Tax Administration Reform Proposals Under the Tax Reform for Acceleration and Inclusion*

I. INTRODUCTION

A tax reform program is not complete without providing for reforms in tax administration. Most tax reforms focus on the amendments to tax rates and schedules, although in most instances, simplification of the tax structure can actually result in more effective and efficient tax administration.

Tax administration reforms mean improving the efficiency and effectiveness of the tax collection and enforcement system. With the current fast-changing technology and globalized transactions, modernizing tax administration is a must to continuously improve collection efficiency. Tax administration should be able to adapt to or make use of technological advancement to its advantage and at the same time align its policies and practices to international standards, minimize tax leakages and avoidance and enter into tax treaties and conventions to avoid double taxation.

This paper presents the tax administration reform proposals under Package 1 of the Comprehensive Tax Reform Program (CTRP) also known as the Tax Reform for Acceleration and Inclusion (TRAIN) which was approved on 3rd Reading by the House of Representatives last May 31, 2017 as House Bill (HB) No. 5636[1] and Senate Bill (SB) No. 1408[2] as counterpart bill filed in the Senate of the Philippines during this 17th Congress.

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[1] Entitled, "An Act Amending Sections, 5, 6, 22, 24, 25, 31, 32, 33, 34, 79, 84, 86, 99, 106, 107, 108, 109, 116, 148, 149, 155, 171, 232, 237, 254, 264, and 288; Creating New Sections 148-A, 150-A, 237-A, 264-A, 264-B and 265-A; and Repealing Sections 35 and 62, All Under the National Internal Revenue Code of 1997, As Amended." Introduced by Representatives Dakila Carlo E. Cua, et. al.

[2] Entitled, "An Act Amending Sections 6, 22, 23, 24, 25, 31, 32, 33, 34, 79, 84, 86, 99, 100, 101, 106, 107, 108, 109, 113, 116, 148, 149, 155, 232, 237, 249, 288; Creating New Sections 148-A, 237-A, 264-A and 264-B; and Repealing Sections 35 and 62, All Under Republic Act No. 8424, Otherwise Known as "The National Internal Revenue Code," As Amended, and For Other Purposes." Introduced by Senator Aquilino "Koko" Pimentel III.

II. PROPOSED TAX ADMINISTRATION REFORMS

HB 5636 and SB 1408 propose the following:

- Recognition of electronic receipts or electronic sales or commercial invoices in the issuance of receipts as required under Section 237 of the National Internal Revenue Code (NIRC) of 1997, as amended and their transmission directly to the Bureau of Internal Revenue (BIR) at the same time and date of each sale transaction;

- Creation of an electronic sales reporting system that will link sales and purchase data entered on the cash register machines/point-of-sales (CRM/POS) machines of VAT-registered taxpayers to the BIR servers for simultaneous reporting of sales and purchase data;

- Interconnectivity of the BIR with concerned government agencies, local government units (LGUs), government financial institutions (GFIs) and government-owned or –controlled corporations (GOCCs);

- Increase in the threshold amount for keeping books of accounts from PhP50,000.00 to PhP250,000.00 of quarterly sales, earnings, receipts or output of taxpayers and increase in the threshold amount for taxpayers required to be examined and audited by independent Certified Public Accountants (CPAs), from more than PhP150,000.00 to more than PhP750,000.00;

- Expansion of the authority of the Commissioner of Internal Revenue (CIR) in the exchange of information with foreign authority to include authority to receive information on bank deposit accounts and other relevant data held by financial institutions and inquire into bank deposits of a specific taxpayer even in the absence of a request for exchange of tax information with a foreign tax authority;

- Provision for fuel marking on petroleum products; and

- Increase in existing penalties and imposition of new ones for acts or omissions deemed as offenses.

In addition, HB 5636 proposes the following:

- Submission of the Cooperative Development Authority (CDA) to the BIR of a tax incentive report which shall include information on the income tax, value-added tax (VAT) and other tax incentives availed of by cooperatives registered and enjoying incentives under Republic Act (RA) No. 6983, as amended by RA 9520.

- Submission of the BIR of such report to the Department of Finance (DOF) to be included in the database created under RA 10708, otherwise known as "The Tax Incentives Management and Transparency Act (TIMTA); and

- Requirement for the professionals to present a certificate of tax payment from the BIR or certified true copy of their latest income tax return (ITR), at the option of the taxpayer, upon application for renewal of their respective professional license.

