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# Amendments to the National Internal Revenue Code Introduced by TRAIN 1

*Euney Marie J. Mata-Perez\**

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## I. INTRODUCTION

Republic Act No. 10963,<sup>1</sup> or the Tax Reform for Acceleration and Inclusion Law (TRAIN 1) is the first tranche of amendments to the National Internal Revenue Code (NIRC), aimed at achieving the Government's effort to overhaul the Philippine tax system. Its passage within a year since the filing of the original bill in Congress is a feat of political will. The last major amendment to the NIRC was in 1997, upon the passage of Republic Act No. 8424, otherwise known as Tax Reform Act of 1997 (National Internal Revenue Code).<sup>2</sup>

## II. OBJECTIVES

In summary, TRAIN 1 was passed with the following objectives:

- (a) To enhance progressivity of the tax system through the rationalization of the Philippine internal revenue tax system, thereby promoting sustainable and inclusive economic growth;
- (b) To provide, as much as possible, an equitable relief to taxpayers to a greater number of taxpayers and their families in order to improve levels of disposable income and increase economic activity; and[.]

- 
1. An Act Amending Sections 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, and 288; Creating New Sections 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, and 265-A; and Repealing Sections 35, 62, and 89; All Under Republic Act No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, as Amended, and for Other Purposes [Tax Reform for Acceleration and Inclusion (TRAIN)], Republic Act No. 10963 (2017).
  2. An Act Amending the National Internal Revenue Code, as Amended, and for Other Purposes, Republic Act No. 8424 [NAT'L INTERNAL REVENUE CODE] (1997).

- (c) To ensure that the government is able to provide for the needs of those under its jurisdiction and care through the provision of better infrastructure, health, education, jobs[,] and social protection for the people.<sup>3</sup>

Enhancing progressivity required the adjustment to the personal income tax brackets, which have been in the NIRC for decades. With these adjustments, it was expected that taxpayers will have improved disposable income.<sup>4</sup> However, with the third objective, it was clear that TRAIN 1 not only had to compensate for the expected revenue loss from the personal income tax brackets adjustments, but it also sought to raise revenues for the government.<sup>5</sup>

In any case, with the increase in value-added tax (VAT) coverage and excise tax rates, it has not become clear if indeed the “purchasing power” or disposable income of taxpayers has improved.

### III. GENERAL AMENDMENTS

#### *A. Revenue Raising Measures*

The revenue raising measure implemented by TRAIN 1 includes the following:

- (1) Expanding the VAT system, by removing VAT exemptions imposed under special laws, and removing (conditionally) certain zero-rating transactions;<sup>6</sup>
- (2) Increasing the excise taxes on automobiles,<sup>7</sup> cigarettes,<sup>8</sup> and mineral products;<sup>9</sup> and
- (3) Imposing new excise taxes on cosmetic procedures<sup>10</sup> and sweetened beverages.<sup>11</sup>

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3. Tax Reform for Acceleration and Inclusion (TRAIN), § 2.

4. See Tax Reform for Acceleration and Inclusion (TRAIN), § 2 (a).

5. *Id.* § 2 (c).

6. *Id.* § 32 (amending NAT'L INTERNAL REVENUE CODE, § 107 (B), para. 1).

7. Tax Reform for Acceleration and Inclusion (TRAIN). § 45 (amending NAT'L INTERNAL REVENUE CODE, § 149).

8. *Id.* § 42 (amending NAT'L INTERNAL REVENUE CODE, § 145).

9. *Id.* § 48 (amending NAT'L INTERNAL REVENUE CODE, § 151).

It also increases the rate on capital gains tax on sale of shares not listed in the stock exchange,<sup>12</sup> the stock transaction tax for shares listed in the stock exchange,<sup>13</sup> and the documentary stamp taxes on several transactions.<sup>14</sup>

### *B. Shift to More Indirect Taxation*

It can be gleaned that TRAIN 1 indirectly shifted more tax burden through the expansion of the VAT provisions and the increase in excise taxes.<sup>15</sup> The impact on the reduced personal income tax rates will be felt only by the employed taxpayers. On the other hand, the impact on the VAT and increase in excise taxes affect every consumer, a much wider swath of the population. With this, there is doubt if the increase in disposable income, the second objective of TRAIN 1, would be achieved.

## IV. AMENDMENTS ON INCOME TAXATION

### *A. Personal Income Tax Rate Adjustments*

The amendments on Personal Income Tax (PIT) included an across the board exemption of ₱250,000,<sup>16</sup> but deleted personal and additional exemptions.<sup>17</sup> Previously, those earning ₱500,000 taxable compensation income were taxed at 32%.<sup>18</sup> Now, they are subject to only 25%, which will be reduced to 20% starting in the year 2023 and onwards.<sup>19</sup>

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10. See Tax Reform for Acceleration and Inclusion (TRAIN), § 46 (adding Section 150-A to the National Internal Revenue Code).

11. *Id.* § 47 (adding Section 150-B to the National Internal Revenue Code).

12. *Id.* § 7 (amending NAT'L INTERNAL REVENUE CODE, § 27 (D), para. 2).

13. *Id.* § 39 (amending NAT'L INTERNAL REVENUE CODE, § 127).

14. *Id.* §§ 51-70 (amending NAT'L INTERNAL REVENUE CODE, §§ 174-175, 177-183, 186, & 188-197).

15. Compare Tax Reform for Acceleration and Inclusion (TRAIN) (provisions on value added tax (VAT) and excise taxes) with NAT'L INTERNAL REVENUE CODE (provisions on VAT and excise taxes as amended by the Tax Reform Act of 1997).

16. Tax Reform for Acceleration and Inclusion (TRAIN), § 5 (amending NAT'L INTERNAL REVENUE CODE, § 24 (A) (2) (a)).

17. *Id.* § 12 (repealing NAT'L INTERNAL REVENUE CODE, § 35).

18. NAT'L INTERNAL REVENUE CODE, § 35 (repealed by Tax Reform for Acceleration and Inclusion (TRAIN), § 12).

19. Tax Reform for Acceleration and Inclusion (TRAIN), § 5.

However, individuals earning taxable income of ₱8 million and above will be taxed at 35%.<sup>20</sup> When compared with the country's ASEAN neighbors, the 35% is on the high end.<sup>21</sup> This will still send a message that the Philippines has high taxes.

The adjusted PIT table, as set out in Section 24, Subsection A of the NIRC is thus as follows —

Annual Taxable Income	2018	2023 onwards
Not over ₱250,000	0%	0%
Over ₱250,000 but not over ₱400,000	20% of the excess over ₱250,000	15% of the excess over ₱250,000
Over ₱400,000 but not over ₱800,000	₱30,000 + 25% of the excess over ₱400,000	₱22,500 + 20% of the excess over ₱400,000
Over ₱800,000 but not over ₱2,000,000	₱130,000 + 30% of the excess over ₱800,000	₱102,500 + 25% of the excess over ₱800,000
Over ₱2,000,000 but not over ₱8,000,000	₱490,000 + 32% of the excess over ₱2,000,000	₱402,500 + 30% of the excess over ₱2,000,000
Over ₱8,000,000	₱2,410,000 + 35% of the excess over ₱8,000,000.	₱2,202,500 + 35% of the excess over ₱8,000,000.

