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Situationer on Estate Taxation in the Philippines: Issues and Prospects *



I. INTRODUCTION

1. It is said that taxes and death are the two (2) things certain in life. Taxes are considered the lifeblood of the government because without these impositions, the government cannot perform its various responsibilities or obligations. The government imposes different kinds of taxes on different situations, one of which is the transfer of property as a result of death of an individual taxpayer. Under the National Internal Revenue Code (NIRC) of 1997, the tax that is imposed upon the estate of the decedent is the estate tax.

2. This paper attempts to provide information on the various aspects of estate taxation in the Philippines and looks into the issues and proposals concerning estate tax to broaden the understanding of this tax.

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II. HISTORICAL BACKGROUND

A. On the Estate Tax Structure

1. From the beginning, the estate tax system of the Philippines featured two (2) components, the inheritance tax¹ and the estate tax. The inheritance tax which was a tax imposed on the heirs of the decedent was first imposed by Act No. 2601 which took effect on July 1, 1916, and through re-enactments, remained in force for quite some time. Section 86 of Commonwealth Act (CA) No. 466² provided that in addition to the estate tax, there shall be levied, assessed, collected and paid an inheritance tax equal to the sum of the percentage of the value of the individual shares of each heir or beneficiary in the net estate, after deducting the amount of the estate tax, of every decedent, whether a resident or non-resident of the Philippines³. The inheritance tax was, however, repealed effective January 1, 1973 under Presidential Decree No. 69 and integrated into the estate tax for practical administrative reasons.⁴ The difficulty in administering the inheritance tax arises particularly when the will of the testator provides for contingent future interests, with the result that the heirs who will take the amount they will receive remain uncertain for many years after the decedent's death; or the heirs may also be undetermined for a considerable number of years when the will of the decedent is being contested as in the case of several heirs. This leads to difficulties of valuation and collection and loss of or at least a lag in the realization of revenue on the part of the government⁵.

2. On the other hand, the estate tax was first imposed by Sec. 85 of CA No. 466 which was approved on June 15, 1939 and became effective on July 1, 1939. CA No. 466 provided for 19 tax brackets starting at ₱3,000 up to the top margin of over ₱1,500,000 at schedular rates ranging from 1%-10%.⁶

¹ Inheritance tax is a tax on the privilege of inheriting the property of a person upon his death. It has also been defined as a tax on the legal right or privilege to succeed to, receive or take property by or under a will, intestacy law, or deed, grant or gift becoming operative at or after death. [Source: Hector S. De. Leon, *The Law on Transfer and Business Taxation, 1987 Edition* (Manila: Rex Bookstore, 1987), p.17].

² Entitled "An Act to Revise, Amend and Codify the Internal Revenue Laws of the Philippines," approved on June 15, 1939 and became effective on July 1, 1939.

³ Eduardo Z. Romualdez, Sr., loc. cit.

⁴ National Tax Research Center, *Transfer Taxes as a Tool for Wealth Distribution*, Tax Monthly, Vol. XXVIII No. 5, May 1987.

⁵ Pedro P. Mangaliman, *The Law of Estate and Inheritance and Donor's and Donee's Gift Taxation of the Philippines* (Manila: General Printing Press, 1956) p. 4 and Hector S. De. Leon, *The Law on Transfer and Business Taxation, 1987 Edition* (Manila: Rex Bookstore, 1987), p.17.

⁶ Commonwealth Act No. 466 as published in "Public Laws of the Commonwealth (Act Nos. 413 to 612)" enacted by National Assembly of the Philippines, Printed by Floro P. Agustin, Vol. III (March 7, 1939-August 29, 1949), pp. 167-169.

Table 1. ESTATE TAX SCHEDULE AS PROVIDED IN SEC. 85 OF CA 466

Net Estate		Rate
Over	But not over	
₱3,000	₱10,000	1%
10,000	30,000	1.5%
30,000	50,000	2.0%
50,000	80,000	2.5%
80,000	110,000	3.0%
110,000	150,000	3.5%
150,000	190,000	4.0%
190,000	240,000	4.5%
240,000	290,000	5.0%
290,000	350,000	5.5%
350,000	420,000	6.0%
420,000	500,000	6.5%
500,000	600,000	7.0%
600,000	720,000	7.5%
720,000	850,000	8.0%
850,000	1,000,000	8.5%
1,000,000	1,200,000	9.0%
1,200,000	1,500,000	9.5%
1,500,000		10.0%

3. Reduction in the number of tax brackets and increases in rates were effected under Section 85 by R.A. No. 579⁷ which became effective on September 15, 1950.⁸ The law provided for ten (10) tax brackets and the minimum taxable net estate and maximum rate were increased to an amount of over ₱5,000 and 15%, respectively. The amendments were made to ensure that the estate tax schedule

⁷ Entitled “An Act to Amend Sections Eighty-Five, Eighty-Six, Eighty-Nine, One Hundred and Nine and One Hundred and Ten of Commonwealth Act Numbered Four Hundred and Sixty-Six, Otherwise Known as the National Internal Revenue Code, as Amended.” Approved on September 15, 1950.

