



## REGARDING **R-VAT**

The Reformed Value Added Tax Law (R-VAT) was enacted last year at an initial rate of ten per cent. The rate was later raised to 12% early this year. The law expands VAT coverage to previously exempt sectors including electricity, fuel and transport.

### What is VAT?

According to Revenue Regulation No. 16-2005 issued by the Bureau of Internal Revenue, "VAT is a tax on consumption, levied on the sale, barter, exchange or lease of goods or properties in the Philippines and on importation of goods to the Philippines." The regulation further states that "the seller is the one statutorily liable for the payment of the tax but the amount of the tax maybe be shifted or passed on to the buyer, transferee, or lessee of the goods, properties or services."

### Who are covered?

The law applies to "any person who, in the course of his business, sells, barter, exchanges or leases goods, renders services, and any person who imports goods." The word "person" refers to any individual, trust, estate, partnership, corporation, joint venture, cooperative or association.

### What are the exemptions?

Following are some of the VAT-exempt transactions: **[SEE R-VAT, page 2]**

## DOLE SETS GUIDELINES ON COMPRESSED WORKWEEK SCHEMES

The Department of Labor and Employment (DOLE) has issued the implementing guidelines for the compressed workweek scheme. The guidelines, which took effect last December 30, 2005, defines a compressed workweek scheme as "an

alternative arrangement whereby the normal workweek is reduced to less than six days but the total number of normal work hours per week shall remain at 48 hours."

Under the scheme, normal daily work hours can be extended beyond eight hours up to a maximum of twelve hours.

Although employees are not entitled to overtime premium under the scheme, the DOLE advisory emphasizes that no

diminution of benefits should result from the adoption of the compressed workweek schedule.

The compressed workweek scheme may only be implemented upon the express and voluntary agreement of the establishment's covered employees or their duly authorized representatives.

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## MEET THE NEW CHIEF

On December 20, 2005, President Gloria Macapagal Arroyo appointed Artemio Panganiban as the new Supreme Court Chief Justice, succeeding Hilario Davide, Jr. who retired at age 70.

Following are some interesting information about the man who is now tasked with leading the Philippine judiciary.

### Great things come from small beginnings

Justice Panganiban was born to a poor family in Manila on December 7, 1936. To support his studies, he sold newspapers, peddled cigarettes and shined shoes. He graduated from elementary and high school with honors and obtained his Bachelor of Laws degree from the Far Eastern University (FEU), *cum laude*.

Accepting his appointment as Chief of the High Tribunal, Panganiban borrowing the words of Pope Benedict XVI, said, "I take consolation in the fact that the Lord knows how to work through imperfect instruments to bring about great things."

### Controversial decisions

Appointed to the Supreme Court initially as Associate Justice in 1995, Justice Panganiban wrote the ponencia in some of the high tribunal's more controversial decisions.

He decided against ex-congressman Romeo Jalosjos, saying that even essential duties by public officials do not constitute a valid reason to free a person from prison. He also invalidated the government's contract with Mega Pacific Consortium to computerize the May 2004 elections. Panganiban also penned the decision declaring the Mining Act of 1995 unconstitutional.

### Prolific writer

Described by colleague Justice Antonio Carpio as "undoubtedly, the most prolific writer of the court, bar none," Justice Panganiban has, in the past decade, penned more than 1,000 full-length decisions as well as ten books on the judiciary.

### Short tenure

Justice Panganiban will retire from the Supreme Court on December 7, 2006 when he reaches the age of 70. By then, he will have served as Chief Justice for less than a year, one of the shortest terms ever served by any Chief Justice of the Supreme Court of the Philippines.