Table 1: Personal Income Tax Table<sup>22</sup>

The 13th month pay exemption was increased to ₱90,000.<sup>23</sup>

20. *Id.*

21. *See generally*, National Tax Research Center, 30 NTRC TAX RESEARCH J. 50 (2018).

22. Tax Reform for Acceleration and Inclusion (TRAIN), § 5.

23. *Id.* § 9 (amending NAT'L INTERNAL REVENUE CODE, § 32 (B) (7) (c)).

*B. The 8% Tax on Gross Income*

In an attempt to simplify taxation, TRAIN 1 introduced a new 8% tax on gross sales or gross receipts (8% of gross income tax (GIT)) in lieu of the graduated rates imposed by Section 2, Subsection A of the NIRC for self-employed individuals<sup>24</sup> earning income purely from self-employment or practice of profession where the gross sales or receipts do not exceed ₱3 million, the new VAT threshold.<sup>25</sup> The 8% GIT shall be in lieu of the VAT and percentage taxes imposed in the NIRC.<sup>26</sup> Thus, such self-employed individuals now have the option to be taxed as follows:

- (1) at the graduated rates under Section 24, Subsection A of the NIRC, as amended by TRAIN 1;<sup>27</sup> or,
- (2) at the 8% GIT on gross sales or receipts and other non-operating income in excess of two hundred fifty thousand pesos (₱250,000.00) in lieu of the graduated income tax rates under Section 24 (A) and the percentage tax under Section 116, all under the NIRC, as amended.<sup>28</sup>

Bureau of Internal Revenue's Revenue Regulations (BIR RR) No. 8-2018<sup>29</sup> prescribed that availing the 8% GIT has to be elected by the taxpayer

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24. Self-employed individual is defined as

a sole proprietor or an independent contractor who reports income earned from self-employment. S/he controls who s/he works for, how the work is done and when it done. It includes those hired under a contract of service or job order, and professionals whose income is derived purely from the practice of profession and not under an employer-employee relationship.

Bureau of Internal Revenue, Implementing the Income Tax Provisions of Republic Act No. 10963, Otherwise Known as the "Tax Reform for Acceleration and Inclusion (TRAIN)" Act, Revenue Regulations 8-2018 [BIR RR No. 8-2018], § 2 (n) (Jan. 25, 2018).

25. Tax Reform for Acceleration and Inclusion (TRAIN), § 5 (amending NAT'L INTERNAL REVENUE CODE, § 24 (A) (2) (b)).

26. *Id.*

27. *Id.*

28. *Id.*

29. Bureau of Internal Revenue, Implementing the Income Tax Provisions of Republic Act No. 10963, Otherwise Known as the "Tax Reform for

annually, and such choice is irrevocable for the year.<sup>30</sup> The option is not available to a VAT-registered taxpayer, regardless of the amount of gross sales receipts, and to a taxpayer who is subject to other percentage taxes under Title V of the NIRC, as amended, except those subject under Section 116 of the same Title. Likewise, partners of a general professional partnership (GPP), by virtue of their distributive share from GPP which is already net of cost and expenses, cannot avail of the 8% GIT rate option.<sup>31</sup>

### *C. Increased Taxes*

TRAIN 1 increased the final tax on deposits received by individuals from deposits with depository banks under the expanded foreign currency deposits system from 7.5% to 15%.<sup>32</sup>

The capital gains tax on sale of shares of domestic companies outside the facilities of the stock exchange was increased to 15% from the old rates of 5% and 10%.<sup>33</sup>

It also increased the fringe benefits tax from 32% to 35%.<sup>34</sup>

### *D. Tax on Employees of ROHQs, RHQs, OBUs, and Petroleum Service Contractors*

A controversial amendment is the change in the income tax rates imposed on employees of regional headquarters (RHQs), regional operating

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Acceleration and Inclusion (TRAIN)" Act, Revenue Regulations 8-2018 [BIR RR No. 8-2018] (Jan. 25, 2018).

30. BIR RR No. 8-2018, § 3 (C) & Bureau of Internal Revenue, Prescribing Policies, Guidelines and Procedures in the Availment of the Eight Percent (8%) Income Tax Rate Option for Individuals Earning from Self-Employment and/or Practice of Professions, Revenue Memorandum Order No. 23-2018 [Revenue Memo. Order No. 23-2018], pt. II, ¶ 6 (May 21, 2018).

31. BIR RR No. 8-2018, § 3 (C).

32. Tax Reform for Acceleration and Inclusion (TRAIN), § 5 (amending NAT'L INTERNAL REVENUE CODE, § 24 (B) (1)).

33. *Id.* (amending NAT'L INTERNAL REVENUE CODE, § 24 (C)). The old rates were 5% on net capital gains not exceeding ₱100,000, and 10% on gains in excess of ₱100,000. *Id.*

34. *Id.* § 10 (amending NAT'L INTERNAL REVENUE CODE, § 33 (A)).



headquarters (ROHQs), offshore banking units (OBUs), and petroleum service contractors.<sup>35</sup>

Contrary to the version of the TRAIN approved by the House of Representatives, TRAIN 1 reproduced Subsections (C), (D), and (E) of Section 25, from Subsections (C), (D), and (E) of Section 25 of the National Internal Revenue Code.<sup>36</sup> The provisions mentioned provide for a 15% tax

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35. See Tax Reform for Acceleration and Inclusion (TRAIN), § 6 (amending NAT'L INTERNAL REVENUE CODE, § 25).

36. Subsections C, D, and E of Section 25, which were reproduced verbatim in TRAIN 1, read as follows —

- (C) *Alien Individual Employed by Regional or Area Headquarters and Regional Operating Headquarters of Multinational Companies.* — There shall be levied, collected[,] and paid for each taxable year upon the gross income received by every alien individual employed by regional or area headquarters and regional operating headquarters established in the Philippines by multinational companies as salaries, wages, annuities, compensation, remuneration[,] and other emoluments, such as honoraria and allowances, from such regional or area headquarters and regional operating headquarters, a tax equal to fifteen percent (15%) of such gross income: *Provided, however,* That the same tax treatment shall apply to Filipinos employed and occupying the same position as those of aliens employed by these multinational companies. For purposes of this Chapter, the term 'multinational company' means a foreign firm or entity engaged in international trade with affiliates or subsidiaries or branch offices in the Asia-Pacific Region and other foreign markets.
- (D) *Alien Individual Employed by Offshore Banking Units.* — There shall be levied, collected[,] and paid for each taxable year upon the gross income received by every alien individual employed by offshore banking units established in the Philippines as salaries, wages, annuities, compensation, remuneration[,] and other emoluments, such as honoraria and allowances, from such offshore banking units, a tax equal to fifteen percent (15%) of such gross income: *Provided, however,* That the same tax treatment shall apply to Filipinos employed and occupying the same position as those of aliens employed by these offshore banking units.
- (E) *Alien Individual Employed by Petroleum Service Contractor and Subcontractor.* — An alien individual who is a permanent resident of a foreign country but who is employed and assigned in the Philippines by a foreign service contractor or by a foreign service

on employees of RHQs, ROHQs, OBUs, or petroleum service contractors and subcontractors. Under House Bill No. 4688, all these paragraphs were proposed to be deleted, thereby removing the incentive and subjecting such employees to the regular income tax on individuals.<sup>37</sup>