⁸ Laws and Resolution, vol. 5, 1950, pp. 618-627.

coincided with the inheritance tax which also had 10 brackets and to avoid concentration of wealth among individuals or families.⁹

Table 2. ESTATE TAX SCHEDULE AS PROVIDED IN R.A. NO. 579

Net Taxable Estate		Rate
Over	But not over	
₱5,000	₱12,000	1%
12,000	30,000	2.0%
30,000	50,000	2.5%
50,000	70,000	3.0%
70,000	100,000	5.0%
100,000	150,000	7.0%
150,000	250,000	9.0%
250,000	500,000	11.0%
500,000	1,000,000	13.0%
1,000,000	-	15.0%

4. Subsequently, Presidential Decree (PD) No. 69, amending certain sections of the NIRC was issued on November 24, 1972 and became effective on January 1, 1973. The law introduced a new estate tax schedule which provided for 16 tax brackets and a tax exempt value of ₱10,000. The maximum rate was set at 60% for a net taxable estate of over ₱3,000,000.¹⁰ These amendments were part of the reform measures to increase the financial resources of the government and make the tax system more responsive to the requirements of a developing economy.¹¹

⁹ As may be inferred from the deliberations of House Bill No. 866 entitled “ An Act to Amend Sections Eighty- Five, Eighty –Six, Eighty-Nine, One Hundred and Nine and One Hundred and Ten of Commonwealth Act Numbered Four Hundred and Sixty-Six, Otherwise Known as the National Internal Revenue Code, as Amended” filed during the 2nd Congress, 1st Session of the House of Representatives. (Source: Congressional Record, House of Representatives, 2nd Congress, 1st Session, Vol.1, Nos. 68 and 71, May 3 and 6, 1950, p. 1819 and pp.2073-2077, respectively.)

¹⁰ National Tax Research Center, Compilation on “Historical Development of Direct Taxes from 1939-2006”, p. 270.

¹¹ Based on the “Whereas Clauses” of Presidential Decree No. 69.

Table 3. ESTATE TAX SCHEDULE AS PROVIDED IN PD 69

If the Net Estate is		The tax shall be	Plus	Of the excess over
Over	But not over			
	₱10,000	Exempt	-	-
₱10,000	50,000	3%	-	₱10,000
50,000	75,000	1,200	4%	50,000
75,000	100,000	2,200	5%	75,000
100,000	150,000	3,450	10%	100,000
150,000	200,000	8,450	15%	150,000
200,000	300,000	15,950	20%	200,000
300,000	400,000	35,950	25%	300,000
400,000	500,000	60,950	30%	400,000
500,000	625,000	90,950	35%	500,000
625,000	750,000	134,700	40%	625,000
750,000	875,000	184,700	45%	750,000
875,000	1,000,000	240,950	50%	875,000
1,000,000	2,000,000	303,450	53%	1,000,000
2,000,000	3,000,000	833,450	56%	2,000,000
3,000,000	-	1,393,450	60%	3,000,000

5. Subsequent amendments of the Tax Code as enunciated in Section 90 of the NIRC, as amended by PD 507¹² issued on July 16, 1974, Section 100 of the NIRC as amended by PD 1457¹³ issued on June 11, 1978 and Section 100 and 101 (d) of the NIRC, as amended by PD 1705¹⁴ issued and effective August 1, 1980 provided the same estate tax schedule under PD 69.¹⁵

¹² Entitled “Exempting Donations and/or Contributions and Bequests to Social Welfare, Cultural and Charitable Institutions From Certain Taxes and Providing Tax Allowance Therefor.”

¹³ Entitled “Amending Certain Sections of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes.”

¹⁴ Entitled “Amending Certain Sections of the National Internal Revenue Code.”

¹⁵ National Tax Research Center, *Compilation on “Historical Development of Direct Taxes from 1939-2006”*, pp. 272-274.

6. Later on, Section 77 of the NIRC, as amended by RA 7499¹⁶ approved on May 18, 1992 restructured the estate tax structure by reducing the then existing 16 schedular rates (3%-60%) to only six (6) (5%-35%). There was also an increase in the value of tax exempt net estate from ₱10,000 to ₱200,000. The revision was meant to rationalize the then existing rates, which were made effectively higher because of the escalation of real property values due to inflation and the adoption of the zonal valuation scheme by the BIR. With reduced rates and tax burden, the new schedule was expected to encourage better compliance thus, resulting in increased collection.¹⁷

Table 4. ESTATE TAX SCHEDULE AS PROVIDED IN SEC. 77 OF THE NIRC, AS AMENDED BY R.A. NO. 7499

If The Net Estate Is		The Tax Shall Be	Plus	Of The Excess Over
Over	But Not Over			
	₱200,000	Exempt	-	-
₱200,000	500,000	5%	-	₱200,000
500,000	2,000,000	15,000	8%	500,000
2,000,000	5,000,000	135,000	12%	2,000,000
5,000,000	10,000,000	495,000	21%	5,000,000
10,000,000	And over	1,545,000	35%	10,000,000

7. The latest amendment to the estate tax was introduced by RA No. 8424 approved on December 11, 1997 and became effective on January 1, 1998. It generally reduced the rates, and lowered the maximum rate of 35% to 20%, as follows:

¹⁶ Entitled “An Act Restructuring the Estate and Donor’s Taxes, Amending for the Purpose Sections 77, 79 (a), 83 (b) and 92 (a) and (b) on Transfer Taxes of the National Internal Revenue Code, as Amended.”

¹⁷ National Tax Research Center, Assessment of the Transfer Tax Structure Under Republic Act No. 7499, NTRC Tax Research Journal, Vol. VI, No. 6, November-December 1994, p.1-2.

