

# Senate ratifies bicam report on agri-agra amendments

THE SENATE on Monday ratified the consolidated version of a bill amending Republic Act 10000 or the Agri-Agra Reform Credit Act of 2009, which recognized more activities for bank financing that allow institutions to meet the agricultural lending quota.

The bicameral report reconciles Senate Bill 2494 and House Bill 6134. The bill, certified as urgent by President Rodrigo R. Duterte, is known as "An Act Strengthening the Financing System, including Capacity-Building and Organization, for Agriculture, Fisheries, and Rural Development in the Philippines."

"I am pleased to report on the successful outcome of the bicameral conference," said Senator Cynthia A. Villar, who chairs the Senate Agriculture, Food and Agrarian Reform committee and was the primary sponsor of the bill, in plenary session.

"The conference committee decided to use the Senate version as the working draft of the discussion," she added.

According to the report accompanying the consolidated bill, a new paragraph was added to the declaration of policy highlighting the importance of designing and implementing capacity-building programs to develop competencies of farmers, fisherfolk, and agrarian reform beneficiaries.

The objective of the capacity-building program is to get agricultural workers to operate

productive, profitable and viable ventures while enhancing their ability to pay when they tap formal financing channels.

Under the proposed law, administrative sanctions and other penalties will be computed at one-half percent or at rates prescribed by the BSP Monetary Board. A revision was made to the penalty clause, where instead of 10%, 5% of penalties collected will be retained by the Bangko Sentral ng Pilipinas (BSP) to cover administrative expenses.

"Twenty percent shall be allocated as a fund for agricultural- and fishery-related organizational-, capacity-, and institution-building programs and activities to be implemented equally by the LBP (Land Bank of the Philippines) and DBP (Development Bank of the Philippines)," Ms. Villar said.

According to the bill, a portion of the Special Fund managed by the LBP and DBP will be used to fund capacity-building programs developing the knowledge, skills and income of agricultural stakeholders.

If signed into law, all banking institutions, except newly established banks, must set aside at least 25% of their total loanable funds for agricultural and fisheries-related sectors after they have been operating for five years.

Banks will be expected to design and offer financial products and services that suit the specific requirements of agricultural clients

appropriate to their cash flows and production cycles.

The bill also includes special lending arrangements for agribusiness enterprises with qualified agricultural borrowers and agricultural value chain financing, which cover production, distribution, manufacturing, and processing of agricultural products.

Banks can comply with the credit quota by lending to rural community beneficiaries to finance agricultural and fishery-related activities, as well as by investing in securities where the proceeds are meant to finance these activities.

Other modes of compliance include opening deposit accounts with or investing in fixed-term deposit products of rural financial institutions (RFI), investing directly in RFIs, lending for the construction and upgrade of agriculture infrastructure, extending credit to agri-businesses that have commodity supply-chain arrangements with rural community beneficiaries, as well as engaging in sustainable finance.

The BSP may also identify other activities that will qualify as part of the quota and is authorized to monitor and provide reports on the banks' compliance with the measure.

The House has also ratified the bicameral report and the measure will be sent to the Palace for signing by President Rodrigo R. Duterte. — **Alyssa Nicole O. Tan**

## Senate passes Bulacan Airport ecozone authority bill on second reading

THE SENATE on second reading on Monday passed the bill establishing the Bulacan Airport City Special Economic Zone and Freeport Authority (BACSEZFA).

Committee Report 438 which amends House Bill 7575 was passed with revisions made by Senator Maria Imelda Josefa R. Marcos, the bill's primary sponsor.

BACSEZFA will be responsible for establishing, building, operating, and maintaining public utilities and other services and infrastructure in the Bulacan Ecozone.

The Bulacan Ecozone will be managed and operated as a separate customs territory to ensure the free flow or movement of goods and capital within, into and out of its territory.

The chamber gave it the power to offer incentives such as tax and duty-free importation of raw materials and capital equipment to registered enterprises under the terms laid out by Republic Act (RA) 11534, otherwise known

as the Corporate Recovery and Tax Incentives for Enterprises Act.

A provision allowing BACSEZFA to operate tourism-related activities, either directly or through license to others, was deleted.

"We are deleting it outright because of certain objections regarding the possibility of setting up gambling outfits as well as the objection also to unregulated power production," Ms. Marcos said during the session.

An update was also inserted to define the regulatory framework for registered enterprises within the Bulacan Ecozone as the National Internal Revenue Code of 1997 as amended, instead of the Omnibus Investments Code of 1987.

The revision effectively puts Bulacan Ecozone within the purview of the CREATE law, instead of RA 10708 or the Tax Incentives Management and Transparency Act, in matters of administration, implementation and monitoring of incentives. — **Alyssa Nicole O. Tan**

### FULL STORY



Read the full story by scanning the QR code with your smartphone or by typing the link [bit.ly/EcoZone052422](https://bit.ly/EcoZone052422)

## Mapua University, Germany's Lipp in biogas research tieup

GERMAN biogas tank producer Lipp GmbH has entered into a tieup with Mapua University to research new feedstock for producing biogas.