The TRAIN 1 instead inserted a new Subsection F in Section 25 which reads —

- (F) The preferential tax treatment provided in subsections (C), (D), and (E) of this [S]ection shall not be applicable to regional headquarters (RHQs), regional operating headquarters (ROHQs), offshore banking units (OBUs)[.] or petroleum service contractors and subcontractors registering with the Securities and Exchange Commission (SEC) after January 1, 2018: *Provided, however, that existing RHQs/ROHQs, OBUs[,] or petroleum service contractors and subcontractors presently availing of preferential tax rates for qualified employees shall continue to be entitled to avail of the preferential tax rate for present and future qualified employees.*<sup>38</sup>

Citing the equal protection clause of the Constitution and considering the significant reduction in the personal income tax, President Rodrigo R. Duterte vetoed the proviso in Subsection F, stating —

- A. Reduced income tax rate of employees of [RHQs, ROHQs, OBUs], and Petroleum Service Contractors and Subcontractors, [the President

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subcontractor engaged in petroleum operations in the Philippines shall be liable to a tax of fifteen percent (15%) of the salaries, wages, annuities, compensation, remuneration[,] and other emoluments, such as honoraria and allowances, received from such contractor or subcontractor: *Provided, however,* That the same tax treatment shall apply to a Filipino employed and occupying the same position as an alien employed by petroleum service contractor and subcontractor.

Any income earned from all other sources within the Philippines by the alien employees referred to under Subsections (C), (D)[.] and (E) hereof shall be subject to the pertinent income tax, as the case may be, imposed under this Code.

*Id.* § 25 (C), (D), & (E).

37. An Act Amending Sections 22, 24, 31, 32, 34, 35, 79, 106, 107, 108, 109, 110, 148 and Title VI of Republic Act No. 8424 Otherwise Known as “The National Internal Revenue Code of 1997”, as Amended, and for Other Purposes, H.B. No. 4688, § 5, 17th Cong., 1st Reg. Sess. (2016).
38. Tax Reform for Acceleration and Inclusion (TRAIN), § 5 (adding Subsection F to Section 25 of the National Internal Revenue Code) (emphasis supplied).

is] constrained to veto the proviso under Section 6 (F) of the enrolled bill that effectively maintains the special tax rate of 15% of gross income for the aforementioned employees, to wit [—]

‘PROVIDED, HOWEVER, THAT EXISTING RHQS/ROHQS, OBUS OR PETROLEUM SERVICE CONTRACTORS AND SUBCONTRACTORS PRESENTLY AVAILING OF PREFERENTIAL TAX RATES FOR QUALIFIED EMPLOYEES SHALL CONTINUE TO BE ENTITLED TO AVAIL OF THE PREFERENTIAL TAX RATE FOR PRESENT AND FUTURE QUALIFIED EMPLOYEES.’

While I understand the laudable objective of the proposal, the provision is violative of the Equal Protection Clause under Section 1, Article III of the 1987 Constitution, as well as the rule of equity and uniformity in the application of the burden of taxation [—]

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

In line with this, the overriding consideration is the promotion of fairness of the tax system for individuals performing similar work. Given the significant reduction in the personal income tax, the employees of these firms should follow the regular tax rates applicable to other individual taxpayers.<sup>39</sup>

This shows the President’s intention to subject the employees of RHQs, ROHQS, OBUs, or petroleum service contractors and subcontractors to the regular tax applicable to other individual taxpayers.<sup>40</sup>

However, as mentioned, President Duterte vetoed the proviso in Subsection F only.<sup>41</sup> Subsections C, D, and E of Section 25 granting the 15% preferential treatment, as well as the first sentence of Subsection F of Section 25, which expressly state that the preference was removed for new entities only, or ROHQS, RHQs, OBUs, or petroleum service contractors registered with the Security and Exchange Commission after 1 January 2018,

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39. Office of the President, (Veto Message of the President on Certain Provisions of the Tax Reform for Acceleration and Inclusion (TRAIN)), pt. II (A), *available at* [https://www.bir.gov.ph/images/bir\\_files/internal\\_communications\\_1/TRAIN%20matters/VETO%20Message%20TRAIN%20Act.pdf](https://www.bir.gov.ph/images/bir_files/internal_communications_1/TRAIN%20matters/VETO%20Message%20TRAIN%20Act.pdf) (last accessed Sep. 20, 2018) (citing PHIL. CONST. art. III, § 1). (emphasis omitted)

40. *See* Office of the President, *supra* note 44, pt. II (A).

41. *Id.*

remain. Does it then follow that the preferential treatment of employees of existing “entities” continues to apply? Or will the preferential treatment apply only to existing and not to new employees of these entities? Is there now a distinction between foreign and alien employees of the above entities?

The President’s explanation shows that he wants all employees of the said entities to no longer be subject to the preferential treatment and, thus, be subject to the regular tax rates.<sup>42</sup> However, based on a literal reading of Subsection F, despite the veto, one may argue that only the incentive of employees of new entities — those registered after 1 January 2018 — was removed.

It should be noted that, in any case, the President’s exercise of his veto power is considered part of the legislative process. Every bill passed by Congress must be presented to the President for approval or veto.<sup>43</sup> In the absence of presentment to the President, no bill passed by Congress can become a law.<sup>44</sup> In this sense, law-making under the Constitution is a joint act of the Legislature and of the Executive. Thus, the President’s explanation of his veto carries great weight.

BIR RR No. 8-2018 clarified that the foregoing employees are now subject to the regular PIT under Section 24, Subsection A, Paragraph 2 (a) of the National Internal Revenue Code, and longer to the 15% preferential income tax rate under Subsections C, D, and E of Section 25 of the National Internal Revenue Code, as amended.<sup>45</sup> This is without prejudice to the application of preferential tax rates under existing international tax treaties, if warranted.<sup>46</sup>

#### *E. Optional Standard Deduction*

TRAIN 1 amended Section 34, Subsection L of the National Internal Revenue Code on Optional Standard Deductions (OSD), to provide that “a [GPP] and the partners comprising such partnership may avail of the OSD

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42. *Id.*

43. PHIL. CONST. art. VI, § 27 (1).

44. PHIL. CONST. art. VI, § 27 (1).

45. BIR RR No. 8-2018, § 4 (C).

46. *Id.*

only once, either by the general professional partnership or the partners comprising the partnership[.]”<sup>47</sup> The rule provides that

[u]nless the taxpayer, who is taxable under the graduated income tax rate, signifies in the income tax return the intention to elect the OSD, it shall be considered as having availed of the itemized deductions. Such election of the option, when made in the return, shall be irrevocable for the taxable year for which the return is made[.]

...

An individual who is entitled to and claimed for the OSD shall not be required to submit with the tax return such Financial Statements otherwise required under the [National Internal Revenue Code], as amended.<sup>48</sup>

#### *F. General Professional Partnerships*

A General Professional Partnership (GPP) is not a taxable entity for tax purposes, and thus, is not subject to the regular corporate income tax.<sup>49</sup> However, the partners

shall be liable to pay income tax on their separate and individual capacities [for their respective distributive share in the net income of the GPP].

For purposes of computing the distributive share of the partners, the net income of the [GPP] shall be computed in the same manner as a corporation.<sup>50</sup>

A GPP is allowed to “claim either the itemized deductions allowed under Section 34 of the Code or in lieu thereof, it can opt to avail of the OSD allowed to corporations in claiming the deductions in an amount not exceeding forty percent (40%) of its gross income.”<sup>51</sup>

BIR RR No. 8-2018 provides that

[t]he share in the net income of the partnership, actually or constructively received, shall be reported as taxable income of each partner. The partners comprising the GPP can no longer claim further deduction from their distributive share in the net income of the GPP and are not allowed to avail

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47. Tax Reform for Acceleration and Inclusion (TRAIN), § 11 (amending NAT'L INTERNAL REVENUE CODE, § 34).

