Tax Implications of Republic Act No. 11469 on Documentary Stamp Tax (DST)*

I. INTRODUCTION

Republic Act (RA) No. 11469[1], otherwise known as the "Bayanihan to Heal As One Act", which was enacted into law on March 24, 2020[2], is a response measure by the government to address the continuing rise of confirmed cases of Coronavirus Disease 2019 (COVID-19) in the country. The law aims to mitigate, if not contain, the transmission of COVID-19 in the country and provides an emergency subsidy to low income households and individuals, tax reliefs, grace period for the payment of all taxes, loans and rents, among others.

In view thereof, the Department of Finance (DOF) issued the implementing rules and regulations (IRR) of Section 4(aa) of RA 11469[3] while Bureau of Internal Revenue (BIR) subsequently issued Revenue Regulations (RR) No. 8-2020[4], and Revenue Memorandum Circular (RMC) Nos. 35-2020[5] and 36-2020[6] to specify, prescribe, and define rules and regulations for the effective enforcement of Section 4(aa) of RA 11469. Said revenue issuances provide an exemption from DST on loans falling due within the Enhanced Community Quarantine (ECQ) period.

The purpose of this paper is to assess the tax implications of the exemption from DST on said transactions within the ECQ period pursuant to Section 4(aa) of RA 11469.

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[1] Entitled, "An Act Declaring the Existence of a National Emergency Arising from the Coronavirus Disease 2019 (Covid-19) Situation and a National Policy in Connection Therewith, and Authorizing the President of the Republic of the Philippines for a Limited Period and Subject to Restrictions, to Exercise Powers Necessary and Proper to Carry Out the Declared National Policy and for Other Purposes", approved on March 24, 2020.

[2] It shall be in full force and take effect only for three months, unless extended by the Congress.

[3] Issued on April 1, 2020.

[4] Entitled, "Rules and Regulations Implementing Section 4(aa) of Republic Act No. 11469, otherwise known as the "Bayanihan to Heal as One Act", dated April 1, 2020.

[5] Entitled, "Exemption from Documentary Stamp Tax (DST) for Relief for Loans pursuant to Revenue Regulations No. 8-2020 dated April 1, 2020", dated April 2, 2020.

[6] Entitled, "Further Classification on the Exemption from Documentary Stamp Tax (DST) Relief for Qualified Loans pursuant to Regulations No. 8-2020 dated April 1, 2020 and Revenue Memorandum Circular No. 35-2020 dated April 2, 2020.

II. BACKGROUND INFORMATION

On March 8, 2020, the government declared a State of Public Health Emergency throughout the country due to local transmission and outbreak of COVID-19[7]. Upon the recommendation by the Department of Health and the Inter-Agency Task Force for the Management of Emerging Infectious Diseases, the government raised the code alert level for COVID-19 to Code Red Sublevel Two on March 12, 2020. On March 16, 2020, a State of Calamity was declared throughout the country for six months and imposed an ECQ in Luzon beginning March 17 until April 12, 2020, unless earlier lifted or extended as circumstances may warrant[8]. The ECQ was extended to April 30, 2020[9] as the risk of resurgence of COVID-19 remains significant.

Although the purpose of the ECQ was to slow down the spread of COVID-19, it also led to significant hardship among individuals, families, and businesses. COVID-19 became a serious threat to the health, safety, security, and lives of Filipinos which resulted to long-term adverse effects on livelihood and disruption of economic activities.

RA 11469 provides various mitigation programs to cushion the adverse impact of COVID-19 on individuals and businesses during the ECQ which include the grant of emergency subsidy and assistance program for low income households[10], one month moratorium on all loans and residential rents[11], rescheduling of various statutory deadlines and timelines for the filing and submission of any documents, payment of taxes, fees, and other charges required by law[12], and tax reliefs[13], among others.

