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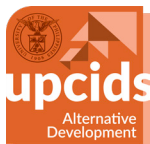
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#TaxTheRich:

A Policy Analysis of Introducing a Wealth Tax in the Philippines Using a Social Justice Lens

Jacquelyn Anne G. Libatique

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#TaxTheRich: A Policy Analysis of Introducing a Wealth Tax in the Philippines Using a Social Justice Lens¹

*Jacquelyn Anne G. Libatique*²

Abstract

The COVID-19 pandemic has exposed the government's need for additional revenue sources or the imposition of new taxes. The Philippine economy shrank by 9.6 percent in 2020. About 4.5 million Filipinos lost their jobs at the end of 2020. In contrast, the ultra-rich of the Philippines increased their wealth by about PHP 4 trillion. Legislators now call for a wealth tax to address the need for additional revenue. In response, the Secretary of Finance asserts that a wealth tax will drive away investments out of the country. This paper examines the strategies proposed by House Bill No. 10253, which seeks to impose a wealth tax on the “super-rich.” It addresses the challenges associated with implementing such a wealth tax and explore possible refinements to the proposed legislation. In light of constitutional and statutory applicability to the Philippines, this paper also looks into the examples of European countries that

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- 1 This paper was first submitted on 20 January 2022 as a requirement for the Supervised Legal Research class of Prof. Raul C. Pangalangan, University of the Philippines College of Law. It was then presented during the 2022 Asian Studies Association of Australia Conference (ASAA), a hybrid and digital conference hosted by Monash University, Australia. The 2022 ASAA had the theme “Social Justice in Pandemic Times” and took place from 5–8 July 2022. This paper received the Prof. Juliana R. Ricalde Prize for Best Paper in Taxation Law during the UP College of Law Recognition Rites 2023 held on 2 August 2023.
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have implemented and later repealed laws on imposing wealth taxes. This paper uses a social justice lens to assess whether a prospective wealth tax can bridge the tax burden gap between the rich and the poor in the Philippine context.

Keywords: COVID-19, inequality, pandemic, Philippines, social justice, tax gap, wealth tax

Introduction

Taxation During Times of Uncertainty and Crisis

Crisis carries costs. The State will require all necessary resources to address the adverse effects of any such crisis on the health and well-being of the population, peace and order in society, as well as the preservation of properties and assets. Taxation, the legitimate means for the State to raise revenue to defray costs, becomes a “certainty” during times of uncertainty and crisis. Hence, the hornbook principle states that “taxes are the lifeblood of government and their prompt and certain availability is an imperious need.”³ Nevertheless, as the government’s lifeblood, taxation should not be arbitrary, even if necessary. It should be governed by the law to “reconcile the conflicting interests of authorities and the taxpayers so that the promotion of the common good may be achieved.”⁴

Depending on the crisis to be managed and the intensity of the situation, Congress wields the awesome power to determine who to tax, what to tax, and how much should be imposed.⁵ The discretion of the legislature as the taxing authority is broad, and the power to tax has classically been considered the most potent of all government

3 *Commissioner of Internal Revenue v. Pineda*, GR No. L-22734, 128 Phil. 146 (15 September 1967).

4 *Commissioner of Internal Revenue, v. Court of Appeals*, GR No. 119322, 327 Phil. 1 (4 June 1996); *Commissioner of Internal Revenue v. Algue, Inc.*, GR No. L-28896, 241 Phil. 829 (17 February 1988).

5 *Tolentino v. Secretary of Finance*, GR No. 115455, 305 Phil. 686 (30 October 1995).

powers, often referred to as “the power to destroy.”⁶ The power to tax, therefore, can be applied even to the richest in society—the elites, the influential, and the wealthy.

