall, as far as practicable, be subject to a non-intrusive examination such as x-ray or any equivalent device on a random basis based on existing selectivity scheme used by the Bureau.
- 4) Importations of tobacco products, wines, spirits, within *de minimis value* shall be subject to the provisions of the NIRC, as amended, on excise tax.

Imported goods within the *de minimis* value are entitled to immediate release. However, excluded are:

- 1) Importation declared as "without commercial value" or "of no commercial value";
- 2) Tobacco and liquor products carried by passengers in excess of the allowable limits but within the *de minimis* value;
- 3) Goods subject to requirements or conditions imposed by the concerned regulatory agency, unless for personal use and within the limits allowed by regulations;
- 4) Prohibited and restricted importations; and
- 5) Importations to be entered conditionally free, for warehousing, for transit, and/or admission to free zone.





Toledo Power Company

**Commissioner of Internal Revenue (CIR), *Petitioner v. Toledo Power Company (TPC), espondent, G.R. No. 196415 and TPC, *Petitioner v. CIR, Respondent. G.R. No. 196451, December 02, 2015 (Del Castillo, J.)****

#### **Facts:**

TPC is a general partnership engaged mainly in the commerce of power generation and sale of electricity to the National Power Corporation (NPC), Cebu Electric Cooperative III (CEBECO), Atlas Consolidated Mining and Development Corporation (ACMDC) and Atlas Fertilizer Corporation (AFC).

An administrative claim for refund or credit of its unutilized input Value Added Tax (VAT) for the taxable year 2002 in the total amount of P14,254,013.27 under the Electric Power Industry Reform Act of 2001 (EPIRA) and the Tax Code, was filed by TPC with the Bureau of Internal Revenue (BIR) – Regional District Office (RDO), on December 22, 2003.

On April 22, 2004, due to the inaction of the CIR, TPC filed with the Court of Tax Appeals (CTA) a Petition for Review, docketed as Case No. 6961 and raffled to the First Division.

In response, the CIR argued that TPC failed to prove its entitlement to the tax refund or credit

#### **Issues:**

- 1) Whether the administrative and judicial claims for tax refund or credit were timely and validly filed.
- 2) Whether TPC is entitled to the full amount of its claim.

#### **Held:**

The Supreme Court (SC) decided that the petitions of both TPC and CIR are without merit. The November 22, 2010 Decision (dismissing both petitions) and the April 6, 2011 Resolution of the CTA in EB Nos. 623 and 629 (parties moved for partial reconsideration but the CTA denied both) were affirmed.

- 1) The SC said that both the administrative and the judicial claims filed by TPC were timely and valid. The High Court declared:

*“In Commissioner of Internal Revenue v. San Roque Power Corporation, we said that the 120+30-day*

period must be strictly observed except from the date of issuance of BIR Ruling No. DA-489-03 on December 10, 2003, which allowed taxpayers to file a judicial claim without waiting for the end of the 120-day period, up to the date of promulgation of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.* on October 6, 2010, where we declared that compliance with the 120+30-day period is mandatory and jurisdictional.

*"In this case, TPC applied for a claim for refund or credit of its unutilized input VAT for the taxable year 2002 on December 22, 2003. Since the CIR did not act on its application within the 120-day period, TPC appealed the inaction on April 22, 2004. Clearly, both the administrative and the judicial claims were filed within the prescribed period provided in Section 112 of the NIRC.*

*"Also, the administrative claim was not pro forma as TPC submitted documents to support its claim for refund and even manifested its willingness to submit additional documents if necessary. The CIR, however, never requested TPC to submit additional documents. Thus, she cannot now raise the issue that TPC failed to submit the complete documents.*

*"Neither do we find the alleged failure of TPC to submit all relevant documents set out in RMO No. 53-98 fatal to its claim."*

- 2) TPC is not entitled to a refund or credit of unutilized input VAT attributable to its sales of electricity to CEBECO, ACMDC, and AFC. Said the SC:

*"X x x. Obviously, the parties did not stipulate that TPC is a generation company. They only stipulated that TPC is engaged in the business of power generation and that it filed an application with the ERC on June 20, 2002. However, being engaged in the business of power generation does not make TPC a generation company under the EPIRA. Neither did TPC's filing of an application for COC with the ERC automatically entitle TPC to the rights of a generation company under the EPIRA.*

