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Comments on the motor vehicle section of HB 4339

Prepared by Adoracion M. Navarro

14 February 2024

1. HB 4339 proposes the removal of "pick-ups" from excise tax exemption. The proposal on page 41, Section 28, of HB 4339 is as follows:

   SEC. 28. Section 149 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:
   "Sec. 149. Automobiles. - There shall be levied, assessed and collected an ad valorem tax on automobiles based on the manufacturer's or importer's selling price, net of excise and value-added tax, in accordance with the following schedule:
   "xxx
   "Provided, That hybrid vehicles shall be subject to fifty percent (50%) of the applicable excise tax rates on automobiles under this Section: Provided, further, That purely electric vehicles [and pick-ups] shall be exempt from excise tax on automobiles.
   "As used in this Section -
   "(a) xxx
   "(b) Trucks/cargo van shall mean a motor vehicle of any configuration that is exclusively designed for the carriage of goods and with any number of wheels and axles [: Provided, That pick-ups shall not be considered as trucks].

2. This is a proposal that came from the DOF, based on the observation of the DTI that car manufacturers have been modifying pickups as lifestyle passenger vehicles, or leisure or sports utility vehicles. This circumvents the intention of the TRAIN Law or RA 10963, which granted the tax exemption, to give special tax consideration to pick-ups because these are considered workhorses of small enterprises. The removal of the tax exemption is a sensible move because the government revenues that can be gained from taxing pick-ups again can be used for fiscal support that directly targets small enterprises. The simulation of net tax revenue gains can be estimated by the National Tax Research Center, which is attached to the DOF.

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Comments on the imposition of branch profit remittance tax on PEZA locators

Prepared by Francis Mark A. Quimba[1]

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Impact on Foreign Direct Investment (FDI)

The branch remittance tax exemption may be viewed as a significant incentive for multinational corporations to establish and operate their branches or subsidiaries in the Philippines' economic zones[2]. Desai and Foley (2006) found that American multinational companies establish operations in low-tax jurisdictions[3] as part of their international tax avoidance strategies. Thus, removing this exemption could make the Philippines less attractive to foreign investors compared to other countries that offer more favorable tax treatments (See Table 1). This could lead to a decrease in FDI[4], which plays a crucial role in the Philippines' economic growth, innovation, and employment generation.

Desai and Foley (2006) also found that large firms with high shares of international activity are the most likely to have affiliates in low-tax jurisdictions, and firms in industries characterized by high R&D intensities and significant volumes of intrafirm trade similarly exhibit the greatest demand for low-tax jurisdiction operations. These sectors are present in the country and they heavily rely on foreign investment and operate within economic zones. Examples are electronics, automotive, business process outsourcing (BPO), and manufacturing, might be disproportionately affected. A decrease in FDI in these sectors could impact innovation, industry development, and the country's export competitiveness.

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[2] https://carpolaw.com/practice-areas/tax/peza/
[3] Low-tax jurisdictions are common within countries, taking the form of special economic zones in China, low-tax states and enterprise zones in the United States, and tax-favored subnational regions including eastern Germany, southern Italy, eastern Canada, and others
[4] Easson (2001) and Taylor (2000) revealed that FDI incentives, especially fiscal preferences, have become significant determinants of international direct investment flows. This is especially so with the manufacturing, petroleum and services industries.

Government Revenue and Public Finance

While the removal of the tax exemption could lead to a short-term increase in tax revenue from remittances, it could have adverse long-term effects on tax revenue by reducing corporate profits, payroll taxes, and consumption taxes due to lower economic activity.

It's crucial for policymakers to conduct a thorough cost-benefit analysis, considering not only the potential increase in direct tax revenue but also the broader economic implications, including impacts on GDP growth, employment, and competitiveness.

Table. 1. Branch income remittance tax rates in selected APEC economies

	Branch Profits Tax Regime	**Tax rate**
BND		
KHM	Branches of foreign corporations are subject to CIT on Cambodian-source income only. If any branch of a foreign company transfers its Cambodian-sourced income to foreign countries, the income shall be subject to the withholding tax (WHT) as stated in paragraph 10 of Article 33 of the Law on Taxation.	14
IDN	Branch profits are subject to the ordinary CIT rate of 22%. The after-tax profits are subject to a withholding tax (WHT) (i.e. branch profits tax or BPT) at 20%, regardless of whether the profits are remitted to the home country. However, a concessional WHT rate may be applicable where a tax treaty is in force (see the Withholding taxes section for more information). The BPT may be exempt if the profits are entirely reinvested in Indonesia (see the Tax credits and incentives section for more information).	20
LAO	Income of branches of foreign companies from carrying on business in Lao PDR are subject to the same tax rate as companies registered under Lao PDR laws. However, not all foreign companies can establish a branch in Lao PDR. Only foreign companies in certain industries may establish branches in Lao PDR (e.g. banking, financial institutions, aviation, and consulting).	0
MYS	Tax rates on branch profits of a company are the same as CIT rates. **No tax is withheld on transfer of profits to a foreign head office.**	0