The Constitution provides limitations and restrictions on the power of taxation. Among these restrictions are complying with due process of law;⁷ complying with equal protection of laws;⁸ freedom of the press;⁹ freedom of religion;¹⁰ the non-impairment of contracts;¹¹ non-imprisonment for nonpayment of poll tax;¹² ensuring that appropriation, revenue, and tariff bills should originate in the House of Representatives;¹³ the power of the President to exercise veto;¹⁴ uniformity;¹⁵ a progressive system of taxation;¹⁶ the power of the President to fix tariff rates;¹⁷ the exemption from property tax on properties of religious, educational, and charitable institutions;¹⁸ and exemptions for nonstock and nonprofit educational institutions.¹⁹

However, the Constitution is also built on a framework of social justice. The State is mandated to “promote social justice in all phases of national development.”²⁰ Article XIII of the Constitution, entitled “Social Justice and Human Rights,” mandates Congress to “give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic,

6 *Sison v. Ancheta*, GR No. L-59431, 215 Phil. 582 (25 July 1984).

7 Philippine Constitution, Art. III, Sec. 1.

8 Philippine Constitution, Art. III, Sec. 1.

9 Philippine Constitution, Art. III, Sec. 4.

10 Philippine Constitution, Art. III, Sec. 5.

11 Philippine Constitution, Art. III, Sec. 10.

12 Philippine Constitution, Art. III, Sec. 20.

13 Philippine Constitution, Art. VI, Sec. 24.

14 Philippine Constitution, Art. VI, Sec. 27

15 Philippine Constitution, Art. VI, Sec. 28(1).

16 Philippine Constitution, Art. VI, Sec. 28(1).

17 Philippine Constitution, Art. VI, Sec. 28(2).

18 Philippine Constitution, Art. VI, Sec. 28(3).

19 Philippine Constitution, Art. XIV, Sec. 4(3).

20 Philippine Constitution, Art. II, Sec. 10.

and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.”²¹

Inequality becomes more pronounced during a crisis because, quite visibly, the wealthy cope more successfully. They may prosper during national distress while the poor become even more impoverished and entrenched in squalor. The State holds the awesome power to create new taxes, including a wealth tax, not only to address short-term revenue needs but also to fulfill a Constitutional mandate of reducing economic disparities, equitably diffusing wealth for the common good, and advancing a progressive taxation system.

The COVID-19 Pandemic and the Philippine Economy

The COVID-19 pandemic resulted in an abrupt stop to economic activity in the Philippines as the government imposed lockdowns throughout the country to curb the spread of infections.²² In the 2020 Annual Preliminary Estimates of Labor Force Survey (LFS) released in March 2021, the Philippine Statistics Authority (PSA) reported a 10.3-percent increase in the annual unemployment rate in 2020. This was the highest recorded annual unemployment rate since April 2005. This accounted for 4.5 million unemployed Filipinos in the labor force.²³ In April 2021, in their Annual Revisions of the National Accounts of the Philippines, the PSA reported that the annual growth rate of gross domestic product (GDP) for 2020 contracted to -9.6 percent.²⁴

To immediately address the adverse effects of the pandemic among vulnerable segments of the population, Congress enacted Republic Act

21 Philippine Constitution, art, XIII, sec. 1.

22 Economic Research Institute for ASEAN and East Asia, “COVID-19 and Southeast and East Asian Economic Integration: Understanding the Consequences for the Future,” no. 2020-01, (April 2020); cf. Proc. No. 929 s. 2020 (16 March 2020), which imposed an Enhanced Community Quarantine over the island of Luzon.

23 Philippine Statistics Authority, “2020 Annual Preliminary Estimates of Labor Force Survey (LFS),” 8 March 2021, <https://psa.gov.ph/content/2020-annual-preliminary-estimates-labor-force-survey-lfs>

24 Philippine Statistics Authority, “PSA Releases Annual Revisions of the National Accounts of the Philippines,” 8 April 2021, <https://web.archive.org/web/20210805074540/https://psa.gov.ph/content/psa-releases-annual-revisions-national-accounts-philippines>

(RA) No. 11469, or the Bayanihan to Heal as One Act (Bayanihan I), in March 2020. This law, among other measures, empowered the President to provide an emergency subsidy of PhP 5,000 to PhP 8,000 per month for two months, covering April and May 2020, benefiting around 18 million low-income households.²⁵ Subsequently, in September 2020, Congress enacted RA No. 11494, or the Bayanihan to Recover as One Act (Bayanihan II). It expanded funding for programs that would address pandemic challenges such as, but not limited to, the following:

