



Press Statement

9 March 2010

STATEMENT ON THE CASE OF THE GOVERNMENT OF THE PHILIPPINES VS. PILIPINAS SHELL

The Makati Business Club notes with some satisfaction the apparent truce between the Philippine Government and Pilipinas Shell in their public disagreement over back taxes. The Office of the Solicitor General has accepted, and the Court of Tax Appeals has approved, Shell's issuance of a bond to secure their alleged tax deficiency in the importation of catalytic cracked gasoline/light catalytic cracked gasoline from 2004 to 2009.

However, we believe the main issue remains to be the instability of government policies and regulations. The retroactive application of a ruling imposes a crushing burden on Pilipinas Shell, which had taken on good faith a Bureau of Internal Revenue opinion in settling its previous tax obligations, an opinion upheld by four BIR commissioners from 2003 to 2009. This reminds us of the case of the Yukos Oil Company in Russia where the government retroactively declared the company's tax practices illegal and gave it only days to pay billions of Euros in back tax claims even as they froze the company's assets.

Policy instability is also manifested in the conflicting positions taken by different government agencies on the same issue, with the Department of Energy and the House Ways and Means Committee on one side, and the Department of Finance, the Presidential Adviser on Revenue Enhancement, the BIR, and the Bureau of Customs on the other. It is equally disconcerting that Customs officials are challenging the position taken by the Solicitor General, who is the Philippine government's lawyer.

The policy inconsistency appears to be driven not by the sole objective to increase government revenues but also by individual consideration. We have reliable information that a major motivation for this sordid flip-flopping is the desire of certain government officials to collect a 20% whistleblower reward of P1.46 **billion** for collecting back taxes they should have been collecting on a regular basis in the first place!

The National Internal Revenue Code allows rewards to whistleblowers of 5% of the value or P1 million, whichever is lower. But no government official or their relative up to the 6th degree of consanguinity is eligible to receive a whistleblower reward. On the other hand, the Tariff and Customs Code provides for rewards of 20% of the value, without limit, and allows government officials to receive the reward.

The Tariff and Customs Code provisions have only encouraged harassment and extortion by government officials who are tasked to collect revenue for the government. We believe that the National Internal Revenue Code, adjusted for inflation, is the more appropriate basis for the whistleblowers' reward.

The Pilipinas Shell case sends a chilling message to potential investors to the Philippines. It speaks of the unreliability of government to implement its own regulations with consistency and of institutional weakness by allowing the privatization of gains that should accrue to government. We call on government to be fair and consistent in applying its regulations to all, including Pilipinas Shell.

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