

PROCESS MAP ON THE CRIMINAL PROSECUTION OF TAX EVASION IN THE PHILIPPINES



Process Map on the Criminal Prosecution of Tax Evasion in the Philippines

Asian Development Bank

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Foreword

Tax evasion is a key reason for the poor revenue performance of the Philippines. The Department of Finance (DOF) estimates that about \$5.2 billion in taxes is lost every year due to tax evasion. While much of the institutional and legal infrastructure for the criminal prosecution of tax evasion has been in place for decades, only in 2005 did the Government of the Philippines begin systematically focusing on the prosecution of criminal tax evaders through its Run After Tax Evaders (RATE) Program. The RATE Program is complemented by the Task Force on Revenue at the Department of Justice (DOJ) and the expansion of the jurisdiction of the Court of Tax Appeals to hear certain criminal tax evasion cases.

This systematic approach produced immediate results. One month after the RATE Program was launched, the Bureau of Internal Revenue (BIR) registered a record income tax collection, equivalent to a 43.6% increase from the same period during the previous year. In 2006, the government enjoyed an overall 20% increase in tax revenues over 2005 levels as a result of the RATE Program and other tax policy measures implemented from November 2004 to February 2006. Following these initial successes, however, the number of tax evasion cases actually filed and prosecuted in court leveled off, and the first conviction in a tax evasion case was achieved in August 2009.

Various development partners provided assistance to build the capability of BIR and DOJ staff members to prepare and prosecute tax evasion cases, and the Asian Development Bank (ADB) supported the preparation of this process map on the prosecution of tax evasion. This report is part of a wider ADB undertaking in support of justice sector reforms in the Philippines, draws on findings from a series of stakeholder consultations, and seeks to identify issues related to the criminal prosecution of tax evasion cases. In laying out the issues, it provides a process map of the system and its limitations along with a set of initial recommendations on how these limitations might be addressed. Though the process mapping exercise was conducted in 2007 and the report presents a snapshot of issues at that time, many remain relevant today, while the strengthening of revenue collection has become even more of a critical priority in light of the impact of the global financial crisis.

The crisis and severe contraction in global demand has sharply affected the country's economic performance; its gross domestic product (GDP) growth fell from 7.1% in 2007 to 3.8% in 2008, and the government's growth estimate for 2009 has now been revised to range from 0.8% to 1.8%. The marked slowdown in growth has had a pronounced impact on tax revenues; 2009 collections are now estimated to be 20% lower than originally projected. To

boost domestic demand and support recovery, the government is implementing a P330 billion stimulus package focused on increasing infrastructure and social expenditures.

The fall in revenues, combined with the sharp increase in expenditures due to the stimulus package, means that the deficit is projected to rise to 3.2% of GDP in 2009 from less than 1% in 2008. The government's target of achieving a balanced budget by 2010 has now been deferred to 2013. While flexibility is important in addressing the immediate exigencies of the crisis, a firm and credible commitment to medium-term fiscal consolidation is crucial to maintaining market confidence; strengthening the government's revenue performance is central to the consolidation effort. Moreover, a clear understanding of the underlying impediments to the successful prosecution of criminal tax evasion cases is fundamental to support the government's efforts to achieve fiscal consolidation.

This process map was prepared by ADB's Southeast Asia Department under the supervision of Jaseem Ahmed, Director, Financial Sector, Public Management, and Trade Division. Debra Kertzman served as task manager for the initial version of this study and the ADB team subsequently expanded to include Joven Balbosa, Kelly Bird, Prasanna Jena, Thatha Hla, and Sani Ismail. Consultants who supported the preparation of the report included Edmundo P. Guevara; Araceli Habaradas; Richard Amurao; Christine V. Lao; and Rick Tan, Jr., James Cappio, Kimberly Fullerton, and Sukanya Wignaraja edited the process map.

The preparation of this report involved discussions with many stakeholders across the government. Special thanks are owed to the BIR, the Court of Tax Appeals, the DOF, and the DOJ, particularly Secretary Margarito Teves of the DOF and Presiding Justice Ernesto D. Acosta of the Court of Tax Appeals, both of whom firmly supported this project and attended the process map workshop at ADB headquarters in November 2007; Secretary Raul Gonzalez of the DOJ; panelists Deputy Commissioner Gregorio Cabantac of the BIR, Justice Juanito Castañeda of the Court of Tax Appeals, and Senior State Prosecutor Susan Dacanay of the DOJ; and Justice Jose Vitug, who moderated the proceedings.

Arjun Thapan
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Abbreviations

BIR	–	Bureau of Internal Revenue
BOC	–	Bureau of Customs
CTA	–	Court of Tax Appeals
DOF	–	Department of Finance
DOJ	–	Department of Justice
GDP	–	gross domestic product
MCA	–	Millennium Challenge Account
MTPDP	–	Medium-Term Philippine Development Plan
NEDA	–	National Economic and Development Authority
NID	–	National Investigation Division
NIRC	–	National Internal Revenue Code
NPS	–	National Prosecution Service
RATE	–	Run After Tax Evaders Program
RATS	–	Run After the Smugglers Program
RELIEF	–	Reconciliation of Listings for Enforcement System
SEC	–	Securities and Exchange Commission
SID	–	Special Investigation Division
SIDA	–	Swedish International Development Cooperation Agency
UNDP	–	United Nations Development Programme
USAID	–	United States Agency for International Development
VAT	–	value-added tax

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Introduction

In March 2005, the criminal prosecution of tax evasion in the Philippines received significant public attention with the launch of the Run After Tax Evaders (RATE) Program by the Department of Finance (DOF) and Bureau of Internal Revenue (BIR). Until then, tax evasion had only been prosecuted sporadically—for example, in 1993, when criminal charges were filed against a prominent businessman, and again in 2002, when 300 business establishments were identified as candidates for criminal prosecution.¹ Since March 2005, 87 complaints for tax evasion have been submitted to the Department of Justice (DOJ), 83 of which have been filed with the DOJ national office for preliminary investigation under the RATE Program; individual subjects of the complaints include actors, businesspersons, public officials, and other high-profile personalities.²

Recognizing the impact of the RATE Program, President Gloria Macapagal-Arroyo reiterated the Government of the Philippines's commitment to fight tax evasion: "For the first time in Philippine history, we see initiatives that are aggressive, consistent, and have begun to strike fear in the hearts of grafters and cheaters."³ At the commencement of her second term in 2004, the President promised "to crack down on tax cheats" for the 6 years she would be in office in an effort to present a balanced budget by the end of her term.⁴ In April 2005, a month after it launched the RATE Program, the BIR registered a record income tax collection of P21.4 billion, a 43.6% increase from the P14.8 billion collected the previous year.⁵

However, as of August 2007, only 6 out of the 83 complaints for tax evasion submitted to the DOJ had progressed to the filing of criminal cases in

¹ The BIR's Reconciliation of Listings for Enforcement (RELIEF) System led to the discovery of under-declarations in value-added tax (VAT) payments by 300 business establishments. See P. Villarica. 2002. President Arroyo Lauds BIR VAT Audit Program. *BIR Monitor*. 4 (8). pp.1–2.

² Four complaints were filed with local prosecutors' offices.

³ G. Macapagal-Arroyo. 2005. Speech to BIR Regional Command Conference. 17 May. Quezon City. Cited in Government of the Philippines, Office of the Press Secretary. 2005. President Vows No Letup in Fight against Tax Evasion, Corruption. 17 May. http://www.ops.gov.ph/speeches2005/speech-2005_may17.htm

⁴ In her 30 June 2004 pre-inaugural speech to about 30,000 government workers and supporters, the President said, "I pledge to collect taxes as mandated by law... Pay your taxes. Don't pretend to be innocent when you are caught.... I will crack down on tax cheats." <http://www.ops.gov.ph/speeches2004/speech-2004june30a.htm>

⁵ Government of the Philippines, Office of the Press Secretary. 2005. BIR Posts Historic High Collection Growth. 17 May. <http://www.news.ops.gov.ph/archives2005/may17.htm#BIR%20posts>

court.⁶ The reasons for the low number of cases filed in court and the difficulties encountered in filing tax evasion cases are among the underlying concerns of this report. This process map briefly explains the framework and process of prosecuting criminal cases involving violations of the National Internal Revenue Code (NIRC) of the Philippines and identifies issues and concerns affecting the process. It also suggests ways of making the process operate more effectively to hasten the investigation and prosecution of cases before the Court of Tax Appeals, and eventually to achieve convictions of tax evaders.

Background

Tax evasion has long been acknowledged as a key factor in the country's poor revenue performance. The country's tax collection effort pales in comparison to those of its Association of Southeast Asian Nations (ASEAN) neighbors;⁷ the DOF estimates that P243 billion in taxes are lost every year due to tax evasion.⁸

The institutional and legal infrastructure for the criminal prosecution of tax evasion has been in existence for decades. However, only recently has there been an organized, sustained effort to pursue tax evaders, with the establishment of the

RATE Program by the BIR and DOF and the creation of the Task Force on Revenue by the DOJ. These, combined with the expansion of the jurisdiction of the Court of Tax Appeals over criminal cases, approval of the Revised Rules of the Court of Tax Appeals, and President Arroyo's directive to prosecute "big-time" tax evaders,⁹ have emphasized the determination of the government to pursue tax evaders. Furthermore, in June 2006, the Millennium Challenge Corporation approved the Millennium Challenge Account Philippine Threshold Program. The BIR, particularly the RATE Program, received the largest single allocation of the funds,¹⁰ underscoring the growing importance of the government's anti-tax evasion program.

It is notable that the program has been consistently referred to as an anticorruption governance strategy. Even under the Millennium Challenge Account Philippine Threshold Program, the BIR's RATE program is identified as one of the three areas under the DOF that strengthens enforcement and reduces corruption.¹¹ The Asian Development Bank (ADB) cited the need for sustained efforts to prosecute corrupt officials and tax evaders "to make corruption a 'high risk, low return' undertaking" in order to improve the country's investment climate.¹² It also recognized the need to improve the operational, administrative, and institutional capability of the special tax courts and

⁶ Statistics as of 16 August 2007, based on data provided by the RATE Legal Writing and Appearance Group. Each criminal complaint may result in the filing of more than one criminal case in court depending on the number of violations committed; the six tax evasion complaints filed with the DOJ resulted in the filing of 14 separate cases with the Court of Tax Appeals.

⁷ Tax collection performance is measured as the ratio of tax collections to gross domestic product.

⁸ M. B. Mundo. 2006. A Taxing Climb. *Makati Business Club (MBC) Research Reports* 75. March. Also available: http://www.mbc.com.ph/economic_research/mbcrr/no76/default.htm

⁹ L. Dalangin-Fernandez. 2007. Arroyo Asks BIR to Focus on "Big Fishes." *Philippine Daily Inquirer*. 13 August. Also available: http://business.inquirer.net/money/breakingnews/view_article.php?article_id=82271

¹⁰ About \$9.4 million of the approximately \$20.4 million overall grant was allotted to the RATE Program, with the rest going toward strengthening the Office of the Ombudsman (\$6.475 million), Revenue Integrity Protection Service Unit (\$1.425 million), and the Run After the Smugglers Program (\$3.135 million). United States Agency for International Development (USAID). 2006. Strategic Objective Grant Agreement between the United States of America and Government of the Republic of the Philippines to Strengthen and Enforce Anti-Corruption Measures, Millennium Challenge Account Threshold Program. 26 July. Annex 1. Also available: http://philippines.usaid.gov/resources/key_documents/08-23-06-mca-soag.pdf

¹¹ "To address corruption, the Department of Finance is simultaneously conducting anticorruption drives in three separate areas," which include "the Bureau of Internal Revenue through its Run After Tax Evaders (RATE) unit.... All three units were recently organized and given increased resources to increase the Government's enforcement ability." *Ibid.*, p. 9.

¹² ADB. 2005. *Philippines: Country Strategy and Program (2005–2007)*. Manila. Table 3. Concerning the governance and judicial system, the strategy states: "There is a need to make corruption a 'high risk, low return' undertaking through sustained efforts to prosecute corrupt officials and tax evaders, speedy but just trials, an unwavering resolution to equally punish those found guilty, and concerted efforts to nurture new generations with zero tolerance for any form of corruption and strong concepts of good governance and democratic governments" (pp. 18–19).

the public prosecutors' offices.¹³ With the advent of the Millennium Challenge Account Philippine Threshold Program, which is expected to contribute to strengthening the BIR's capability to detect and investigate tax evasion and develop cases against tax evaders, other government institutions—such as the Court of Tax Appeals and the National Prosecution Service (NPS)—must improve their operational and administrative capabilities in order to meet the inevitable increase in tax evasion cases to be filed by the BIR.

Objectives

This report explains how criminal cases involving violations of the National Internal Revenue Code (NIRC) are prosecuted. It identifies perceived impediments to obtaining convictions for tax evasion in the Philippines, as well as other issues and concerns affecting the prosecution of tax evasion. It suggests steps toward a more effective operation that would result in speedier investigation and prosecution of cases and increase the likelihood of achieving convictions.

This report also takes a closer look at the institutional infrastructure of the government for prosecuting tax evasion, identifying areas in the system that could be improved to further the RATE Program. It identifies initiatives that benefit the program, as well as other areas that require further improvement and assistance. It is intended to present a comprehensive frame of reference for development partners, so that they can take a

coordinated approach to addressing the issues facing key players in the RATE Program and to initiating and sustaining reform measures in the BIR, the Court of Tax Appeals, the DOF, and the NPS. The process map is also expected to serve as a resource document for technical assistance, including the development of a framework for a national justice information system and a case management system for the NPS, to improve the administration of justice.¹⁴

Agencies including the DOF, DOJ, Court of Tax Appeals, BIR, and the Office of the Solicitor General were given a copy of the report by ADB prior to its final version, allowing them the opportunity to comment. The report was formally presented to these agencies on 21 November 2007, in a workshop on the process of prosecuting tax evasion in the Philippines held at ADB headquarters in Manila. Comments given by the agencies were reflected in relevant portions of the report. Highlights of the workshop proceedings are given in Appendix 1.

Scope of the Report

The report focuses on tax evasion cases filed under the RATE Program, given its existing organizational and institutional apparatus, extent of documentation, and status as a beneficiary in the Millennium Challenge Account Philippine Threshold Program. At inception, RATE Program cases were defined to include those involving at least P1 million filed with the DOJ national office and prosecuted before the Court of Tax Appeals.¹⁵

¹³ "The operational, administrative, and institutional capacities of the Ombudsman, the special anticorruption court (Sandiganbayan), the special tax courts, the public prosecutors and defense offices, the trial courts, the Court of Appeals, and Supreme Court need to be improved to reduce case congestion and delay, enhance judicial and legal competence (and skills), improve administrative support for judicial and legal functions, reduce rent seeking opportunities within these agencies, and reduce their susceptibility to political and economic pressures." Ibid.

¹⁴ ADB. 2006. *Technical Assistance to the Republic of the Philippines for Enhancing the Autonomy, Accountability, and Efficiency of the Judiciary, and Improving the Administration of Justice*. Manila. p. 4.

¹⁵ At the start of the RATE Program, the DOF limited the scope of its tax evasion program to cases involving an estimated tax liability of at least P1 million to ensure that the cases were filed with the Court of Tax Appeals. Tax evasion cases involving smaller amounts are prosecuted before the municipal trial court or the regional trial court.

Philippine Situation

Revenue Targets, Shortfalls, and Evasion

Determined to put its fiscal house in order, the government anchored its fiscal consolidation program under the Medium-Term Philippine Development Plan (MTPDP) on an increasing revenue stream during the implementation of the MTPDP through a combination of administrative and legislative measures. The government projected that under the MTPDP, given favorable economic conditions and excluding new legislative measures, total revenues would grow over the medium term “at an average rate of 11.6 percent, with tax receipts growing more vigorously at 13.2 percent through a more rigorous implementation of administrative measures.”¹⁶

A policy objective of the MTPDP was to balance the national government budget by 2010.¹⁷ Figures from the DOF show that the budget deficit of P187 billion in 2004 was reduced to P146.8 billion in 2005¹⁸ and P64.8 billion in 2006.¹⁹ In 2007, the government set its sights on a full-year deficit target of P63 billion, or less than 1% of gross domestic product (GDP).²⁰ The government expressed confidence it would be able to balance its budget ahead of schedule, i.e., by the end of 2008.²¹

¹⁶ Government of the Philippines, National Economic and Development Authority (NEDA). 2004. *Medium-Term Philippine Development Plan (MTPDP)*. Manila. pp. 93–94.

¹⁷ Ibid., p. 95. The two other policy objectives under the fiscal program are to reduce the Consolidated Public Sector Deficit–GDP ratio from 6.7% in 2004 to 1.0% in 2010, and to reduce the public sector debt–GDP ratio from 136% in 2004 to 90% by 2010.

¹⁸ Government of the Philippines. 2007. PGMA Says 8-Year Low Budget Deficit Clear Signal that RP’s Back in Business. <http://mail.pia.gov.ph/default.asp?m=12&sec=reader&rp=1&fi=p070205.htm&no=9&date=>

¹⁹ M. Remo. 2007. 6-Month Budget Deficit Hits P37.7B. *Philippine Daily Inquirer*. 5 July. The P64.8 billion deficit is an adjustment from the earlier announcement of Malacañang (the Philippine presidential residence, hence administration) of a P62.2 billion deficit in 2006. See R. Palacio. 2007. RP Budget Deficit of P62.2B in 2006 Is Lowest in 8 Years. Philippine Information Agency press release. 2 June.

²⁰ Agence France-Presse. 2007. WB Concerned over Philippine Fiscal Targets. *Philippine Daily Inquirer*. 28 June; M. E. I. Calderon. 2007. Deficit Differences in Gov’t. *Business World*. 12 July.

²¹ “Malacañang is confident that by the end of 2008, the government will be able to meet its target of balancing the budget or overcoming its deficit.” Government of the Philippines, Office of the Press Secretary. 2007. PGMA Places Tax Evasion Program under BIR Deputy Commissioner for Legal & Inspection Group. 13 June (citing Executive Secretary Eduardo Ermita). <http://www.news.ops.gov.ph/archives2007/jun13.htm#PGMA%20places>. Subsequent events, including the global financial crisis, have made it necessary for the government to postpone its target to 2013.

BIR collections account for more than 70% of total government revenue.²² The collection goal of the BIR for 2007 was set at P765.9 billion,²³ or more than two-thirds of the total revenue goal of P1.12 trillion.²⁴ However, by the end of 2007, the BIR had collected only P711.6 billion, missing its target by about P54.3 billion. It should be noted, though, that under Commissioner Lilian B. Hefti, the BIR met its monthly revenue collection target for the first time in July 2007, exceeding the target by P2 million.²⁵ The BIR again surpassed its next monthly target by P3.3 million, with August 2007 revenues pegged at P55.1 billion.²⁶

Even in 2006, when the government exceeded its revenue targets, the BIR's collection was still short by P22.6 billion²⁷ despite a significant boost from legislative reforms in the value-added tax (VAT) and corporate income tax.²⁸ The deficit reduction was due to nontax revenues.²⁹

Under the MTPDP, the government estimated that its revenue effort ratio would climb steadily to 18% of GDP in the medium term, with tax effort projected to reach 17.2% in 2010.³⁰ The revenue effort ratio of the government for 2006 was 16.3%,³¹ which is weak when compared with

the revenue efficiency of other ASEAN countries such as Viet Nam (22.9%); the Republic of Korea (20.4%); Malaysia (19.5%); Singapore (19.0%); the People's Republic of China (18.8%); Hong Kong, China (17.6%); and Taipei, China (17.4%).³² The Philippines's revenue effort has not been higher than 20% of its GDP since 1986.³³

The MTPDP attributed the significant deterioration in the government's tax collection effort to many factors, including income under declaration or tax evasion, especially on professional income earned.³⁴ The National Tax Research Center reported that, in 2005, self-employed individuals and professionals paid only P8.2 billion in taxes, while salaried workers and employees paid P94.2 billion. The center estimated that the self-employed and professionals evaded an average of P25.5 billion a year from 2001 to 2005. Later estimates showed that from 2001 to 2006, over P179 billion in income taxes was lost because of tax evasion by fixed-income earners, professionals, and self-employed individuals.³⁵ The DOF estimated that P243 billion in taxes is evaded every year.³⁶

To achieve the desired increase in revenue, the MTPDP required the BIR to undertake measures

²² D. Lucas. 2007. Fiscal Situation "Very Serious"—Teves. *Philippine Daily Inquirer*. 3 July (citing DOF Secretary Margarito Teves). Also available: http://archive.inquirer.net/view.php?db=1&story_id=74435

²³ Revenue Memorandum Order No. 7-2007, 25 April 2007. The total BIR revenue goal for 2007 of P765.859 billion breaks down as follows: revenue from BIR operations, P730.470 billion; final income tax on T-bills, P30.391 billion; Documentary Stamp Tax on T-bills, P4.488 billion; and travel taxes, P0.510 billion. The government's revenue target for January to November 2008 was set at P1.11 trillion, but government revenue collections for that period reached only P1.08 trillion. The BIR's target was to collect P762.2 billion for January to November 2008, but it collected only P721.6 billion, prompting BIR Commissioner Sixto Esquivias IV, who succeeded Commissioner Hefti, to say that the BIR "would definitely miss" its 2008 collection target of P845 billion for 2008. The BIR's revenue target for 2009 is P866 billion. R. Domingo. 2009. Gov't. Misses 11-Month Revenue Target. *Philippine Daily Inquirer*. 14 January; I. Gonzales. 2009. Bureau of Internal Revenue Gets Lower First Quarter Target. *Philippine Star*. 23 March. Also available: <http://www.philstar.com/Article.aspx?articleId=451007&publicationSubCategoryId=66>

²⁴ J. L. Cagoco. 2007. Tax Chief Wants Target Revision. *Business World*. 15 June; Calderon, footnote 20.

²⁵ PhilippineBusiness.com.ph. 2007. Government Posts Another Fiscal Surplus in July. 17 August. http://www.philippinebusiness.com.ph/news_updates/publicfinance.htm

²⁶ Government of the Philippines, Office of the President. 2005. Palace: Budget Surplus, Hiked Tax Take Signs of Fiscal Stability, More Investments Ahead. 23 September. <http://www.news.ops.gov.ph/archives2005/sep03.htm>

²⁷ Estopace, D. 2007. Government Financial System Needs an Overhaul, Says Buñag. *Business Mirror*. 23 June. (Citing BIR Commissioner Jose Mario Buñag). Also available: <http://www.businessmirror.com.ph/0622&232007/headlines03.html>

²⁸ Republic Act No. 9337, 24 May 2005. In 2006, the government collected an additional P76.9 billion of VAT revenues, "slightly ahead" of a P75.8 billion target. Palacio, footnote 19.

²⁹ Palacio, footnote 19.

³⁰ NEDA, p. 93, footnote 16.

³¹ L. C. Cuevas. 2007. Actual 2006 Deficit More than Half of Full-Year Target. *Manila Times*. 2 February.

³² ADB. 2005. *Asian Development Outlook 2005*. Manila.

³³ "Revenue effort, which has never gone higher than 20 percent of GDP in the past 18 years [since 1986] and has dropped to 14.6 percent of GDP in 2004, is the second lowest in Asia. We continue to lag behind our ASEAN neighbors. While Thailand has only 17.1 percent revenue effort, it enjoys a slight surplus of 0.4 percent." NEDA, p. 93, footnote 16.

³⁴ Ibid.

³⁵ USAID, footnote 10.

³⁶ Mundo, footnote 8.

such as “conduct of raffles, industry benchmarking, electronic publication of company tax payment vis-à-vis companies in the industry, and use of third-party information.” The MTPDP further stated that “[e]xpanding the large taxpayer services in district offices and creating a tax fraud division will also strengthen tax audit and surveillance.”³⁷

The revenue generated by these administrative measures was projected to be augmented by the passage of an excise tax legislation on “sin” products (Republic Act No. 9334) in 2004, the institutionalization of an attrition and reward system for revenue-generating agencies of government (Republic Act No. 9335) in 2005, and the passage of the VAT Reform Law (Republic Act No. 9337) also in 2005.³⁸

Then, in 2007, Congress passed the General Tax Amnesty Law (Republic Act No. 9480), which allows taxpayers to avail themselves of a tax amnesty by declaring previously undisclosed assets or liabilities held as of 31 December 2005 and paying an amnesty tax. Those who do so are excused from the payment of taxes and immune to civil, criminal, and administrative penalties for 2005 and earlier tax years. Those with criminal cases for tax evasion and other criminal offenses under the NIRC pending as of the effective date of the law cannot take advantage of this amnesty.³⁹

Despite the amnesty, which was intended to generate additional revenue, the BIR continued to experience a shortfall in collection. By the end of 2007, it had collected only P711.6 billion, missing its target by about P54.3 billion.⁴⁰

The government’s revenue target for January–November 2008 was P1.11 trillion. However, it collected only P1.08 trillion. The BIR only managed to collect P778.2 billion of its 2008 target of P845 billion.⁴¹ The BIR’s revenue target for 2009 is P866 billion.⁴²

Strategies for Revenue Collection

The BIR has been exercising its three key functions—assessment, collection, and enforcement⁴³—with varying emphases and techniques to achieve its annual revenue targets. Depending on the policy and strategy adopted by its leadership, it has given priority to different approaches over the years, such as enhancing collection through voluntary compliance (e.g., registration, filing of returns, and payment of taxes), conducting assessment programs, or taking enforcement action (civil or criminal) against a taxpayer.

A key factor that has enhanced the BIR’s collections is the Reconciliation of Listings for Enforcement (RELIEF) System, which was developed in the later part of the administration of Commissioner Rene G. Bañez.⁴⁴ The RELIEF System, with the BIR Integrated Tax System, generated precise data on sales under-declarations, exposing many taxpayers who may not have been paying the correct VAT, income, and other taxes.⁴⁵ The consolidation and matching of information generated data on possible under-declaration of revenues that served as the basis for filing tax evasion

³⁷ NEDA, p. 97, footnote 16.

³⁸ NEDA, pp. 97–98, footnote 16. The expected revenue boost from the VAT Reform Law fell short of expectations; BIR VAT collections for the first half of 2007 totaled only P67.8 billion, below the P91.3 billion target for the period. A. S. Samonte. 2007. BIR Blames Inflation for Poor VAT Results. *Manila Times*. 13 August.

³⁹ Republic Act No. 9480, §8(e).

⁴⁰ Senate Economic Planning Office. 2007. *Fiscal Report 2007 at a Glance*. <http://www.senate.gov.ph/publications/AG%202008-02%20-%20Fiscal%20Report%202007.pdf> Likewise, the BIR did not meet its collection target of P845.0 billion for 2008, collecting only P778.2 billion by the end of the year. This performance was deemed to be due partly to the effect of Republic Act No. 9504 and the lower-than-expected GDP growth of the country in 2008. Republic Act No. 9504 exempts minimum daily wage earners from income tax and increases the personal exemption of each individual taxpayer to a uniform amount of P50,000, whether the taxpayer is single, married, or head of a family. The law, which took effect in July 2008, also raised the additional exemption for each qualified dependent to P25,000 from P8,000. See Domingo, footnote 23.

⁴¹ Gonzales, footnote 23.

⁴² Ibid.

⁴³ Republic Act No. 8424, §2.

⁴⁴ The RELIEF System was created using the Integrated Tax System–National Office Management Information System modules to enhance voluntary assessment programs of the BIR through the cross-referencing of third-party information from the Taxpayer Summary List of Sales and Purchases.

⁴⁵ Revenue Regulation No. 12-02, 11 September 2002.

charges against an initial batch of taxpayers in August 2002. By the time Commissioner Bañez left the BIR in August 2002, the RELIEF System, which had been in place for just a few months, had already uncovered close to P7 billion in undeclared income involving 600 taxpayers.⁴⁶

Another key revenue-generating measure under the administration of Commissioner Bañez was the Voluntary Assessment Program, implemented to “maximize revenue collection with least administration costs, to encourage voluntary tax compliance, and to maintain harmonious relation with taxpayers by minimizing inconvenience relative to investigation.”⁴⁷ The program grants last priority to audit and investigation to qualified taxpayers. Other programs included expanding the coverage of the creditable withholding tax system and adopting a technology-based Electronic Filing and Payment System (eFPS), allowing the paperless filing of tax returns and payment of taxes.