48. BIR RR No. 8-2018, § 8, paras. 4-5.

49. NAT'L INTERNAL REVENUE CODE, §§ 22 (B) & 26, para. 1.

50. *Id.* § 26, paras. 1-2.

51. BIR RR No. 8-2018, § 8, para. 7.

of the 8% income tax rate option since their distributive share from the GPP is already net of cost and expenses.<sup>52</sup>

#### *G. Creditable Withholding Tax*

TRAIN 1 amended Section 57 of the National Internal Revenue Code to cap the amount of creditable withholding tax (CWT) rates that may be prescribed by the Commissioner of Internal Revenue at 15% of income payments.<sup>53</sup> The old Section 57 did not provide a cap, and states that the withholding tax rates that the Commissioner may prescribe should not be less than one percent (1%) but not more than thirty-two percent (32%) of the gross amount of the income payment. By previous regulation,<sup>54</sup> it has been prescribed a 20% withholding tax on interest income or traditional loans.<sup>55</sup> Such high withholding tax may be higher than the general effective tax rate.<sup>56</sup> With this 15% cap, the Commissioner of Internal Revenue cannot just impose higher withholding tax rates at will.<sup>57</sup>

#### *H. Amendments to Simplify*

Aside from granting the 8% GIT option, TRAIN 1 also introduced the following amendments which could aid in simplifying compliance:

- (1) Mandating that individual Income Tax Returns (ITR) shall have a maximum of four pages;<sup>58</sup>

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52. *Id.* § 8, para. 9.

53. Tax Reform for Acceleration and Inclusion (TRAIN), § 17 (amending NAT'L INTERNAL REVENUE CODE, § 57 (B)).

54. Bureau of Internal Revenue, Revenue Regulations 14-2012 [BIR RR No. 14-2012], § 7 (Nov. 7, 2012).

55. *Id.*

56. An individual availing of the 40% OSD may have an effective tax rate of only 19.2%.

57. *See* Tax Reform for Acceleration and Inclusion (TRAIN), § 17 (amending NAT'L INTERNAL REVENUE CODE, § 27 (B)).

58. Tax Reform for Acceleration and Inclusion (TRAIN), § 13 (amending NAT'L INTERNAL REVENUE CODE, § 51 (A) (5)).

- (2) Prescribing that the returns for final withholding taxes (FWT) and CWT shall be made “not later than the last day of the month following the close of the quarter during which the withholding was made[,]” supposedly doing away with the monthly filing;<sup>59</sup> and
- (3) Moving the deadline for ITR filing to on or before 15 May of the same taxable year.<sup>60</sup>

However, the BIR has required taxpayers to still remit monthly FWT and CWT.<sup>61</sup>

#### IV. AMENDMENTS ON PROPERTY TAXATION

##### *A. Estate Tax*

Estate tax was reduced to 6% of the value of the net estate.<sup>62</sup> The standard deduction was increased from ₱1 million to ₱5 million,<sup>63</sup> and the exemption for the family home was increased from ₱1 million to ₱10 million.<sup>64</sup> However, funeral, judicial, and medical expenses are no longer allowed as deductions.<sup>65</sup>

The requirement of submitting a report from a Certified Public Accountants (CPA) was revised to apply only to net estates with values of exceeding ₱5 million.<sup>66</sup> Further, the deadline to file the estate tax returns was extended from the previous six months to one year from the decedent's death.<sup>67</sup>

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59. *Id.* § 18 (amending NAT'L INTERNAL REVENUE CODE, § 58 (A)).

60. *Id.* § 20 (amending NAT'L INTERNAL REVENUE CODE, § 74 (A)).

61. Bureau of Internal Revenue, Tax Advisory dated 6 February 2018 (on file with the Bureau of Internal Revenue).

62. Tax Reform for Acceleration and Inclusion (TRAIN), § 22 (amending NAT'L INTERNAL REVENUE CODE, § 84).

63. *Id.* § 23 (amending NAT'L INTERNAL REVENUE CODE, § 86 (A) (1)).

64. *Id.* (amending NAT'L INTERNAL REVENUE CODE, § 86 (A) (7)).

65. *See* Tax Reform for Acceleration and Inclusion (TRAIN), § 23 (amending NAT'L INTERNAL REVENUE CODE, § 86).

66. Tax Reform for Acceleration and Inclusion (TRAIN), § 25 (amending NAT'L INTERNAL REVENUE CODE, § 90 (A) (3)).

67. *Id.* (amending NAT'L INTERNAL REVENUE CODE, § 90 (B)).

A welcome relief is the introduction of a new section which allows the withdrawal of bank deposits belonging to the deceased, subject to the withholding of the 6% final tax by the banks.<sup>68</sup> The withdrawal should be made within one year from the death of the depositor decedent<sup>69</sup> —

[(1)] For joint accounts, the final withholding tax shall be based on the share of the decedent in the joint bank deposit/s[;]

[(2)] Prior to such withdrawal, the Bank shall require the presentation of a copy of the Tax Identification Number (TIN) of the estate of the decedent and BIR Form No. 1904 or the estate, duly stamped received by the concerned Revenue District Office (RDO) of the BIR in accordance with the existing guidelines on the issuance of TIN[.]<sup>70</sup>

### *B. Donor's Tax*

Donor's tax was also reduced to 6% of the fair market value of the gifts in excess of ₱250,000.<sup>71</sup> This replaced the 2% to 15% donor's tax rates, and the 30% donor's tax rate to strangers.<sup>72</sup> "Net gift" is defined as the "net economic benefit from the transfer that accrues to the donee."<sup>73</sup>

Section 100 of the National Internal Revenue Code was amended to add certain qualifications to transfers deemed made for less than adequate consideration.<sup>74</sup> Section 100 sets the general rule that where property (other than real property referred to in Section 24, Subsection D)

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68. *Id.* § 27 (amending NAT'L INTERNAL REVENUE CODE, § 97).

69. Bureau of Internal Revenue, Revenue Memorandum Circular No. 62-2018 [BIR RMC No. 62-2018], para. 1 (1) (June 28, 2018).

70. *Id.* paras. 1 (2) & 1 (3).

71. Tax Reform for Acceleration and Inclusion (TRAIN), § 28 (amending NAT'L INTERNAL REVENUE CODE, § 99 (A)).

72. NAT'L INTERNAL REVENUE CODE, § 99 (A).

73. Bureau of Internal Revenue, Consolidated Revenue Regulations on Estate Tax and Donor's Tax Incorporating the Amendments Introduced by Republic Act No. 10963, Otherwise Known as the "Tax Reform for Acceleration and Inclusion (TRAIN) Law", Revenue Regulations No. 12-2018 [BIR RR No. 12-2018], § 12, para. 7 (Jan. 25, 2018).