SB 1408, on the other hand, also proposes the limitation/cap on the maximum penalty imposed for unpaid amount of tax to 60% interest rate or in no case to exceed the total interest corresponding to a period of three (3) years.

III. COMMENTS AND OBSERVATIONS

A. Creation of Electronic Sales Reporting System and the Use of E-receipts and Related Invoices

The proposed use of e-receipts and related invoices and their direct transmission to the BIR servers, through interlinkage of sales and purchase data from the CRM/POS machines of VAT-registered taxpayers, for simultaneous sales and purchase data reporting is envisioned to hinder unscrupulous taxpayers from cheating with their tax liabilities as real-time data will now be transmitted to the BIR. In effect, the BIR is actually provided with actual data which it can use to facilitate its tax audit of business establishments.

Many countries today adopt the system and make it obligatory for anyone who is engaged in selling goods or services to consumers to use approved tax registers and other devices with special security features that will enable tax authorities to check in a reliable way the total amount of tax that a taxpayer has to pay.

This will discourage the non-issuance of receipts/invoices and/or underdeclaration of sales which are prevalent among small and medium size business establishments, hence, tax evasion will be minimized. As real-time data will be reported on each sale transaction, there will be less disputes between the businesses and tax authorities. Tax audit and verification of reported sales of businesses will become easier for tax authorities. It will also greatly improve compliance resulting in increased revenue for the government.

Among the countries that control their tax revenue through the use of electronic cash registers with fiscal memory and electronic journal are, Austria, Bosnia and Herzegovina, Germany, Canada, Croatia, Czech Republic, Slovenia, Kenya, Zimbabwe, Greece, Montenegro, Malawi, Tanzania, Italy, Sweden, Hungary, and Ethiopia, among others. In the ASEAN region, Singapore is the pioneer in the modernization of its tax administration. Its long-run goal is to link the information related to earnings, eligible deductions, etc., in various government agencies so that the need for most taxpayers to file any kind of return can be eliminated all together.

It may be worth noting, however, that the proposed interconnectivity of CRM/POS machines of VAT-registered taxpayers to BIR servers will entail costs both on the part of the BIR and business establishments. In the case of the latter, it would increase their compliance cost and consequently, their cost of doing business.

The expenses include the acquisition cost of CRM/POS machines and/or other electronic devices and the cost of the interconnectivity. The issue on the compatibility of the systems of the BIR and the businesses is also a major consideration to ensure an efficient and effective interlinkage.

In most countries, businesses procure and install their CRM/POS machine at their expense while in some countries, the tax authorities provide some cost recovery schemes. For instance, in Malawi, VAT taxpayers who use electronic fiscal devises (EFDs) within the stipulated time frame can claim 100% of the cost of the device from the Malawi Revenue Authority through subsequent VAT returns. Also, the Tanzania government reimburses the cost of the first purchase of EFDs within the nine-month window it gives all VAT taxpayers to implement the use of EFDs across all sectors. On the other hand, in Quebec, the government shoulders the interlinkage only with the revenue authority server. In Kenya, the cost may be reimbursed with the Revenue Authority. In Zimbabwe, half of the cost is shouldered by the government while in Czech Republic up to CZK5,000.00 (PhP11,700[3]) of the cost of purchasing new fiscal equipment is shouldered by the government and can be claimed by the taxpayer through tax deduction.

As proposed, the machine and other ancillary devices to be used for the envisioned interconnection shall be at the expense of the taxpayers and to be established within three (3) years and within one (1) year and six (6) months from the effectivity of the Act under HB 5636 and under SB 1408, respectively. Given the cost that the proposal entails, it is recommended that the proposed measure be implemented in phases. For instance, for the first three (3) years, compliance could be made mandatory for large taxpayers. The next group to comply mandatorily with the provision could be medium-size taxpayers and lastly the small taxpayers.

It may be noted that HB 5636 and SB 1408 reinstated the provisions on the issuance of receipts for sales of a VAT taxpayer to another person also liable to VAT amounting to PhP100.00 or more and the inclusion of the Taxpayer Identification Number (TIN) of the

[3]Exchange rate as of September 20, 2017: CZK1 = PhP2.34.

purchaser in the invoice or receipts. Those were provided in EO 273, s. 1987,[4] as amended by RA 8424 but were deleted by RA 9337.