Recognizing the enhanced capability of the RELIEF System to detect evasion and to encourage voluntary compliance, the BIR immediately modified its strategy from enforcement to collection. Citing the need to make the system “immediately contribute” to the 2002 collections, in September 2002 it offered the Voluntary Assessment and Abatement Program to taxpayers with underdeclared sales, receipts, and income discovered through the RELIEF System, even as the system continued to uncover instances of under-declaration.⁴⁸

The Voluntary Assessment and Abatement Program, implemented soon after Commissioner Guillermo L. Parayno took over BIR leadership from Commissioner Bañez, first encouraged voluntary payment of tax liabilities, then pursued enforcement, including criminal prosecution, if voluntary measures failed. Commissioner Parayno designated a deputy commissioner for criminal prosecution

under whose supervision 60 tax evasion cases were developed from September to December 2004, again based mainly on information generated by the RELIEF System. These cases were then referred to revenue district offices for filing with local prosecutors’ offices.⁴⁹

Despite these RELIEF-generated criminal cases, the BIR generally placed less emphasis on criminal enforcement, instead giving priority to initiatives that encourage voluntary taxpayer compliance, for example,

- implementing e-services such as electronic broadcasting, web-based taxpayer identification number application and processing, electronic lottery of invoices and receipts, provision of e-payment gateways, e-substituted filing of tax returns,⁵⁰ and electronic submission of sales reports;
- conducting tax-compliance verification drives and accreditation and registration of cash registers and point-of-sale machines;
- establishing BIR contact centers and e-lounges in regional offices;
- building up third-party information through computer links and data matching; and
- auditing exempt entities and cases involving non-remittance of withholding taxes.

This strong emphasis on efforts outside of criminal enforcement is not without reason; as even the United States (US) Internal Revenue Service acknowledges, enforcement actions are expensive “because they are labor intensive and often lengthy, sometimes extending for years after the tax is due.”⁵¹ Moreover, enforcement revenue represents an almost insignificant percentage of total revenue collected, making enforcement action less appealing where performance is measured solely by actual revenue collection.⁵² In the US, about 2% of the revenue collected by the Internal Revenue Service is derived from

⁴⁶ A. Marquez. 2002. BIR Offers VAAP to Taxpayers. *BIR Monitor*. 4 (9). p. 1.

⁴⁷ Revenue Regulation No. 8-01, 1 August 2001.

⁴⁸ Revenue Regulation No. 12-02, 11 September 2002.

⁴⁹ RATE Legal Writing and Appearance Group, interview by E. P. Guevara, 31 July 2007.

⁵⁰ E-substituted filing is the electronic transmission to the BIR of the employer’s annual information returns, which serve as the income tax return of their employees qualified for substituted filing.

⁵¹ US Internal Revenue Service. 2000. *Modernizing America’s Tax Agency*. Washington, DC. p. 8.

⁵² *Ibid.*, p. 7. The Internal Revenue Service defines enforcement revenue as “any tax, penalty or interest gained from a specific taxpayer by an IRS enforcement action, usually an examination or a collection.”

enforcement activity.⁵³ The Philippines has a similar ratio, although in 2007, the BIR required regional directors and revenue district officers to increase collections from audits to at least 3% of collections from voluntary compliance.⁵⁴

Upon his assumption of BIR leadership in July 2005, Commissioner Jose Mario Buñag gave priority to collection and assessment over criminal enforcement, stating that his “mandate is to collect more taxes, not to punish tax evaders.”⁵⁵ The BIR again emphasized programs geared toward collection and assessment, such as the revival of the electronic lottery receipts promotion, a program that encouraged consumers to ask for receipts habitually, and the Enhanced Voluntary Assessment Program.⁵⁶ Under Commissioner Buñag, the BIR still pursued the RATE Program, though with less publicity, and maintained the purpose behind it, that is, “changing taxpayer behavior and compliance by increasing the risk associated with violating tax laws.”⁵⁷

Under Commissioner Parayno, implementation of the RATE Program had been directly supervised by the BIR commissioner, assisted by the deputy commissioner for criminal prosecution, and closely supervised by the DOF. With the change of leadership in the DOF and the BIR in the second half of 2005, the implementation of the RATE Program was fully transferred to the BIR. After the resignation of the deputy commissioner

for criminal prosecution, whose appointment was simultaneous with that of Commissioner Parayno, Commissioner Buñag formalized the composition of the RATE Program. Under Revenue Special Order No. 381-2005 (16 August 2005), the program comprises a case development group, chaired by the BIR assistant commissioners for enforcement service, and a legal writing and appearance group, chaired by the assistant commissioners for inspection service (also referred to as the RATE Ad Hoc Committee).

Commissioner Buñag also established the Tax Reforms Steering Committee⁵⁸ and later the Tax Reforms Administration Group⁵⁹ to assist the commissioner in implementing the most important tax reform projects of the BIR. These tax reform projects are classified under registration, filing, and payment;⁶⁰ audit capabilities;⁶¹ legal and enforcement;⁶² collection enforcement and arrears management;⁶³ taxpayer service development and compliance;⁶⁴ performance management systems;⁶⁵ and nationwide rollout of computerized systems and e-services.

In addition, in November 2006, Commissioner Buñag introduced programs for tax delinquents similar to those implemented by his predecessors, such as the One-Time Administrative Abatement Program⁶⁶ and the Improved Voluntary Assessment Program.⁶⁷ These compromise programs were among the measures taken by the BIR to ease

⁵³ Ibid.

⁵⁴ Revenue Memorandum Order No. 12-2007, 3 July 2007.

⁵⁵ R. Pelovello. 2005. New BIR Wants to Settle, Not Sue. *Manila Standard Today*. 22 July. This article quotes Commissioner Buñag saying: “I will be judged at the end of my term on how much [in taxes] I collected, and not how many people I sent to jail.”

⁵⁶ Revenue Regulation No. 18-05, 12 October 2005.

⁵⁷ L. Agcaoli. 2006. BIR Chief Reverses Self, Will Still Sue Tax Cheats. *Manila Standard Today*. 23–24 July.

⁵⁸ Revenue Special Order No. 379-2006, 8 August 2006.

⁵⁹ Revenue Administrative Order No. 1-2006, 14 September 2006.

⁶⁰ These projects include registration cleanup, filing and payment, and enhanced tax mapping operations through tax compliance verification drives.

⁶¹ These projects include a computer-assisted audit tool system, an audit manual (reflecting industry standards), industry profiling and benchmarking, and audit training on international financial and accounting standards and Philippine financial reporting.

⁶² These projects include the RATE Program and streamlining of the rulings process.

⁶³ These projects include accounts receivable management, management of forfeited property, enhancement of payment through authorized agents, bank process enhancement, production of an updated collection manual, tax credit certificate administration, and tax remittance advice reconciliation.

⁶⁴ These projects include training on taxpayer service excellence, compliance on issuance of receipts, strengthening taxpayer information links, improving compliance on excise taxes on cigarettes, and codifying pertinent excise tax regulations.

⁶⁵ These projects include reviewing organization structure and staffing, enhancing performance management and evaluation systems, creating a human resources management information system, enhancing internal audit systems, and reviewing forecasting and tax modeling.

⁶⁶ Revenue Regulation No. 15-2006.

⁶⁷ Ibid. The program gave delinquent taxpayers the opportunity to be the last priority in tax audits, provided that they settled their tax obligations and paid the required additional fees.

the tax collection shortfall it experienced in 2005. Taken together, the programs generated almost P9 billion in additional revenues.⁶⁸

Despite revenue-generating efforts, the BIR did not meet its collection goal for the first 6 months of 2007. BIR Deputy Commissioner Hefti was appointed officer-in-charge of the BIR, replacing Commissioner Buñag, on 2 July 2007.⁶⁹ She committed the BIR to implementing four tax administration measures estimated to generate P15 billion: the use of business intelligence (P7 billion), improved audits (P5 billion), excise tax improvement (P1 billion–P2 billion), and arrears management (P2 billion).⁷⁰

Commissioner Hefti also announced that, under her stewardship, the BIR would explore new ways to improve the quality of tax administration, including a review of rulings granting tax exemptions and preferential treatment to certain corporate taxpayers, a check on the top 1,000 corporations' compliance with withholding tax rules, and the intensive development of tax evasion cases.⁷¹

Running after Tax Evaders

In 1993, President Fidel Ramos directed all BIR revenue regions and revenue district offices “to develop at least one tax fraud case against taxpayer(s) in their respective jurisdictions.”⁷² Pursuant to this directive, BIR Commissioner Liwayway Vinzons-Chato issued an order prescribing guidelines for a tax fraud program intended “to prosecute persons

who failed to declare or underdeclared their taxable base” and to increase revenues by enhancing voluntary compliance.⁷³

Thus, tax evasion charges were filed in 1993 against a prominent business, involving an estimated tax liability of P25 billion. The tax evasion cases (collectively, the “Fortune Tobacco case”) had a complex legal life—13 years in all—traveling back and forth between the BIR, the DOJ, trial courts, the Court of Appeals, and the Supreme Court. First, the BIR filed criminal complaints with the DOJ for tax evasion against Fortune Tobacco's corporate officers and officers of the suspected dummy corporations allegedly set up to benefit the company.⁷⁴ The BIR premised these tax evasion charges on Fortune Tobacco's filing of allegedly false and fraudulent VAT and excise tax returns and masking its true status through acts such as creating dummy corporations and simulated sales. However, the Supreme Court suspended the preliminary investigation by the Metropolitan Trial Court on the issue of propriety of filing criminal charges prior to completion of the assessment process against Fortune Tobacco. The Supreme Court's ruling in this case overturned an earlier ruling that there was no need for a prior BIR assessment in a criminal case.⁷⁵ Eventually, the main trial proceeded in the Metropolitan Trial Court, which acquitted the defendants in October 2006. With the acquittal putting an end to the litigation, the Fortune Tobacco case shows the failed earlier efforts of the government to prosecute those perceived to be tax evaders.

⁶⁸ M. Remo. 2007. BIR Nets P9B from Tax Deals. *Philippine Daily Inquirer*. 22 July.

⁶⁹ She was later appointed BIR commissioner in September 2007. She resigned in March 2009 and was succeeded by Sixto S. Esquivias IV.

⁷⁰ J. Vallecera and M. Gonzalez. 2007. 6-Mo. Deficit at P37.7B; Tax Targets Stay. *Business Mirror*. 5 July. Also available: <http://businessmirror.com.ph/07052007/headlines01.html>

⁷¹ L. Hefti. 2007. Speech at the 103rd anniversary celebration of the BIR. Manila. 1 August; D. Lucas, footnote 22.

⁷² Revenue Memorandum Order No. 44-93, 9 September 1993.

⁷³ Ibid.

⁷⁴ On 7 September 1993, the BIR filed a complaint with the DOJ (I. S. No. 93-508) charging Fortune Tobacco Corporation, its corporate officers, and nine other corporations and their respective corporate officers with fraudulent tax evasion for alleged nonpayment incurred in 1992 of the correct ad valorem, income and value-added taxes. On 26 October 1993, a second criminal complaint (I. S. No. 93-584) was filed against the same respondents for the same alleged acts of tax evasion for taxable year 1991. On 21 December 1993, the third criminal complaint (I. S. No. 93-17942) was filed against the same respondents for alleged tax evasion in 1990. *People of the Philippines v. Lucio Tan*, G. R. No. 144707 (13 July 2004).

⁷⁵ The Fortune Tobacco case was brought to a regional trial court and later the Court of Appeals in 1994. In 1996, the Supreme Court ruled that before the BIR could criminally prosecute Fortune Tobacco, it was required to prove that the “manufacturer's registered wholesale price” (pre-approved by the BIR) was not the price on which the tax liability of Fortune Tobacco should be based. After the DOJ filed the case with the Metropolitan Trial Court of Marikina, the BIR conducted a reinvestigation of the liability of Fortune Tobacco, concluded that there was no fraud, and consequently filed a manifestation for the withdrawal of the case from the Metropolitan Trial Court. The court dismissed the case, on the grounds that it did not have a certification

In 2005, with the launch of the RATE Program—resulting from the directive of DOF Secretary Purisima to “continue putting pressure on tax evaders without letup”⁷⁶—the government’s interest in pursuing tax evaders was renewed. However, at that time, no written issuance or order formalized the creation of the program.

The Frequently Asked Questions (FAQs) page on the BIR’s website declares that the RATE Program’s objectives are to enhance voluntary compliance among taxpayers, generate the maximum deterrent effect on the taxpaying public by emphasizing the fact that tax evasion is a crime and that violators will be caught and punished, and promote the confidence of the public in the tax system.⁷⁷

It is worth noting that all three objectives are directed at the taxpaying public and that they do not include an increase in enforcement revenue—that is, revenue (tax, penalty, or interest) collected from the specific taxpayer. It is thus evident that the RATE Program actually has two objectives: the direct objective of criminal prosecution, and the indirect but equally important objective of enhanced voluntary compliance. While the program stresses that violators will be caught and punished, it is still intended to create a maximum deterrent effect on the taxpaying public.

At the RATE Program’s inception, the following criteria were established for the development and filing of RATE cases:

- The case involves simple offenses, such as non-filing of tax returns, substantial under-declaration of income, or overstatement of deductions.
- The deficiency tax consequence of the case is at least P1 million in basic taxes.⁷⁸
- The case has a high impact on public perception.
- The taxpayer is known in the sector or industry to which he or she belongs.⁷⁹

Perhaps learning from the Fortune Tobacco case experience, the above criteria were guided by the overriding instruction from the DOF that the BIR develop “open and shut” cases, i.e., the cases to be proved should be simple, the evidence against the respondent taxpayers is conclusive as to guarantee their filing with the Court of Tax Appeals, and the case should not raise any complex tax issues.

The RATE Program was expanded in 2006 to BIR regional offices. Each revenue region, through its Special Investigation Division (SID) and the revenue district office, is required to develop one tax evasion case per month for filing under the RATE Program.⁸⁰ However, the revenue memorandum circular setting the required number of cases does not provide criteria for developing RATE cases.

On 12 June 2007, President Arroyo issued Executive Order No. 625-A placing the RATE Program under the administration of the BIR

from the BIR commissioner authorizing such a filing, a new requirement imposed by the newly revised NIRC. This led to another legal contest as the Office of the Solicitor General appealed the Metropolitan Trial Court dismissal up to the Supreme Court, which subsequently ordered the Fortune Tobacco case remanded to the Metropolitan Trial Court for trial to proceed. After the presentation of voluminous documentary evidence in the Metropolitan Trial Court of Marikina, the legal journey of the Fortune Tobacco case ended with an acquittal of the defendant in October 2006. The decision stated that members of the board of directors or its chairperson could not be held criminally liable because they were not among the persons who may be held liable in case of a “corporate violation” of the Tax Code. See Joint Order dated 6 October 2006 issued by the Metropolitan Trial Court of Marikina, *People of the Philippines v. Lucio C. Tan, Fortune Tobacco Corporation, et al.* Criminal Cases Nos. 98-38181 to 98-38189, pp. 33–34.

⁷⁶ DOF. 2005. DOF and BIR File Tax Evasion and Estafa Complaints vs PT&T, Weaving Firm. News release. 31 March. <http://www.iro.ph/downloads/pressrelease/03105-RATE%20PR.pdf>

⁷⁷ The FAQs on the BIR website describe how different the RATE Program is from other BIR programs: “Unlike the other programs of the Bureau which are designed for revenue generating purposes as a means to achieve the Bureau’s collection goal, the RATE Program aims to investigate, prosecute and convict tax evaders and other violators of the NIRC of 1997.” BIR, footnote 57.

⁷⁸ Republic Act No. 9282 gives the Court of Tax Appeals exclusive original jurisdiction over all criminal offenses arising from violations of the NIRC except where “the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than one million pesos (P1,000,000.00) or where there is no specified amount claimed,” which cases shall be tried by the regular courts and the jurisdiction of the Court of Tax Appeals shall be appellate (§7.b.1).

⁷⁹ BIR assistant commissioner of internal revenue, interview by E. P. Guevara, 31 July 2007; BIR deputy commissioner of internal revenue, presentation on the RATE Program, Quezon City, 20 April 2006.

⁸⁰ Revenue Memorandum Circular No. 40-2006, 13 July 2006.

Office of the Deputy Commissioner for Legal and Inspection Group to “give more teeth to the on-going drive against tax evaders.”⁸¹ During a command conference at the BIR on 13 August 2007, the President told BIR officials and district revenue collectors that the “bigger cases should be given priority.”⁸² She gave instructions to focus on “big-ticket” fraud cases including those with liabilities of at least P50 million.⁸³

Accordingly, Commissioner Hefti stated that the “campaign against tax evaders will continue to be accorded top priority” by the BIR, which would continue to prosecute RATE cases. “Special attention,” according to the commissioner, “will be focused on the specific cases filed before the [Court of Tax Appeals] to ensure the successful prosecution of these cases and the conviction of tax evaders.”⁸⁴

⁸¹ Office of the Press Secretary, footnote 22.

⁸² Ibid. President Arroyo noted, “The biggest case is what, P150 million ... whereas there are billion-peso cases that are languishing.”

⁸³ E. Jurado. 2007. To the Point. *Manila Standard Today*. 15 August. Also available: http://www.manilastandardtoday.com/?page=emilJurado_aug15_2007

⁸⁴ Hefti, footnote 72.

Legal Framework for Prosecuting Tax Evasion

Tax evasion or tax fraud occurs when the taxpayer eliminates or reduces the correct and proper tax through fraudulent means.⁸⁵ As contemplated by the law, the commission of fraud must be actual and not constructive. It must amount to an intentional fraud which consist of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right.⁸⁶

There are two types of tax evasion or fraud—civil or criminal—depending on the amount of evidence available to prove fraud. A case for criminal tax fraud results when all elements of fraud can be proven “beyond [a] reasonable doubt.”⁸⁷ Upon conviction, the respondent taxpayer is liable to both criminal sanctions (including imprisonment or fines) and civil penalties in addition to deficiency taxes.⁸⁸ On the other hand, a civil tax fraud case results when all elements of fraud cannot be proven beyond a reasonable doubt, but only by clear and convincing evidence amounting to more than a mere preponderance, and cannot be justified by mere speculation.⁸⁹ In such a case, the respondent taxpayer is liable for deficiency taxes and civil penalties.⁹⁰

There are several violations of the National Internal Revenue Code (NIRC) that are considered tax evasion, most of which are premised on two key penal provisions, section 254 (Attempt to Evade or Defeat Tax)⁹¹ and section 255 (Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensa-

⁸⁵ Guidelines and Investigative Procedures in the Development of Tax Fraud Cases for Internal Revenue Officers; Annex A of Revenue Memorandum Order No. 15-95, 9 June 1995.

⁸⁶ *Aznar v. CTA and Collector of Internal Revenue*, G. R. No. L-20569 (25 August 1974).

⁸⁷ “Proof beyond [a] reasonable doubt does not mean such a degree of proof as, excluding possibility of error, absolute certainty. Moral certainty is only required, or that degree of proof which produces conviction in an unprejudiced mind.” Guidelines and Investigative Procedures in the Development of Tax Fraud Cases for Internal Revenue Officers, Types of Tax Fraud Cases – Criminal Fraud.

⁸⁸ Guidelines and Investigative Procedures in the Development of Tax Fraud Cases for Internal Revenue Officers.

⁸⁹ “Preponderance of evidence” means that the testimony presented by one side is more credible and conclusive than that of the other. “Clear and convincing” need not rise to proof beyond a reasonable doubt as in a criminal case but must be stronger than mere preponderance. Guidelines and Investigative Procedures in the Development of Tax Fraud Cases for Internal Revenue Officers, Types of Tax Fraud Cases–Civil Fraud.

⁹⁰ The BIR may impose a 50% surcharge on a civil penalty. Guidelines and Investigative Procedures in the Development of Tax Fraud Cases for Internal Revenue Officers.

⁹¹ NIRC, §254. Attempt to Evade or Defeat Tax. “Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Thirty thousand pesos (P30,000) but not more than One hundred thousand pesos (P100,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years: *Provided*, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.”

tion).⁹² Cases are filed against individual taxpayers or responsible officers of corporate taxpayers.⁹³

As stated earlier, the BIR tries to file simple tax cases under the RATE Program.⁹⁴ Thus, RATE tax evasion cases typically involve willful failure to file tax returns,⁹⁵ willful failure to pay taxes,⁹⁶ substantial under-declaration of income (or a deliberate under-declaration of income by more than 30% of that declared per return), substantial overstatement of deductions (or a deliberate overstatement of amount of deductions by more than 30% of actual deductions),⁹⁷ hiding or transferring assets or income, willful non-remittance of withholding taxes,⁹⁸ claiming personal expenses as business expenses, and claiming false deductions.

Other offenses, usually identified as the means or method employed to commit or further tax evasion, are charged in addition to the abovementioned violations of the NIRC.⁹⁹ These incidental offenses include using fake certificates authorizing registration, tax clearance certificates, or other

accountable forms;¹⁰⁰ failure to register with the BIR;¹⁰¹ keeping more than one set of account books;¹⁰² and making false entries in books and records.¹⁰³ The tax offenders may also be charged with committing other crimes punishable under the Revised Penal Code.¹⁰⁴ In a number of criminal cases filed by the BIR or the DOJ on behalf of the Philippines (criminal case), suspected tax evaders were also charged with perjury,¹⁰⁵ *estafa* (swindling),¹⁰⁶ and falsification of public documents in addition to criminal violations of the NIRC.¹⁰⁷

All criminal violations may be compromised, except those for which a case has already been filed in court, or those involving fraud.¹⁰⁸ Even the 2007 General Tax Amnesty Law states that amnesty is not available to those with pending criminal cases for tax evasion and other criminal offenses under the NIRC.¹⁰⁹ Thus, cases filed under the RATE Program that involve fraud may not be a subject of compromise. In the abatement program implemented in late 2006 by the BIR, RATE cases were excluded from coverage.¹¹⁰

⁹² NIRC, §255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation. "Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than one (1) year but not more than ten (10) years. Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp or receipt of an internal revenue office wherein the same was actually filed shall, upon conviction therefore, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years."

⁹³ NIRC, §256.

⁹⁴ BIR assistant commissioner of internal revenue, interview, footnote 79.

⁹⁵ NIRC, §255.

⁹⁶ NIRC, §254 and 255.

⁹⁷ NIRC, §248(B).

⁹⁸ NIRC, §251.

⁹⁹ BIR deputy commissioner of internal revenue, presentation on RATE program, footnote 79.

¹⁰⁰ NIRC §257(B)(8) imposes penal liability on any person who "[w]illfully attempts in any manner to evade or defeat any tax imposed under the [NIRC], or knowingly uses fake or falsified revenue official receipts, Letters of Authority, certificates authorizing registration, Tax Credit Certificates, Tax Debit Memoranda and other accountable forms"; upon conviction for each act or omission, the person held liable shall "be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000) and suffer imprisonment of not less than two (2) years but not more than six (6) years."

¹⁰¹ NIRC, §258.

¹⁰² NIRC, §257(B)(6) imposes penal liability on any person who "[k]eeps two (2) or more sets of such records or books of account."

¹⁰³ In addition to NIRC §255, which declares the failure to keep any record or supply correct and accurate information a criminal violation, §257(B)(4) also declares a person who "[k]nowingly makes any false entry or enters any false or fictitious name in the books of accounts or records" to have committed a criminal violation.

¹⁰⁴ Act No. 3815, Revised Penal Code, 8 December 1930.

¹⁰⁵ *Ibid.*, Art. 183.

¹⁰⁶ *Ibid.*, Art. 315.

¹⁰⁷ Revenue Memorandum Circular No. 31-2007 (23 April 2007) reminds financial officers and certified public accountants of the penalties under the NIRC for engaging in "illegal and unscrupulous practices" resulting in tax evasion. Among the acts penalized are the making of false entries in books of account and the signing and certification of financial statements without audit. NIRC, §257.

¹⁰⁸ NIRC, §204.

¹⁰⁹ See footnote 39.

¹¹⁰ Revenue Regulation No. 15-2006, §2(k) (30 June 2006).

Process Map for Prosecuting Tax Evasion

The prosecution of tax evasion cases involves four major stages: detection of possible tax evasion, investigation and case development, preliminary investigation (and an appeal stage, if a motion for reconsideration or petition for review is filed), and prosecution.

The Process and Agencies

Three government institutions—two under the executive department (Bureau of Internal Revenue [BIR] and Department of Justice [DOJ]) and one under the judiciary (Court of Tax Appeals)—are the key actors in the process of prosecuting tax evasion. These agencies are driven by different objectives, depending on their legal mandates at each stage of the process, and function independently at different stages. Their interrelations are depicted in Figure 1.

The BIR's mandate covers the assessment and collection of all national internal revenue taxes, fees, and charges, and enforcement of all forfeitures, penalties, and fines connected with its assessment or collection functions.¹¹¹ Its mission is to "raise internal revenue taxes for the government,"¹¹² and in pursuit of this goal, it may exercise its powers to assess and collect or to proceed with civil enforcement instead of immediately proceeding with criminal prosecution.

However, upon the filing of a criminal complaint for tax evasion, the BIR focuses on the exercise of its power to enforce payment of taxes and other remedies for collection. The BIR, as the complainant in tax evasion cases, must prove before the DOJ that probable cause exists against an alleged tax evader. Probable cause exists when "there is sufficient ground to engender a well-founded belief that a crime [i.e., tax evasion] has been committed and the respondent is probably guilty of that crime."¹¹³

Once a criminal complaint is filed, the DOJ must investigate the alleged tax evasion and determine if probable cause exists. At this stage, the DOJ exercises a quasi-judicial function, independently weighing the evidence submitted by the BIR and the alleged tax evader.¹¹⁴ Differences may arise between

¹¹¹ NIRC, §2.

¹¹² BIR. *Mission and Vision*. <http://www.bir.gov.ph/about/about.htm>

¹¹³ Revised Rules of Criminal Procedure (2000), rule 112, §1, Preliminary Investigation.

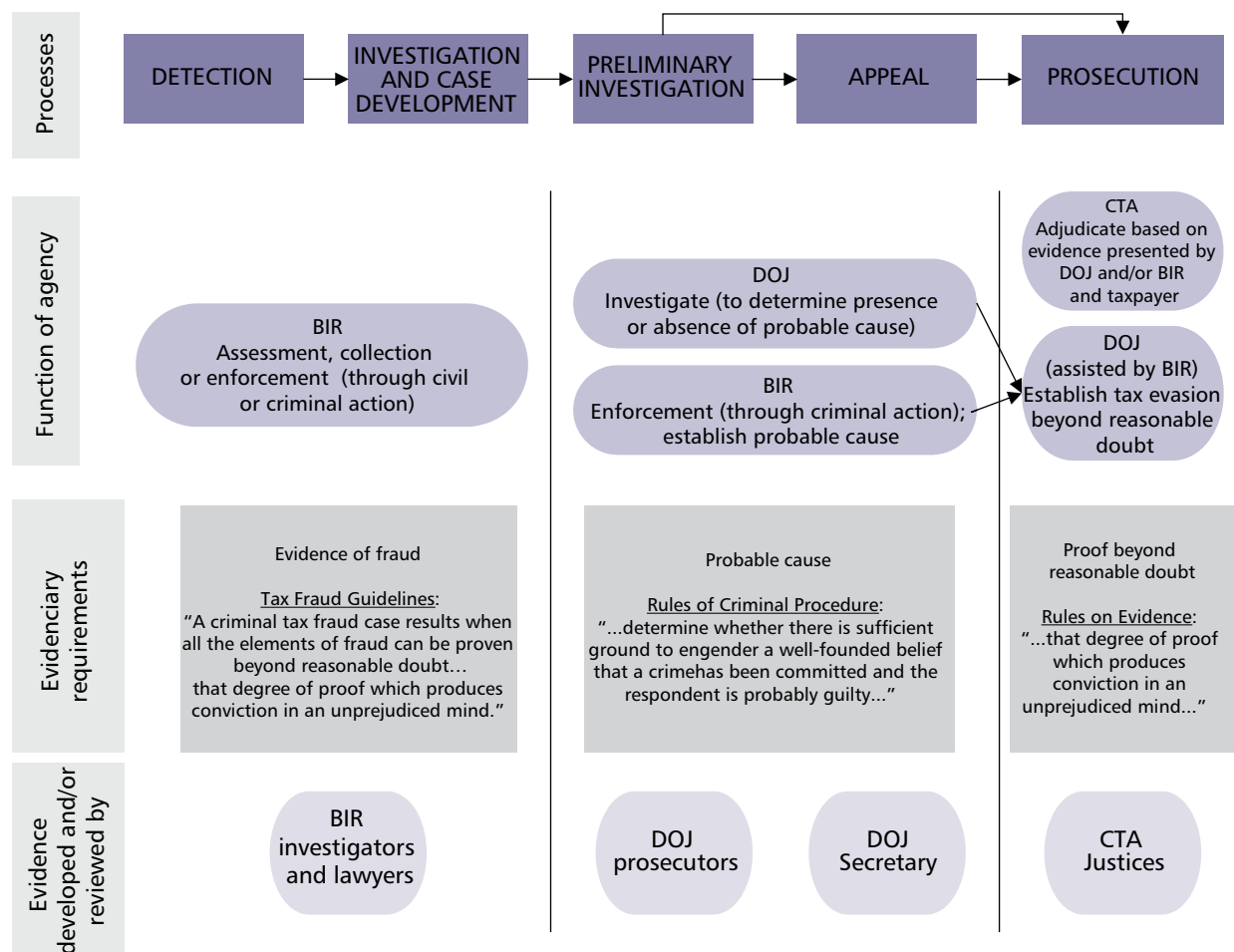
¹¹⁴ The Supreme Court considers a preliminary investigation as a "judicial proceeding wherein the prosecutor or investigating officer, by the nature of his functions, acts as a quasi-judicial officer." *Cruz, Jr. v. People*, G. R. No. 110436 (27 June 1994).

the BIR and the DOJ with respect to evidence and the interpretation of the law, or even the procedure for filing complaints.