74. Tax Reform for Acceleration and Inclusion (TRAIN), § 29 (amending NAT'L INTERNAL REVENUE CODE, § 100).



is transferred for less than an adequate and full consideration in money or money's worth, [ ] the amount by which the fair market value of the property exceeded the value of the consideration shall, for donor's tax purposes, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year[.]<sup>75</sup>

However, TRAIN 1 added a proviso which states that “a sale, exchange, or other transfer of property made in the ordinary course of business (a transaction which is a [bona fide], at arm's length, and free from any donative intent), will be considered as made for an adequate and full consideration in money or money's worth.”<sup>76</sup>

With the added proviso, the BIR and the courts cannot just assess donor's tax if they deem that sale of property or shares are made for less than fair market value, if it can be proven that the transfer was made for a bona fide business purpose, at arm's length and free of donative intent.

In previous cases, the courts have applied the general rule, and imposed donor's taxes on transfer of shares, without regard to whether or not the transfers were made without donative intent and were made for bona fide business purpose.

In the case of *Philamlife v. Secretary of Finance*,<sup>77</sup> the Court ruled that “the absence of donative intent ... does not exempt the sales of stock transaction from donor's tax, ... [and] even if there is no actual donation, the difference in price is considered a donation by fiction of law.”<sup>78</sup> A similar ruling was held in *Metro Pacific Corporation v. Commissioner of Internal Revenue*,<sup>79</sup> where the Court of Tax Appeals decided that Section 100 of the NIRC shows that no exemption or exception.<sup>80</sup> Had the legislature intended an exception/exemption to it, “it could have clearly stated therein such exception/exemption... Since taxation is the rule and exemption the

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75. *Id.*

76. *Id.*

77. *Philamlife v. Secretary of Finance*, 741 SCRA 578 (2014).

78. *Id.* at 601.

79. *Metro Pacific Corporation v. Commissioner of Internal Revenue*, CTA Case No. 8318, June 11, 2014, available at <http://cta.judiciary.gov.ph/home/download/8b59010b21ba67a43bbc5e04dod1329a> (last accessed Aug. 31, 2018).

80. *Id.* at 29.

exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms.”<sup>81</sup>

The new proviso introduced by TRAIN 1 now sets out a clear exception to the general rule under Section 100.<sup>82</sup>

*C. Valuation of Transfer of Properties Subject to Estate or Donor's Tax*

BIR RR No. 12-2018,<sup>83</sup> as amended and clarified by BIR RR No. 17-2018,<sup>84</sup> clarified the rules in valuation of properties comprising the gross estate or the properties subject to donor's tax.<sup>85</sup>

The aforesaid revenue regulations clarified that valuation of unlisted common shares for estate or donor's tax purposes is valued based on their book value while unlisted preferred shares are valued at par value, and that such valuation is exempt from the provisions of BIR RR No. 6-2013.<sup>86</sup> Thus, in determining the book value of common shares, appraisal surplus shall not be considered as well as the value assigned to preferred shares, if there are any.<sup>87</sup>

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81. *Id.* (citing *Quezon City v. ABS-CBN Broadcasting Corporation*, 567 SCRA 496, 515-16 (2008)).

82. *See* Tax Reform for Acceleration and Inclusion (TRAIN), § 29 (amending NAT'L INTERNAL REVENUE CODE, §100).

83. Bureau of Internal Revenue, Consolidated Revenue Regulations on Estate Tax and Donor's Tax Incorporating the Amendments Introduced by Republic Act No. 10963, Otherwise Known as the "Tax Reform for Acceleration and Inclusion (TRAIN) Law", Revenue Regulations No. 12-2018 [BIR RR No. 12-2018] (Jan. 25, 2018).

84. Bureau of Internal Revenue, Revenue Regulations No. 17-2018 [BIR RR No. 17-2018] (July 10, 2018).

85. *Id.* § 2.

86. Bureau of Internal Revenue, Amending certain provision of RR No. 6-2008 entitled Consolidated Regulations Prescribing the Rules on the Taxation of Sale, Barter, Exchange or Other Disposition of Shares of Stock Held as Capital Assets, Revenue Regulations No. 6-2013 [BIR RR No. 6-2013], § 2 (Apr. 11, 2013).

87. *Id.* § 2, para. 2.

If the property is a real property, the appraised value thereof as of the time of death or time of donation shall be either: (1) “[t]he fair market value as determined by the Commissioner,” or (2) “[t]he fair market value as shown in the schedule of values fixed by the Provincial and City assessors,” whichever is higher.<sup>88</sup>

In the case of shares of stocks, the fair market value shall depend on whether the shares are listed or unlisted in the stock exchanges. Unlisted common shares are valued based on their book value while unlisted preferred shares are valued at par value. In determining the book value of common shares, appraisal surplus shall not be considered, as well as the value assigned to preferred shares, if there are any. On this note, the valuation of unlisted shares shall be exempt from the provisions of BIR RR No. 6-2013, as amended.<sup>89</sup>

BIR RR No. 6-2013, as amended, is the controversial Revenue Regulation which requires that for the sale, exchange, or disposition of shares, the assets and liabilities of the corporation issuing the shares shall be adjusted to reflect their fair market values.<sup>90</sup> Real properties shall be appraised at fair market values.<sup>91</sup> Despite the fact that BIR RR No. 6-2013 expressly refers to the NIRC provisions imposing the then 5-10% capital gains tax on the sale of shares, BIR officials have been adamantly applying the rules of valuation therein to donations and estate taxation.<sup>92</sup>

“For shares which are listed in the stock exchanges, the fair market value shall be the arithmetic mean between the highest and lowest quotation at a date nearest the date of death, if none is available on the date of death itself.”<sup>93</sup>

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88. *Id.* § 2.

89. BIR RR No. 12-2018, § 5, para. 4.

90. BIR RR No. 6-2013, § 2.

91. *Id.*

92. NAT’L INTERNAL REVENUE CODE, §§ 24 (C); 25 (A) (3); 25 (B); 27 (D) (2); 28 (A) (7) (c); & 28 (B) (5) (c).

93. BIR RR No. 12-2018, § 5, para. 5.

#### D. Value-Added Tax

TRAIN 1 amended the VAT provisions in the NIRC by:

- (1) Increasing the VAT threshold to ₱3 million;<sup>94</sup>
- (2) Amending the zero-rating provisions of the National Internal Revenue Code;<sup>95</sup>
- (3) Revising VAT exemptions;<sup>96</sup>
- (4) Amending periods to file returns amended;<sup>97</sup> and
- (5) Prescribing new periods to act on VAT refunds.<sup>98</sup>

#### 1. VAT Zero-Rating

TRAIN 1 retained the zero rating on direct exports and made the zero-rating on indirect exports to continue until the establishment of an enhanced VAT refund system.<sup>99</sup>

The following are transactions which are conditionally subject to 0% VAT until the establishment of an enhanced VAT refund system:

- (1) “Sale of raw materials or packaging materials *to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing[,]* or repacking in the Philippines of the said buyer’s goods and paid for in foreign currency;”<sup>100</sup>
- (2) “Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed 70% of total annual production;”<sup>101</sup>

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94. Tax Reform for Acceleration and Inclusion (TRAIN), § 72.

95. *Id.* § 86 (v), (cc), (dd), (hh), & (bbb).

96. *Id.* §§ 34, 72, & 86 (b)-(jj), (aaa), & (bbb).

97. *Id.* § 31.

98. *Id.*

99. *Id.*

100. Tax Reform for Acceleration and Inclusion (TRAIN), § 31 (amending NAT’L INTERNAL REVENUE CODE, § 106 (A) (3)) (emphases supplied).