- Health-related responses like the “delivery of uninterrupted immunization programs against vaccine preventable diseases;”²⁶
- “Cash-for-work” and “assistance for the displaced workers;”²⁷
- Department of Transportation (DOTr) programs for public transport employees and commuters;²⁸
- “Subsidies and allowances to qualified students in private and public elementary, secondary, and tertiary education whose families [faced] financial difficulties brought about by work stoppage and closure of establishments;”²⁹
- “Subsidies and allowances for displaced teaching and non-teaching personnel;”³⁰
- Procurement of personal protective equipment (PPEs) and other necessities for health workers, barangay officials, and other frontline workers;³¹
- “Construction of temporary medical isolation and quarantine facilities;”³²

25 Bayanihan to Heal as One Act, RA No. 11469 (24 March 2020)

26 Bayanihan to Recover as One Act, RA No. 11494 (11 September 2020), sec. 4(d).

27 Bayanihan to Recover as One Act, Sec. 4(d)(1).

28 Bayanihan to Recover as One Act, Sec. 4(f)(2).

29 Bayanihan to Recover as One Act, Sec. 4(n).

30 Bayanihan to Recover as One Act, Sec. 4(o).

31 Bayanihan to Recover as One Act, Sec. 4(t).

32 Bayanihan to Recover as One Act, Sec. 4(u)(ix)(4).

- Department of Agriculture (DA) “direct cash or loan interest rate subsidies” to agricultural workers;³³
- Department of Tourism (DOT) programs for “training and subsidies for tourist guides” and tourism workers;³⁴
- Scholarships for qualified vocational students of the Technical Education and Skills Development Authority (TESDA);³⁵
- Department of Education (DepEd) “School-Based Feeding Program, digital education, digital infrastructure, support to alternative learning modalities, and printing and delivery of self-learning modules,”³⁶
- Department of Social Welfare and Development (DSWD) programs such as Assistance to Individuals in Crisis Situations (AICS);³⁷
- Local Government Support Fund;³⁸
- Department of Foreign Affairs (DFA) assistance to nationals in foreign countries;³⁹
- Hiring of contact tracers under the Department of the Interior and Local Government (DILG);⁴⁰ and
- “Payment of interest on new and existing loans secured” by the local government units (LGUs).⁴¹

These programs led to an 11.31-percent year-over-year increase in government spending for 2020, amounting to PhP 429.7 billion, reaching PhP 4.2274 trillion. This increase was attributed to the

33 Bayanihan to Recover as One Act, Sec. 4(ff).

34 Bayanihan to Recover as One Act, Sec. 4(hh).

35 Bayanihan to Recover as One Act, Sec. 4(iii).

36 Bayanihan to Recover as One Act, Sec. 4(pp)(7).

37 Bayanihan to Recover as One Act, Sec. 4(pp)(7).

38 Bayanihan to Recover as One Act, Sec. 4(q).

39 Bayanihan to Recover as One Act, Sec. 10(q).

40 Bayanihan to Recover as One Act, Sec. 10(t).

41 Bayanihan to Recover as One Act, Sec. 10(v).

“implementation of various COVID-19 mitigation and recovery measures,” including those mentioned above.⁴²

In contrast to the dire situation of unemployed, low-income households, and even of the government’s coffers, on 9 September 2021, journalists reported that the wealth of Filipino billionaires shot up by 30 percent amid the pandemic.⁴³ The ultra-rich of the Philippines increased their wealth by about PhP 4 trillion.⁴⁴

On 20 September 2021, six legislators from the House of Representatives filed House Bill (HB) No. 10253, titled “An Act Imposing a ‘Super-Rich Tax’ on Individuals with Net Value Assets Exceeding One Billion Pesos (PhP 1,000,000,000.00), Amending for the Purpose Certain Provisions of the National Internal Revenue Code of 1997 or Republic Act 10963 as Amended.” The bill sought to impose a one percent tax on wealth above PhP 1 billion, two percent on wealth above PhP 2 billion, and three percent on wealth over PhP 3 billion.⁴⁵ The bill, as filed, explains that “Philippine taxation for the longest time has been largely collected from what people pay for, what they consume, or what they earn, and have never implemented a tax on large fortunes.”⁴⁶ The bill aimed for the government to use the generated revenue for “anti-poverty measures and other social programs that would help in close the widening divide between the rich and the poor.”⁴⁷ Similarly, the bill projected billions in revenue from the said tax.