Specifically, Section 4(aa) of RA 11469 directs all banks, quasi-banks, financing companies, lending companies, and other financial institutions, public and private, including the Government Service Insurance System, Social Security System, and Pag-IBIG Fund, to implement a minimum of 30-day grace period for the payment of all loans, including but not limited to salary, personal, housing, and motor vehicle loans, as well as credit card payments, falling due within the period of the ECQ without incurring interests, penalties, fees, or other charges. This in line with the policy of the government to ensure the availability of credit to the productive sectors of the economy especially in the countryside through measures such as,

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[7] Pursuant to Presidential Proclamation (PP) No. 922 s. 2020 Entitled, "Declaring a State of Public Health Emergency Throughout the Philippines", dated March 8, 2020.

[8] Pursuant to PP 929 s. 2020 Entitled, "Declaring a State of Calamity throughout the Philippines Due to Corona Virus Disease 2019", dated March 16, 2020.

[9] Memorandum from the Executive Secretary, entitled, "Extension of the Enhanced Community Quarantine over the Entire Luzon until 30 April 2020".

[10] Section 4(c) and (cc) of RA 11469.

[11] Section 4(aa) and (bb), ibid.

[12] Section 4(z), ibid.

[13] Section 4(o) and (aa), ibid.

but not limited to, lowering the effective lending rates of interest and reserve requirements of lending institutions. This will also provide some relief to individuals and businesses.

The mandatory 30-day grace period will apply to multiple loans of individuals and entities, with principal and/or interest falling due within the ECQ period. The grace period shall apply to each loan.

Pursuant to the provisions of Section 244 of the NIRC of 1997, as amended, wherein the Secretary of Department of Finance, upon recommendation of the Commissioner of the BIR, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of the Tax Code has issued on April 1, 2020 RR 8-2020 prescribing the rules and regulations implementing Section 4(aa) of RA 11469 and directing all lenders to grant a 30-day grace period or extension for the payment of all loans, including credit card payments, and pawnshop loans, falling due within the ECQ period, without incurring interests, penalties, fees, and other charges on the borrowers. It also provides DST exemption on credit extensions, credit restructuring, and micro-lending, including those obtained from pawnshops, and extension thereof, during the ECQ period.

The Bangko Sentral ng Pilipinas (BSP) also issued Memorandum Circular No. M-2020-017 requiring all BSP-supervised financial institutions engaged in lending to comply with the provisions of RR 8-2020. Likewise, the Securities and Exchange Commission (SEC) and the Cooperative Development Authority (CDA) directed all financing companies, lending companies and microfinance NGOs[15], and registered cooperatives[16], respectively, to strictly comply with the provision of Section 4(aa) of RA 11469.

III. TAX IMPLICATIONS

The DST is a tax upon documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right, or property incident thereto and in respect of the transaction so had or accomplished. A DST is in the nature of an excise tax. It is levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments.

Generally, debt instruments representing borrowing and lending transactions, including but not limited to, debentures, certificates of indebtedness, due bills, bonds, loan agreements, mortgages, pledges, and deeds of trust, and renewals thereof are subject to DST. However, loan agreements or promissory notes, the aggregate of which does not exceed P250,000, or any

[15] Entitled, "SEC Implementing Rules and Regulations of Section 4(aa) of Republic Act (RA) No. 11469 Otherwise Known as The Bayanihan to Heal as One Act", dated April 2, 2020.

[16] Entitled, "Compliance with Section 4(aa) of Republic Act No. 11469, Otherwise Known as The Bayanihan to Heal as One Act", dated April 2, 2020.

such amount as may be determined by the Secretary of Finance[17], executed by an individual for his purchase on installment for his personal use or that of his family and not for business or resale, barter or hire of a house, lot, motor vehicle, appliance or furniture is currently exempted from DST as provided in Section 199(d) of the National Internal Revenue Code (NIRC) of 1997, as amended.

In adherence to Section 4(aa) of RA 11469, the government is providing a tax relief in the form of DST exemption on loans during the ECQ period. The issuance of RR 8-2020 provides that no additional DST shall be imposed on credit extensions and credit restructuring, micro-lending including those obtained from pawnshops and extensions thereof during the ECQ period.