Table 5. ESTATE TAX SCHEDULE AS PROVIDED IN SEC. 84 OF THE NIRC, AS AMENDED BY RA 8424

If The Net Estate Is		The Tax Shall Be	Plus	Of The Excess Over
Over	But not over			
	₱200,000	Exempt	-	-
₱200,000	500,000	0	5%	₱200,000
500,000	2,000,000	15,000	8%	500,000
2,000,000	5,000,000	135,000	11%	2,000,000
5,000,000	10,000,000	465,000	15%	5,000,000
10,000,000	And over	1,215,000	20%	10,000,000

8. In sum, the highest 19 tax brackets were recorded in the history of estate tax rates under CA 466 on July 1, 1939. This was followed by 16 tax brackets on January 1, 1973 and 10 tax brackets on September 15, 1950. At present, the NIRC provides for only six (6) tax brackets with marginal rates ranging from 5% to 20%. It must be noted that at the outset of the legislation on death taxes, no exemption was provided by the Tax Code but subsequently, PD 69 granted an exemption of ₱10,000. This amount was correspondingly adjusted to the present exempt amount of ₱200,000.

Table 6. SUMMARY OF THE HISTORY OF PHILIPPINE ESTATE TAX RATES

Statutory Basis	Effectivity Date	Tax Brackets	Exempt Amount	Lowest Amount of Taxable Estate (in thousand)	Highest Amount of Taxable Estate (in thousand)	Rates	
						Min	Max
Sec. 85 CA 466	July 1, 1939	19	-	P 3-10	Over P1,500	1%	10%
Sec. 85 RA 579	Sept. 15, 1950	10	-	5-12	Over 1,000	1%	15%
Sec. 85 PD 69	Jan. 1, 1973	16	P10,000	10-50	Over 3,000	3%	60%
Sec. 77, NIRC, as amended by RA 7499	May 18, 1992	6	200,000	200-500	Over 10,000	5%	35%
Sec. 84 NIRC, as amended by RA 8424	Jan. 1, 1998	6	200,000	200-500	Over 10,000	5%	20%

B. On the Taxable Estate

1. Before the issuance of PD No. 1457 on June 11, 1978, the gross estate of a resident decedent excluded his/her real property located outside the Philippines. Since then, and pursuant to Sections 85 and 104 of the NIRC, the term *gross estate* refers to the value at the time of death of the decedent of all property, real and personal, tangible or intangible, wherever situated. However, in the case of a nonresident decedent who at the time of death was not a citizen of the Philippines, only that part of the entire gross estate which is situated in the Philippines shall be included in the taxable estate.

2. Section 85 of the NIRC also specifically enumerated what could be included in the gross estate of the decedent and these are as follows:

- a. *Decedent's Interest.* - To the extent of the interest therein of the decedent at the time of his/her death;
- b. *Transfer in Contemplation of Death.* - To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after death, or of which he/she has at any time made a transfer, by trust or otherwise, under which he/she has retained for life or for any period which does not in fact end before his/her death (1) the possession or enjoyment of, or the right to the income from the property, or (2) the right, either alone or in conjunction with any person, to designate the person who shall possess or enjoy the property or the income therefrom; except in case of a bonafide sale for an adequate and full consideration in money or money's worth.
- c. *Revocable Transfer.* –
 - c.1 To the extent of any interest therein, of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth) by trust or otherwise, where the enjoyment thereof was subject at the date of his/her death to any change through the exercise of a power (in whatever capacity exerciseable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished in contemplation of the decedent's death.

- c.2** For this purpose, the power to alter, amend or revoke shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment or revocation takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases, proper adjustment shall be made representing the interests which would have been excluded from the power if the decedent had lived, and for such purpose if the notice has not been given or the power has not been exercised on or before the date of death, such notice shall be considered to have been given, or the power exercised, on the date of death.
- d. *Property Passing Under General Power of Appointment.*** - To the extent of any property passing under a general power of appointment exercised by the decedent: (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at, or after death, or (3) by deed under which he/she has retained for life or any period not ascertainable without reference to death or for any period which does not in fact end before his/her death (a) the possession or enjoyment of, or the right to the income from, the property, or (b) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth.
- e. *Proceeds of Life Insurance.*** - To the extent of the amount receivable by the estate of the deceased, his/her executor, or administrator, as insurance under policies taken out by the decedent upon his/her own life, irrespective of whether or not the insured retained the power of revocation, or to the extent of the amount receivable by any beneficiary designated in the policy of insurance, except when it is expressly stipulated that the designation of the beneficiary is irrevocable.
- f. *Prior Interests.*** - Except as otherwise specifically provided therein, Subsections (B), (C) and (E) of this Section shall apply to the transfers, trusts, estates, interests, rights, powers and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised or relinquished before or after the effectivity of this Code.
- g. *Transfers for Insufficient Consideration.*** - If any one of the transfers, trusts, interests, rights or powers enumerated and described in Subsections (B), (C) and (D) of this Section is made, created, exercised or relinquished

for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value, at the time of death, of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

3. The following items are, however, not includible in the gross estate of the decedent:¹⁸

- a. The merger of the usufruct in the owner of the naked title;¹⁹
- b. The transmission or delivery of the inheritance or legacy by the fiduciary heir or legatee to the fideicommissary;²⁰
- c. The transmission from the first heir, legatee or donee in favor of another beneficiary, in accordance with the desire of the predecessor; and
- d. All bequests, devises, legacies or transfers to social welfare, cultural and charitable institutions, no part of the net income of which inures to the benefit of any individual. Provided, however, that not more than 30% of the said bequests, devises, legacies or transfers shall be used by such institutions for administration purposes.

4. The estate tax applies on the net estate. To arrive at the net estate, certain items are allowed to be deducted from the gross estate. Under Section 86 of the NIRC, the deductions from the gross estate of a citizen or resident of the Philippines are:

¹⁸ Section 87, NIRC.