MYM	Generally, foreign branches are deemed to be non-resident companies. Non-resident companies are taxed only on income derived from sources within Myanmar. Non-resident companies pay tax at the same rate as resident companies. This means a branch of a foreign company will pay tax at the 22% rate. The income is generally subject to tax under the normal rules for residents.	0
PHL	Profits of a Philippine branch remitted to its parent company are subject to 15 percent branch profits remittance tax. A lower rate may be provided under the applicable tax treaty. Philippine branches whose activities are registered with the Philippine Economic Zone Authority (PEZA) are not subject to branch profit remittance tax.	15
SGP	Tax rates on branch profits are the same as on corporate profits. **There is no branch profits remittance tax on the repatriation of profits to the head office.**	0
THA	**Branch profits remitted to the foreign head office are subject to an additional tax at the rate of 10%**. However, this is a tax on the disposition of profits abroad and is not limited to remittances. For example, a credit of profit to the head office account in the books is held to be a disposition of profit abroad even though no remittance of funds has taken place.	10
VNM	Branches of foreign entities are subject to the same CIT regime as entities incorporated in Vietnam. Headline CIT rate is 20%.	0
CHN	Under the CIT law, a branch of a non-TRE in China is taxed at the branch level. If there is more than one branch, they can select its main office in China to conduct consolidated CIT filing, which requires the overall tax payable to be calculated and adjusted on a consolidated basis but with tax payment settled separately at the respective branches' locations.	
JPN	Branch profits are taxed in the same manner as corporate profits. However, the family corporation tax does not apply to a branch of a foreign corporation. In addition, no withholding tax (WHT) is imposed on the repatriation of branch profits to the home office.	0

KOR	In general, a branch office of a foreign corporation is taxed for Korean-source business profits in the same manner as resident companies. Remittance of accumulated profits or retained earnings from a Korean branch to its foreign head office is subject to reporting to a designated foreign exchange bank in Korea under the Foreign Exchange Transaction Act. If the tax treaty between Korea and the country in which a foreign head office is residing allows the imposition of a branch profits tax, the tax is imposed on the adjusted taxable income of the Korean branch. Where applicable, the branch profits tax is levied in addition to the regular CIT, which is imposed at the rate of 20% (or at a reduced rate as provided in an applicable tax treaty).	20
HKG		
TPE	A Taiwan branch of a foreign company may remit after-tax profits to its foreign head office without further tax due.	0
CAN	A non-resident corporation will be subject to income tax at normal corporate rates on profits derived from carrying on a business in Canada. However, Canada's tax treaties generally restrict taxation of a non-resident's business income to the portion allocable to a PE situated in Canada. In addition, a special 25% 'branch tax' applies to a non-resident's after-tax profits that are not invested in qualifying property in Canada. The branch tax essentially is equivalent to a non-resident WHT on funds repatriated to the foreign head office. In the case of a corporation resident in a treaty country, the rate at which the branch tax is levied may be reduced to the WHT rate on dividends prescribed in the relevant tax treaty (generally 5%, 10%, or 15%). Some of Canada's treaties prohibit the imposition of branch tax or provide that branch tax is payable only on earnings in excess of a threshold amount. The branch tax does not apply to transportation, communications, and iron-ore mining companies. Nor does it apply to non-resident insurers, except in special circumstances. Whether or not a treaty applies, a non-resident corporation that has a PE in Canada may be subject to federal and	25

	provincial capital taxes (in Canada, only financial institutions are subject to capital tax).	
MEX	Mexican branches of foreign corporations (i.e. PEs) are generally subject to the same tax rules as Mexican corporations, with some exceptions. Such exceptions include that branches may deduct pro rata allocations of head office expenses, provided certain requirements are satisfied (such as the existence of an applicable tax treaty and a comprehensive agreement for the exchange of tax information between the relevant territory and Mexico), but may not deduct remittances to their head offices, even when such remittances are classified as royalties, fees, commissions, services, or interest. In general terms, profit distributions to the head office (other than those regarded as a return to the head office of the capital invested into the branch, which are reflected in their 'remittances accounts') either in cash or in kind from branches or other PEs are subject to the statutory CIT rate on the grossed-up distribution, unless the remittance is made from the CUFIN account balance (i.e. the after-tax earnings account). Branches are also subject to the 10% WHT on profit distributions, which can be reduced or eliminated based on any applicable tax treaty provision.	10
AUS	Branch profits are subject to ordinary corporate rates of taxation, and there is no withholding on repatriated profits.	0
NZL	A non-resident company is taxed on income generated by business wholly or partially carried on in New Zealand. Branch profits are subject to ordinary corporate rates of taxation, and there is no withholding tax (WHT) on repatriated profits.	0
USA	US tax law imposes a 30% branch profits tax on a foreign corporation's US branch earnings and profits for the year that are effectively connected with a US business, to the extent that they are not reinvested in branch assets. Thus, the taxable base for the branch profits tax is increased (decreased) by any decrease (increase) in the US net equity of the branch. The branch profits tax on profits may be	30