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- Sale or importation of agricultural or marine products in their original state, livestock and poultry;
- Sale or importation of fertilizers, seeds, seedlings and fingerlings, fish, prawn, livestock and poultry feeds;
- Importation of personal and household effects belonging to residents of the Philippines returning from abroad and non-resident citizens coming to resettle in the Philippines;
- Importation of professional instruments and implements, wearing apparel, domestic animals and personal household effects belonging to persons coming to settle in the Philippines, for their own use and not for sale;
- Services subject to percentage tax under Title V of the Tax Code Services by agricultural contract growers and milling for others of palay into rice, corn into grits, and sugar cane into raw sugar
- Medical, dental, hospital and veterinary services, except those rendered by professionals;
- Educational services rendered by private educational institutions duly accredited by the Department of Education (DepEd), the Commission on Higher Education (CHED) and the Technical Education and Skills Development Authority (TESDA) and those rendered by government educational institutions;
- Services rendered by individuals pursuant to an employer-employee relationship;

- Services rendered by regional or area headquarters established in the Philippines by multinational corporations;
- Transactions which are exempt under international agreements to which the Philippines is a signatory;
- Sales by agricultural cooperatives duly registered and in good standing with the Cooperative Development Authority (CDA);
- Gross receipts from lending activities by credit or multi-purpose cooperatives duly registered and in good standing with the CDA;
- Sales by non-agricultural, non-electric and non-credit cooperatives duly registered with and in good standing with the C.A.;
- Export sales by persons who are VAT-registered;
- Sale of real properties utilized for low-cost housing;
- Lease of residential units with a monthly rental per unit not exceeding P10,000;
- Sale, importation, printing or publication of books and any newspaper, magazine, review, or bulletin;
- Importation of fuel, goods and supplies by persons engaged in international shipping or air transport operations;
- Services of banks;
- Sale or lease of goods or properties or the performance of services the gross annual sales and/or receipts of which do not exceed the amount of P1,500,000.



## DOLE, continued from page 1

The compressed schedule may be adopted by all establishments except those in the construction industry, health services, or occupations requiring heavy manual labor. Occupations or workplaces using substances, chemicals and processes, or those in which workers are exposed to airborne contaminants, human carcinogens substances, chemicals or noise that may exceed threshold limit values or tolerance levels for an eight-hour workday, are required to secure a certification from an accredited health and safety organization, health practitioner, or from the firm's safety committee stating that work beyond eight hours is within threshold limits or

tolerable levels of exposure. Failure to present proof of compliance with these requirements renders the employer liable for overtime premiums due to employees who have worked beyond eight hours.

Firms that adopt the compressed workweek scheme may revert to the normal eight-hour workday provided that the employees are notified within a reasonable period of time. Differing interpretations between the employer and the employees as to the scheme are to be resolved within the company's grievance mechanism absent which the conflict may be referred to the DOLE regional office.



## WHAT IS A DRAGNET CLAUSE?

Citing a string of American and Philippine jurisprudence, the Supreme Court, in the case of *Prudential Bank v. Don and Georgia Alviar* (G.R. No. 150-197, promulgated on July 28, 2005), defined a dragnet clause as "one which is specifically phrased to subsume all debts of past or future origins." Mortgages of this nature, the court explained, "enable the parties to provide continuous dealings, the nature or extent of which may not be known or anticipated at the time, and they avoid the expense and inconvenience of executing a new security on each transaction."

In the aforesaid case, the Alviar spouses mortgaged their house to Prudential Bank. The bank, in turn, asked them to sign a mortgage contract with a dragnet clause, otherwise known as a blanket mortgage clause, providing that the said house will be held as security for the initial loan "and those that may hereafter be obtained."

## DOES IT APPLY TO SUBSEQUENT LOANS COVERED BY SEPARATE SECURITIES?



The spouses made subsequent loans for which they provided separate collaterals. When these loans matured, the bank foreclosed the mortgage. At issue here is whether or not the bank was correct in foreclosing the mortgage when other collaterals were given as security for the subsequent loans.