¹⁹ The decedent here is the usufructuary. Where the death of the usufructuary terminates the contract of usufruct, the use of the property reverts to the naked owner. Such merger or transfer is not subject to estate tax. [Reference: Atty. Francis J. Sababan and Atty. Lydia A. Bundac, *Taxation Law Reviewer, 2000 Edition* (Biñan, Laguna: GB Research & Information Center, 2000) p.199]

²⁰ A fiduciary is a person holding property in trust or confidence; hence, a trustee. A fiduciary is therefore of the nature of trustee while the fideicommissary is of the nature of *cestui que trust*. (Source: Pedro P. Mangaliman, Op. Cit., p.155) There are three parties here: the testator, the first heir, and the second heir. The decedent here is the first heir. Where the first heir dies and the inherited property is transmitted to the second heir, such transmission is exempt from estate tax. (Reference: Francis J. Sababan et. al, Loc. Cit)

- a. *Expenses, Losses, Indebtedness and Taxes.*** – Such amounts for:
1. Actual funeral expenses or in an amount equal to 5% of the gross estate, whichever is lower, but in no case to exceed ₱200,000;
 2. Judicial expenses of the testamentary or intestate proceedings;
 3. Claims against the estate;
 4. Claims of the deceased against insolvent persons where the value of the decedent's interest therein is included in the value of the gross estate; and
 5. Unpaid mortgages upon, or any indebtedness in respect to property where the value of the decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate, but not including any income taxes upon income received after death of the decedent, or property taxes not accrued before death, or any estate tax.
- b. *Property previously taxed;***
- c. *Transfers for public purposes;***
- d. *The Family Home*** - the amount equivalent to the current fair market value of the decedent's family home but in no case to exceed ₱1 million;
- e. *Standard Deduction.*** – an amount equivalent to ₱1 million;
- f. *Medical Expenses.*** – medical expenses not exceeding ₱500,000 incurred by the decedent within one (1) year prior to death which shall be duly substantiated with receipts; and
- g. *Amount received by the heirs under RA No. 4917.***²¹ - any amount received by the heirs from the decedent's employer as a consequence of the death of the decedent-employee in accordance with RA No. 4917 provided that such amount is included in the gross estate.

²¹ Entitled "An Act Providing That Retirement Benefits Of Employees Of Private Firms Shall Not Be Subject To Attachment, Levy, Execution, Or Any Tax Whatsoever" approved on June 17, 1967.

5. The standard deduction of ₱1 million, medical expenses not exceeding ₱500,000 and the amount received by heirs under RA No. 4917 were all introduced in 1998 through the enactment of RA No. 8424 or the National Internal Revenue Code of 1997.

6. In the case of nonresident not a citizen of the Philippines, the following are allowed to be deducted from the value of that part of the gross estate situated in the Philippines:

- a. Expenses, losses, indebtedness and taxes.
- b. Property previously taxed.
- c. Transfers for public purposes

7. The net share of the surviving spouse in the conjugal property as diminished by the obligations properly chargeable to such property is also deductible from the net estate of the decedent.

III. RATIONALE FOR THE IMPOSITION OF THE ESTATE TAX

1. The estate tax is a tax on the right to transmit property upon the death of the decedent and on certain transfers²² by the decedent during his/her lifetime which are presumed by law to be equivalent of testamentary disposition. The estate tax is universally deemed to relate, not to the property by itself, but to its passage by will or by descent in case of intestacy, as distinguished from taxes imposed on property, real or personal as such, because of ownership and possession. In other words, the public contribution which the estate tax exacts is predicated on the passing of property as a result of death, as distinct from a tax on property disassociated from its transmission by will, or as a result of intestacy.²³ Thus, an estate tax may be deemed to be a tax on the privilege to transmit property from the decedent to another person.

2. The imposition of an estate tax is frequently justified on the ground that it closely conforms to the widely accepted principles of ability-to-pay and minimal sacrifice. It also has

²² *Donations mortis causa* or those which are to take effect upon the death of the donor, and, therefore partake of the nature of testamentary disposition, are subject to estate tax.

²³ Tomas P. Matic Jr. , *Fundamentals of Philippine Tax Law and Procedure* (Manila: Rex Bookstore, 1966), p. 168.

the important economic objective of preventing undue concentration of wealth, or stated otherwise, of limiting fortunes by taxation.²⁴

4. Like the income tax, the estate tax is characterized by progressive rates. This means that an increase in the tax base automatically subjects the taxpayer to a higher tax rate; the taxpayer automatically slides down to a lower tax bracket, subject to a lower rate, with a decrease in the tax base. A progressive tax rate is an effective vehicle to counteract fluctuations within the economy because of its built-in flexibility.²⁵

5. Also, the imposition of an estate tax may encourage the early transfer of assets through donations (as the donor's tax rates are relatively lower, from 2% to 15% only²⁶) or sales (as the capital gains tax is set at only 6%, with a possible exemption from the tax if the proceeds are used to acquire another residential property²⁷). Needless to say, an early transfer of assets may lead to more or further productive or optimum use of assets which is good for growth or development purposes.

IV. REVENUE PERFORMANCE OF THE ESTATE TAX FROM 2000-2009

A. Estate Tax

1. Estate tax collection for the period 2000-2009 amounted to ₱ 5,972.86 million with an average annual collection of ₱ 597.29 million which is 67.39 % of the average total transfer taxes collection and 0.11% of the average total BIR collection (Table 7).

2. Based on the foregoing data, the estate tax collection shows an erratic growth trend during the period 2000-2009: in 2001, it increased by 30.44% over the 2000 collection then fell short by 12.39% in 2002 vis-à-vis 2001 collection; then posted a 50.37% increase in 2003, decreased by 9.84% in 2004, and registered a 48.34% and 10.92% increases in 2005 and 2006, respectively before falling short by 15.44% in 2007. It recorded a growth rate of 31.54% and 14.85% in 2008 and 2009, respectively.

