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## **Offline airlines are not tax exempt**

LAST month the President signed into law Republic Act (RA) 10374, otherwise known as the Common Carriers Tax Act. Under the new law, foreign carriers—both air and shipping—are exempted from paying the 3-percent common carriers tax (CCT) imposed on passenger traffic only. Carriers will also be exempt from value-added tax (VAT) for the transport of passengers.

This new law exempts all international and shipping carriers from paying the 3-percent CCT on receipts and income derived from transporting passengers. The carriers are also exempted from paying tax on the gross revenue derived from the carriage of passengers, cargo, or mail—provided that the same exemption is granted by the carrier's home country to the Philippines.

Before RA 10374 was enacted into law, international air carriers were slapped with a 5.5-percent tax on revenues, that is, a 3-percent CCT on their gross receipts and a 2.5-percent tax on all cargo and passenger revenues originating from the Philippines in an uninterrupted flight, regardless of sale or issue of the ticket.

The removal of CCT takes away the primary constraint on foreign carriers from landing in the Philippines. Tourism will grow, as there will be more airlines willing to explore the Philippine market.

It would have been better, though, if the law also addressed another piece of the puzzle—offline airlines.

In a 2010 decision, the Supreme Court said the Tax Code of 1997 does not, in any categorical term, exempt all international air carriers from the coverage of Section 28(A)(1) of the Tax Code of 1997, which imposes tax of 30 percent on all income from sources within the Philippines of resident foreign corporations. It ruled that had the legislature's intentions been to completely exclude all international air carriers from the application of the general rule under Section 28(A)(1), it would have used the appropriate language to do so; but the legislature did not. Thus, a resident foreign corporation, whether an international air carrier, would be liable for the tax under Section 28(A)(1). (*South African Airways v. Commissioner of Internal Revenue*, GR No. 180356, dated February 16, 2010)

The SC said the general rule is that resident foreign corporations shall be liable for a 30-percent income tax on their income from within the Philippines, except for resident foreign corporations that are international carriers that derive income “from carriage of persons, excess baggage, cargo and mail originating from the Philippines,” which shall be taxed at 2.5 percent of their gross Philippine billings (GPB). “GPB” refers to the amount of gross revenue derived from carriage of persons, excess baggage, cargo and mail originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the ticket or passage document.

Offline airlines, being international carriers with no flights landing or originating from the Philippines, do not fall under the exception. As such, offline airlines must fall under the general rule.

The SC is saying the correct interpretation of the law is that, if an international air carrier (otherwise known as “online airline”) maintains flights to and from the Philippines, it shall be taxed at the rate of only 2.5 percent of its GPB (RA 10374 has now scrapped this), while international air carriers that do not have flights to and from the Philippines (otherwise known as “offline airline”), but nonetheless earn income from other activities in the country will be taxed at the staggering rate of 30 percent of such income.

In other words, unlike an online international airline (an airline that has flights to and/or from the Philippines), which is practically exempt from tax under RA 10374, even though it sells online and offline tickets, an offline international air carrier that only sells offline tickets (flights that do not land or originate in the Philippines) will be slapped with the full tax of 30 percent.

Because of this development, offline airlines and their accredited travel agents might be discouraged to sell tickets in the Philippines. It means that if you are going to the United States and travel to different states, your travel agent will only sell ticket for your flight from the Philippines to the first state where you will land, say, Los Angeles, but not for your connecting flight from Los Angeles to New York (where offline airlines will be used). You will have to deal with the inconvenience of buying your ticket for your inter-state trips only upon arriving in Los Angeles.

The distinction of the tax treatment between offline and online airlines may be absurd. But as of now, if I am an airline selling tickets in the Philippines, it would be best if I am not categorized as “offline,” or better yet, I will land my planes here and be classified as an “online” airline instead.

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