In a statement on Monday, the German-Philippine Chamber of Commerce and Industry (GPCCI) said Lipp will donate biogas yield testing equipment to Mapua to support its research.

"Close collaboration between industry and academia is a cornerstone of Germany's higher and dual education, and a main reason for the country's economic success. Through the Lipp-Mapua partnership we were able to localize an important element of the German training system here in the Philippines and support waste-to-energy research," GPCCI Executive Director Christopher Zimmer said.

Biogas is generated via the anaerobic digestion of feedstock. Potential feedstock includes animal by-products, agricultural waste, vegetable and fruit waste, slurry, and manure.

GPCCI added that the research partnership between Lipp and Mapua is a public-private partnership supported by the German government.

"We welcome the opportunity to establish a biogas yield laboratory here at Mapua. This will support our research

as well as fast-track the growth of the Philippine biogas industry through industry-academe collaboration," Mapua University President Reynold B. Veja said. — **Revin Mikhael D. Ochave**

### FULL STORY



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# Philippine creative industry council bill hurdles Senate

THE SENATE on Monday passed on third and final reading a bill establishing the Philippine Creative Industry Development Council, which is tasked with promoting the development of creative content and protecting creators from intellectual property infringement.

Senate Bill 2455 or the Creative Industries Charter of the Philippines was passed unanimously with 21 affirmative votes, no negative votes and no abstentions. The council is tasked with managing the industry's long-term development.

The council, which will be attached to the Department of Trade and Industry, will have 18 members, nine from the private sector and nine from various government agencies. The members will draft and implement a Philippine Creative Industries Development Plan which must be submitted to the Presi-

dent within a year after the effectivity of the act and reviewed every three years.

They must also harmonize plans and programs with National Government agencies that operate in the culture and arts spheres, while constantly consulting with accredited business support organizations and creative associations.

The bill, if signed, will provide infrastructure, research and development, and innovation support to the creative industry.

Micro, small and medium enterprises (MSMEs) and other stakeholders will also be granted access to digital services and digital training platforms, along with technical and financial assistance.

Government-owned, -controlled, or -supported financial institutions will be required to prioritize creative industries in the provision of credit assistance and guarantee schemes. A creative voucher

system will be established to systematize the granting of support, aid, and other incentives to such entities.

Upon signing into law, the measure will require government agencies to devise a creative educational plan geared towards the development of the country's creative-industry human resources.

A one-stop registration center will be set up to assist creative industry MSMEs and entrepreneurs avail of applicable government services including intellectual property registration, product and business registration, loans, grants and benefits programs.

A special account called the creative industry development fund will be made and administered by the council for research and development,

trade promotion, and human resource development. It will source funds from loans, contributions, grants, bequests, gifts, and donations, whether from local or foreign sources.

Creative industries covered by the bill include audio and audiovisual media; digital interactive media; creative services; design; publishing and printed media; performing arts; visual arts; traditional cultural expressions; and cultural sites.

The House of Representatives passed its bill on final reading in September last year. The bill will now be sent to the appropriate bicameral committee for consolidation.

Separately, the Senate also passed a bill regulating private security agencies (PSA) on third and final reading. — **Alyssa Nicole O. Tan**

### FULL STORY



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### OPINION

## The end game: SC voids restricting bank tax deductions

As we awaited the results of the recently concluded 2022 national elections, the Supreme Court (SC) released its decision signifying a win for Banks and Other Financial Institutions (OFIs).

On May 10, the SC released its decision promulgated on Dec. 1, 2021 on the petition for certiorari of the Department of Finance (DoF) and Bureau of Internal Revenue (BIR) seeking the annulment of an order of the Regional Trial Court (RTC) Branch 57 in Makati City that declared Revenue Regulations No. 4-2011 null and void.

The SC voided the 2011 revenue regulation issued by the BIR that effectively curbed income tax deductions of Banks and OFIs in the computation of their taxable income.

### LET'S TALK TAX VINCES PAUL C. LEORNA

1. By specific identification: used for expenses that can be specifically identified with a particular booking unit or taxation regime

2. By allocation: used for expenses that cannot be specifically identified with a particular unit or taxation regime. Allocation must be based on the percentage share of gross income earned by the booking unit or taxation regime to the total gross income earned.

Based on the revenue regulations, banks were not given the choice of identifying their own allocation method for expenses which cannot be specifically identified with a particular unit. The BIR has ruled that the allocation can only be based on the percentage of share of gross income.

### TAXABLE INCOME AND INCOME TAX RATE

Banks derive their earnings from operations of their Regular Banking Units (RBUs) or from Foreign Currency Deposit Units (FCDUs), Expanded Foreign Currency Deposit Units (E/FCDU), or Offshore Banking Units (OBUs).