The Supreme Court ruled that dragnet clauses are valid. However, it ruled in favor of the Alviar spouses, saying that "in the absence of clear, supportive evidence of a contrary intention, a mortgage containing a dragnet clause will not be extended to future advances unless the document evidencing the

subsequent advance refers to the mortgage as providing security therefore." The court further said that "while the dragnet clause subsists, the security specifically executed for subsequent loans must first be exhausted before the mortgaged property can be resorted to."

The high tribunal also pointed out that the dragnet clause in this case was a "contract of adhesion," one that may not be fully understood by lay persons as in the case of the Alviar spouses and, therefore, must be interpreted strictly against the bank which prepared the same.



## When do casual employees become regular?

In the case of *Kay Products, Inc. v. Court of Appeals* (G.R. No. 162472, promulgated on July 28, 2005), the Supreme Court said: "... it is more in keeping with the spirit of the law to rule that the status of regular employment attaches to the casual worker on the day immediately after the end of his first year of service."

This case involved a group of workers who were employed by a manufacturing company which later transferred them to an employment agency with which it had a manpower contract. The employees' wages were subsequently reduced. Some were also terminated despite having been employed by the company for a period of more than one year.

The Supreme Court, in making the above pronouncement, was, in actuality, merely reiterating Article 280 of the Labor Code which, in its second paragraph, provides that: "... any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists."

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Our government is the potent, the omnipresent teacher. For good or ill it teaches the whole people by its example. Crime is contagious. If the government becomes a law-breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.

— Justice Louis D. Brandeis, dissenting in the case of *Olmstead v. US, 1928*

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# It's a Retro Christmas!

**The law firm of Fortun Narvasa and Salazar took a trip down memory lane and celebrated the holidays in style as it held its annual Christmas party last December 16, 2005.**

The party, held at the Loyola Grand Villa residence of senior partner Atty. Gregorio Y. Narvasa II, took on the frivolous spirit of the 1920's. Atty. Mirzi Chua, who was responsible for the choosing the theme, explained that the party gave the ladies and gentlemen of the firm the opportunity to dress in their shiniest, shimmerest, most splendid outfits.

Both the legal and non-legal staff took the challenge to heart donning their gayest apparel – shining satin, pearls and boas for the women and suspenders and bow ties for the men.

The highlights of the party, of course, were the creative production numbers led by the firm's three senior partners. Atty. Narvasa's group won best production



**Partners in Song.** Attorneys Fortun, Narvasa and Salazar entertaining the crowd.

number. The second prize went to the group of Atty. Philip Sigrud A. Fortun. Atty. Roderick R.C. Salazar's group won third prize.

Another highlight of the party was the three senior partners' rendition of *In the Mood for Love* with Atty. Narvasa playing the piano.

Also present during the party were some of the senior partners' families including Chief Justice Andres Narvasa, Judge Wilhelmo Fortun, Atty. Gloria Fortun, Dolores Fortun and Lourdes Salazar.

The event, truly, was a Christmas to remember.



Art@FNS



**IN LIVINGCOLOR.** William Yu pays homage to the persevering spirit of Filipino fisherfolk in this expressionist oil painting (From the FNS art collection).

## 4 New Associates Join the Firm

Four new lawyers joined the firm in the past year. They are Attorneys John Philip M. Castro, Mary Anne M. Bayang, Denise Jordan P. Arenillo and Paul Abbott P. Enriquez.

Atty. Castro, who joined FNS in August of 2005, earned his Bachelor of Laws degree from the University of Santo Tomas. Atty. Bayang, on the other hand, undertook her legal studies at the Baguio Colleges

Foundation. Both Attys. Arenillo and Enriquez are graduates of the Ateneo de Manila University.

The four new associates are also joined by six new lawyer-apprentices: Darwin C. Khan, Rebecca R. de Guzman, Dennis Arvin L. Chan, Walter C. Go, Fides C. Victorio and Reynold S. Munsayac.

FNS welcomes its new family members and wishes them the best of luck in their careers!

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