It specifically provides that Sections 179 (Stamp Tax on All Debt Instruments), 195 (Stamp Tax on Mortgages, Pledges and Deeds), and 198 (Stamp Tax on Assignments and Renewals of Certain Instruments) of the NIRC of 1997, as amended, will not be applied to extended loans during the ECQ period. This was further reiterated by the BIR under RMC 35-2020.

The BIR likewise issued RMC 36-2020 to clarify the exemption from DST for qualified loans in pursuant to RR 8-2020 and RMC 35-2020 to ensure that the burden of debt is lessened without compromising the viability of the lending institutions. It also provides that subject to the provisions of Section 199(d) of the NIRC of 1997, as amended, there shall be no additional DST to be imposed under Sections 179, 195, and 198 of the same Code on credit extensions and credit restructuring, micro-lending including those obtained from pawnshops and extensions thereof during the ECQ period. The new principal loan shall also not be subject to DST.

The same tax treatment shall apply to all extensions of payment and/or maturity periods of all pre-existing loans, including but not limited to salary, personal, housing, and motor vehicle loans, falling due within the ECQ period contemplated by Section 4(aa) of RA 11469, including the extension of maturity periods that may result from the grant of the grace period for these payments, whether or not such maturity periods originally fall due within the ECQ.

Further, credit extensions pertaining to pre-existing loans that fall due during the ECQ period where interest is paid but the principal is converted into a new loan with a new maturity date, the said new loan principal and the renewal or extension of the loan's mortgage, pledge or deed of trust shall be exempt from DST. However, credit extensions pertaining to pre-existing loans that fall during the ECQ period where interest is paid but the principal is rolled-over or renewed as a new loan application in accordance with a pre-agreed roll-over arrangement and collateral documentation thereof prior to the COVID-19 situation shall remain subject to DST.

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[17] The amount to be set by the Secretary of Finance shall be in accordance with a relevant price index but not to exceed 10 percent of the current amount and shall remain in force at least for three years.

On the other hand, credit restructuring pertaining to pre-existing loans that fall due during the ECQ period where both the principal and interests are not paid but are consolidated and converted into a new loan principal with a new maturity date and the renewal or extension of the loan's mortgage, pledge or deed of trust shall also be exempt from DST. Credit restructuring pertaining to pre-existing loans that fall due during the ECQ period where there is payment of interest and partial payment of principal on maturity while the remaining unpaid principal is converted into a new loan principal with a new maturity date and the renewal or extension of the loan's mortgage, pledge or deed of trust shall likewise be exempt from DST.

However, fresh loan availments, top-up to existing loans and new loan drawdown during the ECQ period and its collateral documentation remain subject to DST, as applicable.

Table 1 summarizes the tax bases and rates of DST covered by RA 11469 as implemented by the above-mentioned issuances.

Table 1

DST Covered by RA 11469

Section under the NIRC	Transaction	Tax base	Current	Ad valorem
179	Debt instruments	Issue price; If term is less than 1 year, a proportional amount based on a ratio of its term to 365 days	P1.50 on each P200, or fractional part thereof	0.75%
195	Mortgages, pledges, and deeds of trust	Amount secured P5,000 or less	P40	Not applicable
		On each P5,000 or fraction thereof in excess of P5,000	P20	
198	Assignments and renewals of certain instruments		Same as that of the original instrument	Not applicable

Historically, DST collected under Sections 179, 195, and 198 recorded an annual average of P43 billion from 2014 to 2018. There was a significant increase in DST collections in 2018 as a result of the implementation of RA 10963 or the "Tax Reform for Acceleration and Inclusion" (TRAIN) law as most DST rates were doubled, while DST on debt instruments increased only by 50 percent. (See Table 2.)

Table 2

DST Collections from Sections 179, 195, and 198 of the NIRC of 1997, as Amended: 2014-2018 (In Billion Pesos)

Section	Transactions subject to DST	2014	2015	2016	2017	2018	Average
179	Debt Instruments	26.80	35.06	41.63	42.50	59.79	41.16
195	Mortgages, Pledges and Deeds of Trust	1.09	1.30	1.55	1.62	4.21	1.95
198	Assignments and Renewals of Certain Instruments	0.01	-	-	0.02	-	0.01
	Others	41.14	35.71	36.97	41.78	75.17	46.15
	Grand Total	**69.04**	**72.07**	**80.15**	**85.92**	**139.17**	**89.27**

Note. Data gathered from the BIR.