Bank taxable income is subject to various income tax rates. Taxable income derived from operations of RBUs is subject to regular corporate income tax (RCIT) of 25%/20%. However, taxable income of banks from E/FCDUs with respect to foreign currency transactions with non-residents, OBUs in the Philippines, and local commercial banks, including branches of foreign banks authorized to transact business with E/FCDUs are exempt from income taxes. Interest income from foreign currency loans granted by such depository banks under the expanded system to residents other than offshore units in the Philippines or other depository banks under the expanded system are subject to a final tax of 10%.

However, under RA 11534 or CREATE, taxation of income of OBUs was amended and made subject to RCIT of 25%.

### ISSUANCE OF REVENUE REGULATIONS NO. 4-2011

In 2011, the Bureau of Internal Revenue (BIR) issued Revenue Regulations (RR) No. 4-2011 prescribing the rules for proper allocation of costs and expenses of banks and financial institutions' earnings for income tax reporting considering that taxable income of banks may be subject to different income tax rates.

The RR provides that a bank may deduct only those costs and expenses attributable to the operations of its RBU to arrive at the taxable income of the RBU subject to regular income tax. Any cost or expense related to or incurred for the operations of its FCDU/EFCU or OBU are not allowed as deductions from the RBU's taxable income.

In computing the amount allowable as deduction from RBU operations, costs and expenses should be allocated between RBU and E/FCDU or OBU using the prescribed methods:

### ISSUES IN ALLOCATING COSTS AND EXPENSES

The RR aimed to set rules that banks may only deduct costs and expenses attributable to the operations of its RBUs to arrive at the RBU taxable income subject to regular income tax.

Since costs and expenses are usually allocated to various booking units and taxation regimes, tax benefits through deductions enjoyed by the banks from these costs and expenses are significantly decreased.

Take for example expenses allocated to FCDU activities which are subject to 10% final tax. No benefit can be derived as no deduction is allowed to be applied against such activities. No tax benefit will be received by the taxpayers for expenses which will be allocated to income subject to final tax since deductions are not allowed against income subject to final tax. On the other hand, for expenses allocated to income exempt from income taxes, no benefit can be acquired, as income is already exempt from income taxes.

### DECISION ON TAX DEDUCTIONS FOR BANKS AND OFIS

Due to the issuance of the RR, several banks filed a petition for Declaratory Relief before the RTC. The RTC ruled in favor of the banks and the case was elevated to the SC. In taking cognizance of the case, the SC emphasized that a petition for certiorari or prohibition, not declaratory relief, is the proper remedy to assail the validity or constitutionality of executive issuances. Further, the Court of Tax Appeals, not the RTC, has the jurisdiction to rule on the constitutionality and validity of revenue issuances of the Commissioner of Internal Revenue (CIR).

However, the SC, noting that the validity of RR 4-2011 has far reaching ramifications among banks and OFIs, decided to treat the petition as a petition for certiorari.

The SC ruled that RR 4-2011 is void as the CIR went beyond, if not gravely abused her authority in issuing such a regulation. Further, the issuance of the RR was found to contain substantive and procedural irregularities.

It stressed that, in its previous decisions, it consistently ruled that delegation of legislative power to administrative agencies is strictly construed against the agencies. Administrative agencies cannot amend or modify any act of Congress and should only issue regulations that are in harmony with the provisions of the law.

In issuing RR 4-2011, the SEC noted that the BIR expanded or modified the law when it curtailed the income tax deductions of respondent banks and when it sanctioned the method of accounting the banks should use, without any basis. This amounts to tax legislation, a power held solely by Congress.

The law does not empower the BIR and the Secretary of Finance to issue a regulation such as RR No. 4-2011. The Tax Code allows taxpayers to self-determine the accounting method most applicable to them. The CIR may only prescribe an accounting method if (a) taxpayer did not use an accounting method, or (b) the accounting method used does not clearly reflect the income of the taxpayer. Such circumstances are not present in this case. The SC ruled that the CIR may only challenge the propriety of the accounting method via an audit investigation or assessment. The CIR can then issue a finding if the accounting method has distorted the taxpayer's taxable income. Without such finding, the CIR cannot simply substitute its own judgment and impose an accounting method to be used.

Even Section 50 of the Tax Code, which calls for deductions to be allocated between or among organizations, is not applicable since it applies only to corporations with two or more separate and distinct organizations, trades, or business.

SC also noted that RR 4-2011 imposed an additional requirement for deductibility of expenses which is not provided under the Tax Code. It was also issued without prior notice and hearing which makes it ineffectual.

In fine, the SC decided that the Commissioner of Internal Revenue, in the case of RR No. 4-2011, went beyond its authority.

While this recent decision of the SC for banks signifies a major win in this prolonged battle, the war is far from over. As long as uncertainties remain, driven by the imperfect interactions between tax authorities and taxpayers, and given the complexities of the taxation landscape, the possibility for a reversal or modification of the SC division's decision is a possibility. But until then, victory is ours.

*Let's Talk Tax is a weekly newspaper column of P&A Grant Thornton that aims to keep the public informed of various developments in taxation. This article is not intended to be a substitute for competent professional advice.*

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