After the preliminary investigation, if the DOJ finds probable cause and the case is filed in court, the DOJ serves as legal counsel to the government.¹¹⁵ At the prosecution stage, the interests of the DOJ and the BIR converge on securing a conviction against the accused tax evader. At this stage, the two agencies jointly handle the prosecution of the tax evasion case, with the DOJ taking the lead.

At the prosecution stage, the Court of Tax Appeals exercises adjudicative powers to determine if the evidence presented by the DOJ and the BIR proves beyond a reasonable doubt that the accused indeed committed tax evasion.¹¹⁶ The Rules on Evidence under the Rules of the Court of Tax Appeals define proof beyond a reasonable doubt as “that degree of proof [that] produces conviction in an unprejudiced mind.”¹¹⁷ Again, at this stage, interpretation of evidence may differ between the prosecution (DOJ and BIR), on the one hand, and the court on the other.

Figure 1: Overview of the Process Map and Institutional Actors



BIR = Bureau of Internal Revenue, CTA = Court of Tax Appeals, DOJ = Department of Justice.

Source: Tax Fraud Case Guidelines, NPS Revised Rules of Criminal Procedure and Revised Rules of the Court of Tax Appeals.

¹¹⁵ Executive Order No. 292 (1987), book IV, title III, ch 1, §1.

¹¹⁶ Administrative Memorandum No. 05-11-07-CTA, §2, Revised Rules of the Court of Tax Appeals (22 November 2005).

¹¹⁷ Revised Rules on Evidence, §2, rule 133. Weight and Sufficiency of Evidence.

Detection of Possible Tax Evasion

Information leading to the development of tax evasion cases under the RATE Program may come from many sources, including third-party information obtained by the BIR, routine audit examination of tax returns, confidential information, referrals from other government agencies, and newspaper reports.¹¹⁸

Third-Party Information

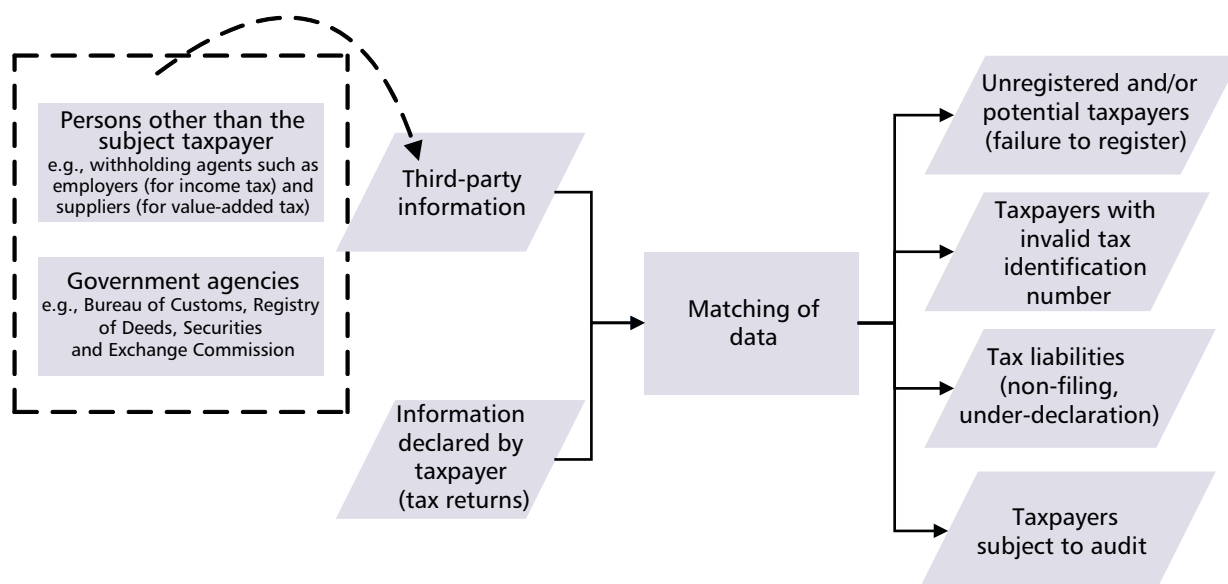
Red flags indicating tax evasion are detected through information obtained by the BIR from third parties, as authorized by section 5(B) of the National Internal Revenue Code (NIRC). Third parties include any person other than the person whose internal revenue tax liability is subject to audit or investigation; and any office or officer of national and local governments, government agencies and instrumentalities, and government-owned and government-controlled corporations.¹¹⁹

Information received from these third parties is matched with information declared by the

taxpayer to the BIR to discover untapped revenue sources, particularly misdeclaration of revenues and expenses. Third-party information, when matched with the BIR registration database, may also lead to the disclosure of unregistered taxpayers. For instance, the Bureau of Customs, a third-party source, provides information on import duties and other payments in connection with the importation of goods, such as value-added tax (VAT). This information is matched against the information declared by the taxpayer-importer in its schedules of importation, VAT returns, and audited financial statements. If substantial discrepancies are detected, they may be red flags for tax evasion. The process is illustrated in Figure 2.

In one instance, the BIR filed a tax evasion case against an actress on the basis of comparing information received from several corporations that withheld income from her to the declarations that she made on her income tax return. The actress declared income of approximately P8 million in 2002 when third-party sources provided certifications that she earned at least P14 million for the same year. As a result, the BIR filed a complaint of

Figure 2: Third-Party Information as a Tool of Detection



Source: National Internal Revenue Code.

¹¹⁸ BIR, footnote 55; BIR assistant commissioner of internal revenue, interview, footnote 79.

¹¹⁹ NIRC, §5(B).

willful failure to supply correct and accurate information against the actress due to substantial under-declaration of income.¹²⁰

Third-party information can also be generated by information systems established within the BIR, such as the Integrated Tax System, the core of the bureau's Tax Computerization Program, which was implemented in 1994. Consisting of 14 application systems including the Registration System and the Taxpayer Accounting System, the Integrated Tax System monitors all revenue transactions of registered taxpayers.¹²¹ Its benefits are being realized in revenue collection, taxpayer compliance, and taxpayer service and information links.¹²²

Before the Integrated Tax System, tax payments were monitored manually.¹²³ The system has thus enhanced the BIR's capability to match the information gathered from a taxpayer against that provided by third parties such as authorized agent banks and other taxpayers.¹²⁴

Based on the Integrated Tax System–National Office Management Information System, which was designed to facilitate BIR's core business functions with a standard processing framework through a set of related automated systems and processes, the RELIEF System was created to cross-reference third-party information with the target taxpayer's summary list of sales and purchases.¹²⁵ The RELIEF System became operational in 2002 when large taxpayers filed their returns electroni-

cally for the first time, automatically creating an electronic database of third-party information. The RELIEF System can detect tax leaks by matching data available in the Integrated Tax System with data gathered from third-party sources, such as schedules of sales and domestic purchases, and schedules of importations submitted by VAT taxpayers.¹²⁶ Unregistered taxpayers and nonfilers can be recognized and accurately reported in a timely fashion.¹²⁷ Several tax evasion cases filed by the BIR even before the RATE Program resulted from information generated by the RELIEF System.

Of the 119 BIR revenue district offices, 70 are computerized. The BIR is in the process of installing the Integrated Tax System in all offices through the National Rollout of Computerized Systems Program, and intends to complete the computerization project by 2008.¹²⁸

The strengthening of taxpayer information links is a primary project under the BIR's tax reform agenda. The BIR intends to establish and expand links with agencies such as the Insurance Commission, the Land Transportation Franchising and Regulatory Board, the Land Transportation Office, the Land Registration Authority, the Securities and Exchange Commission (SEC), and local government units.¹²⁹ In fact, initial SEC and BIR data matching has had significant results. About 9,240 firms registered with SEC have not registered with the BIR, deepening the pool of potential tax evasion cases.¹³⁰ The BIR estimates that

¹²⁰ I. S. No. 2005-417.

¹²¹ The 14 application systems are registration, returns processing, collection and bank reconciliation, accounts receivable, returns compliance, case monitoring, taxpayer accounting, tax reconciliation, tax credits and refunds, audit, national office management policy and planning service information, accountable forms, electronic new government financial and administrative accounting, and human resources information.

¹²² The Integrated Tax System is "a set of related systems and processes, which run and facilitate [BIR's] core business functions. It provides maximum automation and minimum manual intervention in BIR operations. [It] supports [BIR] in servicing taxpayers on different aspects of the tax collection and administration process. With 14 application systems, [it] allows [BIR] to approach all of its information and major business functions in a consolidated manner." BIR. History. <http://www.bir.gov.ph/about/history.htm>

¹²³ Two large corporate taxpayers were discovered by the RATE Program as a result of the information discovered through the Integrated Tax System. The corporate officers were criminally charged after the BIR discovered through the eFPS that both corporations were not remitting the taxes that they withheld. As large taxpayers, these corporations filed their returns through the eFPS but did not pay the corresponding taxes and remit taxes they had withheld. See DOF, footnote 77.

¹²⁴ Third-party information sources for the Integrated Tax System include the Large Taxpayers Service (phase 1) and later, government agencies, e.g., Bureau of Customs (phase 2).

¹²⁵ Revenue Memorandum Order No. 04-2003, 20 February 2003.

¹²⁶ Pursuant to Revenue Regulation No. 7-95, as amended by Revenue Regulation nos. 13-97, 7-99, and 8-2002.

¹²⁷ Revenue Memorandum Order No. 30-2003, 18 September 2003.

¹²⁸ USAID, footnote 10; Hefti, footnote 72.

¹²⁹ Revenue Special Order No. 381-2006, 2 August 2006.

¹³⁰ J. T. Gulane. 2007. Data Matching Shows Nearly 10,000 Firms Not Paying Taxes. *Business World*. 21 August. Of the 9,240 firms, 7,098 were identified as nonstock and nonprofit firms while the rest were business firms.

this discrepancy will result in additional collections of P500 million.¹³¹

The BIR tax reform agenda, also known as the National Program Support for Tax Administration Reform, is funded through an \$11 million loan from the World Bank and \$13 million in grants from the Australian Agency for International Development (AusAID), the Millennium Challenge Corporation, the Swedish International Development Cooperation Agency (SIDA), the United States Agency for International Development (USAID), and the World Bank's Institutional Development Facility.¹³² A substantial portion of the funding under the Millennium Challenge Account Philippine Threshold Program (approximately P4 million) is devoted to the computerization of the BIR, which will help generate information for the development of RATE cases. The program supports the National Rollout of Computerized Systems Program by providing the equipment and facilities necessary to operate the Integrated Tax System and by supporting the training of BIR personnel in preparation for the system's full operation.¹³³

Routine Audit Examination of Returns

The BIR's audit program was implemented to improve overall voluntary compliance and to collect the correct amount of tax from taxpayers. The purpose of an audit is to ascertain the taxpayer's correct tax liability,¹³⁴ and the audit of tax returns is a tool used in determining whether a taxpayer has complied with tax laws.¹³⁵ Tax audits are covered by letters of authority issued by revenue district officers.

Taxpayers who are suspected of tax evasion as the result of an audit are referred by the revenue district office conducting the audit for fraud investigation to the Special Investigation Division (SID).¹³⁶

The BIR sets criteria for the selection of taxpayers subject to audits in its annual audit program for revenue district offices. For 2007, retirees and taxpayers claiming tax credits or refunds exceeding a certain threshold are among those subject to audits, while professionals (such as doctors, lawyers, and accountants), contractors of government agencies, instrumentalities, local government units, government corporations, and hotels and other tourism-related establishments are among those deemed top priority for audits.¹³⁷

One tool used by the BIR to conduct intensified audits is industry benchmarking.¹³⁸ The monitoring and evaluation of tax payments through the use of benchmarks "will determine/identify taxpayers within industry groups who are paying below the minimum amount or set benchmarks for tax compliance purposes."¹³⁹ Taxpayers who fail to meet certain benchmarks may be subjected to audit and investigation.¹⁴⁰

Various reform programs to improve the BIR's audit capability include a computer-assisted audit tool system, preparation of audit manuals for specific industries, development of a national audit plan and implementation of a risk management model for risk-based assessment for effective audits and investigations, and training of auditors on international financial and accounting reporting standards and financial reporting.¹⁴¹

The BIR's Computer-Assisted Audit Program, which uses the computer-assisted audit tool sys-

¹³¹ Ibid.

¹³² Ibid.

¹³³ The Millennium Challenge Account Philippines Threshold Program provided equipment for the installation of the Integrated Tax System in 18 regional district offices outside Metro Manila and Cebu. The project also constructed a fully equipped training center in Cebu to be used initially to train BIR personnel in Visayas and Mindanao on the national rollout of computerized systems. USAID, footnote 10.

¹³⁴ Revenue Memorandum Order No. 17-95, 8 June 1995.

¹³⁵ Revenue Audit Memorandum Order No. 1-99, 5 September 1998.

¹³⁶ Revenue Memorandum Order No. 11-06, 20 April 2006.

¹³⁷ Revenue Memorandum Order No. 12-2007, 6 July 2007.

¹³⁸ Mundo, footnote 8.

¹³⁹ Revenue Memorandum Order No. 04-06, 23 January 2006. Industries that had priority for benchmarking in 2004 were manufacturing (e.g., flour, soft drinks, sugar, cement, and plastic), hardware, restaurants, shipping, information technology providers, telecommunications, call centers, logistics providers (e.g., stevedoring, freight, trucking, and courier services), construction, and petroleum.

¹⁴⁰ Ibid.

¹⁴¹ BIR deputy commissioner of internal revenue, interview by E. P. Guevara, Manila, 31 July 2007.

tem, was developed with financial assistance from the World Bank. This program aims to simplify audit documentation, strengthen the audit process, and improve the BIR's ability to review data.¹⁴² The BIR had hoped to complete specific audit manuals for the telecommunications, banking, shipping, and insurance industries by 2007. It aimed to use the planned audit tools fully and to implement the risk-based national audit plan by 2009–2010.¹⁴³

The BIR Tax Reforms Administration Group cited technical assistance given by USAID and SIDA to support these programs geared toward strengthening the BIR's audit capabilities.¹⁴⁴ BIR personnel were trained on international financial reporting standards through the assistance of USAID.¹⁴⁵

Confidential Information

The DOF and the BIR launched an informer's reward campaign in March 2005. An informer's reward is given to any person who supplies information instrumental to the discovery of violations of the NIRC.¹⁴⁶ For an informer to be entitled to the reward, the information must not yet be in the possession of the BIR (or the information must not refer to a case of fraud or violation already pending or previously investigated or examined by the BIR);¹⁴⁷ must lead to the discovery of fraud perpetrated by the taxpayer or violation of any of the provisions of internal revenue laws; and must result in the actual recovery of revenues, surcharges, and fees, or the conviction of the guilty party, or the imposition of any fine or penalty.¹⁴⁸

The BIR accepts reports over the telephone, by mail (regular or e-mail), or in person at any

BIR office. The confidential information is filed with the BIR Law Division to determine if the information given is in accordance with the requirements prescribed by law. In order to collect the reward, the information must be accompanied by a sworn statement that the informer must execute in person and under oath, specifying the particular violation committed by the denounced person and the kind of tax allegedly not paid.¹⁴⁹ The information is then transmitted to the BIR Records Division for recording in a confidential entry book.¹⁵⁰ Copies of the information and other documents submitted by the informer are referred to the National Investigation Division (NID) or a regional SID for investigation. The investigating unit submits its report and recommendation to the BIR Commissioner or the Regional Director.¹⁵¹

Electronic bounty promotions, periodically sponsored by the BIR, also gather confidential information on tax evasion, particularly on the non-issuance of receipts. A consumer who reports via SMS on a professional, business, or commercial establishment that did not issue a receipt may receive a cash prize equivalent to the reward awarded informers. The cash prize is awarded after investigation and verification of the report, completion of the corresponding assessment, and imposition and collection of the penalties.¹⁵²

Referrals

The RATE Program also receives referrals from other government offices, usually the Criminal Investigation and Detection Group of the Philippine

¹⁴² BIR deputy commissioner of internal revenue, presentation on the Computer Assisted Audit Program, the BIR's current examination and collection programs, Manila. 20 April 2006. it is just a description.

¹⁴³ Gulane, footnote 131.

¹⁴⁴ BIR deputy commissioner of internal revenue, interview, footnote 141.

¹⁴⁵ USAID, interview by E. P. Guevara, Manila, 20 September 2006.

¹⁴⁶ NIRC, §282. However, BIR officials or employees, other public officials or employees, and relatives within the sixth degree of consanguinity are ineligible. The reward is equivalent to 10% of revenues, surcharges, or fees recovered or fines or penalties imposed and collected, or P1 million per case, whichever is lower. Ibid.

¹⁴⁷ Ibid.; Revenue Memorandum Order No. 12-93, 1 February 1993, citing Republic Act No. 2338, §1.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Revenue Memorandum Order No. 12-93 provides that "[t]he individual entries to be made by the Records Division shall indicate the day and time the information is received, the name and address of the informer, name and address of the person denounced, names and addresses of the witnesses, if any, the subject matter of the information and the list of records, documents and books submitted, if any."

¹⁵¹ Revenue Memorandum Order No. 12-93.

¹⁵² Revenue Memorandum Order No. 41-04, 16 August 2004.

National Police and the Malacañang Action Center.¹⁵³ The referrals are forwarded to the appropriate division to conduct an initial investigation.

In 2006, the BIR entered into a memorandum of agreement to prosecute government officials suspected of corruption. The cooperating agencies, headed by the Office of the Ombudsman, are the BIR, the DOJ, and the Office of the Solicitor General. The Anti-Money Laundering Council serves as a venue to share information and to create strategies in prosecuting the officials. In addition to tax evasion and money-laundering charges, the agencies may also file graft cases against suspected officials.

Fraud Investigation and Case Development

The NID, on behalf of the BIR's enforcement service, investigates the information received about alleged tax evasion and develops the case consistent with guidelines established in the conduct of tax fraud investigations in Revenue Memorandum Order No. 15-95.¹⁵⁴ There are 94 NID investigators (10 of whom are lawyers), who, aside from developing RATE cases, also perform other duties pertaining to their regular assessment and collection functions.¹⁵⁵ Each revenue region's SID is also required to follow the same guidelines in investigating fraud cases.

Fraud Cases Developed

In 1995, the BIR issued the *Guidelines and Investigative Procedures in the Development of Tax Fraud Cases for Internal Revenue Officers* (Tax Fraud Case Guidelines) to guide NID and SID personnel in conducting fraud investigations.¹⁵⁶ These guidelines, when all present and proven by com-

petent pieces of evidence, specify the elements of tax evasion, such as

- the end to be achieved, the payment of less tax than that known by the taxpayer to be legally due;
- the accompanying state of mind, variously described as "evil," "in bad faith," "deliberate and not accident," or "willful"—the exact term used is not too important; and
- the overt act done or scheme used by the taxpayer to achieve the nonpayment of taxes known to be due: "The act or scheme must be tinged with some elements of deceit, misrepresentation, trick, device, concealment or dishonesty."¹⁵⁷

Fraud Investigation

Once the NID receives information about the possibility of tax evasion, it first conducts a preliminary investigation to establish the existence of prima facie indications of fraud. This stage includes the verification of allegations made on the basis of confidential information or complaints filed, and the determination of the schemes and extent of fraud perpetrated.¹⁵⁸ Investigators at this stage conduct a "no-contact audit" to verify the allegations of tax evasion. They may access records of private persons, entities, government offices, and agencies, take inventory, and use surveillance.¹⁵⁹ To guide investigators, the Tax Fraud Case Guidelines include a lengthy list of most common indications of fraud committed by taxpayers, including "substantial unexplained increases in net worth over a period of years," failure to file a return "especially for a period of several years although substantial amounts of income were received," and unsubstantiated or unexplained wealth.¹⁶⁰

After prima facie fraud has been established, the formal fraud investigation is conducted. This

¹⁵³ BIR assistant commissioner of internal revenue, interview, footnote 79.

¹⁵⁴ Revenue Memorandum Order No. 15-95, 9 June 1995.

¹⁵⁵ BIR deputy commissioner of internal revenue, presentation on RATE program, footnote 79.

¹⁵⁶ Revenue Memorandum Order No. 15-95, Annex A, 9 June 1995.

¹⁵⁷ Guidelines and Investigative Procedures in the Development of Tax Fraud Cases for Internal Revenue Officers (Tax Fraud Case Guidelines).

¹⁵⁸ Ibid.

¹⁵⁹ Ibid., citing NIRC §7 and 16 (c).

¹⁶⁰ Ibid., Item E.

stage includes examining the alleged tax evader's account books on the basis of the issuance of a letter of authority by the BIR commissioner. With the issuance of this letter, the assessment process commences, and corresponding assessment notices are served on the alleged tax evader.¹⁶¹ The revenue district office or SID of the revenue region, which has jurisdiction over the alleged tax evader, is then required to transmit to the NID all documents in its possession concerning the alleged tax evader.

In normal assessment cases (i.e., those not involving fraud), assessment is a due process requirement, outlined in section 228 of the NIRC and Revenue Regulation No. 12-99, which the BIR must observe before it can issue an assessment for deficiency tax against an alleged tax evader. The normal assessment process is laid out in Figure 3. However, under the Tax Fraud Case Guidelines, following the Supreme Court's ruling in the case of *Ungab v. Cusi*, investigators need not serve an assessment notice upon any taxpayer recommended for criminal prosecution for tax evasion.¹⁶²

The Supreme Court ruled that before the BIR could criminally prosecute Fortune Tobacco, it had to prove that the manufacturer's registered wholesale price (pre-approved by the BIR) was not the price on which its tax liability should be based. The court held that the civil assessment process must first be conducted before any criminal liability could be established. The Supreme Court distinguished the case from the *Ungab v. Cusi*, 97 SCRA 877 ruling, under which no assessment is required before criminal prosecution is commenced, by highlighting the peculiar nature of the excise tax system under which the corporation's tax liabilities were determined.

The BIR filed a motion for reconsideration, which was denied by the Supreme Court. However, without any explanation, the Supreme Court allowed the preliminary investigation before the

DOJ to proceed under a new panel. In effect, the Supreme Court abandoned its earlier ruling that an assessment was a condition to the filing of a criminal complaint against Fortune Tobacco for tax evasion. Thus, the BIR continues to be guided by the Tax Fraud Case Guidelines, instructing investigators that, under the *Ungab* ruling, an assessment notice need not be served upon any taxpayer recommended for criminal prosecution for tax evasion.

Investigators may use the direct or indirect method to prove a tax fraud case.¹⁶³ Under the direct method—that is, the method of proving fraud by direct evidence or “specific item cases”—fraudulent acts are proven through specific transactions. The Tax Fraud Case Guidelines state that, under the direct method, “if the allegations are believed, the existence of the principal or ultimate fact is proven without any inference or presumption;” the guidelines enumerate examples of fraudulent acts that can be adduced in proving fraud.¹⁶⁴ For example, in cases involving income tax, an omission or understatement of taxable income may be shown through a taxpayer's failing to file an income tax return, keeping two sets of account books or records, or failing to issue receipts to customers. Several cases filed with the DOJ used the direct method, such as those against a professional basketball player who did not file income tax returns for 6 years¹⁶⁵ and the president of an entertainment company that had no tax returns for 2 years based on BIR records.¹⁶⁶

The indirect method relies on circumstantial evidence to determine a taxpayer's correct income or to establish a transaction. Circumstantial evidence is defined in the Tax Fraud Case Guidelines as that evidence which proves facts other than the disputed fact, which by inference also establishes the disputed fact. However, where circumstantial evidence is relied on to prove a fact, “the circumstances must be proved by direct evidence and

¹⁶¹ The assessment may be authorized by the BIR commissioner (NIRC, §6[A]) or by the revenue regional director (NIRC, §10[C]).

¹⁶² The Tax Fraud Case Guidelines provide that “No Assessment Notice shall be served upon any taxpayer recommended for criminal prosecution for tax evasion, following the Supreme Court's ruling in the case of *Ungab vs. Cusi*, 97 SCRA 877.”

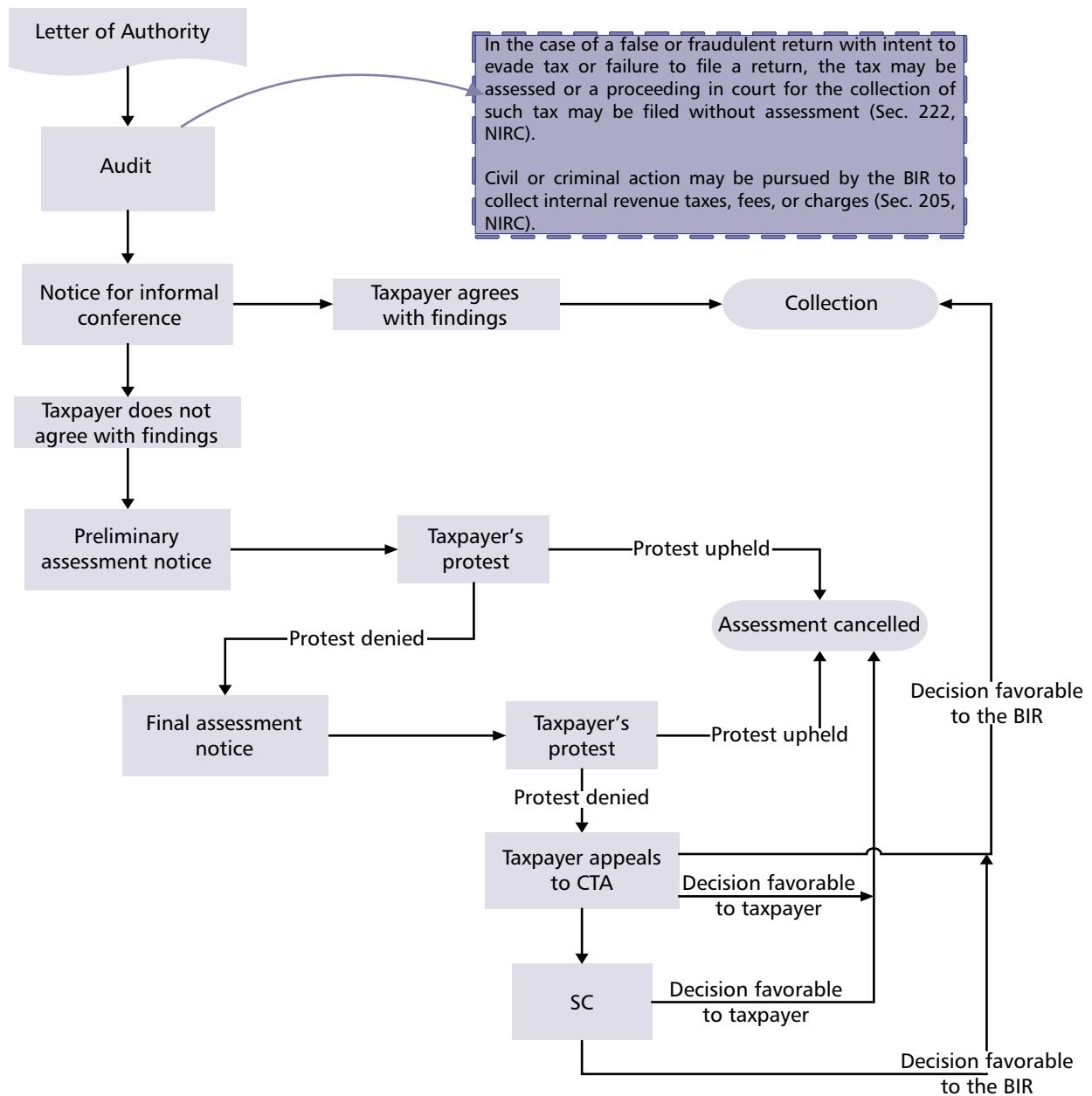
¹⁶³ In the direct approach method, proof of fraudulent acts is “adduced by specific items of fraudulent transactions. It is that only, if the allegations are believed, the existence of the principal or ultimate fact is proven without any inference or presumption” (Tax Fraud Case Guidelines). The indirect method “relies upon circumstantial evidence of determining the correct income or transaction of a taxpayer” (Tax Fraud Case Guidelines).