*"X x x.*

*"Under the EPIRA, all new generation companies and existing generation facilities are required to obtain a COC from the ERC. New generation companies must show that they have complied with the requirements, standards, and guidelines of the ERC before they can operate. As for existing generation facilities, they must submit to the ERC an application for a COC together with the required documents within ninety (90) days from the effectivity of the EPIRA Rules and Regulations. Based on the documents submitted, the ERC will determine whether the applicant has complied with the standards and requirements for operating a*

*generation company. If the applicant is found compliant, only then will the ERC issue a COC.*

*"In this case, when the EPIRA took effect in 2001, TPC was an existing generation facility. And at the time the sales of electricity to CEBECO, ACMDC, and AFC were made in 2002, TPC was not yet a generation company under EPIRA. Although it filed an application for a COC on June 20, 2002, it did not automatically become a generation company. It was only on June 23, 2005, when the ERC issued a COC in favor of TPC, that it became a generation company under EPIRA. Consequently, TPC's sales of electricity to CEBECO, ACMDC, and AFC cannot qualify for VAT zero-rating under the EPIRA.*

*"Neither can TPC rely on VAT Ruling No. 011-5, which considered the sales of electricity of Hedcor effectively zero-rated from the effectivity of the EPIRA despite the fact that it was issued a COC only on November 5, 2003, as this is a specific ruling, issued in response to the query made by Hedcor to the CIR. As such, it is applicable only to a particular taxpayer, which is Hedcor. Thus, it is not a general interpretative rule that can be applied to all taxpayers similarly situated."*

- 3) TPC is not liable for deficiency VAT. The SC pronounced:

*"But while TPC's sales of electricity to CEBECO, x x x, are not zero-rated, we cannot hold it liable for deficiency VAT by imposing 10% VAT on said sales of electricity x x x.*

*"As a rule, taxes cannot be subject to compensation because the government and the taxpayer are not creditors and debtors of each other. However, we are aware that in several cases, we have allowed the determination of a taxpayer's liability in a refund case, thereby allowing the offsetting of taxes."*

In one case the SC allowed offsetting of taxes in a tax refund case because there was an existing deficiency income and business tax assessment against the taxpayer. The High Court said that "[t]o award such refund despite the existence of that deficiency assessment is an absurdity and a polarity in conceptual effects" and that "to grant the refund without determination of the proper assessment and the tax due would inevitably result in multiplicity of proceedings or suits."

The SC continued:

*"Similarly, in South African Airways v. Commissioner of Internal Revenue, we permitted offsetting of taxes because the correctness of the return filed by the taxpayer was put in issue.*

*“In the recent case of SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue, we also allowed offsetting because there was a need for the court to determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid. We explained that the determination of the proper category of tax that should have been paid is not an assessment but is an incidental issue that must be resolved in order to determine whether there should be a refund. However, we clarified that while offsetting may be allowed, the BIR can no longer assess the taxpayer for deficiency taxes in excess of the amount claimed for refund if prescription has already set in.*

*“But in all these cases, we allowed offsetting of taxes only because the determination of the taxpayer’s liability is intertwined with the resolution of the claim for tax refund of erroneously or illegally collected taxes under Section 229 of the NIRC. A situation that is not present in the instant case.*

*“In this case, TPC filed a claim for tax refund or credit under Section 112 of the NIRC, where the issue to be resolved is whether TPC is entitled to a refund or credit of its unutilized input VAT for the taxable year 2002. And since it is not a claim for refund under Section 229 of the NIRC, the correctness of TPCs VAT returns is not an issue. Thus, there is no need for the court to determine whether TPC is liable for deficiency VAT.*

*“Besides, it would be unfair to allow the CIR to use a claim for refund under Section 112 of the NIRC as a means to assess a taxpayer for any deficiency VAT, especially if the period to assess had already prescribed. As we have said, the courts have no assessment powers, and therefore, cannot issue assessments against taxpayers. The courts can only review the assessments issued by the CIR, who under the law is vested with the powers to assess and collect taxes and the duty to issue tax assessments within the prescribed period.*

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**PILIPINAS TOTAL GAS, INC.,**  
*Petitioner v. COMMISSIONER OF*  
**INTERNAL REVENUE, Respondent**  
 (G.R. No. 207112, December 08, 2015.  
 Mendoza, J.)

#### Facts:

Petitioner Total Gas is in the business of selling, transporting and distributing industrial gas and also in the sale of gas equipment and other related businesses. Total Gas registered itself with the Bureau of Internal Revenue (BIR) as a Value Added Tax (VAT) taxpayer.