Initial estimates on the exemption from DST for credit extensions or restructuring of loan payments due within the ECQ period, along with the extension of tax-compliance deadlines, will cost the government P470 million during the period of implementation of RA 11469 (Department of Finance, 2020).

As noted, the projected growth of the country's gross domestic product (GDP) in 2020 ranges from 6.2 to 7.2 percent, while projected DST revenue will amount to P188 billion this year. However, due to the COVID-19 pandemic, the GDP growth is expected to slow down in 2020. Since the DST is a transaction tax, the slowdown in economic activities and fewer transactions due to COVID-19 will have a negative impact on the attainment of the DST revenue target. (See Table 3.) In fact, the Asian Development Bank (ADB) recently forecasted the country's GDP to grow by a modest 2.0 percent this year following the ECQ imposed in March (ADB, 2020). Moreover, trade and private investments in the country is seen to be sluggish due to the global and local outbreak. This will drag the demand for corporate loans, which accounts for 82 percent of the Philippine banking system's loans and restrain the momentum in retail or individual loans (Amand, 2020).

Table 3

GDP Growth and DST Revenue Projections in 2020

Particulars	2018 Actual	2019 Program	2020 Projection
GDP Growth (%)[1/]	5.9	6.0-7.0	6.2-7.2
DST (in billion pesos)[2/]	139.2	170.4	188.0

Notes. [1/] - ADB.

[2/] - Data gathered from the Budget of Expenditures and Sources of Financing FY 2020.

From the projected collection of DST in 2020 amounting to P188 billion, around 46 percent or P86 billion is estimated to come from DST imposed under Sections 179, 195, and 198 while P102 billion would be generated from other transactions subject to DST under the NIRC of 1997, as amended.[19] The slowdown in economic activities and fewer transactions brought by COVID-19 as well as the DST exemption under Sections 179, 195, and 198 pursuant to Section 4(aa) of RA 11469 is expected to cut government revenues from the DST.

Incidentally majority of ASEAN member-states adopted a policy extending the loan repayments or loan restructuring of individuals and businesses to cushion the adverse effect of COVID-19 in their economy. The extension period ranges from one month up to one year (Autoriti Monetari Brunei Darussalam, 2020; Vannavuth, 2020; Rahman, 2020; Bank of Lao PDR, 2020; Bank Negara Malaysia, 2020; Monetary Authority of Singapore, n.d.; Parpart, 2020). (See Table 4.)

Table 4

Summary of Extension of Loan Repayments/Restructuring due to the COVID-19

Country	Number of confirmed cases[1]	Relief	Remarks
Brunei Darussalam	136	Yes	6 months
Cambodia	122	Yes	Up to 6 months
Indonesia	4,241	Yes	Loans of MSME only, for up to 1 year
Lao PDR	16	Yes	1 year
Malaysia	4,530	Yes	Maximum deferment is 6 months
Myanmar	38	N.A.I	N.A.I
Philippines	4,428	Yes	For 30 days, subject to extension.
Singapore	2,299	Yes	Up to 31 December 2020 for residential property loans for individuals
Thailand	2,551	Yes	6 months for all SMES
Vietnam	258	N.A.I	N.A.I

Notes. [1/] Data as of 12 April 2020, gathered from the World Health Organization.
N.A.I – No available information

IV. CONCLUSION

The exemption of qualified loans during the ECQ period from the DST is justifiable to ensure full compliance of the provision set under Section 4(aa) of RA 11469 from lending institutions as well as to reduce their financial burden and their clients as well. However, this will result to substantial revenue loss from the DST exemption under Sections 179, 195, and 198. There is, thus, a need for the BIR to ensure the effective and efficient collection of DST on other documents/instruments/transactions not covered by the exemption under RR 8-2020.

[19] Computed using the 2018 percent distribution of DST collection by type of transaction. The 2019 DST collection by transaction is not yet available.

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