B. Interconnectivity of Different Agencies

The proposed electronic interconnectivity of the BIR with other concerned agencies would promote inter-agency partnerships and data-sharing. It could likewise optimize data exchange to facilitate revenue reporting system and could also be useful for law enforcement purposes.

The proposed interconnectivity will similarly require common and/or compatible systems of information technology that will facilitate the exchange of information among different government agencies.

At present, the BIR has entered into several agreements with other government agencies regarding data exchange through electronic interconnectivity. For instance, there is a Memorandum of Agreement (MOA) on the Electronic Information Interchange between the BIR and the BOC for the electronic submission by the BOC of the customs import and export entries to the BIR in lieu of the printed and pre-numbered Import Entry and Internal Revenue Declaration (IEIRD). There is also a Memorandum of Understanding (MOU) among the members of the inter-agency Task Force on Ease of Doing Business (EODB Task Force)[5] which aims to improve the ranking of the Philippines in the Doing Business Survey (DBS) by reducing the number of procedures in starting a business from 16 steps to a target of 6 steps and the length of time to complete such registration from 34 days to a target of 8 days through the establishment of networks and linkages between and among the EODB Task Force for the exchange of data, reports or information, among others.

C. Keeping of Books of Accounts

The present thresholds for the keeping of books of accounts were set in 1997 with the passage of RA 8424 on December 11, 1997. Prior to RA 8424, the threshold amount for those who shall keep and use simplified set of bookkeeping records was first set at PhP5,000.00[6]and at PhP25,000.00[7] for those whose books of accounts need to be audited before they were amended by RA 8424 to their present levels. It is noted that the proposed

[4]Entitled, **"**Adopting a Value-Added Tax, Amending for this Purpose Certain Provisions of the National Internal Revenue Code, and for Other Purposes." July 25, 1987, effective January 01, 1988.

[5]The members are: Department of Finance (DOF), Department of Trade and Industry (DTI), Department of Interior and Local Government (DILG), Local Government of Quezon City (QC-LGU), BIR, Securities and Exchange Commission (SEC), Social Security System (SSS), Philippine Health Insurance Corporation (PhilHealth), Home Development Mutual Fund (Pag-IBIG Fund) and the National Competitiveness Council (NCC).

[6] Commonwealth Act No. 466 Entitled, "An Act to Revise, Amend and Codify the Internal Revenue Laws of the Philippines".

[7] Presidential Decree 1158 entitled, "A Decree to Consolidate and Codify All Internal Revenue Laws of the Philippines," Otherwise Known as the National Internal Revenue Code of 1977.

adjustment from PhP50,000.00 to PhP250,000.00 and from more than PhP150,000.00 to more than PhP750,000.00 will mean a 400% increase in threshold amounts which are higher than the increase in Consumer Price Index (CPI) from 1997 to September 2017 at 241.13%[8].

D. CDA Tax Incentive Report

The proposal requiring the CDA to provide the BIR with tax incentives reports is supported. It is within the powers and mandate of the CDA, being the agency in charge of the regulation and supervision of all types of cooperatives, to be able to provide such report. The proposed tax incentives report is essential and helpful, not only to the BIR, but to policy makers and even to the CDA in the monitoring and supervision of cooperatives and their tax incentives to ensure that cooperatives are correctly and faithfully complying with the tax provisions of the Philippine Cooperative Code of 2008. It could also serve as vital information in identifying and consequently curbing tax leakages and tax evasion cases. The database could also be used in the crafting of policies on cooperatives.

E. Showing of Certificate of Tax Payment or ITR for Professional License Renewal

This measure will ensure that professionals or the so-called "hard-to-tax group" are paying their taxes. Data from the BIR reveals that self-employed and professionals (SEPs) contribute only an average of 15% of the total individual income tax collection. One of the factors identified contributing to this dismal proportion of income tax collection is their low compliance rate. The proposal would ensure that before professionals are able to exercise their profession, they have already filed their Income Tax Return (ITR) and paid their taxes.