	reduced or eliminated entirely if a relevant treaty so provides (subject to strict 'treaty shopping' rules). The purpose of the branch profits tax is to treat US operations of foreign corporations in much the same manner as US corporations owned by foreign persons. With certain exceptions, a 30% (or lower treaty rate) branch profits tax also will be imposed on interest payments by the US branch to foreign lenders. In addition, the tax will apply if the amount of interest deducted by the branch on its US tax return exceeds the amount of interest actually paid during the year.	

Source: https://taxsummaries.pwc.com/

Policy Recommendations and Economic Strategy

Any changes to the tax regime should be part of a broader economic strategy that aims to enhance the Philippines' competitiveness, support industry development, and foster innovation. This includes investing in infrastructure, education, and technology, as well as maintaining a stable and favorable investment climate.

Engaging with affected stakeholders, including businesses operating in economic zones, industry associations, and foreign investors, is critical to understanding the potential impacts and designing effective policy responses.

Implementing mechanisms to monitor the impact of tax policy changes on investment, economic zones, and the broader economy will be crucial. This allows for timely adjustments and policy recalibrations based on empirical evidence and economic realities.

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Inputs on VAT on digital services

Prepared by Queen Cel A. Oren[1]

One of the approaches of governments on the issues of digital taxation is imposing VAT on digital goods and services. VAT is paid in the location where it is consumed (destination principle). Collecting VAT on digital goods and services purchased from foreign suppliers can be challenging. Foreign suppliers are not required to register for VAT in the country where the digital goods and services are consumed. Hence, they are not considered taxpayers. Cross-border digital services are usually directly sent to consumers without going through customs administration, which collects VAT dues. Furthermore, VAT exemptions are applied for low-value goods. Some countries resolved it by requiring large online suppliers to register for VAT in the country where digital goods and services are consumed. In contrast, others require them to appoint a local tax agent or representative to collect taxes. Others simplify tax filing and collection for them, such as dropping the requirement for invoices, which disables them from claiming input tax credits for VAT paid on business inputs (Mullins 2022).

Some ASEAN countries, including Singapore, Malaysia, and Indonesia, recently imposed VAT on digital goods and services as early as 2020, followed by Vietnam, Thailand, Malaysia, and Cambodia in 2021. These countries impose a 10 percent VAT rate at most, compared to the Philippines, which proposes 12 percent VAT on digital services, similar to the standard VAT in the current local system, promoting neutrality. Most have VAT registration mechanisms and reverse charge rules for business-to-business (B2B) supplies, where "the business receiving the goods or services imposes VAT on the supply and then immediately claims an input tax credit for that VAT" (p. 22). See Table 1.

Countries like Japan and Switzerland required foreign suppliers to appoint tax agents in the market country to collect VAT, while Singapore introduced overseas vendor registration for goods and services tax (GST) on sales of digital services to Singapore consumers. Vietnam imposes VAT and withholding tax simultaneously, wherein financial services act as tax withholders. However, tax rates are not fixed and depend on a case-by-case basis: VAT rates may range from 2 to 5 percent, while withholding tax rates would be around 1-10 percent. In Thailand, VAT is also imposed on digital services wherein platform operators will pay on behalf of the suppliers (Juswanto and Abiyunus 2023).