On April 20, 2007 and July 20, 2007, it filed its

Original Quarterly VAT Returns for the First and Second quarters of 2007, respectively with the BIR.

On May 20, 2008, Total Gas filed its Amended Quarterly VAT Returns for the first two quarters of 2007 reflecting its sales subject to VAT, zero-rated sales, and domestic purchases of non-capital goods and services

For the First and Second quarters of 2007, petitioner claimed it incurred unutilized input VAT credits from its domestic purchases of non-capital goods and services in the total amount of P8,124,400.35. Total Gas claimed that it had P7,898,433.98 excess unutilized input VAT.

Subsequently, on May 15, 2008, Total Gas filed an administrative claim for refund of unutilized input VAT for the first two quarters of taxable year 2007, inclusive of supporting documents. On August 28, 2008, it submitted additional supporting document to the BIR.

On January 23, 2009, petitioner elevated the matter to the CTA in view of the inaction of the Commissioner of Internal Revenue (CIR).

During the hearing, petitioner presented witnesses who identified documentary evidence, on the other hand, the CIR did not adduce any evidence.

#### Issues:

(a) Whether the judicial claim for refund was belatedly filed; and

(b) Whether the submission of incomplete documents at the administrative level (BIR) renders the judicial claim premature and dismissible.

#### Held:

The Supreme Court (SC) sided with petitioner Total Gas. It ruled that the judicial claim was timely filed. Said the High Court:

*“The alleged failure of Total Gas to submit the complete documents at the administrative level did not render its petition for review with the CTA dismissible for lack of jurisdiction.*

*“First, the 120-day period had commenced to run and the 120+30 day period was, in fact, complied with. As already discussed, it is the taxpayer who determines when complete documents have been submitted for the purpose of the running of the 120-day period. It must again be pointed out that this in no way precludes the CIR from requiring additional documents necessary to decide the claim, or even denying the claim if the taxpayer fails to submit the additional documents requested.*

*“Second, the CIR sent no written notice informing Total Gas that the documents were incomplete or required it to submit additional documents. As stated above, such notice by*



way of a written request is required by the CIR to be sent to Total Gas. Neither was there any decision made denying the administrative claim of Total Gas on the ground that it had failed to submit all the required documents. It was precisely the inaction of the BIR which prompted Total Gas to file the judicial claim. Thus, by failing to inform Total Gas of the need to submit any additional document, the BIR cannot now argue that the judicial claim should be dismissed because it failed to submit complete documents.

"Finally, it should be mentioned that the appeal made by Total Gas to the CTA cannot be said to be premature on the ground that it did not observe the otherwise mandatory and jurisdictional 120+30 day period. When Total Gas filed its appeal with the CTA on January 23, 2009, it simply relied on BIR Ruling No. DA-489-03, which, at that time, was not yet struck down by the Court's ruling in Aichi. As explained in San Roque, this Court recognized a period in time wherein the 120-day period need not be strictly observed. Thus:

"To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the Atlas doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the Aichi doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional.

x x x x

"Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional.

"At this stage, a review of the nature of a judicial claim before the CTA is in order. In Atlas Consolidated Mining and Development Corporation v. CIR, it was ruled -

x x x First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was

entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit. Second, cases filed in the CTA are litigated de novo. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim. [Underscoring Supplied]

"A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.

"In the present case, however, Total Gas filed its judicial claim due to the inaction of the BIR. Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal per se. Consequently, the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance. The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim.

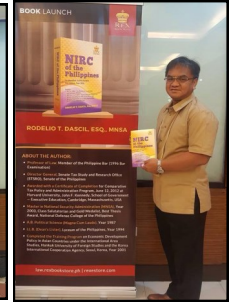
"The Court cannot, however, make a ruling on the issue of whether Total Gas is entitled to a refund or tax credit certificate in the amount of P7,898,433.98. Considering that the judicial claim was denied due course and dismissed by

# ENGAGEMENTS

Atty. Rodelio T. Dascal, STSRO Director General, was the commencement speaker on the "Significant Role of Customs Brokers Profession in International Trade Facilitation, pursuant to CMTA, vis-a-vis sustaining Global Competitiveness" during the 88th Commencement Exercises of PMI Colleges, held at PICC, April 27, 2018.