F. On the Exchange of Information

The proposal under HB 5636 basically takes into account recent developments in the field of international taxation such as the Exchange of Information (EOI) for tax purposes. In 2010, the Philippines enacted RA 10021, otherwise known as the "Exchange of Information on Tax Matters Act of 2009" in compliance and commitment to internationally-agreed tax standards required for the exchange of tax information with its treaty partners to help combat international tax evasion and avoidance and to help address tax concerns that affect international trade and investments. The law authorizes the exchange of information by the BIR with foreign tax authorities, upon the request of the latter, and also allows the use of the same for its tax assessment, verification, audit and enforcement purposes. The inclusion of a provision on the EOI in accordance with international Common Reporting Standards (CRS) in the Tax Code will send a message of the willingness of the government to adopt international tax norms, thus fostering diplomatic, trade and economic ties with other countries. The authority of the Commissioner of Internal Revenue (CIR) will, thus, be strengthened not only in terms of inquiring but also in receiving information on bank deposit accounts and other related data held by financial institutions which are deemed necessary or critical in tax audits or investigations.

[8] As computed by NTRC. Source of Basic Data: Philippine Statistics Authority.

The proposal will also give the CIR the authority to inquire into bank deposits of a specific taxpayer if he/she determines that there is a need or obligation to exchange tax information with a foreign tax authority, even in the absence of a request. There is also merit in expanding the authority of the CIR to inquire and receive information on bank deposit accounts and other data held by financial institutions for any taxpayer against whom a criminal case is initiated for offenses covered under Section 254 of the NIRC of 1997, as amended, as this will aid in the prompt settlement of such criminal cases.

To date, the Philippines has 41 effective Double Taxation Agreements (DTAs) in force with different countries worldwide providing for such exchange of information with treaty partners.

It is also worth mentioning that the BIR is pushing for the lifting of the bank secrecy law for tax purposes in order to align the Philippines with other countries adopting a single and consistent global standard in tracking tax fraud. This will not only allow the BIR to assess tax liabilities and properly enforce administrative and judicial remedies and ensure satisfaction of judgment, but would also increase taxpayer compliance as it would be a global defense against tax evasion.

G. On Fuel Marking

HB 5636 and SB 1408 propose to make mandatory for all petroleum products (refined oil and other fuel) that are refined in, manufactured in, and/or imported into the Philippines, and that are subject to the payment of taxes and duties, which include but are not limited to gasoline and diesel, to be marked with official marking agent. The marker shall be introduced at the refinery or at the terminal, before the petroleum product is offloaded or transported to the domestic market. A Program Implementation Office (PIO) shall be created to directly coordinate and supervise the proper and effective implementation of this proposal.

Governments around the world adopt fuel marking scheme as a tax administration measure to prevent fuel fraud and smuggling due to unequal tax rates imposed on different kinds of fuels. It is intended to monitor the correct payment of taxes and prevent the revenue loss arising from illicit transfer of fuel. Specifically, the following are the fuel marking benefits to the government:[9]

- Increase tax receipts (without raising taxes) and sales revenue from increased volumes of official fuel in legal circulation;
- Improve tax compliance and mitigate tax evasion;

[9]SGS, Fuel Fraud Prevention Through the SGS Fuel Integrity Program, SGS%20OGC%20Fuel%20Integrity%20US%20web%20LR%2011.pdf, (accessed on 6 October 2016).

- Minimize losses from fuel fraud, hence, the corresponding uplift in fuel revenues and tax receipts provide measurable returns on investment;
- Ensure collection of appropriate amount of revenue from excise taxes on fuel; and
- Prevent the illegal import of no or low-tax products and the dumping of transit, export or subsidized fuels.

A robust fuel-marking program provides a government with a comprehensive approach that analyzes each stage of the supply chain, beginning with the country's refineries or fuel depots, and extends to the eventual sale of fuel products at the retail level. The ultimate effectiveness of a fuel marking program is realized when it mitigates fuel fraud, resulting in the return of stolen revenues to state coffers.[10]

In a recent study[11], the Asian Development Bank concluded that fuel fraud, on top of robbing nations of much needed fiscal revenue, "perpetuates extensive secondary effects such as harmful auto emissions, increased fuel consumption, disrupted supply chains, and loss of confidence in national governance systems. While fuel-marking systems have been in use since the 1950s, recent developments in marker technologies, coupled with advances in analytical capacity, now provide the technical foundation for extremely accurate and effective fuel-marking programs".