¹⁶⁴ Item C of the Tax Fraud Case Guidelines.

¹⁶⁵ I. S. No. 2005-215.

¹⁶⁶ I. S. No. 2005-375.

Figure 3: Assessment Process



BIR = Bureau of Internal Revenue, CTA = Court of Tax Appeals, NIRC = National Internal Revenue Code, SC = Supreme Court.

Source: Tax Fraud Case Guidelines.

cannot themselves be inferred.”¹⁶⁷ It should be noted that it is often difficult to obtain a conviction in court, because circumstantial evidence may not be sufficient to establish proof beyond a reasonable doubt. Also, circumstantial evidence—as opposed to direct evidence—is subject to interpretation by the agency reviewing the evidence.

The Tax Fraud Case Guidelines also describe the principal indirect methods used in proving fraud cases: the net worth and inventory or net worth and expenditure method,¹⁶⁸ the expenditures or excess cash expenditures method,¹⁶⁹ the percentage method,¹⁷⁰ and the unit and value method.¹⁷¹

Based on the evidence and the list of fraudulent acts enumerated by the Tax Fraud Case Guidelines, investigators determine if there is criminal fraud, that is, proof beyond a reasonable doubt of all elements of tax evasion. Upon conclusion of the formal fraud investigation, the investigators assigned to the case draft a report bearing a recommendation for criminal prosecution if warranted by evidence. Reports on cases recommended for criminal prosecution under the RATE Program are forwarded to the Legal Writing and Appearance Group for evaluation.¹⁷² If the Legal Writing and Appearance Group finds the evidence insufficient to warrant the filing of a criminal action against the taxpayer, the case is returned to the investigating team developing the case for further documentation and appropriate action.

On the other hand, if the recommendation for criminal prosecution is found to be supported by sufficient evidence, the Legal Writing and Appearance Group drafts the complaint-affidavit of the investigators for filing with the DOJ. The

Legal Writing and Appearance Group is composed of six lawyers, including three who work on the RATE Program full time. The other three lawyers handle tax evasion cases in addition to their regular legal duties within the BIR. In November 2007, additional lawyers from other legal units of the BIR were instructed to handle RATE cases before the DOJ and the Court of Tax Appeals.

The complaint-affidavits and supporting evidence are then forwarded to the BIR commissioner for review and approval. The BIR commissioner prepares a referral letter to the DOJ authorizing the filing of the criminal charge against the taxpayer found by the BIR to have committed tax evasion.¹⁷³ The process is set out in Figure 4.

Performance of the Run After Tax Evaders (RATE) Program

Except for the sharp rise in the 15 April 2005 collections from the previous year’s single-day collection, no other 2005 data show taxpayers’ response to the tax evasion program of the government. In addition, except for the number of cases filed with the DOJ, no other performance indicators—quantitative or qualitative—had been established to track the outcome of such filings as of 2007 (although the necessity of President Arroyo’s directive, addressed only to the BIR, to prosecute a tax evasion case and secure a conviction might indicate poor performance).¹⁷⁴ Early into the program, from March to December 2005, the BIR was filing at least one tax evasion complaint per week—44 in all—with the DOJ on instructions from the DOF. At the beginning of 2006, the policy direction within

¹⁶⁷ Guidelines and Investigative Procedures in the Development of Tax Fraud Cases for Internal Revenue Officers.

¹⁶⁸ This is a method of reconstructing income based on the theory that if the taxpayer’s net worth has increased in a given year in an amount larger than his or her reported income, he or she had understated his or her income for that year (Tax Fraud Case Guidelines).

¹⁶⁹ This method proceeds from the theory that where the amount of money a taxpayer spends during a given year exceeds his or her reported income, and the source of such money is otherwise unexplained, it may be inferred that such expenditures represent unreported income.

¹⁷⁰ The Tax Fraud Case Guidelines consider this method to be “of little value in criminal cases” but it is “useful in test-checking or corroborating the results obtained by some other means of proof such as specific items, net worth, and expenditures methods, and for evaluating allegations from information regarding unreported profits or income.”

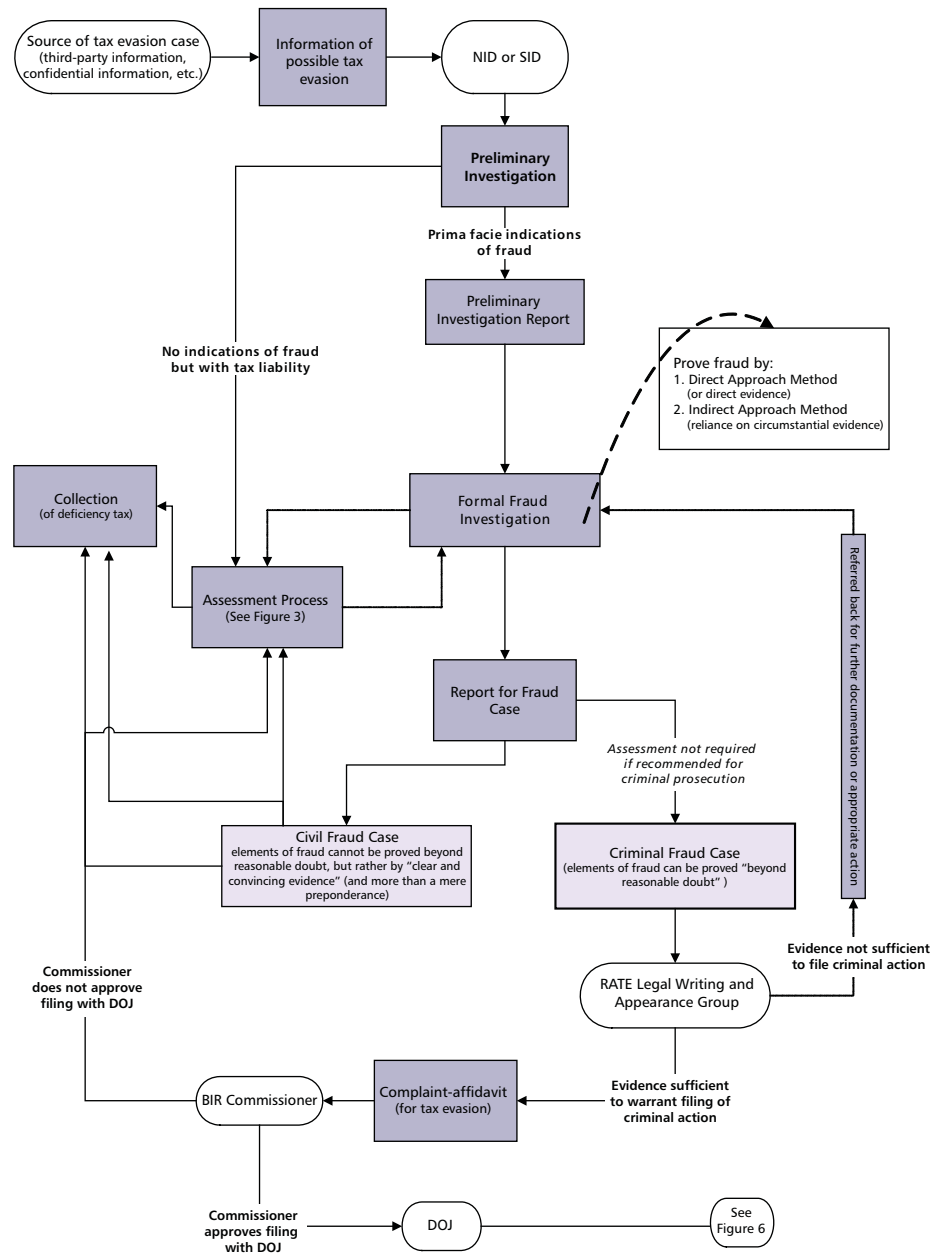
¹⁷¹ The Tax Fraud Case Guidelines state that this is “not a prime method of proof.” Under this method, the determination or verification of gross receipts may be computed by applying price and profit figures to the known ascertainable quality of business done by the taxpayer.

¹⁷² BIR deputy commissioner of internal revenue, presentation on RATE Program, footnote 79.

¹⁷³ Section 220.

¹⁷⁴ Revenue Memorandum Circular No. 40-2006.

Figure 4: Fraud Investigation



BIR = Bureau of International Revenue, DOJ = Department of Justice, NID = National Investigation Division, RATE = Run After Tax Evaders Program, SID = Special Investigation Division.

Source: Tax Fraud Case Guidelines.

the BIR was to continue with the weekly filing of cases under the RATE Program.¹⁷⁵ However, the BIR filed only an average of two tax evasion cases per month in 2006. Table 1 sets forth the targets set by the BIR (including cases filed in 2005) and actual cases filed in 2006.

In 2007, six more complaints were filed with the DOJ by the end of the third quarter, translating to an average filing of approximately one case per month and a total cumulative filing of 87 tax evasion cases involving a total estimated tax liability of at least P6.39 billion. Of these 87 tax evasion complaints, 83 were filed by the BIR national office and 4 were initiated by regional offices. Seventy-five were developed by NID, four by the Large Taxpayers Service, and eight by the revenue regions (four of which were filed by the national office and four by the revenue district offices).¹⁷⁶ Appendix 2 summarizes the estimated tax liability involved in these cases.

The RATE Ad Hoc Committee relies on NID and the SIDs to deliver the criminal tax fraud cases developed for filing with the DOJ to the Legal Writing and Appearance Group. Therefore, if either division provides insufficient material, the number of cases filed will be affected. While the regional offices are required to submit two tax evasion cases per year through a SID for the program,¹⁷⁷ no such quota is imposed on NID. As to the method of collecting or generating information for the development of possible tax evasion cases, both NID and SIDs are only guided by informally stated criteria.

Most of the complaints filed with the DOJ as of the end of August 2007 covered more than one violation of the NIRC. For this reason, the breakdown in Table 2 adds up to 116 rather than 87.

The BIR intended to file a total of 116 tax evasion complaints with the DOJ by the end of 2007, pursuant to its commitment for the RATE Program under the Millennium Challenge Account Philippine Threshold Program.¹⁷⁸ As of the end of the third quarter, the RATE Legal Writing and Appearance Group had filed six more cases with the DOJ.

The BIR also committed itself to increase the number of income tax returns filed by professionals and self-employed individuals as well as corporate tax returns by 10% by the end of 2007.¹⁷⁹ The increase of public confidence in the tax system can be measured by the improvement in taxpayers' compliance.

Absent any other objective indicator, the quality of investigation and case development of the BIR can only be measured by the number of cases filed by the DOJ in court after a finding of probable cause, and in the long term, by the number of convictions achieved at the Court of Tax Appeals. However, the amount of tax liability claimed may serve as an indicator of the quality of a complaint. RATE cases reaching the Court of Tax Appeals involve a total estimated tax liability of approximately P270 million, with one case involving a tax liability of at least P150.49 million. Including criminal complaints filed with the

Table 1: Target and Actual Number of Cases Filed by the Bureau of Internal Revenue, 2006

Type	Target	Actual
Cases filed before the Court of Tax Appeals	10	6
Cases filed with the Department of Justice (developed by)	78	81
a. National Office	40	73
b. Regional Office	38	8

¹⁷⁵ BIR deputy commissioner of internal revenue, presentation on RATE Program, footnote 79.

¹⁷⁶ RATE Case Writing and Legal Appearance Group, interview by E. P. Guevara, Manila, 27 October 2006.

¹⁷⁷ BIR assistant commissioner of internal revenue, interview, footnote 79. Revenue Memorandum Circular No. 40-2006, to which the assistant commissioner was referring, actually provides that "[e]ach RDO or Special Investigation Division (SID) of Revenue Regions shall develop at least one (1) tax fraud case per month."

¹⁷⁸ Hefti, footnote 72 (In her speech, Commissioner Hefti announced that the BIR hoped to file 116 cases by the end of 2007 "in order to graduate to the compact level under the Millennium Challenge Account (MCA) and thereby avail of more extensive assistance from the MCA.")

¹⁷⁹ The BIR's commitment is part of the Millennium Challenge Account Philippine Threshold Program.

Table 2: Tax Evasion Complaints
(according to nature of violation)

National Internal Revenue Code Violation	No. of Cases
Willful failure to file returns	39
Under-declaration of income or overstatement of deductions	20
Willful failure to remit withholding taxes	5
Failure to register or pay annual registration fee	7
Willful failure to supply correct and accurate information	14
Unlawful pursuit of business (e.g., unregistered receipts or multiple receipts)	5
Willful failure to pay capital gains tax or documentary stamp tax	9
Willful failure to pay donor's tax or estate tax	8
Use of unauthentic or spurious income tax returns	9
Total	116

Source: BIR, RATE Legal Writing and Appearance Group.

DOJ, the tax evasion cases filed under the RATE Program involve a total estimated tax liability of at least P6.5 billion, as shown in Appendix 2.¹⁸⁰ The tax evasion case involving the highest estimated tax liability, P1.154 billion, is still pending with the DOJ.

The number of cases dismissed and the reasons for dismissal can also give a general indication of the quality and quantity of evidence in cases developed by the BIR.

The DOJ resolved 35 of the 87 complaints filed as of 31 August 2007. It found probable cause in 13 cases and dismissed 18. It remanded four to the BIR. The BIR continued to pursue 13 of the 18 dismissed cases, taking no further action on the other cases.¹⁸¹ One of these cases was dismissed pending preliminary investigation when the taxpayer died; another involved the failure to locate the appropriate parties to sue; a third case, involving a cabinet official, was dismissed by the DOJ secretary.¹⁸²

While the number of cases filed in court by the DOJ or the number of cases dismissed may be considered qualitative performance indicators, the reliability of these indicators becomes problem-

atic when there are disagreements between the BIR and the DOJ with regard to appreciation of evidence and interpretation of laws relating to tax evasion. In fact, BIR and DOJ even disagree on procedural issues, such as the necessity of an assessment before a criminal complaint is filed.

The BIR cites the increasing shift from developing simple cases of not filing tax returns and failing to pay taxes to building up cases involving "one-time transactions." It intimates the scarcity of cases to be developed for the program due to the difficulty of securing competent evidence, thus accounting for the shift to one-time transaction cases, such as those involving sales of real property, donations, or estate tax payments.

As of 2007, with six lawyers assigned to the Legal Writing and Appearance Group, each lawyer was handling 13 tax evasion cases, whether at the preliminary investigation, appeal, or prosecution stage, on average.¹⁸³ However, out of the six lawyers, only three were handling tax evasion cases full time; two of them handled 20 cases each.¹⁸⁴ In November 2007, additional lawyers from other BIR legal units were assigned to handle RATE cases in addition to their regular legal duties.

¹⁸⁰ RATE cases filed as of 16 August 2007.

¹⁸¹ Two cases are the subjects of motions for reconsideration filed with the Office of the Chief State Prosecutor, while four cases have been appealed to the DOJ secretary.

¹⁸² After the case was dismissed by the investigating prosecutor, a motion for reconsideration—and later, a petition for review—were filed by the BIR. The DOJ secretary denied the petition and affirmed the dismissal of the complaint.

¹⁸³ This represents an increase from an average of eight cases per lawyer in November 2006.

¹⁸⁴ Other lawyers handle other duties for the BIR: two with the Inspection Service and one with the Prosecution Division.

Figure 5 sets forth the proposed organization chart under the BIR Rationalization Program (which has yet to be implemented), showing a new division under the enforcement service that will perform the functions of the RATE Program.

Benefits including an insurance premium, hazard pay, and a legal fund have been proposed to bring the RATE division up to par with lawyers from other government agencies and approximate those of the private sector.¹⁸⁵ The Millennium Challenge Account Philippine Threshold Program supports efforts to establish this separate division within the BIR through institutionalizing the RATE campaign at the national level (including local and foreign training, scholarships, and equipment and software), explaining the RATE campaign to the public (including on how to manage the government-funded information campaign), computerizing taxpayer information (including equipment and local training), and assisting the Human Resource Information System (covering software licenses, server, local training on the system, and software development and customization).

The Millennium Challenge Account Philippine Threshold Program has supported the following activities to strengthen the ability of the RATE Program to investigate and prosecute tax evaders: training RATE investigators on basic and advanced financial tax fraud investigation, financial tax fraud case management, and case develop-

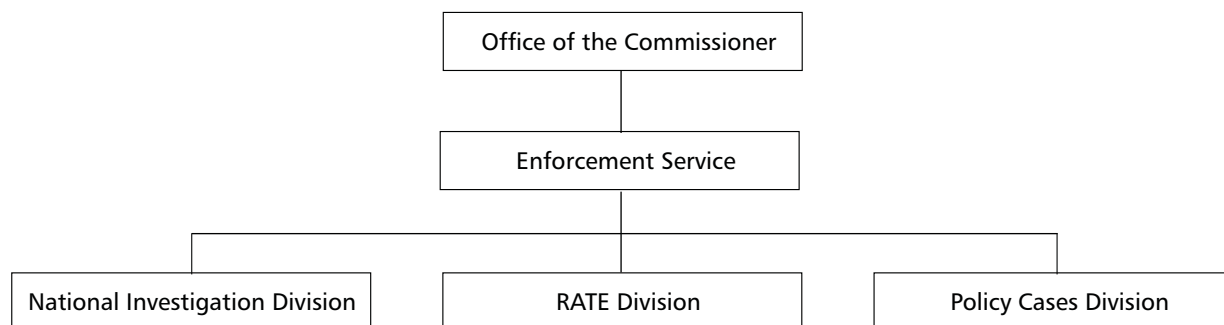
ment and prosecution; providing RATE personnel and officials the opportunity to attend overseas training on scholarship, study tax issues and acquire better skills, and participate in study tours of selected foreign tax institutions; procuring equipment and software needed to boost the capabilities of the program; and training RATE personnel on such tools.¹⁸⁶

Issues and Concerns

Effect of revenue targets. The BIR's primary objective is revenue collection. For 2007, it was assigned a collection goal of P765.9 billion, almost two-thirds of total government revenue.¹⁸⁷ By the end of 2007, the BIR had collected only P711.6 billion. In working toward its assigned collection goal after 2007, the BIR will likely place more emphasis on strategies that produce revenue in the short term rather than the long term. Notwithstanding, the BIR must find ways to duplicate during every filing season the initial success of the RATE Program, which resulted in a record single-day income tax collection in 2005. However, for the RATE Program to remain credible, the effort must be sustained beyond the tax-filing season.

Effect of the General Tax Amnesty Law. Taxpayers who qualify for amnesty under the General Tax Amnesty Law are entitled to immunity from criminal prosecution. Taxpayers who failed

Figure 5: Proposed Run After Tax Evaders (RATE) Division



Source: RATE Legal Writing and Appearance Group, Bureau of Internal Revenue.

¹⁸⁵ BIR deputy commissioner of internal revenue, presentation on RATE Program, footnote 79.

¹⁸⁶ USAID, footnote 10.

¹⁸⁷ Revenue Memorandum Order No. 7-2007, 25 April 2007.

to report taxes in the past and take advantage of the RATE Program no longer have any criminal liability. Thus, RATE cases could only come from taxpayers for tax years up to 2005 who did not avail themselves of the amnesty and from all other taxpayers.

Effect of the Lateral Attrition Law. The Lateral Attrition Law, which took effect in 2005, provides for a system of rewards and punishment to the personnel of the two revenue-generating bureaus—BIR and Bureau of Customs—to encourage them to be more efficient in the collection of taxes. The underlying objectives of the Lateral Attrition Law are desirable but the law focuses primarily on collection. Although regional offices and revenue division offices have been assigned a quota for developing criminal cases, this is not a performance measure in the implementing regulations of the Lateral Attrition Law. The BIR should consider performance criteria for officials and employees performing duties for the RATE Program in criminal cases,¹⁸⁸ just as it did starting in 2007 as part of its program to institute an office management performance system.¹⁸⁹

Centralization of detection functions. The BIR's infrastructure for gathering information is already in place and functioning. Its detection function will likely be enhanced by the development of a computer system under the Millennium Challenge Account Philippine Threshold Program grant. The BIR should consider creating a division that could act as a central office for developing, receiving, and coordinating information on potential tax evasion cases. In the short term, this division could complement the enforcement functions of the regional offices and revenue division offices; in the long term it could complement those of the RATE Division that is to be created un-

der the enforcement service. Short-term strategies could include early wins with the development of open-and-shut cases, such as discrepancies in returns or failure to file returns, both of which are easily discovered through the RELIEF System. Such a clearinghouse will likely enhance regional offices and revenue division offices' capability to develop tax evasion cases that would be easier to prosecute.

Policy directions for development of tax evasion cases. The BIR should consider a directive to BIR personnel clarifying existing guidelines, the rationale of the RATE Program, its policy direction, and criteria for developing cases again. Only two official orders have been issued since the RATE Program was first conceived, and only to assign personnel to the RATE team and to designate officers in charge of the program.¹⁹⁰ While policy directives have been announced by President Arroyo and Commissioner Hefti on various occasions, the criteria for the development of RATE cases are not stated in any official pronouncement.

Official information for public consumption on the RATE Program is found only on the BIR website. The Tax Fraud Case Guidelines issued in 1995, while applicable to the program, generally state that they are "presented to guide and to refresh all internal revenue officers with the necessary know-how in the investigation, evaluation, and submission of reports of fraud cases envisioned to withstand judicial scrutiny."¹⁹¹ A clear set of guidelines devoted to the development of tax evasion cases could be patterned after the following directive under Revenue Memorandum Order No. 44-93:

The objective of the tax fraud program is not to generate the needed revenue directly from the investigation but to prosecute persons who failed to declare or underdeclared their taxable

¹⁸⁸ Ibid. The development of scorecards for the officials and employees of the BIR regional and district offices and support offices at the BIR national office is scheduled for 2007. Ibid.

¹⁸⁹ Performance scorecards were first developed in 2004 for the Large Taxpayers Service, the unit responsible for collecting half of BIR's collection target. The year after, scorecards for officials and employees were developed. In 2006, performance scorecards were formulated for the regional and district offices and support offices at the BIR national office (Operations Group, Legal and Inspection Group, Information Systems Group, Resource Management Group, and the Office of the Commissioner). See J. T. Gulane. 2006. BIR to Expand Scorecard System. *Business World*. 29 November.

¹⁹⁰ Revenue Special Order No. 381-2005 and Executive Order 625-A. Revenue Special Order No. 381-2005 appointed the BIR assistant commissioners for enforcement service and for inspection service to chair the RATE Ad Hoc Committee. Executive Order No. 625-A ordered the transfer of the RATE program's administration from the Office of the BIR Commissioner to the Office of the Deputy Commissioner for Legal and Inspection Group.

¹⁹¹ Under Revenue Memorandum Order No. 15-95, which issues the Tax Fraud Guidelines. Reiterated in Revenue Administrative Memorandum Order No. 1-2000.

base and to collect whatever deficiency tax is due from such persons. The general impact of this program is to enhance and maximize voluntary compliance as a consequence of which revenue collections will increase ... [the] criminal tax case should be developed with the objective of gathering evidence to support a conviction under Sections 253 and 254 of the National Internal Revenue Code.¹⁹²

In addition, BIR can restate its criteria for developing cases, focusing in the short term on open-and-shut cases, which are more likely to lead to criminal prosecution.

Interagency links. Officials of the RATE Program noted the dearth of sources for tax evasion cases to be filed under the program, which reduced filings from one a week when the program started to twice a month in 2006 and once a month in 2007. However, Commissioner Hefti's target of 116 tax evasion cases by December 2007 will necessitate a weekly filing. Coordination and information sharing through database connectivity with other government agencies, such as those in the Bureau of Customs, is essential. Cooperation may generate additional red flags, enabling the BIR to investigate possible acts of tax evasion and providing evidence for the convictions President Arroyo has demanded. For instance, sharing of information between the BIR and the Philippine Overseas Employment Agency should provide leads on tax evasion by staffing and placement agencies by matching the number of persons deployed abroad (and thereby the revenue generated) with income reported to the BIR.

Much progress in interagency information sharing has been achieved; initial matching of SEC and BIR data has resulted in the discovery of at least 9,240 firms unregistered with the BIR.¹⁹³

Some BIR officials rely on their personal contacts at SEC to facilitate production of certifications or documents when needed. Therefore, there is a need for a system of coordination between the agencies to improve the confirmation of information and production of evidence apart from high-level data matching. In the absence of an electronic system of information sharing, the BIR could explore and establish more interagency cooperation to facilitate the development of tax evasion cases and deepen the pool of information sources for the RATE Program.

Availability of generated information. While BIR officials agreed that development of RATE cases should be emphasized, the pool from which RATE can draw and develop cases is limited, making expansion difficult.¹⁹⁴ It is worth noting that the information generated by the RELIEF System is given directly to the regional offices and is not available for NID to develop cases for the RATE Program.¹⁹⁵ Even the guidelines and procedures prescribed by the BIR to its internal revenue officers for handling information generated through the RELIEF System and the third-party information matching program with the Bureau of Customs—systems that are potential sources of RATE cases—are limited to civil assessment cases. Thus, the BIR should consider making information generated by its systems accessible to the RATE Program to widen the pool from which tax evasion cases may be developed. This could assist the deputy commissioner of the Legal and Inspection Group to fulfill the directive under Revenue Memorandum Order No. 25-2007 that he or she “shall always take into consideration the possibility of developing RATE cases out of the fraudulent cases being developed.”

Coordination with other BIR units. In the early stages of the RATE Program, several tax evasion complaints (all of which involve substantial

¹⁹² Revenue Memorandum Order No. 44-93 reiterates President Ramos's directive to the revenue regions and revenue district offices “to develop at least one tax fraud case against taxpayer(s) in their respective jurisdictions.” The order states, “[t]he objective of the tax fraud program is not to generate the needed revenue directly from the investigation but to prosecute persons who failed to declare or underdeclared their taxable base and to collect whatever deficiency tax is due from such persons. The general impact of this program is to enhance and maximize voluntary compliance as a consequence of which revenue collections will increase.” The order also prescribes the coverage of the program and categorically states that the “criminal tax case should be developed with the objective of gathering evidence to support a conviction under Sections 253 and 254 of the National Internal Revenue Code.”

¹⁹³ Gulane, footnote 131.

¹⁹⁴ BIR deputy commissioner and assistant commissioners of internal revenue, interview by E. P. Guevara, Manila, 31 July 2007.

¹⁹⁵ Ibid.

estimated tax liabilities) originated with the Large Taxpayer Service, indicating close coordination with other units in the development of cases for the program. RATE officials stated that the program has been relying on traditional sources, referring to confidential information and results of the audit program.¹⁹⁶ Establishing a closer system of coordination with other BIR units, such as the Large Taxpayer Service, in developing tax evasion, thus becomes imperative.¹⁹⁷

Operations manual. The guidelines for the development of tax fraud cases are broadly stated. The RATE Program requires an operations manual containing a more detailed set of guidelines. A general enumeration of elements and the general definition of criminal fraud is not sufficient to guide investigators. Guidelines for the RATE Program should include decisions of the Supreme Court, Court of Appeals, and Court of Tax Appeals, as well as relevant decisions of US courts (since the Philippines relies heavily on US case law); guidelines for the documentary evidence required to establish a case; and detailed procedures for case documentation and evidence gathering. The latter could include information about sources of evidence, such as interagency links with contact information. Other valuable sources for the guidelines include the results of prosecutor training and interagency dialogues sponsored by the Millennium Challenge Account Philippine Threshold Program and USAID.

Training of investigative personnel. Training must necessarily complement the development of an operations manual. The training on basic and advanced financial tax fraud investigation given to RATE investigators through the Millennium Challenge Account Philippine Threshold Program has contributed to the enhancement of BIR's investigative capability.

Training of prosecuting attorneys. President Arroyo acknowledged the need to "strengthen the prosecutorial and enforcement mechanism" of the BIR.¹⁹⁸ Although criminal cases before the Court

of Tax Appeals are prosecuted under the supervision of DOJ lawyers, the DOJ is likely to rely on BIR lawyers during the conduct of trial on matters relating to tax law. Thus, BIR lawyers should be trained in technical areas, such as the drafting of complaints filed with the DOJ and trial skills. In addition, BIR lawyers should be exposed to the training provided to BIR investigators on the law and procedure of evidence gathering. A focus on BIR lawyers is inevitable if the proposed bill to transfer the prosecutorial duties to them receives approval from Congress. USAID and the Millennium Challenge Account Philippine Threshold Program have set the pace by providing case development and prosecution programs for RATE lawyers.