101. *Id.* (amending NAT’L INTERNAL REVENUE CODE, § 106 (A) (4)).

- (3) “Processing, manufacturing[,] repacking of goods for persons doing business outside the Philippines which goods are subsequently exported;”<sup>102</sup> and,
- (4) “Services performed by contractors and/or subcontractors in processing, converting, or manufacturing good for an enterprise whose export sales exceed [70%] of total annual production.”<sup>103</sup>

Foreign-currency denominated sales<sup>104</sup> and sale of gold to the *Bangko Sentral ng Pilipinas* (BSP) are no longer zero-rated for VAT purposes are.<sup>105</sup>

## 2. Enhanced VAT Refund System

The successful establishment and implementation of an enhanced VAT refund system require the fulfillment of the following conditions:

- (1) The system grants refunds of “creditable input tax within ninety (90) days from the filing of the VAT refund application with the Bureau; *Provided, That*, to determine the effectivity of item no. 1, all applications filed from 1 January 2018 shall be processed and must be decided within ninety (90) days from the filing of the VAT refund application;”<sup>106</sup> and

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102. *Id.* § 33 (amending NAT’L INTERNAL REVENUE CODE, § 108 (B) (1)).

103. *Id.* (amending NAT’L INTERNAL REVENUE CODE, § 108 (B) (2)).

104. Foreign currency denominated sale is defined as the

sale to a nonresident of goods (except those mentioned in Sections 149 and 150 of the National Internal Revenue Code) assembled or manufactured in the Philippines for delivery to a resident in the Philippines, paid for in acceptable foreign currency ... and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).

NAT’L INTERNAL REVENUE CODE, §106.

105. Sale of gold to BSP became VAT exempt. Tax Reform for Acceleration and Inclusion (TRAIN), § 34 (amending NAT’L INTERNAL REVENUE CODE, § 109 (Z)).

106. *Id.* § 31 (amending NAT’L INTERNAL REVENUE CODE, § 112 (C)).

- (2) “All pending VAT refund claims as of [31 December 2017] shall be fully paid in cash by [31 December 2019].”<sup>107</sup>

It further requires that

[5%] of the total VAT collection of the BIR and the [Bureau of Customs] from the immediately preceding year shall be automatically appropriated annually and ... treated as a special account in the general fund or as trust receipts for the purpose of funding claims for VAT refund. [However,] any unused fund, at the end of the year shall revert to the General Fund.<sup>108</sup>

Submission to the Congressional Oversight Committee on the Comprehensive Tax Reform Program of a quarterly report of all pending claims for refund and any unused fund is required.<sup>109</sup>

### 3. New VAT Exemptions

The following were added as VAT-exempt transactions under Section 109 of the NIRC:

- (1) Sale or lease of goods and services to senior and persons with disability, as provided under Republic Act Nos. 9994 (Expanding Senior Citizens Act of 2010)<sup>110</sup> and 10754 (An Act Expanding the Benefits and Privileges of Persons with Disability),<sup>111</sup> respectively; Transfer of property pursuant to Section 40, Subsection C, Paragraph 2 of the NIRC, as amended;

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107. *Id.*

108. *Id.*

109. *Id.* §§ 31 & 33 (amending NAT’L INTERNAL REVENUE CODE, §§ 106 (A) (2) & 108 (B)).

110. An Act Granting Additional Benefits and Privileges to Senior Citizens, Further Amending Republic Act No. 7432, As Amended, Otherwise Known As “An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and for Other Purposes” (Expanded Senior Citizens Act of 2010), Republic Act No. 9994 (2009).

111. An Act Expanding the Benefits and Privileges of Persons with Disability (PWD), Republic Act No. 10754 (2015).

- (2) Association dues, membership fees, and other assessments and charges collected by homeowners associations condominium corporations;
- (3) Sale of gold to the BSP; and
- (4) Sale of drugs and medicines prescribed for diabetes, high cholesterol and hypertension beginning 1 January 2019.<sup>112</sup>

By providing that transfers of property pursuant to Section 40, Subsection C, Paragraph 2 of the NIRC are exempt from VAT, the issue on whether or not transfers of properties used in business pursuant to the modes allowed under Section 40, Subsection C, Paragraph 2 of the NIRC becomes settled.<sup>113</sup>

BIR RR No. 13-2018 was passed to implement the TRAIN 1 VAT amendments.<sup>114</sup>

#### 4. New Periods to Claim VAT Refund

TRAIN 1 also amended Section 112 of the NIRC on the periods to claim refunds of input VAT attributable to zero-rated sales.<sup>115</sup>

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112. *Id.* § 34 (amending NAT'L INTERNAL REVENUE CODE, § 109 (w)-(aa)).

113. Section 40, Subsection C, Paragraph 2 of the National Internal Revenue Code provides that

no gain or loss shall be recognized for tax purposes on mergers or consolidations, as well as on transfers of property to a corporation in exchange for stock of the latter, if the transferor, alone or together with others, not exceeding four (4) persons, gains control of the transferee corporation[.]

NAT'L INTERNAL RVENUE CODE, § 40 (C) (2), para. 2.

114. Bureau of Internal Revenue, Regulations Implementing the Value-Added Tax Provisions under the Republic Act (RA) No. 10963, or the "Tax Reform for Acceleration and Inclusion (TRAIN)," Further Amending Revenue Regulations (RR) No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005), as Amended, Revenue Regulations No. 13-2018 [BIR RR No. 13-2018] (Mar. 15, 2018).

115. *See* Tax Reform for Acceleration and Inclusion (TRAIN), § 36.

The BIR is now mandated to grant a refund within 90 days from the date of submission of the documents in support of the application.<sup>116</sup> If the Commissioner of Internal Revenue finds that the grant of refund is not proper, he or she must state in writing the legal and factual basis for the denial.<sup>117</sup> “In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within 30 days from the receipt of the decision denying the claim, appeal the decision with the [CTA.]”<sup>118</sup> “[F]ailure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of [the NIRC].”<sup>119</sup>

It is important to note that the amendment removed the “deemed denial” provision in Section 112.<sup>120</sup> Thus, after the lapse of 90 days, there is no provision which states that the application is deemed denied, such that a taxpayer will be constrained to appeal to the Court of Tax Appeals within 30 days from deemed denial.<sup>121</sup>

#### 5. VAT on Sale of Real Property

Amendments were also introduced to the sale of real property. Real properties not primarily held for sale or lease in the ordinary course of trade or business and real properties utilized for low-cost and socialized housing under Republic Act No. 7279 are still VAT exempt.<sup>122</sup>

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116. Tax Reform for Acceleration and Inclusion (TRAIN), § 36 (amending NAT’L INTERNAL REVENUE CODE, § 112).

117. *Id.*

118. *Id.* para. 2.

119. *Id.* Section 269 of the National Internal Revenue Code provides for the punishment of the violations to the Tax Code. NAT’L INTERNAL REVENUE CODE, § 269.

120. *Compare* Tax Reform for Acceleration and Inclusion (TRAIN), § 36 (amending Section 112 of the National Internal Revenue Code) *with* NAT’L INTERNAL REVENUE CODE, § 112.

121. *Id.*

122. An Act to Provide for a Comprehensive and Continuing Urban Development and Housing Program, Establish the Mechanism for its Implementation, and for Other Purposes [Urban Development and Housing Act of 1992], Republic Act No. 7279 (1992).