**Growing and Expanding Achievements through Teamwork!**  
STSRO Team Building 2018 Tagaytay City (April 26, 2018)

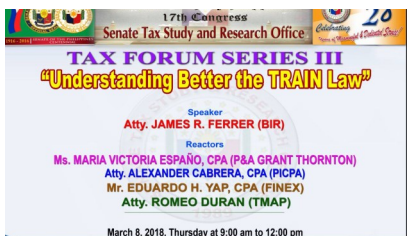


Forum on TRAIN Law and Book Launch on NIRC, 5th Revised Edition 2018 that includes the TRAIN Law Rules and Regulations (RR) implementing the same. Quezon City Sports Club, E. Rodriguez Ave. Quezon City. (April 20, 2018)



5th Lecture on TRAIN Law:

Atty. Rodelio T. Dascil, STSRO Director General, was the inspirational speaker on the topic "THE TRAIN AND ITS EFFECT TO THE YOUTH AND WORDS OF WISDOM FOR SUCCESS" before students, faculty members and parents of the Quezon City Academy, held at the Quezon City Academy, EDSA, Quezon City. (March 21, 2018)



Tax Forum Series III "Understanding Better the TRAIN Law"

Senators Laurel & Pecson Rooms, 2nd floor, Senate of the Philippines, Pasay City (March 8, 2018)



### ANGARA CALLS FOR STRONGER PROTECTION OF PINOY WORKERS

“Let us balance economic activity and development with the protection of workers’ rights as they are the hands and feet that move our country towards progress.”

X x x x

“As enshrined in our Constitution, let us affirm labor as a primary social economic force,” X x x  
 “Wherever our Filipino workers are, the government, as mandated by our Constitution, must be committed to protect their rights and promote their welfare.”

*(Facebook of Sonny Angara, May 1, 2018)*



### ANGARA URGES OFWS TO INVEST EARNINGS IN ‘PERA’ TO SAVE UP FOR RETIREMENT

Senator Sonny Angara has urged overseas Filipino workers (OFWs) to save up for retirement by investing their earnings in a Personal Equity Retirement Account (PERA)—the country’s first-ever voluntary retirement account with tax incentives.

“Malaking sakripisyo para sa ating mga OFW ang magtrabaho abroad at iwan ang kanilang pamilya para mabigyan sila ng magandang buhay. This is why we encourage our OFWs to save and invest their earnings here in the country so they can secure a comfortable retirement and be with their families,” said Angara, one of the authors of the PERA Law or Republic Act 9505.

X x x x

“Non-OFWs can only make a maximum contribution of P100,000 annually. Even if the OFW is abroad, his or her spouse and children can open a PERA account in behalf of the OFW. ”

*(Facebook of Sonny Angara, April 14, 2018)*



## 2nd Congressional Sports Invitational Tournament

House of Representatives, Quezon City  
(April 19, 2018)



**Ms. Marvee Anne Felipe**  
Badminton & Volleyball Player



**STSTRO Family, supporting the Senate contingent.**



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Website : <http://www.senate.gov.ph>  
 Email : [ststro1989@gmail.com](mailto:ststro1989@gmail.com)  
 Facebook : <https://www.facebook.com/ststro.ststro>  
 Telefax No. : 552-6850; Local 5506, 5508

### Editors and Contributing Writers

**Atty. RODELIO T. DASCIL, MNSA**  
*Director General*

**RECHILDA B. GASCON, MNSA**  
*Director III, Tax Policy & Admin*

**MARIA LUCRECIA R. MIR, PhD, MNSA**  
*Director III, Direct Taxes*

**VIVIAN A. CABILING**  
*Director III, Indirect Taxes*

**Atty. SHERRY ANNE C. SALAZAR**  
*Director III, Legal & Tariff*

**NORBERTO M. VILLANUEVA**  
*Director II, Tax Policy & Admin*

**ELVIRA P. CRUDO**  
*Director II, Direct Taxes*

**CLINTON S. MARTINEZ**  
*Director II, Legal & Tariff*

**BONIFACIO R. JOSON**  
*LSA-III, ODG - Layout Artist*

**ELSIE T. JESALVA**  
*LSO III, Legal & Tariff*

The Articles were principally prepared by the authors, under the supervision of STSTRO Directors and the overall guidance of its Director-General.  
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 For comments and suggestions, please email us at [ststro1989@gmail.com](mailto:ststro1989@gmail.com).