Evidence safekeeping. The BIR cited the need for a more advanced system of archiving and preserving the evidence gathered by the RATE team. At present, evidence is stored in a vault. The BIR also mentioned the possibility of acquiring appropriate technology for the electronic storage of documentary evidence, which is not covered by funding under the Millennium Challenge Account Philippine Threshold Program.¹⁹⁹

Risks and personal security of personnel. The BIR noted the security risks faced by its personnel involved in developing criminal charges against tax evaders, leading to its proposal to include an insurance fund for BIR investigators and lawyers in the Millennium Challenge Account Philippine Threshold Program. However, this proposal has not been approved. The BIR added that it needs additional vehicles for the investigators involved in developing tax evasion cases.²⁰⁰

Legal protection of personnel. The BIR also cited the need for a legal defense fund for BIR lawyers and investigators harassed by lawsuits filed by respondents charged under the RATE Program.²⁰¹ In one instance, a disbarment case was filed against a BIR lawyer who was part of a team handling a tax evasion complaint against an actress. BIR personnel must engage their own lawyers when faced with lawsuits. While the grant of additional incen-

¹⁹⁶ BIR deputy commissioner and assistant commissioners of internal revenue, interview, footnote 194.

¹⁹⁷ Dalangin-Fernandez, footnote 9.

¹⁹⁸ http://www.op.gov.ph/index.php?option=com_content&task=view&id=8876&Itemid=2

¹⁹⁹ BIR assistant commissioner of internal revenue, interview, footnote 79.

²⁰⁰ Ibid.

²⁰¹ Ibid.

tives (e.g., an insurance premium, hazard pay, and a legal fund) was planned with the institutionalization of the RATE Program, how these incentives will be funded was not discussed.

System of monitoring of a regional program. As of 2007, eight tax evasion cases for the RATE Program had been developed by the revenue regions. Four were forwarded to the BIR national office for RATE lawyer review before filing criminal complaints with the DOJ national office. The other four cases were entirely developed by the revenue regions and were filed directly with local prosecutors' offices. It would be advisable to institute a system to ensure compliance by the revenue regions with the directive to develop one case per year for the RATE Program. It would also be advisable to institute a mechanism to evaluate the quality of cases developed by the regions and a system to monitor them.

Preliminary Investigation

Complaints for tax evasion are filed with the DOJ.²⁰² Presidential Decree No. 1275 provides that prosecutors under NPS have the authority to "conduct the investigation and prosecution of all crimes,"²⁰³ among which are violations of the NIRC.

Cases for investigation come from various sources, most commonly from the police and private complainants who file complaint-affidavits with the prosecutor's office.²⁰⁴ Tax evasion cases present a peculiar situation, as complaint affidavits are all initiated by the BIR, with the government as the principal "offended party" being deprived of revenue collections.

The preliminary investigation of tax evasion cases is governed primarily by the Revised Rules of Criminal Procedure found in the Rules of Court. The appeal process for review of prosecutors' resolutions is governed by the 2000 NPS Rule on Appeal.²⁰⁵ The preliminary investigation of tax evasion cases is conducted by the prosecutors of the Task Force on Revenue, one of the largest task forces in the DOJ.²⁰⁶

Objective of the Preliminary Investigation

A preliminary investigation is "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial."²⁰⁷ Putting this in context, it is the proceeding in which the prosecutor determines whether there is probable cause or reasonable grounds to believe that tax evasion has been committed, and that the taxpayer identified by the BIR is probably guilty of the acts or omissions amounting to tax evasion.

A preliminary investigation is intended to "secure the innocent against hasty, malicious, and oppressive prosecution; to protect them from an open and public accusation of a crime and from the trouble, expense, and anxiety of a public trial;"²⁰⁸ as well as to "safeguard the State from having to conduct useless and expensive trials."²⁰⁹ It is conducted to allow the DOJ to evaluate if the tax evasion complaint filed by the BIR is worth the time and resources to be spent in prosecuting the case before the Court of Tax Appeals.

²⁰² This stage is to be distinguished from the preliminary investigation conducted by the BIR. Preliminary investigation by the BIR, through its NID, a SID, or a revenue district office, is conducted to determine whether a formal investigation of the alleged tax evasion or fraud should proceed and whether a complaint of tax evasion should be filed with the DOJ. Preliminary investigation by the DOJ, through the NPS, is conducted for the purpose of determining if there is probable cause or reasonable ground to believe that tax evasion has been committed and that the taxpayer identified by the BIR is probably guilty of the acts or omissions amounting to tax evasion.

²⁰³ Presidential Decree No. 1275, 11 April 1978.

²⁰⁴ United Nations Development Programme (UNDP). 2003. Strengthening the Other Pillars of Justice through Reforms in the Department of Justice. Diagnostic Study. Geneva. June. p. 64.

²⁰⁵ Department circulars nos. 70 (issued 3 July 2000) and 70-A (issued 10 July 2000).

²⁰⁶ DOJ assistant chief state prosecutor, interview by E. P. Guevara, Manila, 23 August 2007.

²⁰⁷ Revised Rules of Criminal Procedure (2000), rule 112, §1.

²⁰⁸ *People v. Pocular*, 167 SCRA 176 (1988); *Salonga v. Pano*, 134 SCRA 438 (1985).

²⁰⁹ *Tandoc v. Resultan*, 175 SCRA 37 (1989).

The preliminary investigation is “essentially a judicial inquiry” where there is an “opportunity to be heard, production and weighing of evidence, and a decision rendered on the basis of such evidence.”²¹⁰ In this sense, the investigating prosecutor is a quasi-judicial officer.

Preliminary Investigation Process

When the BIR files a tax evasion complaint, affidavits of its investigation officers are subscribed and sworn to before a DOJ prosecutor. Together with these complaint affidavits, the BIR submits to the DOJ a letter of authority from the BIR commissioner allowing the filing of the complaint against the alleged tax evader.²¹¹ The complaint is assigned to an investigating prosecutor to handle the preliminary investigation. The investigating prosecutor may dismiss the complaint upon finding no grounds to continue with the preliminary investigation, or issue a subpoena to the alleged tax evader with the complaint affidavit and supporting documents.²¹²

Within 10 days from receipt of the subpoena, the alleged tax evader must submit a counteraffidavit as well as affidavits of witnesses and other supporting documents relied upon by the defense.²¹³ If the respondent cannot be subpoenaed, or does not submit counteraffidavits, the investigating prosecutor resolves the complaint based on the evidence presented by the BIR.²¹⁴

In addition to the counteraffidavit and other evidence, the investigating prosecutor usually

conducts a hearing to verify the allegations contained in the respective affidavits and to evaluate the supporting documents.²¹⁵ The hearing must be held within 10 days from submission of counteraffidavits and terminated within 5 days.²¹⁶

After the submission of affidavits and the termination of the hearing, the case is “submitted for resolution,” that is, the investigating prosecutor determines the existence of probable cause to hold the alleged tax evader for trial. This determination is made within 10 days after the investigation.²¹⁷

The investigating prosecutor then prepares a resolution, which may contain a finding of probable cause to have the alleged tax evader face trial or an order to dismiss the case. If there is a finding of probable cause, the investigating officer also prepares the corresponding information for filing with the Court of Tax Appeals.²¹⁸ A resolution of dismissal does not prevent the BIR from filing another tax evasion case against the same respondent, although the NIRC provides a statute of limitations for the filing of a criminal case in court.²¹⁹

After preparing the resolution, the investigating prosecutor forwards the record of the case to the chief state prosecutor for review of the facts and law with respect to a finding of probable cause.²²⁰ If the investigating prosecutor recommends the dismissal of the tax evasion complaint but the recommendation is disapproved on the grounds that probable cause exists, the chief state prosecutor may file the information against the respondent taxpayer, or direct another prosecutor to file the information without conducting another

²¹⁰ *Cruz, Jr. v. People*, 233 SCRA 439 (1994).

²¹¹ As required by NIRC, §220.

²¹² Revised Rules of Criminal Procedure, rule 112, §3(b).

²¹³ *Ibid.* The respondent taxpayer is not allowed to file a motion to dismiss in lieu of a counteraffidavit.

²¹⁴ Revised Rules of Criminal Procedure, rule 112, §3(d).

²¹⁵ Revised Rules of Criminal Procedure, rule 112, §3(e). The parties can be present at the hearing, but they do not have the right to examine or cross-examine. They may, however, submit questions to the investigating officer that may be directed to the party or witness concerned.

²¹⁶ UNDP, footnote 204, p. 68.

²¹⁷ Revised Rules of Criminal Procedure, rule 112, §3(f).

²¹⁸ An information is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court. Philippine Rules of Court, Revised Rules of Criminal Procedure, rule 110, §4.

²¹⁹ NIRC, §281 provides that “All violations of any provision of this Code [NIRC] shall prescribe after five (5) years.... Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment... The prescription shall be interrupted when proceedings are instituted against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy... The term of prescription shall not run when the offender is absent from the Philippines.”

²²⁰ Revised Rules of Criminal Procedure, rule 112, §4. The record is forwarded within 5 days from the investigating prosecutor’s resolution.

preliminary investigation.²²¹ The information may not be filed or be dismissed without the approval of the chief state prosecutor. The chief state prosecutor must act on the resolution within 10 days from receipt of the record.²²²

Depending on the number of violations alleged in the complaint and on the discretion of the investigating prosecutor, several informations may be filed in one or several courts. In one case involving the failure to file tax returns for 2 years and failure to supply correct income for 1 year, the DOJ filed three informations. In another complaint filed against a married couple, the DOJ prosecutor recommended filing three informations against the husband and two against the wife.²²³

Upon receipt of the resolution, the aggrieved party (the respondent taxpayer, if an information is recommended for filing; or the BIR, if no probable cause is found) may file a motion for reconsideration or reinvestigation addressed to the chief state prosecutor. Because the motion is still part of the preliminary investigation stage, arraignment and trial may not proceed until it is resolved.²²⁴ Only one motion for reconsideration may be filed.²²⁵

Figure 6 charts the path of a preliminary investigation as described here.

Appeal

Upon receipt of the resolution on the preliminary investigation or denial of the motion for reconsideration, the aggrieved party, the taxpayer in this instance, may appeal the resolution by filing a petition for review with the DOJ secretary.²²⁶ If an information has already been filed with the Court of Tax Appeals as a result of the resolution approved by the chief state prosecutor, the appeal filed cannot stay the filing of the corresponding informa-

tion in the Court of Tax Appeals, unless the DOJ secretary directs otherwise. Instead, the appellant taxpayer may file a motion to defer proceedings (with the Court of Tax Appeals) with the petition for review.²²⁷ However, the appellant taxpayer and prosecutor must ensure that, pending the resolution of the appeal, the proceedings in court are held in abeyance.²²⁸ After receiving a copy of the petition for review, the adverse party may file a comment to the petition. If no comment is filed within 15 days from the adverse party's receipt of a copy of the petition for review, the appeal is resolved on the basis of the petition.²²⁹

In the course of resolving the appeal, the DOJ secretary may dismiss the petition outright if he or she finds it to be "patently without merit or manifestly intended for delay, or when the issues raised therein are too unsubstantial to require consideration"²³⁰ or may order a reinvestigation of the case if he or she deems it necessary. The investigating prosecutor conducts the reinvestigation unless there are compelling reasons to assign another prosecutor to this task.²³¹ The secretary may dismiss the petition for review on any of the grounds specified by the NPS Rule on Appeal (e.g., failure of the aggrieved party to show a reversible error).²³² The party dissatisfied with the DOJ secretary's resolution may file a motion for reconsideration. Only one motion for reconsideration may be filed.²³³ In the interest of speedy disposition of cases, the NPS Rule on Appeal prescribes a time period to file the appeal (within 15 days from the receipt of the appealed resolution) and to file a comment (within 15 days from receipt of the copy of the petition for review). However, the law does not provide for a time period within which appeals must be resolved.

Figure 7 charts the appellate process.

²²¹ Ibid.

²²² Ibid.

²²³ Case filed against independent contractors of a health products corporation (I. S. No. 2005-499).

²²⁴ *Torralba v. Sandiganbayan*, 230 SCRA 33 (1994).

²²⁵ NPS Rule on Appeal, §3, Department of Justice Circular No. 70 (3 July 2000).

²²⁶ NPS Rule on Appeal, §5.

²²⁷ NPS Rule on Appeal, §4.

²²⁸ NPS Rule on Appeal, §9.

²²⁹ NPS Rule on Appeal, §8.

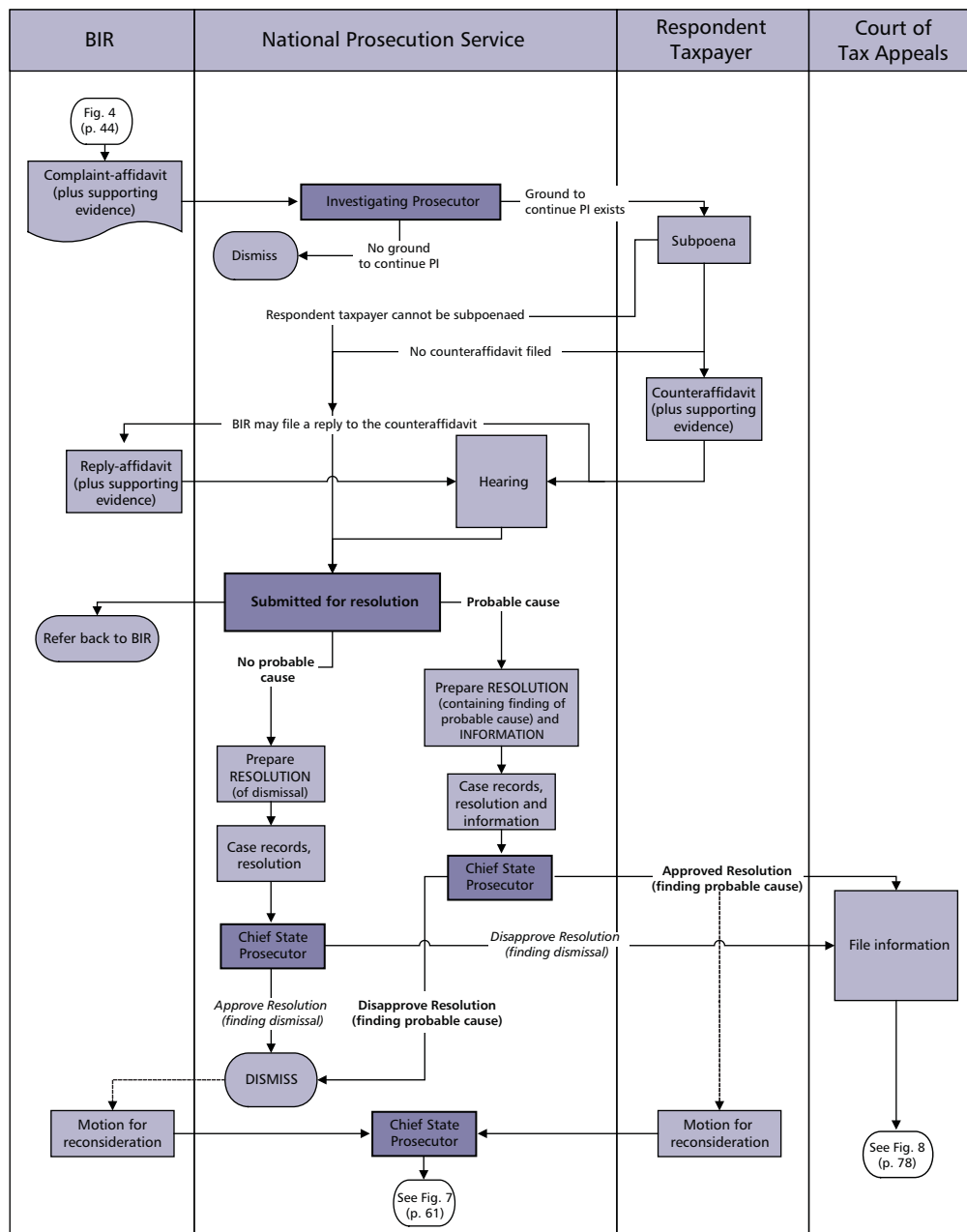
²³⁰ NPS Rule on Appeal, §7.

²³¹ NPS Rule on Appeal, §11.

²³² NPS Rule on Appeal, §12.

²³³ NPS Rule on Appeal, §13.

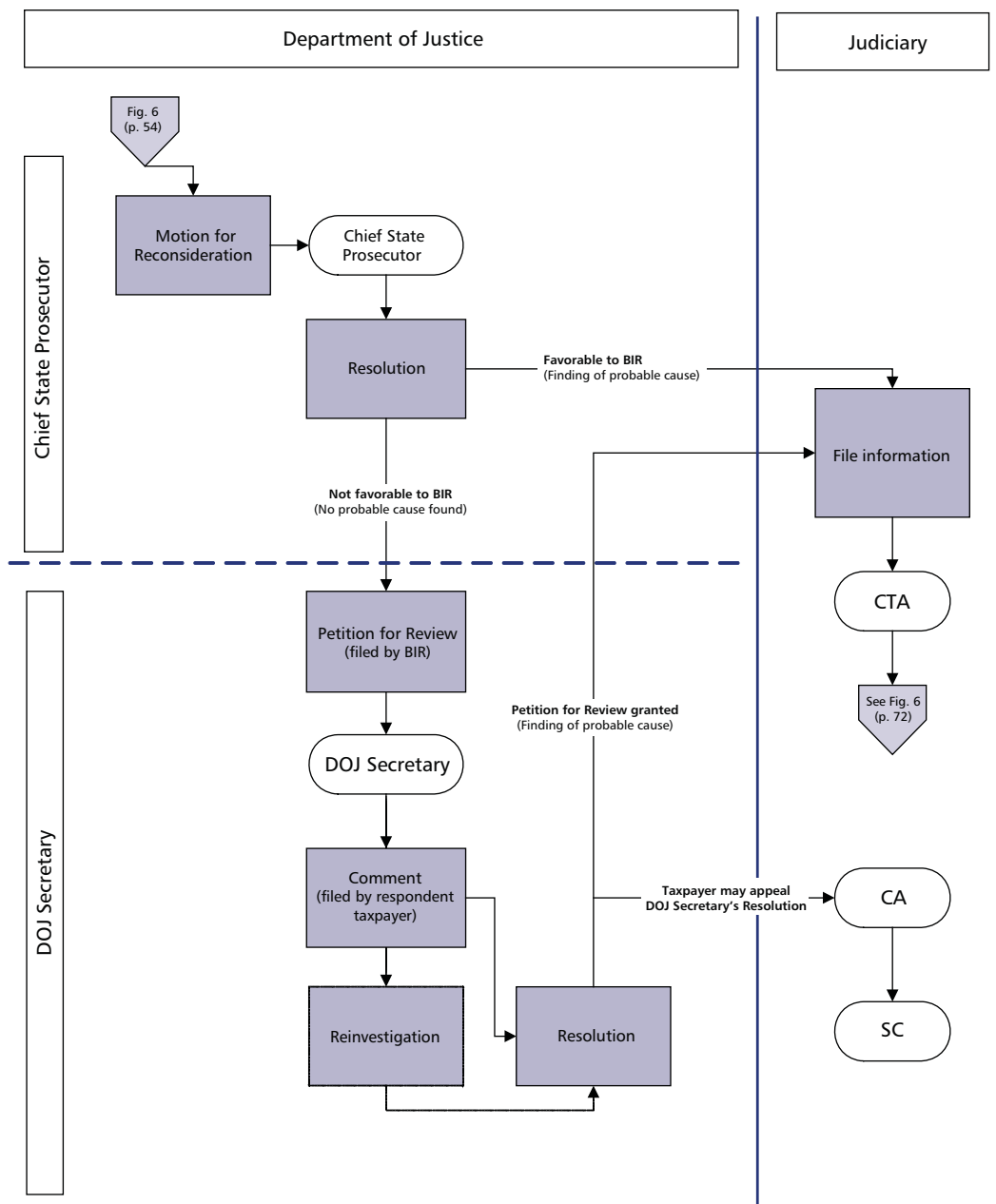
Figure 6. Department of Justice Preliminary Investigation



BIR = Bureau of Internal Revenue, DOJ = Department of Justice, PI = preliminary investigation.

Source: NPS Revised Rules of Criminal Procedure.

Figure 7: Appeals Process after Department of Justice Resolution



BIR = Bureau of Internal Revenue, CA = Court of Appeals, CTA = Court of Tax Appeals, DOJ = Department of Justice, SC = Supreme Court.

Source: NPS Rule on Appeal.

Performance of the Department of Justice

The DOJ uses the disposition rate to gauge the performance of the NPS, particularly its speed and efficiency in handling cases. The disposition rate is computed as the percentage of cases resolved or disposed out of the total cases pending during the year.²³⁴ A case is considered resolved at the preliminary investigation stage if it has been filed, dismissed, recommended for referral or transferred, or suspended due to a prejudicial question. From the inception of the RATE Program, the disposition rate of the Task Force on Revenue of RATE-initiated criminal complaints submitted for preliminary investigation as of the end of 31 May 2007 (when 83 complaints are for disposition) was 42.17%.²³⁵ Table 3 shows the status of the 83 complaints filed in 2007.

Table 3: Status of Run After Tax Evaders Cases Filed with the Department of Justice National Office, 2007

Status	Number of Cases
Pending preliminary investigation	14
Submitted for resolution	34
Resolved or disposed	35 (4 of which were referred back to BIR)
Total Complaints Filed	83 ^a

BIR = Bureau of Internal Revenue.

^a Four of the 87 complaints filed under the RATE program were filed with the local prosecutors' office.

Source: RATE Legal Writing and Appearance Group.

It must be noted that, in addition to the criminal complaints filed by the BIR under the RATE Program, the Task Force on Revenue also handles a number of tax evasion cases filed prior to the RATE Program, as well as cases filed by the Bureau of Customs for violations of the Tariff and Customs Code.

Of the 44 tax evasion complaints filed by the BIR in 2005, the Task Force on Revenue disposed of 8 cases,²³⁶ translating to a disposition rate of 18.18% of RATE-initiated criminal complaints. For 2006, when 69 RATE cases were filed with the DOJ national office, the disposition rate went up to 31.88% after disposing of 22 complaints. The NPS's overall disposition rate from 1997 to 2002 is 95.35%.²³⁷ Table 4 breaks out the numbers year by year through June 2007.

Out of the 35 resolutions issued by the DOJ as of 31 August 2007,²³⁸ 13 resulted in a finding of probable cause against the respondent taxpayer²³⁹ and a recommendation to file the corresponding information with the court, while 18 cases resulted in a resolution against the BIR and a recommendation to dismiss the case. Four cases were referred back or remanded by the DOJ to the BIR. Table 5 sets forth these statistics with further detail and the estimated tax liability involved in each.

Of the 13 complaints resolved in the BIR's favor,²⁴⁰ 6 were filed in court, while the filing of the information for the 7 other cases was pending as of 31 August 2007. These cases involved 11 individual taxpayers and 21 corresponding informations filed in the Court of Tax Appeals, regional trial court, and municipal trial court.²⁴¹ The 11 other resolutions finding probable cause were,

²³⁴ UNDP, footnote 204, p. 72.

²³⁵ NPS. 2007. *Report on Resolved BIR Cases*. 30 May 2007.

²³⁶ This figure is derived from data provided by the DOJ and by the RATE Legal Writing and Appearance Group.

²³⁷ UNDP, footnote 204, p. 74.

²³⁸ Data from the RATE Legal Writing and Appearance Group.

²³⁹ In one case, the finding of probable cause was based solely on newspaper reports. BIR has not yet received an official copy of the resolution of the investigating prosecutor. After newspaper reports on the supposed finding of probable cause, it did receive a copy of a pleading from the respondent taxpayer.

²⁴⁰ In one case, however, the favorable resolution is based only on newspaper reports. See http://www.manilatimes.net/national/2005/sept/30/yehey/top_stories/20050930top4.html

²⁴¹ Ten of these informations were filed with the Court of Tax Appeals: three against a doctor (failure to file income tax returns for 2001 and 2002 and failure to supply correct income for 2003), one against an herbalist (failure to file return and pay tax for 2001), one against an actress (under-declaration of income for 2002), and five against independent contractors of a health products corporation (failure to file income tax returns and pay taxes for 1999 to 2001). Eleven of these informations were filed with the regional trial court: 10 against a basketball player (failure to file income tax returns for 1998 to 2003, failure to register, failure to pay annual registration fee, and securing more than one tax identification number) and 1 against one of the independent contractors of a health products corporation (failure to file income tax returns and to pay taxes for 1999 to 2001).

Table 4: Case Disposition of Run After Tax Evaders Cases of the Task Force on Revenue

Cases under Preliminary Investigation	March– December 2005	2006	January–June 2007
Number of complaints received			
Carried over from previous period	0	36	47
Newly received	44	33	6
Total for disposition	44	69	53
Resolved or disposed	8	22	5
• for filing	6	6	1
• for dismissal	2	12	4
• for referral or transfer	–	–	–
Suspended due to prejudicial question	–	–	–
Remanded or referred back to BIR	–	4	–
Pending at the end of the period	36	47	48
Disposition rate	18.2%	31.9%	9.4%

– = data not available, BIR = Bureau of Internal Revenue.

Sources: DOJ Report on Resolved BIR Cases as of 30 May 2007; RATE Legal Writing and Appearance Group (RATE cases filed as of 16 August 2007).

as of 2007, pending appeal with the chief state prosecutor or the DOJ secretary.

One of the cases pending with the DOJ secretary was the result of an appeal filed by a respondent taxpayer without the formal termination of the preliminary investigation.²⁴² The taxpayer filed a petition preemptively with the DOJ secretary on the basis of a newspaper report that probable cause was found against him. NPS data indicate that this case was resolved on 9 August 2005, but as of 2007, the BIR had not yet received an official copy of the resolution of the prosecutor who conducted the preliminary investigation in this case. The BIR only received a copy of the petition from the respondent taxpayer, in response to which the BIR filed a comment.

Of the 18 resolutions dismissing tax evasion complaints, 12 involved criminal charges against officers of corporations alleged to have violated the NIRC. Prosecutors cited the BIR's failure to

establish "particular acts"²⁴³ showing "participation in the commission of the criminal offenses charged"²⁴⁴ or "personal involvement"²⁴⁵ by the respondent corporate officers in the alleged acts of tax evasion.²⁴⁶ However, in another case where probable cause was found, the DOJ refused to accept a respondent corporate officer's defense that he was not the elected president of the corporation and not in charge of its financial or tax matters. Not requiring a showing of particular acts or personal involvement, the DOJ instead ruled that "the limited functions he performs for the corporation are believed to be evidentiary in nature and could be properly raised in a full-blown trial."²⁴⁷

In another case in which the DOJ did not find probable cause, the investigating prosecutor cited the BIR's failure to determine the respondent taxpayer's tax liability at the time the complaint was filed. The investigating prosecutor did not find that there was a willful attempt on the part of the

²⁴² I. S. No. 2005-290.

²⁴³ Resolutions dated 12 July 2006 (in I. S. No. 2005-444) and 21 April 2006 (in I. S. No. 2005-613), both dismissing complaints against officers of corporate taxpayers.

²⁴⁴ Resolution dated 21 April 2006 (in I. S. No. 2005-613) dismissing a complaint against officers of a realty corporation.

²⁴⁵ Resolution dated 12 September 2005 (in I. S. No. 2005-547) dismissing a complaint against officers of a realty corporation.

²⁴⁶ Cases against officers of different corporations (I. S. nos. 2005-613, 2005-443, 2005-359, 2005-444, and 2005-547).

²⁴⁷ Resolution dated 14 September 2005 (in I. S. No. 2005-375) finding probable cause against the president of an entertainment corporation.

Table 5: Resolutions Issued by the Department of Justice

Resolution	Number of Cases	Estimated Tax Liability (P million)
Favorable to BIR	13	609.2
Filed in court	6 (5 with Court of Tax Appeals, and 1 with regional or metropolitan trial court)	253.4
Not yet filed (appealed by respondent to DOJ secretary or awaiting filing of information)	7	335.8
Dismissed by investigating prosecutor	18	1,476.0
Motion for reconsideration filed with chief state prosecutor	5	407.2
On appeal (petition for review or motion for reconsideration filed with DOJ secretary)	6	183.9
No further action taken by BIR	5	215.2
Appealed to Court of Appeals	2	670.3
Others (remanded and/or referred back to BIR)	4	252.3
Total	66	4,403.3

BIR = Bureau of Internal Revenue, DOJ = Department of Justice.

Source: RATE Legal Writing and Appearance Group.

respondent taxpayer to evade taxes in the “absence of the assessment of the correct taxes, notice and demand which the BIR should have made in the first place.”²⁴⁸ However, in at least two other cases in which the DOJ found probable cause, the investigating prosecutors did not require the precise computation and assessment of tax before the criminal case was initiated, and further ruled that assessment, notice, and demand were not prerequisites for criminal prosecution.²⁴⁹

Of the 18 resolutions ordering dismissal, the BIR pursued 13 of the cases through a motion for reconsideration (5 motions for reconsideration were filed with the Office of the Chief State Prosecutor) or an appeal (6 petitions for review and motions for reconsideration were filed and

are pending with the DOJ secretary, while two other cases were pursued by the BIR before the Court of Tax Appeals).²⁵⁰

Of the 83 tax evasion complaints filed with the DOJ national office by the BIR under the RATE Program, 78 remained part of the caseload of the Task Force on Revenue: no further action was taken on 5 complaints dismissed by the DOJ. With 23 prosecutors assigned to the task force, as of 2007 each prosecutor was handling three or four tax evasion cases, whether during preliminary investigation or prosecution, in addition to their regular caseload within the NPS.²⁵¹ In 2005, each prosecutor handled 268 cases on average.²⁵² The DOJ secretary pegged the number of cases handled by the NPS at “some 400,000 a year.”²⁵³ The MTPDP

²⁴⁸ Resolution dated 10 August 2005 on the complaint for under-declaration of income in 2003 (in I. S. No. 2005-330) against a singer-actress.