Exemptions were amended, however, to apply to residential lots valued at ₱1.5 million and below and other residential dwellings valued at ₱2.5 million and below.<sup>123</sup> Beginning 2021, all sales of residential lots shall no longer be exempt, and the exemption of residential dwellings shall apply only to those with selling price of not more than ₱2 million.<sup>124</sup>

#### 6. Other VAT Amendments — VAT on Capital Goods

The other amendment is the removal of the requirement that input VAT on capital goods should be amortized for 59 months.<sup>125</sup> After 31 December 2021, taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the same as scheduled until fully utilized.<sup>126</sup> The amortization of the input VAT is allowed until 31 December 2021.<sup>127</sup>

#### *E. Stock Transaction Tax*

The stock transaction tax on the sale, barter, or exchange of shares of stock listed and traded through the local stock exchange or through initial public offering was increased from 0.5% to 0.6%.<sup>128</sup>

#### *F. Documentary Stamp Taxes (DST)*

TRAIN 1 increased the documentary stamp tax (DST) rates on several documents or transactions subject to DST, by doubling the previous rates.<sup>129</sup> However, DST on loan agreements and debt instruments were increased by

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123. The thresholds of ₱1,919,500 for lots and ₱3,199,000 for house and lots set out in in BIR RR No. 16-2011 were not codified. See Bureau of Internal Revenue, Revenue Regulations No. 16-2011 [BIR RR No. 16-2011], § 1 (Oct. 27, 2011).

124. Tax Reform for Acceleration and Inclusion (TRAIN), § 34 (amending NAT'L INTERNAL REVENUE CODE, § 109 (P)).

125. *Id.* § 35 (amending NAT'L INTERNAL REVENUE CODE, § 110).

126. *Id.*

127. *Id.*

128. *Id.* § 38 (amending NAT'L INTERNAL REVENUE CODE, § 127).

129. *Id.* §§ 54-73 (amending NAT'L INTERNAL REVENUE CODE, §§ 178-183, 186, 188-195, & 197).

50%.<sup>130</sup> Donations of real property are now as among the transactions of land conveyances subject to DST.<sup>131</sup>

A comparison of the old and new rates is set out below —

Document	Old Rate	New Rate
Original Issue of Shares of Stock	₱1.00/ ₱200 of the par value	₱2.00/₱200 of the par value
Sales, Agreements to Sell, Memoranda of Sales, Deliveries or Transfer of Shares or Certificates of Stock	₱0.75/₱200 of the par value	₱1.50/₱200 of the par value
Certificates of Profits or Interest in Property or Accumulations	₱0.50/₱200 of the face value	₱1.00/₱200 of the face value
Bank Checks, Drafts, Certificates of Deposit not Bearing Interest, and Other Instruments	₱1.50	₱3.00
Original Issue of Shares of Stock	₱1.00/ ₱200 of the par value	₱2.00/₱200 of the par value
Sales, Agreements to Sell, Memoranda of Sales, Deliveries or Transfer of Shares or Certificates of Stock	₱0.75/₱200 of the par value	₱1.50/₱200 of the par value
Certificates of Profits or Interest in Property or Accumulations	₱0.50/₱200 of the face value	₱1.00/₱200 of the face value

130. Tax Reform for Acceleration and Inclusion (TRAIN), § 55 (amending NAT'L INTERNAL REVENUE CODE, § 179).

131. *Id.* § 69 (amending NAT'L INTERNAL REVENUE CODE, § 196).

Bank Checks, Drafts, Certificates of Deposit not Bearing Interest, and Other Instruments	₱1.50	₱3.00
Original Issue of Shares of Stock	₱1.00/₱200 of the par value	₱2.00/₱200 of the par value
Sales, Agreements to Sell, Memoranda of Sales, Deliveries or Transfer of Shares or Certificates of Stock	₱0.75/₱200 of the par value	₱1.50/₱200 of the par value
Certificates of Profits or Interest in Property or Accumulations	₱0.50/₱200 of the face value	₱1.00/₱200 of the face value
Bank Checks, Drafts, Certificates of Deposit not Bearing Interest, and Other Instruments	₱1.50	₱3.00

Table 2: Old and new documentary stamp taxes<sup>132</sup>

### G. Excise Taxes

TRAIN 1 amended the provisions on excise taxes, as follows:

- (1) Increasing the excise tax rates on cigarettes,<sup>133</sup> manufactured oils,<sup>134</sup> automobiles<sup>135</sup> and mineral products;<sup>136</sup>

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132. NAT'L INTERNAL REVENUE CODE, §§ 174-175, 177-183, 186, & 188-197 & Tax Reform for Acceleration and Inclusion (TRAIN), §§ 51-70 (amending NAT'L INTERNAL REVENUE CODE, §§ 174-175, 177, 178-183, 186, & 188-197).

133. Tax Reform for Acceleration and Inclusion (TRAIN), § 42 (amending NAT'L INTERNAL REVENUE CODE, § 145 (B)).

134. *Id.* § 43 (amending NAT'L INTERNAL REVENUE CODE, § 148).

135. *Id.* § 45 (amending NAT'L INTERNAL REVENUE CODE, § 149).

136. *Id.* § 48 (amending NAT'L INTERNAL REVENUE CODE, § 151).

- (2) Expanding the coverage to impose excise taxes on cosmetic procedures<sup>137</sup> and sweetened beverages;<sup>138</sup> and
- (3) Adding new provisions on fuel marking.<sup>139</sup>

#### 1. Excise Tax on Manufactured Fuels and Other Fuels

Excise taxes on cigarettes were increased commencing on 1 January 2018 and every two years thereafter until 1 January 2022.<sup>140</sup> Thereafter, the rates shall be increased by 4% every year starting on 1 January 2024.<sup>141</sup>

Excise taxes on manufactured fuels and other fuels were increased commencing on 1 January 2018, and every year thereafter, until 2021.<sup>142</sup> The schedule increases, however, shall be suspended when the Dubai crude oil price based on Mean of Platts for Singapore for three months prior to the scheduled increase of the month reaches or exceeds US\$80.00 per barrel.<sup>143</sup>

Kerosene, diesel, and liquified petroleum gas fuels which were previously exempt from excise taxes are now subject to excise taxes.<sup>144</sup>

#### 2. Excises Tax on Non-Essential Services

Excise taxes are now due on “services.” A 5% excise tax on gross receipts net of excise tax and VAT is now due on the performance of services on “invasive cosmetic procedures, surgeries, and body enhancements directed solely towards improving, altering, or enhancing the patient’s appearance and do not meaningfully promote the proper function of the body or prevent or treat illness or disease.”<sup>145</sup>

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137. *Id.* § 46 (adding Section 150-A to the National Internal Revenue Code).

138. *Id.* § 47 (adding Section 150-B to the National Internal Revenue Code).

139. Tax Reform for Acceleration and Inclusion (TRAIN), § 44 (adding Section 148-A to the National Internal Revenue Code).

140. *Id.* § 42 (amending NAT’L INTERNAL REVENUE CODE, § 145).

141. *Id.*

142. *Id.* § 43 (amending NAT’L INTERNAL REVENUE CODE, § 148).

143. *Id.*

144. *Id.*

145. Tax Reform for Acceleration and Inclusion (TRAIN), § 46 (adding Section 150-A to the National Internal Revenue Code).