²⁴ Ibid.

²⁵ Eduardo Z. Romualdez, Sr. et. al., *Philippine Tax System*, (Manila: GIC Enterprises Co., Inc., 1970), p. 107.

²⁶ The rate is 30% when the donee or beneficiary is stranger. Please refer to Section 99 of the NIRC.

²⁷ Please refer to Section 24 (D) of the NIRC.

3. In terms of ratio to total transfer taxes collection during the same period, the estate tax collection has the lowest in 2004 when it recorded only a 62.33% ratio and the highest in 2003 when it contributed 72.51% of the total transfer taxes collection. As part of the total BIR collection, the estate tax collection has also the lowest contribution in 2000 when it accounted for only 0.08% and the highest in 2005 and 2009 when it represented 0.13% of the total BIR collection. Similar to the growth in collection, the ratio of estate tax collection to total transfer taxes collection and BIR collection show also an erratic trend.

4. During the period 2000-2009, a total of 279,911 estate tax returns were filed, resulting to an average of 27,991 returns filed annually. The most number of returns filed in a year was in 2005, with 32,223 returns which could possibly be the reason for the highest collection growth rate of 48.34% and highest ratio at 0.13% to total BIR collection during the said period.

A.1. Factors Affecting Estate Tax Collection

1. Significantly, it must be noted that Revenue Regulations 2-2003 dated December 16, 2002 was implemented beginning CY 2003 which is a consolidated revenue regulation on estate and donor's taxes incorporating therein the amendments introduced by RA 8424, the Tax Reform Act of 1997. It amended Revenue Regulations 17-93 relative to the change in the rates of estate tax and the manner of claiming deductions from the gross estate of the decedent pursuant to the present Tax Code.²⁸ Moreover, in CY 2003, the BIR has aggressively conducted a Tax Compliance Verification Drive (TCVD) in order to expand the tax base, enhance tax compliance, and effectively put in place its enforcement activities pursuant to Revenue Memorandum Order (RMO) No. 56-2000 which prescribes the imposition of fines and penalties for various violations.²⁹ Also, the BIR explored the full potential of the Information and Communication Technology (ICT) in the delivery of efficient taxpayer services and implementation of simplified and taxpayer friendly compliance procedures which encourage optimum levels of voluntary compliance.³⁰ All of these contributed to the improved overall collection performance of the BIR in that year.

2. The One-Time Transaction Tax (ONETT) Process in every RDO was implemented in 2002. It serves as a One-Stop-Shop in the processing and issuance of Certificates Authorizing Registration (CARs) of properties to taxpayers within five (5) days from date of receipt of complete documents.³¹

²⁸ Sec. 1 Revenue Regulations 2-2003.

²⁹ 2003 BIR Annual Report.

³⁰ 2005 BIR Annual Report.

³¹ 2002 BIR Annual Report.

Nevertheless, the lowest collection due to fewer dealings involving the imposition of estate tax was in 2000 at ₱301.5 million with only 22,103 estate tax returns and which resulted to the lowest contribution of 0.08% to total BIR collection. On the other hand, the lowest ratio to total transfer taxes collection was in 2004 with only 62.33% despite having the second highest number of returns filed during the ten-year period which may imply lower value of the net estate involved due to excessive or unwarranted claims for deductions. Or, it may also imply a failure (whether intentional or unintentional) to report all the items constituting the estate of the concerned decedent.

3. The estate tax collection displayed negative growth rates of -12.39%, -9.84% and -15.44% in 2002, 2004 and 2007 (see Table 7), respectively, despite the increase in estate tax returns filed during such period. This could only mean that the values of taxable estates declared for those years are substantially low which could be explained by excessive deduction claims or non-declaration of other items comprising taxable estates. The figures show the positive growth of estate tax returns filed every year with the highest growth rate of 8.90% in 2002. Also, without considering the number of exempt estate tax returns,³² the average collection per estate tax return amounted to **₱ 21,338** which will make it fall within the tax bracket of over ₱500,000 but not more than ₱2,000,000 with a corresponding tax of ₱15,000 plus 8% of the amount in excess of ₱500,000. Further, because there was a decrease in collection in 2002 by ₱48.73 million and an increase in the number of returns filed, the average collection per estate tax return correspondingly decreased, making it the lowest during the 10-year period. This suggests three possibilities: (a) the net estates were really of small value; (b) there were cases of under-declaration of estates through non-reporting of other decedent's assets; and (c) there were cases of overstatement of deductions from the gross estate. At any rate, this phenomenon was something that should have merited a closer scrutiny by the BIR.

³² Section 90 of the NIRC provides that “in all cases of transfers subject to the tax (estate tax) imposed herein, or where, though exempt from tax, the gross value of the estate exceeds two hundred thousand pesos (₱200,000), or regardless of the gross value of the estate, where the said estate consists of registered or registrable property such as real property, motor vehicle, shares of stock or other similar property for which a clearance from the BIR is required as a condition precedent for the transfer of ownership thereof in the name of the transferee, the executor, or the administrator, or any of the legal heirs, as the case may be, shall file a return under oath in duplicate., x x x.”