42 Bureau of the Treasury, “National Government Deficit Widens to PhP 1,371.4 Billion in 2020 Full-Year Shortfall at 7.63% of GDP,” 26 February 2021, https://www.treasury.gov.ph/wp-content/uploads/2021/02/COR-Press-Release-December-2020_for-posting_ed.pdf

43 Ralf Rivas, “Filipino Billionaires’ Wealth Shoots Up by 30% During Pandemic—Forbes,” *Rappler*, 9 September 2021, <https://www.rappler.com/business/billionaires-forbes-philippines-rich-list-2021/>

44 Rivas, “Filipino Billionaires’ Wealth Shoots Up”; see also Ralf Rivas, “Filipino Billionaires Grow Wealth Despite Pandemic,” *Rappler*, 7 April 2021, <https://www.rappler.com/business/filipino-billionaires-grow-wealth-coronavirus-pandemic-forbes-list-2021/>

45 Super-Rich Tax Act of 2021, HB No. 10253, 18th Congress, 3d reg. sess., 20 September 2021, Sec. 2.

46 Super-Rich Tax Act of 2021, explanatory note.

47 Super-Rich Tax Act of 2021, explanatory note.

The Department of Finance (DOF) received this new tax measure coldly. DOF Secretary Dominguez claimed that the measure is “self-defeating” and that it would discourage long-term growth and investments.⁴⁸ For additional context, in the midst of the pandemic in October 2020, the DOF, through Secretary Dominguez, stated that the government is not considering new taxes.⁴⁹ However, just a year later, in November 2021, in a seemingly 180 degree shift, Secretary Dominguez announced that new taxes for “relatively untaxed sectors” were needed⁵⁰—but not a wealth tax.⁵¹

This study explores the policy considerations for introducing a wealth tax in the Philippines. It assesses HB No. 10253 to identify gaps within the bill as presently filed and crafted, and to anticipate challenges that Congress must address if it becomes law. Finally, through the lens of social justice, this paper seeks to provide a conversation on the alleged need for taxing the super-rich for the benefit of people experiencing poverty and the alleged risk of capital flight and alleged self-defeating tax method.

HB No. 10253 as Initially Filed: A Tax on the “Super-Rich”

HB No. 10253, as its authors initially filed, introduces three new clauses or amendments to the National Internal Revenue Code (NIRC) of 1997, as amended.⁵² The three clauses are: (1) the individual wealth tax clause; (2) the definition of the super-rich tax clause; and (3) the disposition of the proceeds of the super-rich tax clause. This part

48 Bernadette Nicolas, “Tax for ‘Super Rich’ Self-Defeating—DOF,” *BusinessMirror*, 22 November 2021, <https://businessmirror.com.ph/2021/11/22/tax-for-super-rich-self-defeating-dof/>

49 Anna Leah E. Gonzales, “DoF: New Taxes, Sale of Assets Not Needed,” *Manila Times*, 15 October 2020, <https://www.manilatimes.net/2020/10/15/business/business-top/dof-new-taxes-sale-of-assets-not-needed/780733>

50 Ben de Vera, “New Taxes, Reforms Urged to Restore PH Fiscal Health,” *Philippine Daily Inquirer*, 29 November 2021, <https://business.inquirer.net/335150/new-taxes-reforms-urged-to-restore-ph-fiscal-health>

51 de Vera, “New Taxes”; Nicolas, “Tax for ‘Super Rich.’”

52 Super-Rich Tax Act of 2021; cf. National Internal Revenue Code of 1997, as amended, RA No. 8424 (1 January 1998).

provides stylistic observations on the bill as presently filed. Subsequent portions of this paper will discuss the bill's substance.