The effectiveness of fuel marking system can be inferred from the experiences of different governments that are using it. As gathered, the governments that adopted the fuel marking system have substantial gains in terms of revenue by curbing fuel adulteration and smuggling. For instance, in Tanzania, the use of fuel marking decreased fuel adulteration from 78% in 2007 to below 5% in 2015. It also increased government revenue due to significant increase in the volume of petrol and diesel designated for local market. Moreover, it promoted fair competition among petroleum operators.[12]

In Ghana, early sample results indicated that mere awareness of the Petroleum Product Marking Scheme served as an effective deterrent against fuel fraud. Its use of an aggressive public awareness campaign and the enrolment of the major oil companies helped

[10]Ibid, p.6.

[11] Asian Development Bank. The Governance Brief. "Fuel-Marking Programs: Helping Governments Raise Revenue, Combat Smuggling, and Improve the Environment" Issue 24. 2015. - See more at: http://oecdobserver.org/news/fullstory.php/aid/5376/Fuel_fraud_perpetuates_further_harmful_auto_emissions_and_increased_fuel_consumption.html#sthash.lVi4Y2GI.dpuf (Accessed 7 October 2016).

[12]Energy and Water Utilities Regulatory Authority (EWURA) 2015, Monitoring and Enforcement of Petroleum Products Quality Standards, Presentation at the Workshop on Awareness on Cleaner Standards Initiatives, 21 October 2015, Dar Es Salaam, Tanzania, http://www.unep.org/Transport/new/PCFV/pdf/2015_DART_Monitoring_Enforcement.pdf (accessed on 18 November 2016).

reduce the percentage of retail sites with significant fuel product dilution from 34% to 7% in the first 6 months of the program. This translated into significantly increased tax revenues and more than 100% return on investment.[13]

Also, the oil companies in Serbia welcomed the introduction of the marking system, after seeing the increase in sales volume by 18% and 14% for diesel and for gasoline, respectively, at a time when the government expected sales to decline due to poor economic growth and catastrophic flooding throughout most of Serbia. Based on its excise tax collections since the program started, the government expected a €60 million increase or annual return on investment of 6-7 times as a result of fuel-marking.

In Guyana, the implementation of the fuel marking program enabled authorities to reduce the incidence of fuel smuggling in the country and recovered revenues that would have been lost through illegitimate sales and tax evasion. An internal analysis by the Guyana Energy Agency (GEA) completed in 2009 estimated the net benefits of the program to represent a 443% return on investment.

The plan to revive fuel marking in the Philippines would cost PhP0.07 to PhP0.09 per liter. On the other hand, it could generate $300 million in revenue which is more than enough to offset the cost of implementation which is estimated around $25 million[14].

H. Cap on Interest Rate on Unpaid Taxes

Interest and penalty provisions play an integral role in the tax administration because, theoretically, they deter non-compliance by making it unprofitable and establish a uniform and consistent response to non-compliance, among others.[15] SB 1408 proposes to put a cap on the maximum interest/penalty imposed on any unpaid amount of tax at the rate of 60% of the basic deficiency tax being assessed but in no case to exceed the total interest corresponding to a period of three (3) years. The prevailing rate is 20% per annum, or such higher rate as may be prescribed by regulations, until the amount is fully paid.

It may be noted that the imposition of interest on unpaid taxes under Section 249 of the NIRC, as amended, may fall under two categories: deficiency interest and delinquency interest. The 20% deficiency interest per annum is imposed on a tax return where the paid tax

[13]Asian Development Bank 2015, Fuel-Marking Programs: Helping Governments Raise Revenue, Combat Smuggling, and Improve the Environment, https://www.adb.org/sites/default/files/publication/174773/governance-brief-24-fuel-marking-programs.pdf (accessed on 6 October 2016).

[14]Business World, Customs bureau will revive fuel marking as smuggling deterrent, http://www.bworldonline.com/content.php?section=Economy&title=customs-bureau-will--revive-fuel-marking-as-smuggling-deterrent&id=126600, (accessed on 6 October 2016).