Table 8. NUMBER OF REGISTERED DEATHS VIS-À-VIS NUMBER OF ESTATE TAX RETURNS FILED, 2000 -2007

Year	Number of Registered Deaths	Increase/ (Decrease)		Form 1801 (Estate Tax Return) Filed	Increase/ Decrease		Ratio of Estate Tax Returns Filed to Number of Registered Deaths
		Number	%		Number	%	
Total	3,190,892			219,939			
2000	366,931			22,103			6.02
2001	381,834	14,903	4.06	23,786	1,683	7.61	6.23
2002	396,297	14,463	3.79	25,902	2,116	8.90	6.54
2003	396,331	34	0.01	27,919	2,017	7.79	7.04
2004	403,191	6,860	1.73	30,373	2,454	8.79	7.53
2005	415,271	12,080	3.00	32,223	1,850	6.09	7.76
2006	389,081	-26,190	-6.31	28,435	-3,788	-11.76	7.31
2007	441,956	52,875	13.59	29,198	763	2.68	6.61
Average	398,862	10,718	2.84	27,492	1,014	4.30	6.88

Source of basic data: Philippine Statistical Yearbook/<http://www.census.gov.ph/BIR>.

4. Table 8 shows the number of deaths registered in the National Statistics Office (NSO) from the period 2000 to 2007. It is significant to note that on the average, the number of estate tax returns filed correspond only to about 7% of the total number of deaths registered with the NSO. Again, this phenomenon should have been reviewed by the BIR.

V. ISSUES ON ESTATE TAXATION

1. An evaluation of transfer taxes under the Land Administration and Management Project (LAMP) finds that the estate tax in its current form is a weak tax from the perspective of certain tax principles – efficiency, equity, administrative simplicity and transparency, revenue adequacy and stability. These tax principles were employed in the evaluation framework used by the LAMP³³ in its attempt to determine the drags or items which delay land-related transactions.

³³ Land Administration and Management Project Phase 2, *Review of National and Local Land-Related Taxes and Fees, Draft Report*, June 2008, p.35.

2. The current estate tax is inefficient because it undermines horizontal and vertical equity due to the delays in the revision of the schedule of market values (SMVs) and zonal values (ZVs) which serve as the basis in computing the tax. For the BIR, this tax is expensive to collect due to significant staff input required for the processing of tax returns and for the taxpayers, costly to comply with in view of numerous documentation requirements. Also, its revenue performance is relatively poor compared to the growth of gross domestic product (GDP) and BIR collections.³⁴

3. Moreover, findings of the Survey of Public Perception on Real Property -Related Taxes and Fees conducted under the LAMP suggest that the estate tax is a complex tax³⁵ since its determination involves a number of complicated procedures and need to be reformed or modified to simplify its tax administration aspects and facilitate tax compliance therewith.

4. It should be noted that the computation of the estate tax requires the determination of the value of the decedent's gross estate and the amount of allowable deductions. This is where the opportunity to understate the gross estate and taxable net estate exists. This is done by either excluding other assets in the computation of the gross estate or overstating the deductions or both. This will eventually reduce the estate tax collection, hence, the BIR should closely scrutinize the estate tax returns filed by the taxpayers to avoid or minimize tax leakages. To be able to do this, the concerned BIR district/region must have access to the registry of assets located within its jurisdiction. This registry which should be updated on a regular basis should contain information such as types and values of assets and their respective owners. It may help the BIR if coordination/linkage with certain government entities (such as the Land Transportation Office in the case of motor vehicles, the Land Registration Authority or the local government unit in the case of real properties, etc.) where such assets are normally registered is established.

5. The other aspect of the administration of the estate tax that also needs to be revisited in order to reduce the cost of compliance incurred by the taxpayers has to do with the certification requirement. For example, if the amount of gross estate exceeds two million pesos (₱2,000,000), the estate tax return is required to be supported with a statement duly certified to by a Certified Public Accountant (CPA) containing, among others, a list of the itemized assets of the decedent with their corresponding gross value at the time of death. The gross estate of P2 million is deemed very low considering the level of deductions allowed to be claimed by the estate, e.g., ₱1 million for family home, P1 million standard deduction, etc. This would likely result to zero estate tax liability and yet, the heirs/administrator of the estate or the person filing the estate tax return will have to get the services of a CPA which surely would only add to the cost of tax compliance. Hence, an

³⁴ Ibid.

³⁵ Land Equity International, *Survey of Public Perception on Real Property -Related Taxes and Fees*, July 2008, p. IV-10.

adjustment in the minimum gross estate that requires a CPA certification should be reconsidered.

6. It may be practical to assume that the assets often declared in the estate tax return are real properties (land and buildings) since these items cannot be easily transferred without the corresponding supporting registration document. Other registrable properties, i.e., motor vehicles and stocks and other investments made by the decedent cannot also be transferred without the required supporting registration document. The requirement for a CPA's certification often adds burden to the taxpayer, hence, could be a cause of delay in the payment of estate tax. This also results to a delay in the registration of real properties with the Registry of Deeds, the agency tasked to register all landholdings and issue title thereto. Formalization of ownership and the consequent optimum use of the property is thus adversely affected.

7. Maintenance of accurate records on landownership is deemed crucial to an efficient and effective system of land administration and taxation. Delays in the registration of lands and other real property transferred through inheritance or succession affect the efficient and accurate imposition of taxes thereon.

VI. LEGISLATIVE PROPOSALS CONCERNING ESTATE TAXATION

A. Abolition of the Estate Tax

1. During the 14th Congress, House Bill (HB) No. 5602³⁶ was filed to abolish the estate tax on the grounds that:

- a. It unfairly punishes frugality, undermines economic growth, reduces real wages, and raises only little revenue;
- b. A number of countries have already abolished their estate or inheritance tax policies for reasons of fundamental unfairness;
- c. There is a need to plug the damage that estate tax causes to saving, investment, and business activity.