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Table 1. VAT on foreign suppliers of digital goods and services in selected ASEAN countries

Country	VAT rate (%)	Tax base	Vat registration?	Reverse charge rules B2B	VAT registration threshold	Date commenced
Indonesia	10	Digital goods and services	Yes	Yes	Sales in excess of Rp600 million (US$41,930) per year or 50 million per month Internet traffic/access in Indonesia 12,000 per year or 1,000 per month	2020
Philippines	12	Digital services	Yes	Yes	₱3 million (US$58,831) (digital service providers must have a resident agent or office)	Proposed
Vietnam	2-5*	Financial institutions withholding for e-commerce supplies of goods and services includes a VAT component	Not applicable	Yes		2021
Thailand	10	Digital services	Yes	Yes	B18 million (US$540,832)	2021

Malaysia **	6 RM10 per night	Services tax - Digital services Tourism tax—tourism accommodation services provided by digital platforms	Yes Yes	Not applicable Not applicable	RM500,000 (US$119,670) None	2020 2021
Cambodia	10	E-commerce services, including online goods and services	Yes	Yes	KR250 million (US$61,371)	2021
Singapore	7	Digital services	Yes	Yes	S$1 million (US$740,579)	2020

Note: *The withholding rate for Viet Nam is different to the standard VAT rate (i.e., 10%);
**Malaysia does not have a standard VAT, but it has a Sales and Services Tax
Source: Mullins (2022)

According to Mullins (2022), based on global experiences, many large online suppliers are willing to register, especially when taxation processes are simplified. It should be facilitated online to ensure simplified administration and low-cost compliance for suppliers without representatives in the market country. Simplified registration and collection have been proven to reduce compliance costs and significantly increase additional revenues collected (Juswanto and Abiyunus 2023). Table 2 shows the main features of the simplified registration and compliance regime.

Table 2. Main features of a simplified registration and compliance regime

Features	**Description**
Registration	Online registration with a limited information requirement
Input tax recovery	No recovery of input tax
Return procedure	Simplified electronic fling
Payments	Electronic payment using the currencies of main trading partners
Record-keeping invoices	Electronic record-keeping systems • The system allows commercial invoices if required • Only contain specific data, such as customer identification information, date of supplies, taxable amount, tax rate, and tax payable

Availability of information	Information should be available online
Use of third-party service providers	Allows foreign suppliers to appoint a third-party service provider to act on their behalf

Source: Juswanto and Abiyunus (2023)

To ensure clarity in applying VAT to transactions involving foreign suppliers, it is essential to establish clear rules regarding where the supply occurs. These rules could involve differentiating between business-to-business (B2B) and business-to-consumer (B2C) supplies. A common practice for B2B supplies made to VAT-registered businesses is applying a "reverse charge" mechanism wherein the recipient (buyer), rather than the supplier, assumes the responsibility for accounting for the VAT and paying it directly to the tax authorities. On the other hand, for B2C supplies (and to businesses not registered for VAT), the responsibility for collecting and remitting VAT typically falls on the foreign supplier. They collect the VAT from the consumer or non-VAT registered business and then forward it to the tax authority of the relevant country. In digital services, determining the consumer's location is crucial for applying VAT correctly. The study also suggests following OECD guidelines to establish the consumer's location, which helps determine the appropriate VAT treatment for digital services supplied across borders (Mullins 2022). In addition, Juswanto and Abiyunus (2023) pointed out that the government should impose an enforcement scheme rather than voluntary compliance, except for large suppliers where voluntary compliance works since they tend to be compliant due to reputational concerns. Enforceable penalties should also be put in place. Other tax liabilities should also be integrated into one simplified process to minimize compliance costs.

The country must continue its active international coordination in addressing the taxation of cross-border goods and services since it is a global issue affecting our relationships with other countries. Implementing unilateral measures contradicting international agreements may lead to retaliations from other countries we are trading with. Hence, unilateral measures may have to be temporary and adjust accordingly once a global consensus has been reached. For example, the US accused France and other countries of imposing a digital services tax discriminating against US companies, consequently imposing tariffs on goods imported from these countries. This was suspended with the ongoing negotiation on international taxation (Juswanto and Abiyunus 2023; da Silva and Avendano, 2022). Unilateral measures may also cause suppliers to raise the prices of digital goods and services or withdraw from providing them to consumers where measures are implemented. In addition, the impact of new tax rules on tax incentives and statutory tax rates should also be studied since tax regimes are significantly related to attracting foreign direct investment (FDI) (Avenado and Rosenkranz 2021).

In the Philippine context, Bañez (2022) suggested a need to improve the efficiency of the existing mechanisms and processes for regulating and monitoring tax compliance within digital platforms, establish a tax administration equipped for the digital era, and leverage data analysis for investigating possible tax irregularities. Furthermore, international engagements are also crucial. Non-resident providers have significantly benefited from digital markets while minimizing their tax obligations. The Philippines should explore multilateral options for redistributing taxing rights and addressing the tension between optimizing tax revenues and encouraging trade and investment. These options encompass regional tax agreements and the OECD's framework treaty. When negotiating and formulating these provisions, the Philippines must consider its trading influence relative to other nations and its ability to assert jurisdiction.

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