

August 30, 2005

# tax alert

## SC invalidates tax incentives of Clark ecozone; repeals purchasing privilege of certain individuals from Subic duty-free shops

The Supreme Court, in its July 29 decision (*Coconut Refiners Association, Inc., et.al., v Hon. Ruben Torres, et.al., GR 132527*) declared null and void the tax incentives enjoyed by the Clark Special Economic Zone. Section 5 of Executive Order (EO) No. 80 and Section 4 of Board Resolution No. 93-05-034 of the Bases Conversion Development Authority (BCDA) provides that CSEZ-registered firms shall enjoy all the incentives available under the BCDA Act or Republic Act (RA) 9227.

The SC reiterated its arguments in *John Hay Peoples Alternative Coalition, et al. v. Victor Lim, et al.*, and ruled that the incentives under RA No. 7227 are exclusive only to the Subic Special Economic Zone (SSEZ). The President, therefore, had no authority to extend their application to CSEZ when he issued EO 80.

In the same case, the SC invalidated the purchasing privilege of certain individuals from Subic duty-free shops. Under Section 1 of EO 97-A, second sentences of paragraphs 1.2 and 1.3, residents of the Subic Special Economic and Free Port Zone (SSEFPZ) living outside the Secured Area as well as Filipinos not residing within the SSEFPZ are allowed to purchase and bring out of the Secured Area to other parts of the Philippine territory consumer items worth not exceeding US\$100 per person month and \$200 per person per year, respectively.

The SC finds the establishment of duty-free shops well within the policy objectives of RA 7227. However, said law also provides that exportation or removal of goods from the SSEZ to the other parts of the Philippine territory shall be subject to customs duties and taxes. Hence, allowing tax and duty-free removal of goods from the Secured Area by certain individuals, even in a limited amount, is null and void.

20th Floor, Tower 1  
The Enterprise Center  
6766 Ayala Avenue  
1200 Makati City  
Philippines  
T +63 2 886-5511  
F +63 2 886-5506; +63 2 886-5507  
W [www.punongbayan-araullo.com](http://www.punongbayan-araullo.com)

Offices in Cebu, Davao, Cavite

Member of Grant Thornton International

P&A Tax Alerts are intended to keep our clients up to date with significant tax developments. We welcome your suggestions and feedback so that the Tax Alerts may be even more useful to you. If you have comments, or if you would require assistance, or if you would like to be included in our mailing list, please contact Lina Figueroa at our Tax Knowledge Center, T: 886-5511 ext. 507; or 887-9458, E: [Lina.P.Figueroa@pna.ph](mailto:Lina.P.Figueroa@pna.ph).