2. The proposed abolition of the estate tax was not supported primarily because the government cannot afford to forego the revenue collected therefrom. On theoretical ground, it was also counter-argued that the estate tax is part of the death taxation system in the country and around the world. Of the numerous and varied literature on theories on the imposition of death taxes, one of the economic theories that has been advanced to justify the imposition of said taxes is the "accidental or

³⁶ Introduced by Hon. Magtanggol T. Gunigundo I.

fortuitous income theory”. This theory postulates that the death of the owner of property results in a sudden acquisition by the beneficiaries which increases their tax-paying capacity and that such transmission is a social privilege for which some compensation may rightfully be demanded by the State.³⁷ Two other theories emphasize the due share that the government should be accorded in respect of the estate that will be received by the heirs or beneficiaries of the decedent. The first is the *benefit-received theory* which stipulates that the services and other benefits that accrue to the estate and heirs through the intervention of the government should be compensated. The *privilege theory*, on the other hand, is based on the assumption that inheritance is not a right but a privilege granted and perpetuated by the State, and that large estates have been acquired only with the protection of the State. It is therefore argued that in providing for the proper atmosphere for the creation of estates, the State should share, at least to some degree. Hence, the practical view of the imposition of the estate tax is that it is “the only method of collecting the share which is properly due to the State as a ‘partner’ in the accumulation of property which was made possible on account of the protection of the State”.³⁸

3. Another argument against the abolition of the estate tax is that the imposition of the estate tax is frequently justified on the ground that it closely conforms to the widely accepted principles of ability-to-pay and minimal sacrifice.³⁹ In this regard, it should be mentioned that if the estate tax is to be compared to other taxes such as the Value-Added Tax (VAT) and the capital gains tax (CGT) on real property, it will be unfair if the estate tax will be repealed. In the case of the VAT, which is a tax on the sale of goods and services, this tax is practically being shouldered by all citizens regardless of their economic status in the society. The rate of VAT was even increased from 10% to 12% in 2005 by virtue of Republic Act (RA) No. 9337⁴⁰ in order to boost government revenues as a support to its expanding expenditure program. Hence, it is unfair that while the VAT is assumed by even those with very little income in the society in order to aid the government, the estate tax which can be perceived as a tax on the wealthy is to be abolished. The financial sacrifice which is the cost of the tax is also minimal when ranged against the value of properties accumulated by the decedent. With respect to the CGT on the sale of real property which is based on the presumed capital gain, it should be mentioned that even if the seller actually incurred losses from the disposition of the capital asset, he/she is still required to pay the tax thereon.

³⁷ Tomas P. Matic, Jr., *Estate and Gift Taxation in the Philippines*. (Manila: Central Lawbook Publishing Co., Inc., 1981), p. 6.

³⁸ Report of the Tax Commission, Vol. I, pp. 555-557, cited in Matic, T. P. 1981, *Estate and Gift Taxation in the Philippines*, p. 7.

³⁹ Eduardo Z. Romualdez, Sr., Angel Q. Yoingco, and Antonio O. Casem, Jr., *Philippine Public Finance*, (Manila: 1973), p. 305.

⁴⁰ Entitled, “An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237, and 288 of the National Internal Revenue Code of 1997, and for Other Purposes.” Approved on November 1, 2005.

4. The estate tax is perceived to be a tax on those who have more in life for the reason that not all individuals are capable of generating wealth in different forms in more than modest amounts, and be able to transfer these to their chosen/designated heirs or beneficiaries. As discussed earlier, there are various types of items that may be deducted from the gross estate of a decedent before the net estate is arrived at. Whether the items of deduction are maximized or not, the fact that there remains a net estate that is subject to tax, there will always be the perception that payees of the estate tax are affluent or well-to-do individuals because it is a tax on the transfer of wealth from the decedent to his/her heirs or beneficiaries. Hence, if this type of tax which is deemed as a tax on those who have more in life will be abolished, the progressive character of the tax system may be eroded.

5. Moreover, if the estate tax is to be repealed, this can have a substantial impact on the donor's tax collection. This is for the reason that a donor, instead of donating a property during his/her lifetime, will most likely opt to wait for the time of his/her death before passing the ownership of his/her assets to beneficiaries in order to avoid taxation. Thus, even the opportunity to make more/productive use of assets is threatened.

6. As regard the contention that the estate tax unfairly punishes frugality, it is worthy to mention that there are various reasons for an individual's decision to be frugal. As Romualdez, et al. noted, some people work and save because of the creative interest that such activities offer to them or probably because of the power and prestige that they will acquire, while there are those who work and save because it has become a habit. The estate tax, therefore, does not punish frugality per se. As Justice Cooley has stated when he spoke of the inheritance tax of the State of New York (which can be aptly applied to the estate tax): "The subject of the tax is the transmission from the dead to the living, not the thing transmitted."⁴¹

7. Economic growth is likewise not undermined with the imposition of the estate tax. Proponents of death taxes argue that should an heir sell an asset or a property that he or she inherited to another person in order to pay death taxes, "the capital of the country remains unchanged, as the asset is merely transferred from one individual or estate to another."⁴²

B. Adjustment in the Amount of Deductions

1. It must be noted that the present Tax Code (RA No. 8424) was approved on December 11, 1997 and became effective on January 1, 1998. Considering the inflation that took place from the enactment of RA No. 8424 to the present, an

⁴¹ Matic, Jr., op. cit., p. 12.

⁴² Romualdez, et. al., op. cit. p. 307.

adjustment in the amount of allowable deductions from the gross estate may be considered. One of these pertains to the increase in the amount of maximum deductible medical expenses from ₱500,000 to ₱1.5 million.⁴³ The proposed increase notes that medical expenses before death often reach exorbitant amounts and therefore, the maximum deductible medical expenses need to be rationalized to reflect the realistic cost of medical services.