²⁴⁹ Resolutions dated 21 October 2005 (in I. S. No. 2005-417) and 20 January 2006 (in I. S. No. 2005-204), recommending the filing of informations against an actress (for under-declaration of income) and a doctor (for failure to file income tax returns and to supply correct income). The investigating prosecutors cited the Ungab ruling, 97 SCRA 877 (1980).

²⁵⁰ Data from RATE Legal Writing and Appearance Group.

²⁵¹ The task force is currently divided into two groups: one handling preliminary investigation and the other handling appeals. DOJ assistant chief state prosecutor, interview, footnote 206.

²⁵² DOJ Management Services Office, interview by E. P. Guevara, Manila, 3 October 2006.

²⁵³ *Business Mirror*. 2007. Reflections from the Mirror, by Justice Secretary Raul Gonzalez. 15 August. <http://www.businessmirror.com.ph/08152007/opinion06.html>

noted in 2004 that more than 500 prosecutors are needed to expedite the resolution of cases.²⁵⁴ While 200 vacant positions in the NPS were filled from 2004 to 2007, the DOJ secretary estimated that the NPS still needed more than 600 prosecutors to cope with its caseload in 2007.²⁵⁵

Appendix 3 presents the age of cases filed with the DOJ national office for preliminary investigation as of 2007. One of the tax evasion cases filed when the RATE Program was launched was still awaiting resolution as of 2007.²⁵⁶ A case filed on 7 April 2006 against the officers of an entertainment company for failure to file income tax returns for 5 years and for under-declaration of income was still pending preliminary investigation.²⁵⁷ Each case involved an estimated tax liability of at least P3 million.

Two other tax evasion complaints filed at the inception of the RATE Program—one on 17 March 2005 involving P15.5 million (against a military officer) and another on 31 March 2005 (against officers of a corporation involving a P1.154 billion estimated tax liability of the corporation)—remained unresolved as of 2007.²⁵⁸ Of the 48 tax evasion complaints filed with the DOJ national office for preliminary investigation but without any resolution, 34 were already submitted for resolution of the investigating prosecutor as of 31 August 2007.²⁵⁹

Cases resolved by the DOJ as of 31 August 2007 averaged 8.9 months from filing of the complaint to resolution by the investigating prosecutor in the preliminary investigation stage.²⁶⁰ The shortest period in which an investigating prosecutor

resolved a complaint for tax evasion was 3 months.²⁶¹

Why some cases are disposed of speedily and others are not remains unknown. However, the BIR has cited several causes of delay: change of counsel by taxpayer respondents, the process of securing documents required by the DOJ, and the filing of motions to revert or refer the case back to the BIR by respondents.²⁶² By 3 August 2007, the BIR filed 14 motions for early resolution with the DOJ,²⁶³ and intended to file similar motions in 14 more cases.²⁶⁴

Four of the tax evasion cases filed were referred back or remanded by the DOJ to the BIR. It is not clear in the rules if an order of remand in these cases bears a recommendation that the BIR conduct further investigation. In one case, the DOJ remanded the case because the BIR did not show the “reckoning time of BIR’s initial investigation of respondents’ liabilities and whether they were in fact notified at the first instance of their tax liabilities.” The DOJ found that the remand would give the respondents the “opportunity to pay their tax liabilities” and afford the BIR an “opportunity to further investigate” the case if the respondents failed to pay the proper taxes after the remand.²⁶⁵ It might be noted, however, that section 204 of the NIRC explicitly provides that criminal violations may be compromised, except for those already filed in court or those involving fraud.

Eleven cases resolved by the investigating prosecutor (five in which there was a finding of probable cause and six in which the case was dismissed) were pending appeal with the DOJ

²⁵⁴ NEDA, p. 192, footnote 16. For 2005, the NPS had 426,324 cases under preliminary investigation for disposition (353,744 cases received during the year and 72,580 carried over from 2004). These data, however, include regional and city prosecutors (NPS Accomplishment Report 2005).

²⁵⁵ *Business Mirror*, footnote 253. According to Secretary Gonzalez, the department also had a shortage of about 150 support staff members.

²⁵⁶ In 2007, the court still had to resolve the issue of prejudicial question on a previously interrelated action pending before the BIR office in Makati.

²⁵⁷ Respondents filed a motion to remand the case, but it was denied.

²⁵⁸ Both cases involve an alleged under-declaration of income.

²⁵⁹ Data from RATE Legal Writing and Appearance Group.

²⁶⁰ The BIR divided the total number of months (from date of filing to the date of the resolution) by the number of cases resolved.

²⁶¹ Filed against the corporate officers of a realty corporation (I. S. No. 2005-547) and of a canning corporation (I. S. No. 2005-719).

²⁶² RATE Legal Writing and Appearance Group, interview by E. P. Guevara, Manila 26 October 2006.

²⁶³ Data from RATE Legal Writing and Appearance Group.

²⁶⁴ BIR deputy commissioner and assistant commissioners of internal revenue, interview, footnote 194.

²⁶⁵ I. S. No. 2005-1126.

secretary as of 31 August 2007.²⁶⁶ While investigating prosecutors had speedily (that is, within 3 months of filing) resolved some of these complaints, these cases had been under the jurisdiction of the DOJ for over 2 years. Appendix 4 summarizes the age of tax evasion cases resolved by the investigating prosecutor and pending appeal with the chief state prosecutor and the DOJ secretary as of 2007.

Delays in the resolution of tax evasion complaints led to an earlier suggestion that the BIR should file tax evasion cases directly with the Court of Tax Appeals. Direct filing would be justified by section 220 of the NIRC, which provides that criminal actions and proceedings instituted on behalf of the government under the authority of the NIRC must be conducted by BIR legal officers. The suggestion was not considered as NPS was granted the primary authority by Presidential Decree No. 1275 to conduct the investigation and prosecution of all crimes.²⁶⁷ To resolve the supposed “confusion over the jurisdiction in the handling of tax cases,” Representative Danilo Suarez filed a bill in the Thirteenth Congress, proposing to remove the handling of preliminary investigation from DOJ’s jurisdiction and to give BIR legal officers the authority to “investigate, prosecute and handle exclusively” criminal cases arising from NIRC violations.²⁶⁸ The proposed bill was intended to address “impediments to the effective prosecution of tax-related cases and factors that hamper the effort of the BIR to collect taxes.”

The proposal encountered the objection that the BIR, the complainant in a tax evasion case, would also conduct the preliminary investigation. The Court of Tax Appeals expressed this due process reservation by observing that the BIR is likely to file many criminal actions, considering the “heightened tax-collection drive of the Bureau.”²⁶⁹ The observance of due process will fail if the BIR legal officers who are the complainants in all criminal actions shall also handle the preliminary investigation and, as aptly stated by Presiding Justice Acosta, will obviously support their own complaints.²⁷⁰

The Office of the Court Administrator added that a “preliminary investigation should be scrupulously conducted so that the constitutional right to liberty of a potential accused can be protected from any material damage.”²⁷¹ To address these concerns, the House of Representatives of the Thirteenth Congress approved on second reading a revised bill giving the DOF the authority to review every criminal complaint before it is filed in court.²⁷²

Among the expected benefits cited by the House Committee on Oversight are the elimination of “unnecessary red tape” and the “fast tracking” of filing of cases with the Court of Tax Appeals.²⁷³ However, the Thirteenth Congress ended without the proposed bill being enacted to law. A similar bill, Senate Bill No. 1233, was introduced in the Fourteenth Congress by Senator Juan Ponce Enrile, but has yet to be passed.²⁷⁴

²⁶⁶ Data from RATE Legal Writing and Appearance Group.

²⁶⁷ “In matters involving criminal actions and prosecution, it is the members of the National Prosecution Service that are expressly granted authority to conduct a preliminary investigation, despite what Section 220 of the 1997 Tax Code might suggest. This means that even though the Tax Code arguably grants the privilege of conducting tax-related actions to BIR legal officers, the preliminary investigation is to be done by the member of the National Prosecution Office. This must be so, otherwise, an overlapping and/or encroachment of functions will ensue between two departments of the Executive Department.” Court of Tax Appeals. 2006. Letter to House Committee on Oversight. 25 April.

²⁶⁸ House Bill No. 4774.

²⁶⁹ Office of the Court Administrator. 2006. Letter to the Committee on Oversight of the House of Representatives. 16 May. According to the Court of Tax Appeals, “With due respect to the BIR, it seems strange to expect its legal officers to opt not to proceed with the filing of the criminal action whether or not the evidence against the taxpayer is strong, given the heightened tax-collection drive of the Bureau. This controversial situation will unnecessarily put the taxpayer at the mercy of the BIR; one that can be equated to deprivation of due process.”

²⁷⁰ Ibid.

²⁷¹ Ibid.

²⁷² House Bill No. 5567 submitted by the Committee on Oversight on 9 June 2006 and approved by the House of Representatives on second reading.

²⁷³ Committee Report on House Bill No. 5567.

²⁷⁴ Titled “An Act Mandating the Bureau of Internal Revenue to Exclusively Investigate, Prosecute and Handle Tax-Related Cases, Amending Section 220, Chapter III, Title VIII of Republic Act No. 8424, Otherwise Known as the ‘Tax Reform Act of 1997’ and for Other Purposes.” Filed on 16 July 2007.

In 2006, the DOJ and the BIR signed a memorandum of agreement “to facilitate the prosecution” of the tax evasion cases filed under the RATE Program.²⁷⁵ This resulted in a joint panel that met regularly to address concerns arising from the RATE Program. The BIR emphasized that this system of cooperation was established to expedite the resolution of cases, create consistent guidelines and policies with respect to the RATE Program, and discuss and attempt to resolve certain legal concerns arising from the filing of RATE cases (such as the need for an assessment before a criminal complaint is filed).²⁷⁶ These regular meetings between the DOJ and the BIR have led to progress in some areas, including agreements on matters of evidence.²⁷⁷ A roundtable discussion between the two agencies organized in July 2007 by the Millennium Challenge Account Philippine Threshold Program was also fruitful.

On 31 January 2006, the DOJ, through the NPS, officially deputized BIR legal officers to prosecute criminal tax cases instituted by DOJ state prosecutors before the Court of Tax Appeals. Later, on 20 June 2007, this deputization was extended to cases pending before regular courts.²⁷⁸

Issues and Concerns

Training. Training of DOJ personnel is essential given that criminal tax law is a subspecialty of an already specialized field. Training would benefit the preliminary investigation phase and reduce disagreement with the BIR on the interpretation of law and sufficiency of evidence,²⁷⁹ provide some predictability to BIR on how the DOJ might resolve certain issues, and prepare DOJ lawyers for litigation before a specialized tax court such as the Court of Tax Appeals. DOJ resolutions can

set a trend in future rulings on cases submitted for preliminary investigation, and can define the standards for BIR case development, further underscoring the importance of providing immediate training to prosecutors.

The following case shows need for shared training in both agencies. Pursuant to the Supreme Court’s ruling in *Ungab*, the Tax Fraud Case Guidelines state that no assessment notice can be served upon any taxpayer recommended for criminal prosecution for tax evasion.²⁸⁰ However, in one case, the tax evasion complaint filed by the BIR was dismissed because, among other grounds, the BIR failed to serve an assessment upon the respondent taxpayer. The investigating prosecutor in this case did not find a willful attempt by the taxpayer to evade taxes in the “absence of the assessment of the correct taxes, notice and demand to respondent [taxpayer] which the BIR should have made in the first place.”²⁸¹ Such areas of disagreement on the interpretation of tax law need to be ironed out to ensure that cases filed for preliminary investigation will pass probable cause standards. Shared training is one way of achieving this objective.

The DOJ admitted that its lawyers, while proficient in prosecuting criminal cases, do not have sufficient experience or background in tax law. A representative of the Task Force on Revenue expressed a preference for training on the substantive aspects of tax law.²⁸² This echoes the suggestion made in a 2003 United Nations Development Programme (UNDP) study that BIR personnel be provided “context training” or “more exposure to and knowledge of the circumstances surrounding [a particular] criminal activity,” in this case, tax evasion.²⁸³ In July 2005, USAID sponsored a joint training program for the BIR and the DOJ for the RATE Program, which included lectures on

²⁷⁵ The BIR commissioner, in his speech on the 102nd anniversary of the BIR, formally announced the signing of the memorandum of agreement between the BIR and the DOJ to coordinate and strengthen the prosecution of RATE cases.

²⁷⁶ BIR assistant commissioner of internal revenue, interview, footnote 79.

²⁷⁷ BIR deputy commissioner and assistant commissioners of internal revenue, interview, footnote 194; DOJ prosecutor, interview by E. P. Guevara, Manila, 23 August 2007.

²⁷⁸ Letter of Chief State Prosecutor Jovencito R. Zuño to BIR Commissioner Jose Mario C. Buñag dated 20 June 2007.

²⁷⁹ DOJ prosecutor, interview, footnote 278. The prosecutor cited the natural knowledge gap between DOJ prosecutors and BIR lawyers. Some DOJ prosecutors, while proficient in the prosecution of criminal cases, may not have as much knowledge of tax law. On the other hand, their BIR counterparts, while familiar with tax law, are not as adept in handling criminal prosecution.

²⁸⁰ Revenue Memorandum Order No. 15-95, 9 June 1995.

²⁸¹ Resolution dated 10 August 2005 on the complaint for under-declaration of income in 2003 (in I. S. No. 2005-330) against a singer-actress, p. 7.

²⁸² DOJ prosecutor, interview, footnote 278.

²⁸³ UNDP, footnote 204.

elements of tax evasion and Court of Tax Appeals jurisdiction.²⁸⁴

Given the interdisciplinary nature of the tax field, training should also include accounting, particularly return preparation, since the return is the starting point for determining a taxpayer's liabilities and invariably one of the pieces of evidence used to prove criminal fraud.

The DOJ noted that while its prosecutors have been invited to various training sessions, several of these, such as those given by foreign lecturers, have not been very helpful. According to the DOJ, prosecutors do not learn much from these lecturers because the techniques taught (such as making opening and closing arguments or proving a case before a jury) are not applicable to local conditions.²⁸⁵ The DOJ suggested that the focus of training should be on improving trial techniques (e.g., how to prosecute a tax case). This kind of training is best given to younger lawyers who entered the prosecution service without receiving any formal training outside of university. In 2006, several DOJ prosecutors participated in a basic trial advocacy program sponsored by USAID.²⁸⁶ This program, offered through the Institute of Judicial Administration of the University of the Philippines College of Law, included lectures and workshops on trial techniques (e.g., direct and cross-examinations). In September 2007, Task Force on Revenue prosecutors and BIR lawyers attended a 2-day training session on trial techniques with moot court proceedings.

Compensation and other resource limitations. The DOJ received only 0.5% of the national budget in 2007; it needs additional funds to finance the recruitment and development of its personnel.²⁸⁷

Operations manual. An operations manual similar to the one suggested for the BIR may also benefit the DOJ. In addition to the matters covered

in the BIR manual, it might include specific trial techniques and methods of presenting evidence for tax evasion cases. An operations manual might also address situations such as the one previously cited in which a respondent taxpayer filed an appeal with the DOJ secretary before any resolution was issued by the investigating prosecutor. Such a manual might also clarify the basis for issuing orders to remand or refer back cases in light of section 204 of the NIRC (which does not allow the compromise of criminal violations involving fraud), as the rules do not clearly provide this mode of disposition.²⁸⁸

Evidence safekeeping. Like the BIR, the DOJ stressed the need for the NPS to have an advanced system of archiving and preserving evidence used by its personnel in prosecuting cases filed in court.²⁸⁹

Electronic database of resolutions. An electronic database of DOJ resolutions will encourage and contribute to increased consistency in the DOJ's resolution of cases filed by the BIR for preliminary investigation, thereby providing predictability to the BIR on how future cases will be decided by the DOJ.²⁹⁰ Such a database would also facilitate the disposition of cases submitted for preliminary investigation, because the research on similar circumstances in previous cases would not need to be duplicated.

Disposition of cases on preliminary investigation and appeal. The disposition rate of the Task Force on Revenue (18.18% in 2005, 31.88% in 2006) is significantly lower than the overall disposition rate of the NPS (more than 90%). This discrepancy calls for a study of the factors accounting for delay in the resolution of cases after parties have submitted their affidavits and supporting evidence and after hearings are terminated. In addition, a significant number of unresolved cases (34 complaints) have been submitted

²⁸⁴ USAID, interview, footnote 145.

²⁸⁵ DOJ assistant chief state prosecutor, interview, footnote 206.

²⁸⁶ USAID, interview, footnote 145.

²⁸⁷ DOJ assistant chief state prosecutor, interview, footnote 206.

²⁸⁸ In 2008, with assistance from ADB and USAID, the DOJ published a handbook on administrative procedures and a revised operations manual that tackled procedures to facilitate the prosecution of criminal tax evasion cases.

²⁸⁹ Workshop on the Process of Prosecuting Tax Evasion in the Philippines, sponsored by ADB, Manila, 21 November 2007.

²⁹⁰ According to the assistant chief state prosecutor, there is no existing electronic database of DOJ resolutions issued after preliminary investigation. A repository of DOJ opinions is available; however, citation of past resolutions as precedent is not part of the process in the resolution of a case at the preliminary investigation stage.

for resolution, although the investigating prosecutor must determine the existence of probable cause within 10 days after investigation and the chief state prosecutor must act on the investigating prosecutor's proposed resolution of the case within 10 days from receipt of the record.

The number of cases appealed to the DOJ secretary is not a factor in the disposition rate of the NPS. However, the length of time cases wait at the appeal stage cannot be ignored; it significantly affects the rights of the parties, both the BIR and respondent taxpayers, to a speedy disposition of the case, and inevitably affects the efficiency of the government's program to prosecute tax evaders. As the UNDP diagnostic study notes, "[t]here is no time frame within which appeals must be resolved. This area needs to be studied carefully. It can be a source of delay, resulting in the frustration of justice."²⁹¹

Aging of tax evasion cases. Aging of cases has been cited as a critical indicator of performance for the prosecution service.²⁹² Unfortunately, the DOJ cannot readily generate data on the age of tax evasion cases. The absence of a system that immediately and accurately captures the age of cases pending preliminary investigation and under prosecution is a concern for the entire prosecution service. The DOJ has acknowledged that "protracted preliminary investigation procedures" and "inadequate accountability and transparency mechanisms" contribute to the "perception of and vulnerability to corruption"; the absence of a system of aging cases makes it easier for these institutional concerns to persist.²⁹³ At present, the DOJ is alerted to delays in cases only when they are brought to its attention, as when an update is requested.²⁹⁴ At present, the DOJ's only perfor-

mance benchmark is the disposition rate. A system for capturing the age of cases will provide another.

Preparation for regional program. The DOJ has expressed confidence that its state prosecutors can still handle the workload on tax evasion cases while the BIR concentrates on Metro Manila. However, the DOJ anticipates problems if the RATE Program expands at the regional level, because the NPS is suffering a staffing shortage with 400 vacancies as of August 2007.

Case monitoring system. With the number of tax evasion cases still relatively low,²⁹⁵ the task of monitoring cases remains manageable. While the Task Force on Revenue maintains a basic database of tax evasion cases, the database is not linked to a comprehensive case management system covering all cases handled by the NPS. There is no case tracking system for the NPS, and the DOJ has adopted a manual system for gathering updates on cases handled by prosecutors.²⁹⁶ In addition, the Task Force on Revenue handles only cases filed with the DOJ national office; it does not monitor tax evasion cases filed in local courts. However, with the expected increase in tax evasion cases to be filed in coming years, including in the trial courts, an effective department-wide case management system would be helpful to enable their careful monitoring. Such a system is in line with the MTPDP strategy to establish an information technology system for the NPS and an inventory of all cases for preliminary investigations, evaluations, and petitions for review.²⁹⁷ It is also consistent with the UNDP diagnostic study's proposal of an integrated information system to support operations and oversight management.²⁹⁸

²⁹¹ UNDP, p. 67, footnote 204.

²⁹² UNDP, footnote 204.

²⁹³ Government of the Philippines, DOJ Planning Staff. 2007. *Program Design of the Organizational Development of the NPS*. Manila. 30 June.

²⁹⁴ DOJ assistant chief state prosecutor, interview, footnote 206.

²⁹⁵ Only 63 cases remained on the task force's caseload as of October 2006.

²⁹⁶ DOJ assistant chief state prosecutor, interview, footnote 206.

²⁹⁷ The Program Design of the Organizational Development of the NPS (30 June 2007) states that, with regard to the information technology system and inventory of cases, "the same necessitate unified accountability systems to include case management, data/information requirements, reporting mechanisms, and performance monitoring methodologies must first be established before any [information technology] system on this matter can be developed effectively or a full inventory of cases can be done efficiently."

²⁹⁸ "An integrated information system will enable prosecutors to manage their caseloads, track the status and requirements of cases, provide useful information inputs for caseload management policies, resource allocation, staffing, performance valuation and career development, and strategic planning" (UNDP, p. 101, footnote 204).

Holistic and integrated approach to implement reforms. To implement reforms in the NPS, the DOJ should undertake a more comprehensive assessment and analysis of factors causing inefficiency within the department. A unit could focus on reform efforts in the department, akin to the Action Program for Judicial Reform and the Project Management Office of the Supreme Court. The DOJ's establishment of the Management Services Office indicates its resolve to handle the NPS's reform program in a more integrated manner. The Management Services Office focuses on three core areas of concern: reporting and performance monitoring (including performance monitoring and evaluation, data requirements, reporting procedures, and information systems);²⁹⁹ organization and staffing (involving the overall NPS structure, including its functional mandate, systems and procedures, work processes, organizational setup, and staffing standards and structure); and resources management (including financial and procurement planning, programming and allocation, and human resources management and development).³⁰⁰

The office is proposing an organizational development plan before reforms are undertaken. In this regard, the UNDP diagnostic study noted that the "insufficiency of performance indicators limits available information needed for a thorough evaluation of accomplishments and for improving case management and performance efficiency."³⁰¹

General problems. Most issues and concerns about the handling of tax evasion cases cannot be

divorced from the problems facing the DOJ as a whole. First, NPS members do not receive any formal training. Instead, newly hired prosecutors are sent immediately to trial, learning trial techniques through experience. The DOJ expressed the need for training similar to that offered by the Philippine Judicial Academy, and is open to having prosecutors attend courses there if the academy agrees. Second, there is a need to develop an improved performance management system. Finally, as previously mentioned, the DOJ receives only 0.5% of the national budget;³⁰² it needs additional funding for recruiting and personnel development. The DOJ has requested that the Department of Budget and Management approve the restructuring of the compensation package for prosecutors "to entice more lawyers to join the government's prosecution sector."³⁰³ Likewise, a bill has been filed in Congress proposing an increase in salaries and additional privileges for the NPS to put the prosecutors "at par with those in the Judiciary."³⁰⁴

Prosecution

The filing of a criminal case for tax evasion is also governed by the NIRC, particularly section 220, which prescribes the form and mode of proceeding in actions arising under the code.³⁰⁵

With the expansion of the jurisdiction of the Court of Tax Appeals under Republic Act No. 9282,³⁰⁶ the special tax court now has exclusive original jurisdiction over all criminal offenses arising

²⁹⁹ The office notes that the existing forms used for performance evaluation are not responsive to the needs of the organization.

³⁰⁰ DOJ Planning Staff, footnote 293.

³⁰¹ UNDP, p. 72, footnote 204.

³⁰² DOJ assistant chief state prosecutor, interview, footnote 206.

³⁰³ *Business Mirror*, footnote 253.

³⁰⁴ An Act Rationalizing the Compensation Benefits and Other Privileges and Incentives for the Members of the National Prosecution Service and the Office of the Chief State Counsel in the Department of Justice, Providing Funds Therefore, and for Other Purposes, Senate Bill No. 213 introduced by Senator Edgardo J. Angara.

³⁰⁵ NIRC, §220. Form and Mode of Proceeding in Actions Arising under this Code. "Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner."

³⁰⁶ Republic Act No. 9282 §7 (b) (1) provides "[e]xclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: *Provided, however,* That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the [Court of Tax Appeals] shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding

ing from violations of the NIRC and other laws administered by the BIR where the principal amount of taxes and fees claimed, exclusive of charges and penalties, is at least P1 million.³⁰⁷ Because all tax evasion cases filed under the RATE Program involve a deficiency of more than P1 million in basic taxes, the Court of Tax Appeals has exclusive original jurisdiction over these cases.³⁰⁸ It should be noted, however, that in addition to criminal tax cases, the court's jurisdiction now covers areas it had not previously handled, such as local taxes and real property taxes.³⁰⁹

At the Court of Tax Appeals, the prosecution of criminal cases involving violations of the NIRC is governed mainly by the Revised Rules of the Court of Tax Appeals.³¹⁰ The Rules of Court in the Philippines are supplementary to these revised rules.³¹¹ The revised rules contain extensive revisions to the tax court's old rules of procedure issued in 1955, and derive heavily from procedural rules—particularly on pleadings, pretrial proceedings, trials, judgments, motions for reconsideration, and new trials—governing ordinary criminal cases filed with the regular trial courts.

The revised rules provide that the public prosecutor shall provide direction and control on the conduct and prosecution of all criminal actions.³¹² For criminal actions involving violations of the NIRC or other laws enforced by the BIR, the BIR legal officers can only conduct the prosecution of these cases once they are “duly deputized” by the public prosecutor.³¹³

When a criminal complaint is filed, the corresponding civil action for the recovery of taxes and penalties is simultaneously instituted and jointly determined in the Court of Tax Appeals. There is no right to file the civil action separately from the criminal action.³¹⁴ This differs from criminal cases filed in the regular courts, where the law is silent.

Court of Tax Appeals Procedures

Upon the filing by the DOJ of an information with the Court of Tax Appeals, the case is assigned to a division of the court through a lottery.³¹⁵ The number of informations filed may vary depending on the number of violations alleged in the criminal complaint for which probable cause is found and on the determination of the investigating prosecutor.

The assigned division evaluates the resolution of the DOJ prosecutor and its supporting evidence. The division may dismiss the case if it finds that “the evidence on record clearly fails to establish probable cause.” If the division finds probable cause, it issues a warrant of arrest. If there is doubt about the existence of probable cause, the division may order the prosecutor to present additional evidence.³¹⁶ The court also fixes and approves the amount of bail to be posted,³¹⁷ and can issue a search warrant.³¹⁸

After the respondent taxpayer is arraigned, the pretrial conference is held.³¹⁹ Under the revised rules, the court must observe the same rules

civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the [Court of Tax Appeals], the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.”

³⁰⁷ Republic Act No. 9282, §7.

³⁰⁸ Note, however, that in one case, the DOJ filed the information with the regional trial court and the metropolitan trial court as no amount was specified in the complaint to give the Court of Tax Appeals jurisdiction over the case.

³⁰⁹ Republic Act No. 9282, §7.

³¹⁰ Administrative Memorandum No. 05-11-07-CTA (22 November 2005).

³¹¹ Revised Rules of the Court of Tax Appeals, rule 1, §3.

³¹² Revised Rules of the Court of Tax Appeals, rule 9, §3.

³¹³ *Ibid.*

³¹⁴ Republic Act No. 9282, §7(b)(1); Revised Court of Tax Appeals Rules, rule 9, §11.

³¹⁵ The BIR commissioner must approve the filing of the information involving violations of the NIRC. Revised Court of Tax Appeals Rules, rule 9, §2.

³¹⁶ Revised Rules of the Court of Tax Appeals, rule 9, §4 citing the Rules of Court, rule 112, §6a.

³¹⁷ Revised Rules of the Court of Tax Appeals, rule 9, §6.

³¹⁸ Revised Rules of the Court of Tax Appeals, rule 9, §5.

