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## Polishing the TRAIN

Everybody is excited to ride the Tax Reform for Acceleration and Inclusion (TRAIN). It arrived on time. But Congress watered down some of its original parts. I have no complaint since it is part of democracy. You cannot have it all. I am concerned, though, with some poorly crafted provisions of the law that are inconsistent with the true intentions of the government. Fortunately, TRAIN 1 is not the first and last ride. The succeeding TRAINs can still rectify questionable provisions.

First, employees of regional headquarters, regional operating headquarters, offshore banking units and petroleum contractors that are enjoying the preferential tax rate under the previous Tax Code are now subject to the graduated income-tax rate based on a Bureau of Internal Revenue (BIR) advisory. Employees affected by this advisory have a legitimate argument that it is inconsistent with the law. According to them, the President did not veto the preferential tax rate of 15 percent. Unfortunately, the directive of the BIR is to implement the veto message of the President, which advocates equal taxation for all. Employers are now in a dilemma. Should they make a stand by not following the directive of the BIR and risk going through the rigors of tax assessment or just follow the BIR's advisory and let their employees carry the burden of additional tax, despite a legitimate argument against it? It is not too late for the government to correct this. If the intention is to apply the rates of withholding tax on compensation to everyone in the spirit of equal protection, then the law must be crafted clearly to reflect this.

Second, among the real properties exempt from value-added tax (VAT) include the sale of real property that is not primarily held for sale to customers or held for lease in the ordinary course of trade or business, real properties utilized for low-cost and socialized housing, as well as residential lot valued at P1.5 million and house and lot valued at P2.5 million. Revenue Regulation (RR) 16-2011 increased the VAT exempt threshold of residential lot valued at P1.5 million to P1,919,500. On the other hand, house and lot and other residential dwellings valued at P2.5 million was increased to P3.199 million. But with the advent of TRAIN, the VAT exempt threshold was brought back to P1.5 million for residential lot and P2.5 million for house and lot and other residential dwellings. In effect, residential lot that exceeds P1.5 million and house and lot that exceeds P2.5 million are now subject to VAT. It appears that this is an oversight on the part of Congress, since the real intention is to expand the coverage of VAT exemption for real properties for residential purposes. Can the BIR issue a similar revenue regulation as RR 16-2011 and unilaterally increase the amount covered by the VAT exemption? By doing so, is it tantamount to illegal legislation on the part of the executive? To avoid an unintentional hit on the marginalized sector, Congress must fix this in the succeeding TRAIN.

Finally, taxpayers have no choice but to wait for a decision of the BIR in VAT refunds. Before the TRAIN, taxpayers have the following remedies: In case of (a) a full or partial denial by the BIR of the claim, or (b) the BIR's failure to act on the claim within 120 days, the taxpayer may file a judicial claim via an appeal with the Court of Tax Appeal (CTA) of the BIR decision or unacted claim within 30 days (a) from receipt of the decision; or (b) after the expiration of the 120-day period. The TRAIN deleted option (b) above. So, taxpayers now have to wait for a BIR decision before it can file an appeal with the CTA. Although the law provides for a criminal penalty if the BIR officer deliberately fails to act on a refund claim within 90 days, this remedy is very adversarial that businessmen want to avoid. Congress should not leave taxpayers at the mercy of the BIR. A remedy similar to option (b) must be made available in the succeeding TRAIN.

We must always do it right the first time. This may not always be the case because we are just human. We can always correct a mistake and do it right the second time. Heads up! The second TRAIN is coming.

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