2. While there is truth on the assertion that the cost of medical expenses has increased from the time the Tax Code was passed, the proposed deductible amount is deemed to be generous particularly when measured by the increase in the Consumer Price Index (CPI) from 1998 up to 2006 which is only 151.1% or even up to 2010 when the CPI is only 182%. Hence, if the proposal is pursued, the amount should not be more than ₱750,000 if based on 2006 CPI or ₱ 910,000 if based on 2010 CPI. The drawback of such adjustment is that it would result to revenue loss on the part of the government, a situation which may not be fiscally acceptable considering the prevailing budget deficit and government's expenditures program.

3. Aside from the adjustment of maximum deductible medical expenses, the deductible value of family home is likewise proposed to be increased from ₱1 million to ₱10 million.⁴⁴ Considering the erosion in the tax base and the revenue loss that the government may incur if the increase in the amount of deduction is pursued, the proposal may have to wait for a more opportune occasion.

C. Improvement in the Administration of Estate Tax

1. A bill⁴⁵ was also filed seeking to mandate the local civil registry (LCR) to provide the BIR certified true copies of its death records to enhance the monitoring and proper payment of estate tax and as a result thereof, boost the collection of the said tax. The provision of death records shall be conducted in the following manner:

- a. The LCR shall forward the Certified True Copies of Death within ten (10) days to the BIR; and

⁴³ Per Senate Bill No. 285 entitled "An Act Amending Section 86 (A) (6) of Republic Act No. 8424, As Amended, Otherwise Known as the National Internal Revenue Code of 1997", introduced by Senator Richard J. Gordon during the First Regular Session of the 14th Congress and Senate Bill No. 483 with the same title introduced by Senator Jinggoy Ejercito Estrada during the First Regular Session of the 15th Congress.

⁴⁴ Senate Bill No. 132 entitled "An Act Amending Section 86 (A) (4) of Republic Act No. 8424, As Amended, Otherwise Known as the National Internal Revenue Code of 1997", introduced by Senator Juan Ponce Enrile during the First Regular Session of the 15th Congress.

⁴⁵ House Bill (HB) No. 2931 entitled "An Act Requiring the Local Civil Registry to Provide the Bureau of Internal Revenue Certified True Copies of Death Records, Providing Penalties for the Violation Thereof", introduced by Hon. Godofredo V. Arquiza during the first Regular Session of the 15th Congress.

- b. If the LCR is unable to obtain and provide the Certified true Copies of Death within thirty (30) days from the actual date of death due to obstacles encountered in furnishing the copies, the LCR shall immediately inform the BIR of the same, explaining the nature of obstacles encountered.

2. The proposal is supported as it will strengthen the BIR's drive to enhance the collection of the estate tax. The BIR will be armed with the necessary documents to identify potential taxpayers and go after them if they fail to comply with their tax obligations, if any. The proposal however, also entails additional resources on the part of the BIR specifically in handling, processing and analyzing the submitted certified true copies of death records. Likewise, the proposal requires additional resources from the LCR to comply with the mandate to share its death records with the BIR. Considering the expected volume of records that will be received and processed by the BIR, it might be helpful to consider that instead of the death records, the LCR should submit an abstract or digest of the records containing information vital to the administration of the estate tax by the BIR.

VII. ADMINISTRATIVE PROGRAM TO STRENGTHEN ESTATE TAXATION

1. Noting the minimal number of estate tax returns filed vis-à-vis the number of registered deaths and to improve the collection of the estate tax, the BIR launched in February 2010 the Project Rest In Peace (Project R.I.P.) under Revenue Memorandum Order No. 10-2010. The project directs all Revenue District Offices to conduct a pro-active and close monitoring of potential estate tax cases by establishing linkages with and/or accessing or securing the records of the following:

- a. Civil Registers;
- b. Hospitals;
- c. Memorial Parks;
- d. Cemeteries;
- e. Funeral parlors;
- f. Crematoriums;
- g. Judicial Clerks of Courts;
- h. Obituaries; and
- i. Life Insurance companies and other Financial Institutions.

2. The information to be gathered are the following:
 - a. Name of decedent;
 - b. Address of decedent;
 - c. Date of death;
 - d. Status of decedent (i.e., married, single, with children, etc.);
 - e. Name of relative(s)/contact person (s); and
 - f. Address of relative(s)/ contact person(s).

3. It is unfortunate that an evaluation of the Project R.I.P. cannot yet be made at this juncture due to unavailability of necessary data.

VIII. CONCLUSIONS AND RECOMMENDATIONS

1. The imposition of the estate tax is justified on the ground that it closely conforms to the widely accepted principles of ability-to-pay and minimal sacrifice. It also has the important economic objective of preventing undue concentration of wealth, or stated otherwise, of limiting fortunes by taxation. Whether or not this objective has been achieved is still the subject of a detailed and much closer scrutiny as the estate tax structure, rate and base have gone through a series of changes. The increase in the amount of deductions from the gross estate enables the tax to cover only those individual taxpayers with substantial value of properties to be passed to their beneficiaries.

2. In terms of its contribution to the revenue generation of the government, the estate tax contributes only minimally with only around one-tenth of 1% of the total BIR collection. Thus, the proposal to increase the amount of certain deductible expenses from the gross estate is not supported or modified. However minimal the estate tax contribution to the government's revenue could be, its abolition is not supported as it will give an impression that the tax system operates in favor of wealthy individuals.

3. One of the reasons for the minimal collection from the estate tax could be the low number of estate tax filers which is only around 7% of the number of registered deaths in the country. In this regard, the BIR launched in February 2010 the Project R.I.P which aims to enhance the collection of the estate tax. An evaluation of the Project R.I.P should provide interesting insights on what reforms should be further introduced into the country's estate tax structure.