The Individual Wealth Tax Clause

Section 2 of HB No. 10253 inserts a new section 27 in the NIRC⁵³ as follows:

Sec. 27. Individual Wealth Tax—

- (A) An individual wealth tax is hereby imposed
- (2) On the net value of all taxable assets of the taxpayer as defined in Sec. 33 of this Code,⁵⁴ *Provided*, That the net value of taxable assets of the taxpayer exceeds one billion pesos (PhP 1,000,000,000.00) as defined in subsection (B) of this Section, derived from each taxable year from all sources within and without the Philippines by every individual citizen of the Philippines residing therein;
 - (3) On the net value of all taxable assets of the taxpayer as defined in Sec. 33 of this Code, *Provided*, That the net value of taxable assets of the taxpayer exceeds one billion pesos (PhP 1,000,000,000.00) as defined in subsection (B) of this Section, derived from each taxable year from all sources within the Philippines by every individual citizen of the Philippines residing outside of the Philippines including overseas contract workers referred to in subsection (c) of Section 23 hereof;⁵⁵ and

53 National Internal Revenue Code, Sec. 27. As amended, this is the first section of Chapter IV, entitled Tax on Corporations. This state of the law places the insertion of HB No. 10253 as a new last section of Chapter III, entitled Tax on Individuals.

54 National Internal Revenue Code, Sec. 33. This section pertains to special treatment of fringe benefit, based on the amendments by RA No. 10963, or the Tax Reform for Acceleration and Inclusion (TRAIN), approved by the President on 24 July 2017. This paper submits that this reference may be erroneous, and what is meant is Section 31 of the NIRC, which defines taxable income.

55 National Internal Revenue Code, Sec. 23(C). This pertains to the taxability of an individual citizen of the Philippines working and deriving income from abroad as an overseas contract worker.

(4) On the net value of taxable assets of the taxpayer as defined in Sec. 33 of this Code, *Provided*, That the net value of taxable assets⁵⁶ of the taxpayer exceeds one billion pesos (PhP 1,000,000,000.00) as defined in subsection (B) of this Section, other than assets subject to tax under subsections (B), (C), and (D) of Section 24 hereof,⁵⁷ derived for each taxable year from all sources within the Philippines by an individual alien who is a resident of the Philippines.

(B) **Rates of Taxable Wealth of Individuals**—The Tax shall be computed in accordance with and at the rates established in the following schedule:

Tax Schedule Effective January 1, 2022 Onwards:

Wealth above PhP 1,000,000,000.00 ... 1%
 Wealth above PhP 2,000,000,000.00 ... 2%
 Wealth above PhP 3,000,000,000.00 ... 3%

For married individuals, the husband and wife, shall compute separately their individual wealth tax based on their respective total taxable assets: *Provided*, That if any asset cannot be attributed to or identified as wealth exclusively accumulated or realized by either of the spouses, the same shall be divided equally between the spouses for the purpose of determining their respective taxable wealth.

Readers can observe that the new insertion pertains to a wealth tax on individuals. As such, an amendment before Chapter IV of the NIRC covers corporate tax. As a matter of style, the way this new insertion references existing sections of the NIRC requires proper adjusting. For example, the clauses cite the current Section 33 of the NIRC, which

56 The word “all” is removed as compared to subparagraphs (1) and (2). This removal may be a typographical error.

57 National Internal Revenue Code, Sec. 24(B–D). Section 24(B) of the NIRC pertains to the rate of tax on certain passive income, such as interests, royalties, prizes, other winnings, and cash or property dividends. Section 24(C) pertains to capital gains from the sale of shares of stock not traded in the Stock Exchange, and Section 24(D) pertains to capital gains from the sale of real property.

pertains to Special Treatment of Fringe Benefit as recently amended by RA No. 10963, or the Tax Reform for Acceleration and Inclusion (TRAIN) Law. This paper suggests that this reference to Section 33 of the NIRC may be erroneous. The authors may have intended to refer to Section 31 of the NIRC, which defines taxable income. A discussion on the substantive distinction of taxing “assets” instead of taxing “income” is in the later portions of this paper. For now, it’s worth noting that Section 27 of the NIRC rightly pertains to taxation of “income” as it is under Title II of the Code titled Tax on Income.

The Definition of the Super-Rich Tax Clause

Section 3 of HB No. 10253 inserts a new Section 33 in the NIRC as follows:⁵⁸

Sec. 33. Super-Rich Tax Defined—The term “Net Value of Taxable Assets” means the market value of assets owned by a taxpayer, real or personal, tangible or intangible, wherever situated, reduced by any debts owed by the taxpayer.