³¹⁹ Revised Rules of the Court of Tax Appeals, rule 9, §6. In criminal cases, the clerk of court must set the case for pretrial not later than 10 days after arraignment, if the accused is detained, and not later than 30 days if the accused is on bail (Revised Rules of the Court of Tax Appeals, rule 11, §2).

at pretrial used by trial court judges. For criminal cases originally filed with the Court of Tax Appeals, parties are not allowed to compromise the criminal liability or submit the case to mediation, arbitration, or other modes of alternative dispute resolution.³²⁰

The pretrial is conducted with a view to narrowing issues, making admissions or stipulating to facts, simplifying the presentation of evidence, and otherwise assisting in the preparation for trial or possible disposition of the case in whole or in part without trial.³²¹ Before the pretrial, the Court of Tax Appeals division may refer the case to the division clerk of court for a preliminary conference to cover matters that can aid the court in its disposition of the case (e.g., marking of documents and exhibits).³²² After the pretrial, the division issues a pretrial order stating the actions taken, facts stipulated, admissions made, and evidence marked during the pretrial conference.³²³

The division then conducts the trial in accordance with the Rules on Criminal Procedure observed by trial courts in ordinary criminal cases. An interesting addition to the Revised Rules of the Court of Tax Appeals is the provision on reception of evidence. The Court of Tax Appeals receives evidence during hearings that it conducts as a collegiate body. However, the court may assign the task of taking evidence to one of its member justices, as though the hearing is proceeding before the entire division.³²⁴ Upon the completion of this hearing, the assigned justice submits a written report stating his or her findings and conclusions. The division then renders its decision on the case, adopting, modifying, or rejecting

the report in whole or in part; alternatively, it can receive evidence or recommit the case to the justice with instructions.³²⁵ At present, however, it is not yet possible for one justice to receive evidence because the court does not have enough hearing rooms for this purpose.

In default or ex parte hearings, or in any case where the parties agree in writing,³²⁶ the court may delegate the task of receiving documentary evidence to a court official for the purpose of marking, comparing with the original, and identification by witnesses of such evidence.³²⁷ However, the assigned court official has no power to rule on objections to any question or to the admission of exhibits.³²⁸

To avoid delays in the conduct of trial, the Revised Rules of the Court of Tax Appeals also allow an independent certified public accountant to summarize voluminous documents or long accounts (e.g., receipts or invoices) for the court and to produce a certification attesting to the correctness of the summary.³²⁹

Once the trial is terminated, the division decides the case after consultation among its members. Then writing of the decision is assigned to a member.³³⁰ The decision is then scheduled for promulgation.³³¹ The judgment is entered in a book of judgment, and the decision is executed if no appeal or motion for reconsideration or for a new trial is filed.³³²

Pursuant to the provisions of the Speedy Trial Act,³³³ after the justices consult with the DOJ prosecutor and counsel for the accused taxpayer, the Court of Tax Appeals at the earliest possible time must set the case for a continuous weekly or other

³²⁰ Revised Rules of the Court of Tax Appeals, rule 11, §1.

³²¹ Revised Rules of the Court of Tax Appeals, rule 11, §4.

³²² Revised Rules of the Court of Tax Appeals, rule 11, §6.

³²³ Revised Rules of the Court of Tax Appeals, rule 11, §6(d).

³²⁴ Revised Rules of the Court of Tax Appeals, rule 12, §3. The court may make this assignment for the case, or for any issue in the case, when the determination of a question of fact arises at any stage of the proceedings, when the taking of an account is necessary, or when the determination of an issue of fact requires the examination of a long account.

³²⁵ *Ibid.*

³²⁶ Revised Rules of the Court of Tax Appeals, rule 12, §4.

³²⁷ Court officials, for this purpose, include the clerk of court, division clerks of court, their assistants who are members of the Philippine bar, or any court attorney.

³²⁸ The objections must be resolved by the court upon submission by the assigned court official of the report and transcripts after the hearing is terminated. Revised Rules of the Court of Tax Appeals, rule 12, §4.

³²⁹ Revised Rules of the Court of Tax Appeals, rule 12, §5.

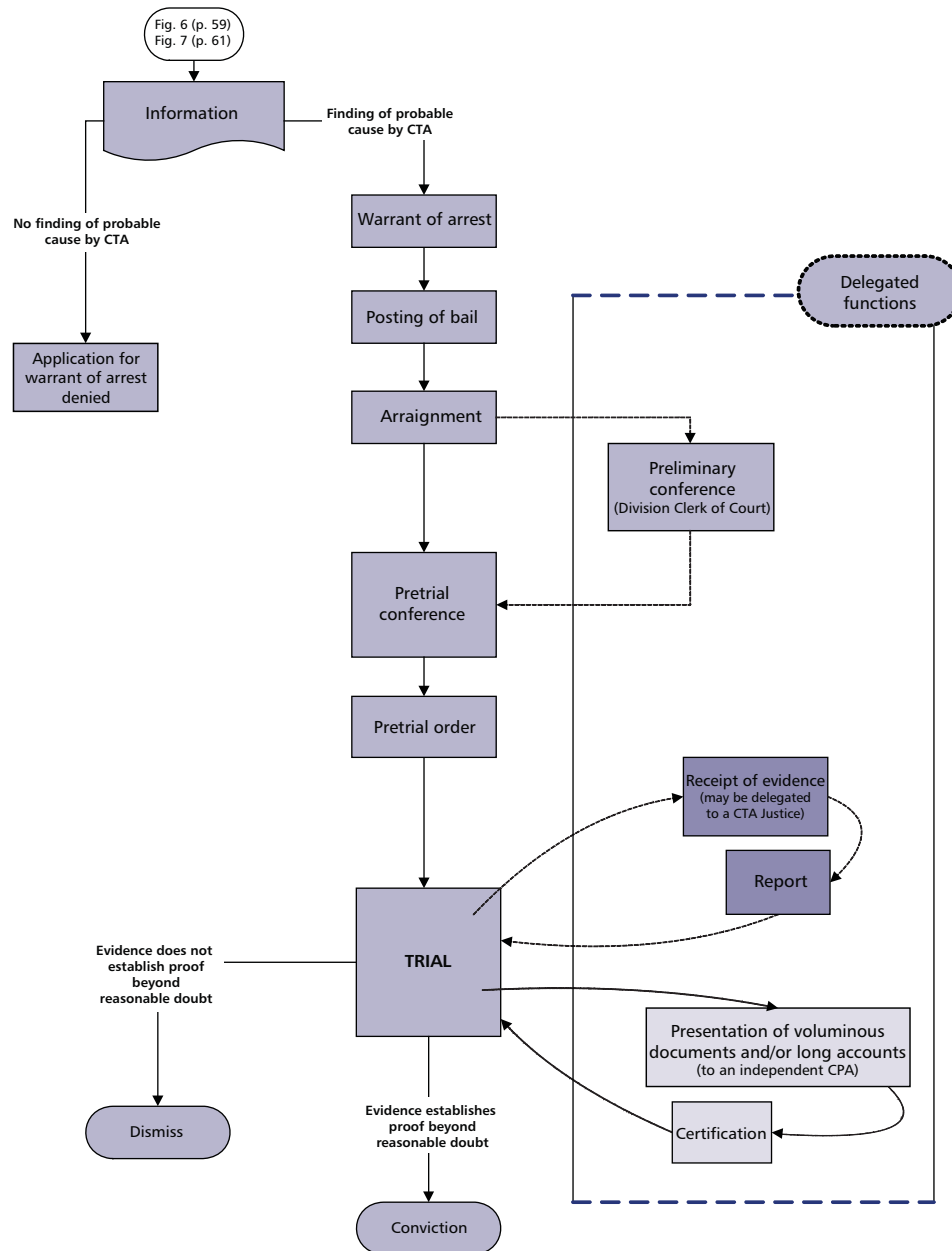
³³⁰ Revised Rules of the Court of Tax Appeals, rule 14, §1.

³³¹ Revised Rules of the Court of Tax Appeals, rule 14, §5.

³³² Revised Rules of the Court of Tax Appeals, rule 14, §6–7.

³³³ Republic Act No. 8493, 12 February 1998.

Figure 8: Process in the Court of Tax Appeals



CPA = certified public accountant, CTA = Court of Tax Appeals.

Source: Revised Rules of the Court of Tax Appeals.

short-term calendar trial so as to ensure speedy trial. The entire trial period may not exceed 180 days from the first day of trial, except as authorized by the chief justice of the Supreme Court.³³⁴

The Revised Rules of the Court of Tax Appeals, citing the Constitution, provide that the court must decide a case within 1 year from submission for decision.³³⁵ Time limits notwithstanding,

³³⁴ Republic Act No. 8493, §6. Section 10 of the Speedy Trial Act lists events that toll the time within which the trial must commence, such as a finding of the existence of a valid prejudicial question and the absence or unavailability of the accused or an essential witness.

³³⁵ According to Republic Act No. 8493, rule 14, §1, the Court of Tax Appeals "shall decide the cases brought before it in accordance with Section 15, paragraph (1), Article VIII of the 1987 Constitution," which in turn provides that all cases must be decided within 12 months from date of submission by all lower collegiate courts.

the court stresses the need to uphold the rights of the accused and the speedy yet fair disposition of cases submitted to it.³³⁶

Performance of the Court of Tax Appeals

As of 30 August 2007, the Court of Tax Appeals, exercising both its original and its appellate jurisdiction, had handled 61 criminal cases. Thirty-two of these cases had been pending with the court for less than 1 year. The estimated tax liability involved in these 61 cases amounts to at least P1.6 billion.³³⁷ Of the 61 cases, the court decided 2 and dismissed 16 cases by resolution. With 18 out of 61 criminal cases disposed, the court's disposition rate was 29.5%.³³⁸

Only 2 of the 61 criminal cases were submitted to the court in the exercise of its appellate jurisdiction.³³⁹ In one of these cases, in September 2006 the court upheld the conviction of an engineer for nonpayment of income tax and VAT. The court upheld the regional trial court's 1-year prison sentence and P1.4 million fine.³⁴⁰ This case is not part of the RATE Program.

As of 16 August 2007, the DOJ had recommended the filing of separate informations with the Court of Tax Appeals in six tax evasion complaints from the BIR under the RATE Program.³⁴¹ Each information may proceed as a separate case; if several informations are filed against the same accused taxpayer, the cases may be consolidated and heard in the same proceeding by the assigned court division. However, if several informations against the same accused taxpayer are randomly assigned to separate divisions, the proceedings

before each division will take place separately.³⁴²

Table 6 presents summary information concerning informations recommended for filing with the Court of Tax Appeals as of 16 August 2007.

Five of the tax evasion cases originating from the RATE Program had been recommended by the DOJ for filing with the Court of Tax Appeals.³⁴³ These five cases resulted in the filing of 14 informations with the court from 2 November 2005. The estimated tax liability involved in these RATE cases amounted to at least P270 million. Appendix 2 summarizes the estimated tax liability involved in the informations filed. As of 2007, the prosecution (the DOJ and the BIR) was in the process of presenting evidence in seven of the RATE cases filed with the court, and pretrial was set for two other cases. In one case, the accused filed a motion to quash that was granted, while another case had already been submitted for resolution. In the three other cases, an alias warrant of arrest had been issued, but the accused could not be located.

Issues and Concerns

Authoritative value of decisions on tax evasion. In regard to tax evasion, relatively little public attention has focused on the Court of Tax Appeals because of the small number of criminal cases pending before it. Nonetheless, the court together with the DOJ is presently the most important institutional actor in the prosecution process, because its first set of decisions—even if still subject to review³⁴⁴—may define the prospects for the government's tax evasion campaign. As the BIR candidly admitted, the whole program may "crumble down" if it loses its first cases before the court.³⁴⁵

³³⁶ Acosta, E. 2007. Welcoming Remarks for the Workshop on the Process of Prosecuting Tax Evasion in the Philippines. Manila. 21 November.

³³⁷ Summary of Criminal Cases Filed in the Court of Tax Appeals and Their Status (as provided by the Court of Tax Appeals).

³³⁸ Ibid.

³³⁹ Ibid.

³⁴⁰ *Business Mirror*. 2006. BIR Actively Pursuing Tax Evaders, Buñag Says. 29 November. p. B5.

³⁴¹ The DOJ found probable cause in another tax evasion case filed against a famous basketball player under the RATE Program for failure to file tax returns for 6 years, failure to register and to pay the annual registration fee, and for securing more than one taxpayer identification number. However, the DOJ filed the information with the regional trial court and the metropolitan trial court as no amount was specified in the complaint.

³⁴² The DOJ filed three informations against a doctor (in I. S. No. 2005-204); two were randomly assigned to the Second Division while the other went to the First Division of the Court of Tax Appeals.

³⁴³ Based on data provided by the RATE Legal Writing and Appearance Group.

³⁴⁴ Revised Rules of the Court of Tax Appeals Rules, rule 16, §1 in relation to rule 45 of the Rules of Court.

³⁴⁵ BIR deputy commissioner and assistant commissioners of internal revenue, interview, footnote 194

Table 6: Informations Recommended for Filing with the Court of Tax Appeals

Criminal Complaint	Violation	Informations Filed with Court	Status of Proceedings (as of 15 August 2007)
I. S. No. 2005-204	Failure to file returns for 2 years	3	For 1 case, pretrial set
	Failure to supply correct income		For 2 cases, ongoing trial; presentation of witnesses
I. S. No. 2005-278	Failure to file returns	2 (original information quashed on grounds that it charged two offenses)	Motion to quash granted with the DOJ secretary granting taxpayer's petition for review; BIR filed motion for reconsideration with DOJ
	Failure to pay taxes		
I. S. No. 2005-417	Substantial under-declaration	1	Set for ongoing trial
I. S. No. 2005-499 (involving two accused taxpayers)	Failure to file returns	5 (1 additional information filed in the regional trial court)	For 2 cases, presentation of witnesses
	Failure to pay taxes		For 1 case, arraignment
I. S. No. 2005-279 (involving two accused taxpayers)	Under-declaration and failure to pay income taxes, VAT, withholding taxes, excise taxes and miscellaneous penalties	5	Accused could not be located
I.S. No. 2005-573 (involving two accused taxpayers)	Under-declaration for 2000, 2001 and 2003	—	Awaiting filing of Information with court

— = not applicable, BIR = Bureau of Internal Revenue, DOJ = Department of Justice, VAT = value-added tax.

Source: BIR RATE Legal Writing and Appearance Group (data as of 16 August 2007).

Purely from the point of view of criminal tax evasion, individuals of the various government institutions concerned with tax evasion cases will need extensive training and immediate access to legal materials. The first few decisions that the Court of Tax Appeals renders on tax evasion cases will have authoritative value. These decisions will set precedents, define the DOJ's approach to handling the preliminary investigation of tax evasion cases, and provide guidance to the BIR in deciding which tax evasion cases to develop. Consequently, it is important that the BIR and the DOJ are adequately trained to file and prosecute strong cases. Because the court has appellate jurisdiction over criminal cases decided by trial courts, its decisions will also set the tone of trial court outcomes on tax evasion cases.³⁴⁶ For instance, in cases of substan-

tial under-declaration of income that may be an indication of fraud, if the court were to rule that evidence of repeated acts of under-declaration over several years (as opposed to a single act of under-declaration in 1 year) is necessary to establish criminal fraud, this will define the amount of evidence gathered by the BIR and the level of evidence needed to establish probable cause before the DOJ in future cases.

The BIR and the DOJ also urgently require extensive training and access to legal materials, since they are charged with prosecuting cases before the Court of Tax Appeals. The effectiveness of DOJ prosecutors and deputized BIR lawyers in handling tax evasion cases will undeniably play a major role in shaping the jurisprudence established by the court in the first few criminal cases filed before it.

³⁴⁶ The pertinent portion of Republic Act No. 9282, §7 states that the Court of Tax Appeals has "exclusive appellate jurisdiction in criminal offenses ... [o]ver appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax cases originally decided by them, in their respected territorial jurisdiction [and] ... [o]ver petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in their respective jurisdiction."

The Court of Tax Appeals is treading new ground as a trial court for criminal tax cases. This is the first time the court will be conducting pre-trial on criminal cases, receiving evidence on trial, and ruling on criminal cases at the first instance or even at the appellate level. Procedural rules will have a greater role in criminal cases, as opposed to civil tax cases where such rules are not strictly observed. In addition, criminal cases involve an examination of issues beyond the substantive rules of civil tax cases, such as the existence of willful intent and criminal fraud. In 2006, USAID hired consultants to conduct a study on the court, focused on its capacity to resolve cases.³⁴⁷ The study proposes a seminar on pretrial exclusively for the Court of Tax Appeals justices “to sharpen their skills in the arena of criminal trial.”³⁴⁸ In this regard, it should also be noted that the court is handling local tax cases and real property tax cases for the first time, so that its training needs are not confined to criminal tax law and procedure.

As the BIR and the DOJ aggressively pursue the prosecution of tax evasion cases before the Court of Tax Appeals, it is inevitable that issues will continue to arise, particularly on the interpretation of laws and procedural rules. Examples of such issues include the authority to file tax evasion cases with the court (the Court of Tax Appeals maintains that only the commissioner may authorize the filing of a criminal case before it), the description of the crime in the information, the requirement of an assessment as a precedent to filing a criminal case, and the court’s jurisdiction over cases involving violations of section 255 of the NIRC (on the failure to file tax returns), where no amount is alleged.³⁴⁹ Access to similar resource materials (e.g., US legal materials) and training may lead to the resolution of differences in interpretation or at least avoid other areas of disagreement.

The BIR has historically pursued taxpayers more aggressively through the filing of collection cases than through criminal charges. Philippine jurisprudence on tax evasion cases is therefore not rich enough to provide extensive guidance to justices and litigants. Novel legal issues are expected to rise in the number of tax evasion cases filed with the court. Because the NIRC provisions on tax evasion are principally patterned after the criminal provisions of US internal revenue laws, the justices and their legal staff members will benefit from access to resource materials on foreign tax jurisprudence and training on the criminal aspects of Philippine and US tax jurisprudence. One USAID project is providing training on both substantive and procedural laws.

The Court of Tax Appeals study noted that the court has only 80 staff members compared to an ideal of 224, leading to “an overworked and undermanned human resource complement.”³⁵⁰ The study also cited the limited physical infrastructure of the court; the first and second divisions share a single courtroom, and there is a lack of storage rooms for case files, dockets, and other voluminous documentary evidence.³⁵¹ It is also expected that the filing of criminal cases will stretch the resources of the court, as it takes five hearings on average to conclude a civil case and at least 10 hearings to complete a criminal case. A study of the these additional resource requirements is in order.

The Court of Tax Appeals study also found that there is no computer system that can capture the all important data for “aging” of cases other than going through a tedious and manual review of the case folders. And with the [court] poised and, in fact, already handling criminal cases, [it] will surely appreciate a similar “case flow management” system that systematically warns the Court

³⁴⁷ USAID Rule of Law Effectiveness Project (USAID-ROLE). 2007. Computerization of the Court of Tax Appeals Project. Report. Manila. July.

³⁴⁸ *Ibid.*, pp. 16–17.

³⁴⁹ See the discussion of these issues in Appendix 1.

³⁵⁰ USAID-ROLE, footnote 347, stated: “... with a current population of only 80 personnel compared with the ideal or desired total of 224 employees under the Court of Tax Appeals Organizational Chart (Expanded)..., it appears that the Court of Tax Appeals has to adopt a somewhat ‘selective hiring’ approach and even ‘selective’ promotions and upgrading of positions (notwithstanding the provisions of Sec. 14, R.A. No. 1125, as amended) due, perhaps, to budgetary constraints. This translates to an overworked and undermanned human resource complement which, at the end of the day, translates to delays in their day-to-day discharge of their functions and responsibilities” (pp. 27–28).

³⁵¹ *Ibid.*, pp. 25–26.

whether or not it is within or about to exceed or has exceeded the time limits set by the Speedy Trial Act.³⁵²

Also, an effective case management system will allow the court to consider and implement a continuous trial system for criminal cases under its expanded jurisdiction.³⁵³ USAID assisted the court in the development of an automated case management system,³⁵⁴ dubbed the CTA Case Management Information System, which was launched in July 2008.³⁵⁵

The study underscored the lack of a system to facilitate the court's decision-making process in tax refund and questionable assessment cases, both in terms of speed in disposition and of consistency. While the study dealt with civil cases, the same concern may arise for criminal cases. It is anticipated that, with the increase in criminal cases, the court is bound to "basically or essentially, rule on issues and matters it had already ruled upon

before, albeit in a different case/s, but *still* involving similar circumstances and legal issues."³⁵⁶ The study proposes the publication of annotated reports consisting of "all cases originating from or decided by the [Court of Tax Appeals]." ³⁵⁷

The study proposes the compilation of a bench book that lists all pertinent rules of practice and procedure, circulars, directives, memoranda, and orders issued by the court and issuances and resolutions from the Court of Appeals and Supreme Court—"all of which are designed to be within easy retrieval of and as a handy reference book for practitioners and other stakeholders" to "weed out other 'frivolous' suits based on non-compliance with the rules of procedure."³⁵⁸ Although there is less material on criminal cases than civil cases, a bench book for handling tax evasion cases before the court would be a useful guide for all personnel in handling criminal cases more efficiently.

³⁵² *Ibid.*, pp. 26–27.

³⁵³ *Ibid.*, p. 26.

³⁵⁴ SC project management office project director, interview by E. P. Guevara, 29 June 2007. Under the Action Program for Judicial Reform, the Court of Tax Appeals (together with the Court of Appeals, pilot model courts, the Sandiganbayan, and the Supreme Court) is covered by the subcomponent on the design and implementation of an improved case management system. This case management reform will include electronically integrating in the courts the various processes in the receipt, recording, and tracking of cases; identifying their nature; and generating other statistics that will enable analysis of cases and case management performance of the courts. The system will make possible the inter-court tracking of cases and the generation of micro- and macrostatistical reports useful in evaluating performance at various levels and in formulating policies and systems for continuing case management improvement.

³⁵⁵ Acosta, footnote 336.

³⁵⁶ De Veyra and Ureta, footnote 347, p. 23.

³⁵⁷ De Veyra and Ureta, footnote 347, p. 23.

³⁵⁸ De Veyra and Ureta, footnote 347, p. 24.

Final Note

The institutional actors in the development and prosecution of tax evasion cases—the BIR, the Court of Tax Appeals, and the DOJ—are all exploring relatively new territory in handling criminal cases. For almost 3 years, the BIR has been implementing what may be considered an organized, institutionalized, and sustained effort to prosecute tax evaders through the RATE Program. Consequently, the DOJ is handling a significantly larger number of tax evasion cases, and the court—which had assumed jurisdiction over criminal cases—will take on a heavier criminal case load in addition to its already increasing case load in civil assessment and refund cases. A number of issues and concerns will require assistance and intervention in light of the resource limitations faced by these agencies.

In providing assistance, development partners must realize that each institutional actor is driven by different objectives at each stage of the process depending on its legal mandate, and may thus function independently of the others. Thus, intervention must be tailored in accordance with these institutional mandates, and more importantly the agencies (particularly the Court of Tax Appeals and the DOJ) need to maintain independence in their respective proceedings and in their evaluation of the evidence presented to them.

Despite being driven by different objectives and legislative mandates, all institutional actors perform their duties within a common legal framework: the penal provisions of the NIRC and the rules of evidence. As these institutional actors may understand the NIRC penal provisions and the rules of evidence differently from each other, especially in the absence of jurisprudence on the matter, they must make simultaneous and parallel efforts to reduce these differences. Interventions such as training sessions and development of manuals or bench books will contribute to a better common understanding of the basic law and evidence on tax evasion.

While each agency has different mandates and objectives, revenue generation (the BIR's, that is, the government's goal) sets the entire tax evasion prosecution process in motion. Thus, while the independence of the Court of Tax Appeals and the DOJ in evaluating evidence is respected, efforts to increase the number of cases filed by the DOJ to produce convictions will ultimately generate revenue.

Training and access to resource materials play a significant role in ensuring that the BIR will develop cases in which the DOJ can find probable cause and the Court of Tax Appeals can eventually convict. Training becomes even more significant to bridge the gaps in assessing evidence at each stage of the prosecution process. Such training, supplemented by the development of support systems, will certainly make each agency function more efficiently in prosecuting tax evasion.

Appendixes

Appendix 1

Highlights: A Workshop on the Process of Prosecuting Tax Evasion in the Philippines

21 November 2007

Asian Development Bank Headquarters, Auditorium C
Manila, Philippines

Agenda

Time	Activity/Topic	Resource Person
8:30–9:00 AM	Registration	
9:00–9:10	Welcoming Remarks	Jaseem Ahmed, director, Governance, Finance and Trade Division, Southeast Asia Department, ADB
9:10–9:20	Opening Remarks	Justice Ernesto Acosta, presiding justice, Court of Tax Appeals
9:20–9:30		Susan Dacanay, senior state prosecutor, DOJ (on behalf of Secretary Raul Gonzalez, DOJ)
9:30–9:40	Keynote Speech	Hon. Margarito B. Teves, secretary, Department of Finance
9:40–10:10	Break	
10:10–10:40	Presentation of Draft Report on the Prosecution of Tax Evasion in the Philippines	Edmundo Guevara, ADB consultant
10:40 AM–12:20 PM	Discussion of the Report	Moderator: Justice Jose C. Vitug Panelists: Gregorio Cabantac, deputy commissioner, BIR Susan Dacanay, senior state prosecutor, NPS Justice Juanito Castañeda, Court of Tax Appeals Edmundo Guevara, ADB consultant
12:20–12:30	Closing Remarks	Gregorio Cabantac, deputy commissioner, BIR
12:30–12:40		Jaseem Ahmed, director, Governance, Finance and Trade Division, Southeast Asia Department, ADB
12:40–1:40	Lunch	Private Dining Room 1, ADB

ADB = Asian Development Bank, BIR = Bureau of Internal Revenue, DOJ = Department of Justice, NPS = National Prosecution Service.

Welcoming Remarks by the Asian Development Bank

Jaseem Ahmed, director of the Governance, Finance and Trade Division, Southeast Asia Department of the Asian Development Bank (ADB), made the welcoming remarks. He explained that the process map is an ideal format to discuss and identify issues and impediments from the perspective of the concerned agencies. He stated two objectives of the workshop on the process map:

- to achieve accuracy and to get input and feedback from the concerned agencies, and
- to provide a forum for agencies to share experiences that will help achieve a greater understanding of challenges faced by each agency separately and working together.

Mr. Ahmed also mentioned ADB's longstanding involvement in the justice sector and its ongoing engagement with the Department of Budget and Management, Department of Finance (DOF), Department of the Interior and Local Government, Department of Justice (DOJ), Philippine National Police, and Supreme Court in preparing a justice sector reform strategy for the Philippines.

He expressed ADB's privilege and honor to work with the institutions present at the workshop, particularly those involved in the process map. He then emphasized the commitment of ADB to provide resources and support needed for policy options to be discussed in the fullest fashion, after which the Philippines and all agencies present at the workshop can determine the direction forward.

Opening Remarks by the Presiding Justice of the Court of Tax Appeals

Presiding Justice Ernesto Acosta first stated that the Court of Tax Appeals is in agreement with the DOF in pursuing the Run After Tax Evaders (RATE) Program of the Bureau of Internal Revenue (BIR). He observed that even before the RATE Program, the idea of "strengthening the mechanism" of prosecuting tax evasion had already been pursued in Congress through the enactment of Republic Act No. 9282, which confers jurisdiction over tax

evasion cases involving at least P1 million in tax liability on the Court of Tax Appeals.

He highlighted the court's commitment to the prosecution of criminal tax cases by citing

- the Court of Tax Appeals justices' initiative to revise the Court of Tax Appeals Rules immediately after Republic Act No. 9282 was enacted;
- the court's commitment to the speedy disposition of cases through projects such as the "scientific approach in monitoring cases" via an automatic case flow management system dubbed the CTA Case Management Information System; and
- the court's initiative to conduct a high-level discussion with BIR and Bureau of Customs commissioners, Chief State Prosecutor Jovencito Zuño, and members of the Integrated Bar of the Philippines to focus on the "need to improve litigation of tax cases." After the discussion, technical working groups will be constituted to provide solutions to the issues raised there.

Presiding Justice Acosta emphasized that the Court of Tax Appeals, "while aware of the need of the government to effectively prosecute tax evaders," must "not be unmindful of the rights of the accused under the Constitution" and must afford the accused access to justice. Overall, he emphasized the need for a fair and effective administration of justice, which stands without compromise, and proceeded to enumerate the principles guiding the court in line with its vision:

- fair and speedy collection of taxes by the government;
- adequate judicial remedies to taxpayers against unreasonable and unjust tax assessments, and the refund of excessive or erroneous taxes collected;
- proper interpretation of tax statutes;
- independence of the judiciary; and
- utmost deference for public trust and confidence in the judiciary.

Presiding Justice Acosta finally congratulated the DOF and the BIR in their efforts to improve and strengthen the government's anti-tax evasion program.

Opening Remarks by the Department of Justice

Senior State Prosecutor Susan Dacanay spoke on behalf of the secretary of justice. She stated that the DOJ is “equally committed” as the BIR and the DOF in working toward success in the prosecution of RATE cases as part of the government’s initiative to enhance revenue collection. The DOJ acknowledged the government’s “utilization of the prosecuting arm of the state” to send a “signal” to tax evaders “to mend their ways” and pay the government correct taxes.