[15]State Revenue Office, Victoria <http://www.sro.vic.gov.au/legislation/interest-and-penalty-tax-3> viewed on September 14, 2017.

is found deficient after assessment. On the other hand, the 20% delinquency interest is imposed in case of failure to pay the amount of tax due on any return to be filed or tax due where no return is required. Delinquency interest is also assessed and collected on the unpaid amount in case of failure to pay a deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner (Section 249 (C) (3)).

The interest rate assessed and collected on the unpaid amount of tax was first imposed in 1939 but only on certain kinds of tax. Commonwealth Act (CA) No. 466 imposed an interest of one percent (1%) per month or 12% per annum until it is paid for unpaid income tax and six percent (6%) per annum for estate and donor's tax. RA 55 (October 15, 1946) also imposed a one percent (1%) per month or 12% per annum interest for unpaid war profits tax. The imposition of 20% interest on unpaid taxes in general was introduced under Presidential Decree (PD) No.1158 (June 3, 1977) as provided under Section 249. Thus, the prevailing interest rate of twenty percent (20%) for deficiency tax has not been changed for four (4) decades. Most ASEAN member countries impose deficiency interest rates higher than 20% per annum on unpaid taxes except Singapore, Malaysia and Myanmar. (Annex A).

During the deliberation of SB 1408, a proposed shift to the prevailing legal interest rate of 6% per annum or twice this amount was floated in lieu of the existing 20% rate per annum. ASEAN countries which impose interest on delinquency taxes equal to or approximating the legal interest rate are Singapore (5%) and Myanmar (10%), which impose legal interest rate of 5.33% and 10%, respectively while Malaysia imposes twice its legal rate. Interest and other penalties for unpaid taxes should be imposed at a level that will compensate the government for being denied the access and use of funds to which it is entitled. It is to be noted that taxes are the lifeblood of the government as they are used for its many functions vital to the government and the country. Thus, non-payment of taxes cannot be likened to an ordinary loan subject only to the prevailing legal interest rate. Moreover, the proposed cap may also send the wrong signal to taxpayers that they can keep foregoing the payment of taxes as the interest rate imposable is restrained.

As a backgrounder, the provision on the cap on interest rate was first imposed on unpaid income tax at a rate not to exceed the amount corresponding to a period of three (3) years with the enactment of RA 2343 (June 20, 1959). PD 69 (November 24, 1972) imposed the maximum amount that may be collected as interest on unpaid estate and donor's tax to the amount corresponding to a period of three (3) years. PD 1705 (August 1, 1980) was the last amendatory law to the NIRC that provided a cap of three (3) years equivalent of deficiency interest on unpaid income tax. PD 1994 (November 05, 1985) removed the cap on imposable interest penalty on all unpaid taxes. SB 1408 proposes again to put a cap on the imposable interest penalty on deficiency and delinquent taxes to a rate corresponding to 60% or in no case to exceed the total interest corresponding to a period of three (3) years.

Among the ASEAN-member countries, it is only Indonesia that imposes a cap on imposable interest penalty at 2% per month or 24% per annum and a maximum of 48% or equivalent to two (2) years of interest penalty on unpaid corporate income tax (CIT) and *Pajak Bumi dan Bangunan* (PBB) tax or the land and building tax. Compared to Indonesia,

the proposed limit of interest at 60% or a cap on total interests corresponding to a period of three (3) years is higher than the maximum in Indonesia.

It may be noted that in the case of unpaid local taxes, under Section 255 of the Local Government Code (LGC) of 1991, as amended, the interest rate for unpaid amount of tax is two percent (2%) per month or 24% per annum subject to a limitation that the total interest on the unpaid tax or portion thereof shall not exceed thirty-six (36) months or three (3) years.

I. Penalty Provisions

HB 5636 and SB 1408 propose to increase several penalties, as well as, to impose new ones for acts or omissions deemed as offenses as follows:

I.1. Penalty for Attempts to Evade or Defeat any Tax

Section 254 of the NIRC, as amended, contemplates fraud in the payment of taxes as it pertains to willful attempt to evade or defeat tax imposed. It may be worth mentioning that RA 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA), Section 1005(b) contains a similar provision. As to the penalty, the terms of imprisonment proposed to be imposed under HB 5636 for fraud is stiffer compared to that of Section 1005 of the CMTA. Section 1400 of the CMTA also penalizes misdeclaration, misclassification and undervaluation in goods declaration resulting to more than 10% discrepancy in duty and imposes a surcharge of 250% of the duty and tax due while more than 30% discrepancy in duty resulting from misdeclaration, misclassification, and undervaluation in goods declaration shall constitute a prima facie evidence of fraud.