Similar to the earlier observation, the style of writing in this new section of the NIRC needs adjustment, as Section 33 of the NIRC pertains to the special treatment of fringe benefits. This paper submits that the authors of HB No. 10253 may have meant a new Section 32—or one after Section 31 of the NIRC, which defines taxable income. This paper also argues that a new Chapter VI is needed since Chapter V pertains to the computation of taxable income, and defining a super-rich tax appears out of place.

The Disposition of the Proceeds of the Super-Rich Tax Clause

Finally, Section 4 of HB No. 10253 inserts a new Section 292 in the NIRC as follows:⁵⁹

58 The present Section. 33 of the NIRC pertains to the special treatment of fringe benefit under chapter VI on Computation of Gross Income.

59 Section 292 of the NIRC pertains to its separability clause.

Title XI
Chapter II

Sec. 292. Disposition of Proceeds of Super-Rich Tax—The provisions of existing laws to the contrary notwithstanding, one hundred percent (100%) of the total revenues collected from the super-rich tax shall be allocated and used exclusively in the following manner:

- (A) Sixty percent (60%) shall be allocated nationwide, based on political and district subdivisions, for medical assistance, the health facilities enhancement program (HEEP), the annual requirements of which shall be determined by the DOH; and
- (B) Forty percent (40%) shall be allocated to social mitigating measures and investments in: (I) Education, (II) Social Protection, (IV) Employment, (*sic*) and (V) Housing that prioritize and directly benefit both the poor and near-poor households.”

This new section of the NIRC proposed by HB No. 10253 also requires proper adjustment. The authors may have intended to refer to a new Title XI, Chapter II, Section 286, as Section 292 of the NIRC is the separability clause, which allows Courts to declare unconstitutional portions of the NIRC without affecting the other parts of the statute. Section 286 pertains to the special disposition of certain national internal revenue taxes.

Understanding Wealth Taxes: Disambiguation and Foreign Experience

What a Wealth Tax May Mean for the Philippines

From the presentation of HB No. 10253 earlier, we see that the bill does not define “wealth” or “wealth tax.” Instead, it defines “net value of taxable assets” as “the market value of assets owned by a taxpayer, real or personal, tangible or intangible, wherever situated,

reduced by any debts owed by the taxpayer.”⁶⁰ The authors of HB No. 10253 crafted the bill to raise revenue for specific medical assistance and social protection programs. This legislative measure is not the first time Congress heard discussions on a wealth tax.

In the 18th Congress, there is scant consideration for a wealth tax other than the current conversation started by HB No. 10253 in the public forum. Noteworthy, however, during the 17th Congress is the 4 October 2017 interpellation on the Senate floor of Senate Bill (SB) No. 1592, which would later be enrolled to and approved by the President as RA No. 10963, or the Tax Reform for Acceleration and Inclusion (TRAIN) Act. In the said interpellation, Senator Risa Hontiveros, while interpellating on SB No. 1592 with Senator Sonny Angara as sponsor, mentioned the concept of an “unearned wealth tax” that may provide a balance to the perceived tax on the “toiling class,” which TRAIN will introduce.⁶¹ Emphasis is supplied on relevant portions of the interpellation on the Senate floor concerning the concept of an “unearned wealth tax” on 4 October 2017:

Senator Hontiveros:

Perhaps, a bill can be filed to allow the Treasury to capture some of the increments in wealth that property owners will harvest as a result, not primarily of the industry and risk taking, but as a result of the proposed infrastructure programs of government. After all, the Local Government Code already allows for the imposition of special levies for the recovery of up to 40 percent of the cost of projects over five years from landowners whose properties have been benefited by local government units providing of better roads, less flooding or less congestion and this kind of taxes also gaining saliency in many parts of the world. And, since we are concerned to align with regional standards, then it is not wrong to look at lessons from other parts of the world beyond Asia Pacific.

This tax on unearned wealth, Mr. President, is a tax that will provide the necessary counterpoint to the tax on the toiling class so that the balance, as I said at the beginning and now

60 Super-Rich Tax Act of 2021, Sec. 3.

61 *Senate Journal*, 17th Cong., 2nd reg. sess., no. 29 (4 October 2017): 83–84.

in closing, in this corner of the universe might be restored to some extent.