Prosecutor Dacanay highlighted the DOJ’s commitment by emphasizing its creation of a task force to handle RATE cases. She added that with the DOJ prosecutors’ skills in handling tax evasion cases being “honed” through various seminars, there is “no doubt” the objective to prosecute tax evasion cases successfully “will be attained in the near future.”

She finally expressed confidence that, with the workshop’s clarification of the issues that impede the successful prosecution of tax cases, there is a greater possibility that the government’s objective will be attained.

Keynote Speech by the Finance Secretary

Secretary of Finance Margarito Teves initially summarized the “magnitude” of the problem of tax evasion to contextualize the discussion. He stated that foregone revenue in the 87 cases so far filed with the DOJ is P6.5 billion, an amount equal to or surpassing the respective 2007 budget allocations of the Court of Tax Appeals, the DOF, and the DOJ, but a mere fraction of the estimated P243 billion in potential tax revenue lost to tax evasion annually.

Given the extent of tax evasion, Secretary Teves stressed that the BIR must “necessarily pursue an aggressive criminal enforcement strategy to complement and reinforce its civil collection and assessment activities,” with a view to closing the revenue gap attributable to tax evasion. He explained that while the actual benefit in a tax evasion case is realized only in the medium and long term when the tax evader is convicted and required to pay his

or her tax obligation, the government chooses to forego the opportunity for immediate collection and instead pursue prosecution for two reasons:

- Criminal enforcement of tax laws is an integral part of any tax agency’s overall collection strategy. Prosecution “enhances voluntary compliance and deters violations of the tax code by increasing the risks associated with tax evasion.”
- Good governance demands that the public perceive the tax system as “fair and equitable” and requires that the tax burden be fairly and justly distributed among all taxpayers. Thus, “appropriate penal sanctions must be imposed for violations of tax laws if public confidence in the tax system and the tax laws administered by the BIR is to be maintained.”

Secretary Teves emphasized that good governance is a concern not only of the BIR but also of the entire government, and it is therefore “essential to show to the public that criminal violations of the law are not only detected and investigated but also appropriately and swiftly penalized.” This is the rationale of President Arroyo’s directive to prosecute more tax evaders.

Secretary Teves conceded that the obstacles and impediments to the process already identified may require medium- and long-term solutions, but operational issues can be discussed in a venue such as this ADB workshop. He noted that the problem of tax evasion is a “complex matter” that must be addressed at both the strategic and the operational levels. The ADB workshop is a welcome opportunity to define solutions to address the operational issues that impede the effective and speedy prosecution of tax evasion.

Presentation of the Draft Report

Attorney Edmundo P. Guevara emphasized that the approach taken in preparing the report was process oriented; that is, though there are three separate institutional actors involved, the report looks at the entire process of prosecuting tax evasion.

Mr. Guevara commenced the presentation by setting forth the objectives of the RATE Program

and explaining how the BIR differentiates the RATE Program from its other revenue-generating programs. He presented the criteria for the development and filing of RATE cases and briefly discussed the “RATE crimes,” the penal provisions under the National Internal Revenue Code (NIRC).

Mr. Guevara then proceeded to present the highlights of the process map on the prosecution of tax evasion (main text, Figure 1).

Discussion

Justice Jose C. Vitug commenced the discussion by emphasizing the constitutional rights of individuals and noting that the standard of proof beyond a reasonable doubt does not appear in the Constitution; it is merely a statutory right. He then called on the representatives of the BIR, the Bureau of Customs, the Court of Tax Appeals, and the DOJ to give their initial thoughts on the process map presentation to start the discussion.

Policies and Objective to Collect

- Justice Juanito Castañeda emphasized that the participants “should not lose sight of the objective,” which is the collection of taxes—an objective in the expansion of the Court of Tax Appeals’s jurisdiction.
- He commented that if the principal amount involved in a tax evasion case is P1 million, the chances of collection may be limited. He then said that it is up to the BIR and the Bureau of Customs to adjust their policies in light of the goal to collect taxes.
- Justice Castañeda added that in the United States (US), policy decisions are made when tax evasion cases are filed. A similar system has to be adopted in the Philippines to make sure cases proceed smoothly.

Disposition of Cases in the Court of Tax Appeals

- The DOJ lauded the court’s strict enforcement of procedural rules and its speed in the conduct of pretrial proceedings and the presentation of evidence.
- The DOJ particularly emphasized the submission of judicial affidavits in lieu of testimony as one of the procedures that help

hasten the process. Justice Castañeda made it clear that judicial affidavits are not mandatory.

- The DOJ also expressed appreciation for the court’s adoption of the 1-day cross-examination rule.
- Justice Castañeda expressed his concerns that proceedings before the court have “slowed down” with the filing of criminal cases, and that the positive clearance ratio of the court might be affected by the potential entry of all the RATE cases. If each revenue district office develops at least one case per year as BIR policy requires, at least 116 tax evasion cases will be filed, and Justice Castañeda had “misgivings” on whether the court could handle such a caseload in light of its current resources.
- Justice Castañeda noted that it is not the Court of Tax Appeals alone that determines if a case is properly prosecuted, as cases can still be appealed to the Supreme Court. He said that it is not accurate to say that once the Court of Tax Appeals acquits the accused, the accused is exonerated, as a petition for certiorari may still be filed with the Supreme Court.

Training

- Responding to the presentation of the process map, the BIR mentioned that several training seminars have been conducted in which materials on US tax law have been provided.
- The DOJ informed the group that a series of training sessions on law, evidence, and procedural matters had already been conducted.
- The DOJ acknowledged that training on technical matters (e.g., accounting, forms preparation, and document evaluation) is still needed.

Commissioner’s Authority to File Cases

- Deputy Commissioner of Internal Revenue Gregorio Cabantac noted that some cases had been dismissed because of “lack of authority,” referring to the BIR commissioner’s authority under the Tax Code to file tax eva-

sion cases. He referred to the need to clarify what is meant by the authority of the BIR commissioner, considering that the authority exists at the time of the filing of a complaint with the DOJ but not when an information is filed with the Court of Tax Appeals.

- Justice Castañeda referred to sections 7 and 220 of the NIRC (on the authority of the BIR commissioner) and stated that there are no regulations issued by the DOF that would allow the BIR commissioner to delegate the power to approve the filing of tax evasion cases to a subordinate official. He pointed out that in the US, no tax evasion case can be filed without the approval of the tax division of the US Department of Justice.

Cases Involving Corporations

- The Court of Tax Appeals expressed concern that some cases filed are against corporations that have been dissolved.
- The DOJ cited the problem of the BIR forms used by taxpayer corporations. Prosecutor Dacanay noted that the forms usually do not contain the printed name of the person signing for the corporation. She proposed that corrections be made at the administrative level and that forms include the names of the responsible officers of the corporation.

Allegations in the Complaint and Information

- The Court of Tax Appeals mentioned that in an information filed before it, the taxpayer's "willful refusal to pay" was not alleged.
- Justice Castañeda mentioned that he agrees that under section 255 of the NIRC, there is no need to indicate the amount involved and that returns are attached to the information. However, a problem arises if the amount involved is not stated in the information, and this problem might be jurisdictional.

Specific Issues on Law and Evidence

- The DOJ welcomed the proof beyond a reasonable doubt standard adopted by the BIR

as an unwritten guideline and indicated that it would appreciate it if this guideline were followed by the BIR, because the DOJ needs evidence that can stand at trial.

- DOJ noted that the settlement of the specific issues of assessment and fraud depends on the Court of Tax Appeals.
- Prosecutor Dacanay mentioned that specific issues, such as when to allow the amendment of an information, are already being settled.
- She added that the BIR and the DOJ are in the process of putting together common guidelines for establishing documentation needed to build a tax evasion case.

Assessment

- Assistant Commissioner of Internal Revenue Celia King emphasized the BIR's stance that there is no need to issue an assessment as a condition to filing a complaint. The issuance of an assessment will reduce criminal cases to civil cases.
- He then cited a case where, even without the BIR's issuing an assessment, the DOJ found probable cause and filed the information with the Court of Tax Appeals; on the other hand, another case was dismissed by the DOJ precisely because no assessment was issued by the BIR.
- Justice Castañeda, citing the process map, stated that "there are certain cases" where "assessment will be required."
- The DOJ agreed that some of its prosecutors still look for an assessment, because respondents typically raise the lack of an assessment as a defense. Prosecutor Dacanay, however, added that the DOJ "generally" agrees that an assessment is not required.

Speed of Disposition and "Fear Factor"

- Prosecutor Dacanay, in response to the presentation of the process map, mentioned that the 60-day period for the completion of preliminary investigation is not observed because the accused has statutory rights to requests for extensions. The DOJ stated that if the accused's requests for extension are not granted, counsel for the accused may seek the recusal of prosecutors.

- The Bureau of Customs later emphasized that speed in the disposition of cases filed with the DOJ has an impact on the alleged violator.
- Deputy Commissioner of Customs Reynaldo Umali stated that delay “can dampen the effectivity” of the Bureau of Customs to prosecute and that the time period to dispose cases affects the “fear factor” of revenue agency programs. He added that the BIR is able to collect because of this fear factor. He added: “Aggressive prosecution translates to improved collections.” He noted that the fear factor subsided in 2007.

Active Participation by the Office of the Solicitor General

- Citing the solicitor general’s instruction to solicitors on 19 November 2007, representatives of the Office of the Solicitor General expressed the agency’s interest in playing an “active role” in prosecuting tax evasion cases. They added that the Office of the Solicitor General can “share technical resources” to make the RATE endeavor succeed.
- The Office of the Solicitor General added that while it is the law firm of the government, it does not actively participate in prosecution. Nonetheless, it is committed to supporting the RATE Program.
- Justice Castañeda reiterated his suggestion in a previous interagency dialogue to involve the Office of the Solicitor General when cases are appealed.
- Justice Vitug cited the important role to be played by the office; the Court of Tax Appeals is an appellate court, and the cases presently pending with the Court of Tax Appeals may eventually be brought to the Supreme Court.

Institutionalization

- The BIR asserted that it is necessary to institutionalize the units handling RATE cases for the program to succeed. The Bureau of Customs raised similar concerns by citing its own lack of continuity, as the unit handling the Run After the Smugglers (RATS)

Program (the counterpart of the RATE program in the Bureau of Customs) is ad hoc and not institutionalized.

- The Bureau of Customs cited the need to have units dedicated to the prosecution of revenue cases and permanent prosecutors dedicated to revenue cases, similar to prosecutors of graft cases.
- The BIR and the Bureau of Customs submitted proposals to the Department of Budget and Management and the DOF to institutionalize the units handling RATE and RATS.
- The Bureau of Customs advised the group that it had requested a senator and a congressperson to sponsor bills that will create a legal and prosecution group in the bureau; it expressed optimism that Congress would provide the funding to create the unit.

Incentives

- The BIR also raised the issue of competitiveness of the compensation of BIR lawyers who are handling RATE cases.
- Deputy Commissioner of Internal Revenue Cabantac referred to the incentive scheme in the Office of the Solicitor General, under which the agency gets a share of the “winnings” in cases it prosecutes before the court. He noted that no such scheme is adopted in the BIR.

Appearance of New Bureau of Internal Revenue Counsel

- The Court of Tax Appeals relayed problems arising from the appearance of new BIR lawyers in RATE cases. The court reminded the BIR that its new lawyers must manifest their special authority as counsel and file a formal entry of appearance to avoid a situation in which private lawyers assail the authority of BIR lawyers.
- The Court of Tax Appeals also noted that new BIR lawyers are “surprised” that a system of continuous trial has been adopted, and cited an instance in which a BIR lawyer wanted to withdraw from a case upon learning of such a procedure. The court expressed concern that such problems may

affect its ability to abide by the Speedy Trial Act.

- Deputy Commissioner of Internal Revenue Cabantac said that this matter has already come to the BIR's attention, and the BIR has already asked the chief state prosecutor to issue the necessary authorizations for new BIR lawyers. He added that the BIR has adopted a mentoring program in which a supervising lawyer guides another BIR lawyer in handling RATE cases.

Other Matters

- Deputy Commissioner of Internal Revenue Cabantac announced that the BIR is prepared to file other criminal cases and assured everyone that due process is respected at the BIR.

- The DOJ mentioned that it is concerned with the safekeeping of evidence as much as the BIR is. The DOJ needs a centralized records center not only for RATE cases but also for other cases being prosecuted by the National Prosecution Service.
- Deputy Commissioner of Internal Revenue Rodriguez noted the reforms in the BIR, crediting them to BIR top management. She then emphasized the BIR's full support for the RATE Program in light of the need to improve voluntary compliance.

Closing Remarks

Deputy Commissioner of Internal Revenue Cabantac gave the closing remarks, followed by a summary of the workshop given by Jaseem Ahmed.

Appendix 2

Estimated Tax Liability Involved in Tax Evasion Cases

Case (I.S.) No.	Estimated Tax Liability (P)
2005-203	3,200,000
2005-204	3,400,000
2005-215	6,200,000
2005-216	15,500,000
2005-238	66,200,000
2005-239	1,154,000,000
2005-278	150,000,000
2005-279	123,180,000
2005-290	15,000,000
2005-291	17,980,000
2005-330	2,400,000
2005-359	151,000,000
2005-375	13,100,000
2005-402	4,400,000
2005-403	53,300,000
2005-404	32,500,000
2005-417	2,700,000
2005-443	18,000,000
2005-446	33,800,000
2005-498	114,800,000
2005-499	78,600,000
2005-515	20,300,000
2005-547	4,000,000
2005-573	12,400,000
2005-613	26,700,000
2005-638	11,600,000
2005-669	165,400,000
2005-719	67,500,000
2005-734	7,900,000
2005-754	1,680,000
2005-791	67,300,000
2005-882	6,500,000
2005-904	158,120,000
2005-952	48,900,000
2005-973	417,800,000
2005-985	19,000,000
2005-1026	602,800,000
2005-1041	42,600,000
2005-1076	177,400,000

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Estimated Tax Liability Involved in Tax Evasion Cases *(continued)*

Case (I.S.) No.	Estimated Tax Liability (P)
2005-1095	12,000,000
2005-1126	3,600,000
2005-1139	11,400,000
2005-1168	3,000,000
2005-1199	143,800,000
2006-109	28,400,000
2006-188	27,800,000
2006-219	24,700,000
2006-239	42,900,000
2006-312	10,500,000
2006-338	131,900,000
2006-347	204,800,000
2006-372	78,280,000
2006-398	3,300,000
2006-413	8,300,000
2006-440	6,500,000
2006-509	15,500,000
2006-546	60,200,000
2006-592	6,300,000
2006-591	445,800,000
2006-633	16,300,000
2006-688	73,300,000
2006-694	15,000,000
2006-813	13,000,000
2006-856	52,300,000
2006-932	653,400,000
2006-1020	6,160,000
2006-1056	104,600,000
2006-1139	16,040,000
2007-285	12,600,000
2007-325	12,900,000
2007-370	12,760,000
2007-458	221,770,000
Total Estimated Tax Liability	6,396,270,000

Appendix 3

Status and Age of Tax Evasion Cases Filed with the Department of Justice (As of 31 August 2007)

Case (I.S.) No.	Status	Date filed	Date of resolution	Period case was resolved (months)	Resolution received by BIR on	Approximate time pending since filing date (months)
2005-203	Pending preliminary investigation	10-Mar-05				30
2005-204	Filed in court	10-Mar-05	20-Jan-06	10	16-Feb-06	
2005-215	Filed in court	17-Mar-05	26-Apr-06	13	16-Jun-06	
2005-216	Submitted for Resolution	17-Mar-05				30
2005-238	Submitted for Resolution	31-Mar-05				29.5
2005-239	Submitted for Resolution	31-Mar-05				29.5
2005-278	Filed in court	07-Apr-05	19-Sep-05	5	08-Nov-05	
2005-279	Favorable to BIR but appealed	07-Apr-05	17-Nov-05	7	10-Feb-06	
2005-290	Favorable to BIR but appealed	14-Apr-05				
2005-291	Dismissed but appealed	14-Apr-05	27-Feb-07	22.5	22-Aug-07	
2005-330	Dismissed but appealed	21-Apr-05	10-Aug-05	3.5	16-Feb-06	
2005-359	Dismissed and no further action	28-Apr-05	28-Oct-05	6	28-Dec-05	
2005-375	Favorable to BIR but appealed	05-May-05	14-Sep-05	4	21-Oct-05	
2005-402	Submitted for Resolution	12-May-05				17.5
2005-403	Favorable to BIR but appealed	12-May-05	04-Sep-06	15.5		
2005-404	Favorable to BIR but appealed	12-May-05	04-Sep-06	15.5		
2005-417	Filed in court	19-May-05	21-Oct-05	5	15-Nov-05	
2005-443	Dismissed but appealed	26-May-05	30-Jan-06	8	17-Mar-06	
2005-446	Dismissed but appealed	26-May-05	12-Jul-06	13	22-Aug-06	
2005-498	Submitted for Resolution	03-Jun-05				27
2005-499	Filed in court	03-Jun-05	07-Feb-06	8	27-May-06	
2005-515	Submitted for Resolution	09-Jun-05				26.5
2005-547	Dismissed and no further action	16-Jun-05	12-Sep-05	3	21-Oct-05	
2005-573	Favorable to BIR but appealed	23-Jun-05	31-Aug-06	14	28-Dec-06	
2005-613	Dismissed but appealed	30-Jun-05	21-Apr-06	10	10-May-06	
2005-638	Submitted for Resolution	07-Jul-05				25.5
2005-669	Submitted for Resolution	21-Jul-05				25
2005-719	Dismissed but appealed (to CA)	04-Aug-05	08-Nov-05	3	16-Dec-05	
2005-734	Submitted for Resolution	11-Aug-05				24.5
2005-754	Favorable to BIR but appealed	18-Aug-05	15-Sep-06	13	22-Nov-06	
2005-791	Submitted for Resolution	25-Aug-05				24
2005-882	Submitted for Resolution	01-Sep-05				24
2005-904	Submitted for Resolution	08-Sep-05				23.5
2005-952	Dismissed and no further action	15-Sep-05	28-Jun-06	9	09-Aug-06	
2005-973	Submitted for Resolution	22-Sep-05				23
2005-985	Submitted for Resolution	29-Sep-05				23
2005-1026	Dismissed but appealed (to CA)	07-Oct-05	26-May-06	7.5	30-Jun-06	
2005-1041	Submitted for Resolution	12-Oct-05				22.5
2005-1076	Remanded to BIR	20-Oct-05	06-Aug-06	9.5		
2005-1095	Filed in court	28-Oct-05	12-Jul-06	9	08-Sep-06	

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Status and Age of Tax Evasion Cases Filed with the Department of Justice *(continued)*

Case (I.S.) No.	Status	Date filed	Date of resolution	Period case was resolved (months)	Resolution received by BIR on	Approximate time pending since filing date (months)
2005-1126	Remanded to BIR	11-Nov-05	11-May-07	18	16-Aug-07	
2005-1139	Submitted for Resolution	17-Nov-05				21
2005-1168	Dismissed and no further action	24-Nov-05	24-Jan-07	14	30-May-07	
2005-1199	Submitted for Resolution	02-Dec-05				20
2006-109	Remanded to BIR	07-Feb-06	20-Sep-06	7	22-Dec-06	
2006-188	Dismissed but appealed	17-Feb-06	11-Sep-06	7	27-Feb-07	
2006-219	Dismissed but appealed	24-Feb-06	26-Jul-06	5	27-Oct-07	
2006-239	Referred back to BIR	03-Mar-06	11-Apr-06	1		
2006-312	Submitted for Resolution	10-Mar-06				17.5
2006-338	Submitted for Resolution	16-Mar-06				17.5
2006-347	Dismissed but appealed	22-Mar-06	29-Nov-06	8	28-Dec-06	
2006-372	Dismissed but appealed	28-Mar-06	30-Jan-07	10	10-May-07	
2006-398	Pending preliminary investigation	07-Apr-06				16.5
2006-413	Dismissed and no further action	20-Apr-06	18-Jan-07	9	22-May-07	
2006-440	Submitted for Resolution	28-Apr-06				16
2006-509	Submitted for Resolution	19-May-06				15.5
2006-546	Submitted for Resolution	31-May-06				15
2006-592	Submitted for Resolution	16-Jun-06				14.5
2006-591	Submitted for Resolution	16-Jun-06				14.5
2006-633	Submitted for Resolution	29-Jun-06				14
2006-688	Pending preliminary investigation	17-Jul-06				13.5
2006-694	Submitted for Resolution	20-Jul-06				13.5
2006-813	Submitted for Resolution	18-Aug-06				12
2006-856	Submitted for Resolution	31-Aug-06				12
2006-932	Submitted for Resolution	15-Sep-06				11.5
2006-1020	Dismissed but appealed	18-Oct-06	27-Apr-07	6	03-Aug-07	
2006-1056	Favorable to BIR; awaiting filing	27-Oct-06	19-Mar-07	5	20-Jun-07	
2006-1139	Submitted for Resolution	30-Nov-06				9
2006-1181	Submitted for Resolution	13-Dec-06				8.5
2006-1182	Pending preliminary investigation	13-Dec-06				8.5
2006-1180	Pending preliminary investigation	13-Dec-06				8.5
2006-1183	Submitted for Resolution	13-Dec-06				8.5
2006-1201	Submitted for Resolution	13-Dec-06				8.5
2006-1204	Pending preliminary investigation	13-Dec-06				8.5
2006-1200	Pending preliminary investigation	13-Dec-06				8.5
2006-1202	Submitted for Resolution	13-Dec-06				8.5
2006-1203	Pending preliminary investigation	13-Dec-06				8.5
2007-180	Pending preliminary investigation	23-Feb-07				6
2007-181	Pending preliminary investigation	23-Feb-07				6
2007-285	Pending preliminary investigation	23-Mar-07				5
2007-325	Pending preliminary investigation	11-Apr-07				4.5
2007-370	Submitted for Resolution	25-Apr-07				4
2007-458	Pending preliminary investigation	24-May-07				3

Appendix 4

Age of Tax Evasion Cases Appealed to Chief State Prosecutor and Department of Justice Secretary (As of 31 August 2007)

Case (I.S.) No.	Resolution	Date of filing of complaint	Date of Resolution	Appealed Resolution received on	Status	Pending (from time of filing of complaint)
2005-279	Probable cause	07-Apr-05	17-Nov-05	10-Feb-06	PR filed by respondent	2 years, 5 months
2005-290	Probable cause*	14-Apr-05		(BIR did not receive Resolution of investigating prosecutor)	PR filed by respondent	2 years, 4.5 months
2005-330	Dismissal	21-Apr-05	10-Aug-05	16-Feb-06	PR filed by BIR	2 years, 4.5 months
2005-375	Probable cause	05-May-05	14-Sep-05	21-Oct-05	PR filed by respondent	2 years, 4 months
2005-443	Dismissal**	26-May-05	30-Jan-06	17-Mar-06	MR filed by BIR (with DOJ Secretary)	2 years, 3.5 months
2005-446	Dismissal***	26-May-05	12-Jul-06	22-Aug-06	MR filed by BIR (with DOJ Secretary)	2 years, 3.5 months
2005-613	Dismissal	30-Jun-05	21-Apr-06	10-May-06	PR filed by BIR	2 years, 2.5 months
2005-719	Dismissal	04-Aug-05	08-Nov-05	16-Dec-05	Certiorari with CA	
2005-1026	Dismissal	07-Oct-05	26-May-06	30-Jun-06	Certiorari with CA	
2005-278	Probable cause	07-Apr-05	19-Sep-05	08-Nov-05	MR filed by BIR	2 years, 5 months
2005-291	Dismissal	14-Apr-05	27-Feb-07	22-Aug-07	MR filed by BIR	2 years, 5 months
2005-403	Probable cause	12-May-05	04-Sep-06	(BIR awaiting official copy of resolution)	MR filed by respondent	2 years, 3.5 months
2005-404	Probable cause	12-May-05	04-Sep-06	(BIR awaiting official copy of resolution)	MR filed by respondent	2 years, 3.5 months
2005-573	Probable cause	23-Jun-05	31-Aug-06	28-Dec-06	PR filed by respondent	2 years, 2 months
2005-754	Probable cause	18-Aug-05	25-Sep-06	22-Nov-06	PR filed by respondent	2 years, 0.5 month
2006-188	Dismissal	17-Feb-06	11-Sep-06	27-Feb-07	MR filed by BIR	1 year, 6.5 months
2006-347	Dismissal	22-Mar-06	22-Mar-06	28-Dec-06	MR filed by BIR	1 year, 5 months
2006-372	Dismissal	28-Mar-06	28-Mar-06	10-May-07	PR filed by BIR	1 year, 5 months
2006-1020	Dismissal	18-Oct-06	18-Oct-06	03-Aug-07	MR filed by BIR	10 months
2006-219	Dismissal	24-Feb-07	26-Jul-06	27-Oct-06	PR filed by BIR	6 months

* Based on newspaper reports.

** DOJ Secretary granted BIR's Petition for Review (PR) and recommended filing of Information on 21 March 2007; but DOJ Secretary later granted taxpayer's Motion for Reconsideration (MR) on 18 June 2007 and again dismissed the complaint. BIR filed an MR on the DOJ Secretary's Resolution. MR is pending.

*** PR filed by BIR denied on 27 April 2007. BIR files MR with DOJ Secretary on 21 May 2007.

Appendix 5

Run After Tax Evaders (RATE) Cases Filed with the Court of Tax Appeals (As of 31 August 2007)

Case No.	Date filed	Tax Liability (P)	Status
0-012	02-Nov-05	8,362,902.00	Prosecution's presentation of evidence
0-013 (consolidated w/ 0-015)	25-Nov-05	1,522,152.14	Prosecution's presentation of evidence
0-014	25-Nov-05	1,089,439.08	Prosecution's presentation of evidence
0-015 (consolidated w/ 0-013)	25-Nov-05	2,107,023.65	Prosecution's presentation of evidence
0-016	25-Nov-05	150,490,301.26	Motion to quash granted
0-029	22-Sep-06	12,009,422.15	Accused's demurrer to evidence for resolution
0-030	22-Sep-06	2,320,183.96	Prosecution's presentation of evidence
0-031	22-Sep-06	3,475,090.64	Prosecution's presentation of evidence
0-032	22-Sep-06	5,175,242.12	Prosecution's presentation of evidence
0-033	22-Sep-06	1,329,319.95	Pretrial set
0-034	22-Sep-06	1,517,242.12	Pretrial set
0-049	27-Jun-07	36,597,812.61	With alias warrant; accused cannot be located
0-050	27-Jun-07	41,387,893.11	With alias warrant; accused cannot be located
0-051	27-Jun-07	2,631,687.27	With alias warrant; accused cannot be located
Total tax liability =		P270,015,712.06	

Appendix 6

List of Executive Issuances Related to the Run After Tax Evaders (RATE) Program

Date of Issuance	Issuance	Title
4 April 2007	Executive Order No. 625	Amending BIR Executive No. 175 of President Joseph Estrada and for other purposes
12 June 2007	Executive Order No. 625-A	Administering the Run After Tax Evaders (RATE) Program through the Office of the Deputy Commissioner for Legal and Inspection Group of the Bureau of Internal Revenue, Repealing Other Provisions of Executive Order No. 625, and for other purposes
1 March 2007	Revenue Delegation Authority Order No. 02-07	Delegation of Authority with Regard to Institution of Civil and Criminal Actions/Cases to Effect Recovery of Taxes or the Enforcement of Any Fine, Penalty or Forfeiture Under the Tax Code, with Regard to the Defense/s of the Bureau of Internal Revenue in Cases/ Actions Instituted Against it, and with Regard to Other Cases
9 June 2005	Revenue Regulations No. 15-05	Providing for Policies and Guidelines for the Abatement of Surcharges in Relation to the Filing of Amended Tax Returns Filed under Certain Conditions
24 April 2007	Revenue Memorandum Order No. 008-07	Tax Reform Administration Operations Manual for the Tax Reform Agenda
8 January 2008	Revenue Memorandum Order No. 004-08	Supplemental Provisions on Revenue Memorandum Order No. 28-2007
11 April 2008	Revenue Memorandum Order No. 023-08	Streamlining Priority Projects under the Tax Reform Agenda
9 May 2008	Revenue Memorandum Order No. 024-08	Policies and Guidelines for RATE Cases

Process Map on the Criminal Prosecution of Tax Evasion in the Philippines

This report documents the findings of a process mapping exercise aimed at identifying bottlenecks in the prosecution of tax evasion cases. While the exercise was conducted in 2007 and the report presents a snapshot of issues at that time, many of the key challenges identified remain relevant today, while the strengthening of revenue collection has become even more of a critical priority in light of the impact of the global financial crisis.

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