I.2. Penalty for Failure or Refusal to Issue Receipts or Sales or Commercial Invoices, Violations Related to the Printing of Such Receipts or Invoices and other Violations (Section 264) and for failure to transmit sales data entered on CRM/POS machines to the BIR's electronic sales reporting system (Section 264-A).

The proposed amendments to Section 264 and the insertion of Sections 264-A and 264-B under HB 5636 (insertions of Sections 264-A and 264-B under SB 1408) could be equated to Sections 1402, 1410 and 1412 of the CMTA on penalties for failure or refusal of a party to give evidence or submit documents on the assessment/audit. Commercial invoices as required under Section 1402 of the CMTA contain information about the importation including the agreed price paid or to be paid for the goods which is needed in the assessment of importation. The penalties proposed under HB 5636 and SB 1408 are stiffer which consists of fine, closure of establishment (Section 264-A) and imprisonment whereas, under Section 1402 of the CMTA, only a surcharge of 20% on the dutiable value of the goods is assessed for the same offense or a fine of PhP100,000.00 to PhP300,000.00 is provided under Sections 1410 and 1412 of the CMTA.

HB 5636 and SB 1408 also propose to penalize the purchase, use, possession, sale or offer to sell, instalment, transfer, update, upgrade, keeping or maintaining of sales suppression devices. Such prohibition is a safety measure in relation to the proposed new scheme of electronic sales reporting where information technology is used and which can be susceptible to such devices. The CMTA also provides for the use of information technology in its various transactions but has no provision for penalty similar to the proposal.

I.3. Penalties for Offenses Relating to Fuel Marking

The proposed penalty on violations related to fuel marking under HB 5636 is tantamount to smuggling or a prima facie evidence of smuggling. The CMTA and other special laws such as RA 10845[16] also penalize the smuggling of goods. The penalties under the CMTA and the proposed section also encompass receiving, concealing, buying, selling or transporting such goods. Penalties under the CMTA are more stringent as it involves imprisonment while only fines and revocation of license to engage in any trade or business are imposed under HB 5636. SB 1408, on the other hand, proposes that the penalties prescribed under the NIRC, the CMTA and other relevant laws for offenses relating to non-payment of tax and failure to mark the products be applied.

Penalties regarding the marking of goods are also provided in both the CMTA and HB 5636. The penalties under HB 5636 are more comprehensive and varied. The penalty ranges from fines or fines and imprisonment plus revocation of the license to practice his/her profession in case of a practitioner, and the closure of the fuel testing facility. The CMTA, on the other hand, provides for fines of 5% of dutiable value, withholding the release of unmarked goods or be deemed abandoned goods subject to dispositions provided under the CMTA.

In sum, the penalties herein proposed can be correlated to penalties provided in other relevant laws. However, the provision for penalties remains a legislative discretion which is up to the lawmakers to ascertain.

IV. CONCLUSION

The success of the tax reform program hinges largely on the envisioned innovations and improvements in tax administration. It is designed primarily to plug the loopholes in tax administration and cope with technologically advanced and globalized transactions. Both HB 5636 and SB 1408 propose the use of technology, e.g., interconnectivity of government agencies and between business establishments and the use of electronic receipts, to modernize and strengthen the tax administration and help tax administrators in curbing tax evasion, tax avoidance and ultimately, improve their tax collection efficiency. It also

[16]Otherwise known as "Anti-Agricultural Smuggling Act of 2016," penalizes large scale agricultural smuggling as economic sabotage.

introduces other methods of tax administration to ensure tax compliance of taxpayers, e.g., fuel marking, presentation of latest income tax return before renewal of any professional license, and reportorial requirements from the CDA. The reform also includes amendments to the exchange of information provisions to make EOI proactive in helping the government in litigating tax cases and in tax assessment, verification, audit and enforcement purposes. Lastly, it adjusted the threshold values and penalties to be more realistic and relevant to current and future conditions.