The excise tax shall not apply to procedures to ameliorate deformity, personal injury, disfiguring disease, and those covered by the national health insurance program.<sup>146</sup>

### 3. Excise Tax on Sweetened Beverages

Excise tax of ₱6.00 per liter is now due on “sweetened beverages” using purely caloric/non-caloric/mixed sweeteners.<sup>147</sup> The tax is ₱12.00 liter for the use of high fructose syrup. Exempt from excise taxes though are drinks which use pure coconut sap sugar and steviol glycosides.<sup>148</sup>

Excluded from the coverage are all milk products, 100% natural fruit juices, 100% natural vegetable juices, meal replacement and medically-indicated beverages, ground coffee, instant soluble coffee, and pre-packaged powdered coffee products.<sup>149</sup>

### H. Mandatory Fuel Marking

TRAIN 1 mandates the “use of an official fuel marking or similar technology on petroleum products that are refined, manufactured, or imported into the Philippines, and that are subject to the payment of taxes and duties[.]” after the taxes and duties thereon have been paid.<sup>150</sup> The persons who “own[s] or enter[s] the petroleum products into the country, or the person[s] to whom the products are consigned shall cause or accommodate the marking of the [fuel] products[.]”<sup>151</sup>

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146. *Id.*

147. *Id.* § 47 (adding Section 150-B, Subsection A, Paragraph 1 to the National Internal Revenue Code). “Sweetened beverages are defined as non-alcoholic beverages of any constitution (liquid, power or concentrates) that are pre-packaged and sealed in accordance with the Food and Drug Administration Standards) that contain caloric and/or non-caloric sweeteners added by the manufacturers.” *Id.*

148. *Id.* (adding Section 150-B, Subsection A, Paragraph 2 to the National Internal Revenue Code).

149. *Id.*

150. Tax Reform for Acceleration and Inclusion (TRAIN), § 43.

151. *Id.* § 44 (adding Section 148-A to the National Internal Revenue Code).

## V. OTHER PROVISIONS

*A. Deficiency and Delinquency Interest*

Section 249 of the National Internal Revenue Code, as amended, now states that deficiency interest shall run from the tax statutory deadline or the date prescribed for its payment until the full payment thereof or the issuance by the CIR of a final notice of demand, whichever comes earlier.<sup>152</sup> Before, the rule was for deficiency to continue to run until full payment of the tax despite of any issuance of a formal notice of demand in the interim. This resulted to an overlap with delinquency interest which runs from the time indicated in the CIR's formal demand until full payment.

Aside from clarifying the periods within which both interests run, TRAIN 1 introduced a proviso stating that in no case shall both deficiency and delinquency interests run simultaneously.<sup>153</sup>

Subsections A, B, and C of Section 249, as amended, now reads —

Section 249. Interest. —

(A) In General. — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of double the legal interest rate for loans or forbearance of money in the absence of an express stipulation set by the Bangko Sentral ng Pilipinas, from the date prescribed for payment until the amount is fully paid, provided that in no case shall the deficiency and the delinquency interest prescribed under Section (B) and (C) hereof be imposed simultaneously.

(B) Deficiency Interest. — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected *from the date prescribed for its payment until the full payment thereof, or upon the issuance of notice and demand by the Commissioner whichever comes earlier.*

(C) Delinquency Interest. — In case of failure to pay:

- (d) The amount of the tax due on any return required to be filed[;]
- (e) The amount of the tax due for which no return is required[;] or

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152. *Id.* § 75 (amending NAT'L INTERNAL REVENUE CODE, § 249).

153. *Id.*

- (f) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.<sup>154</sup>

With the amendment, the Philippines is back to the calculation adopted by the BIR prior to November 2013, where the BIR imposed both interests one after the other and not simultaneously. This rule was illustrated in BIR RR No. 12-99.<sup>155</sup> However, BIR RR No. 18-2013 passed in November 2013 amended certain sections of BIR RR No. 12-99 and changed the illustrations to show that deficiency interest continues to run even after formal demand.<sup>156</sup> This resulted in the overlap. Unfortunately, the overlap calculation was affirmed by the courts in several cases.

#### *B. Increased Thresholds and Penalties*

Finally, TRAIN 1 increased some of the existing administrative thresholds, as well as penalties for certain offenses. The threshold for mandatory CPA audit of books of accounts was increased to ₱3,000,000 of annual receipts<sup>157</sup>

Penalties for an attempt to evade or defeat tax under Section 254 and the failure to issue receipts under Section 264 (B) of the National Internal Revenue Code were increased to not less than ₱500,000 or more than ₱10 million, plus imprisonment of six years to 10 years.<sup>158</sup>

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154. *Id.* (emphases supplied).

155. Then the implementing regulations governing the “Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer’s Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.” Bureau of Internal Revenue, Revenue Regulations No. 12-99 (Sep. 14, 1999).

156. Bureau of Internal Revenue, Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, Revenue Regulations No. 18-2013 [BIR RR No. 18-2013], § 3 (Nov. 28, 2013).

157. Tax Reform for Acceleration and Inclusion (TRAIN), § 71 (amending NAT’L INTERNAL REVENUE CODE, § 232).

158. *Id.* §§ 76 & 77 (amending NAT’L INTERNAL REVENUE CODE, §§ 254 & 264).

The following offenses are now punishable:

- (1) Non-transmittal to the BIR's Electronic Sales Reporting System, subject to a penalty of one percent (1/10 of 1%) of annual net income;<sup>159</sup>
- (2) Purchase, use, possession, sale or offer to sell, installment, transfer, update, upgrade, keeping or maintaining of sales suppression devices, subject to a penalty of ₱500,000 to ₱10 million plus imprisonment of two years to four years;<sup>160</sup>
- (3) Offenses relating to fuel marking and their penalties;<sup>161</sup> and
- (4) Violations committed by government officers, including the deliberate failure to act on the application for refunds within the periods prescribed in Section 112.<sup>162</sup>

### *C. TRAIN 1 Appropriations*

For five years from the effectivity of TRAIN 1, the yearly incremental revenues generated from the amendments, shall be automatically appropriated as follows: (i) no more than 70% to fund infrastructure projects, such as, but not only limited to the Build, Build, Build projects of the government, but also the infrastructure programs to address congestion through mass transport and new road networks, military infrastructure, sports facilities for public schools and potable drinking water, and (ii) no more than 30% to other programs, which include social mitigating measures, social welfare and benefits program, unconditional cash transfers, fare discounts, free skills training, among others.<sup>163</sup>

## VI. CONCLUSION

TRAIN 1 introduced several amendments to the National Internal Revenue Code. In exchange for the lowering of the PIT rates, however, several taxes were increased and even new ones were imposed. In the short term, the supposed benefit for the PIT rate reduction will definitely be offset against

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159. Tax Reform for Acceleration and Inclusion (TRAIN), § 78 (adding Section 264-A to the National Internal Revenue Code).

160. *Id.* § 79 (amending NAT'L INTERNAL REVENUE CODE, § 264 (B)).

161. *Id.* § 80 (amending NAT'L INTERNAL REVENUE CODE, § 265 (A)).

162. *Id.* § 81 (amending NAT'L INTERNAL REVENUE CODE, § 269 (j)).

163. *Id.* § 82 (amending NAT'L INTERNAL REVENUE CODE, § 288 (F)).



increases in prices of goods, services, and commodities brought about by the other tax increases. The government has to make good of its promise to improve infrastructure and government services for the taxpayers to fully see the benefit of TRAIN 1.