Senator Angara:

Well, I am told that there is an assessment levy by local governments and there is also a capital gains tax--those tend to increase when the value of the properties increase. I must confess, it is my first time to hear the unearned wealth tax. I do appreciate the concern of the lady senator for the growing inequalities. And, I wonder if Stiglitz meant it just on the unearned appreciation on property because I read the similar point. But, the reason why the gap between the haves and the have-nots is increasing so much is because whereas before rich people would just earn on capital investment, as opposed to labor investment. Meaning, they will just sit back and let their investments earn. The trend they are seeing now is that the rich people tend to have wealth from both capital and labor. Meaning, they earn a lot from their labor but, at the same time, they earn a lot more from their capital. And they have, I forgot the term, things like intellectual property, meaning, they do not do anything but if they own intellectual property and it is used, they are already earning income.

So, there have been varied responses to that by various jurisdictions and some have responded by placing higher capital income taxes in response to the growing. If we see the growing, the 1 percent as Stiglitz would put it, a lot of them belong to the financial sector. So, we have seen those kinds of taxes in Europe, I think, in particular, Mr. President.

Senator Hontiveros:

Well, Mr. President, certainly that could be one example or form of a tax on unearned wealth, otherwise, not just the description of Stiglitz but also the prediction of international NGOs like Oxfam International will come to pass, that if we do not change the way wealth is owned and earned and better yet redistributed in the different societies in the world, then by year--is it 2020 or 2050 that Oxfam International was projecting for that 1 percent of the world population alone will earn 50 percent of the world's wealth? and certainly, that is not the restoring of the balance in any corner of the Universe that we are looking toward.

So, I just like to, at this point, Mr. President, thank very much the good sponsor for entertaining my questions and his openness to possible amendments at the proper time so that we can maximize the possibility that TRAIN and our future tax measures could not turn a blind eye to the situation of poor Filipinos, let alone exacerbate their situation but, in fact, be among the policy instruments to redistribute wealth and in that way to spur a sustainable development.

Thank you, Mr. President, and thank you very much good sponsor. (Emphasis supplied)

What can be observed from the exchange on the Senate floor provided above is that wealth taxes may take different forms, and Congress may design a tax on the appreciation of property, even without a transfer or sale. This tax specifically pertains to the appreciation of property values as a result of a government project.

When designing this “wealth tax” or tax on the “super-rich,” there should be careful consideration in clarifying its scope. In this regard, Congress may further refine HB No. 10253 to categorize what it intends to tax more precisely. As filed, HB No. 10253 imposes a tax on “assets” while placing such clauses together with portions of the NIRC imposing a tax on “income.”

The Rationale for a Wealth Tax in the Philippine Context

The rationale for HB No. 10253 is primarily revenue generation to defray the costs of the COVID-19 pandemic.⁶² However, as shown earlier in the interpellation of the Senate version of the TRAIN Act (Senate Bill [SB] No. 1592), a wealth tax can have as its rationale taxing passive, unearned growth or appreciation in the value of even idle assets.⁶³

A reading of the explanatory note of HB No. 10253 suggests a disdain for how the super-rich appear to flaunt their wealth amidst the widespread poverty and anguish caused by the pandemic. This paper

62 Super-Rich Tax Act of 2021, exploratory note, Sec. 4.

63 *Senate Journal*, 17th Cong., 2nd reg. sess., no. 29 (4 October 2017): 83–84.

submits that the authors of the measure may have sentiments similar or akin to this Civil Code provision: “Thoughtless extravagance in expenses for pleasure or display during a period of acute public want or emergency may be stopped by order of the courts at the instance of any government or private charitable institution.”⁶⁴ However, imposing a wealth tax will require a more long-term view than mere reactionary motivations.

In refining the rationale for HB No. 10253, Congress may restructure its rationale from a long-term perspective, not confined by the parameters of solely addressing the challenges of the pandemic. For example, readers may consider the following policy declarations:

- Promote tax measures that may reduce economic inequalities and raise revenue to finance projects that can address the costs brought about by the challenges of the COVID-19 pandemic;
- Evolve a progressive system of taxation, wherein increases in property or asset values due to the positive effects of government projects and infrastructure may validly be subject to a fair tax; and
- Strike a balance between promoting growth in industry and investment on the one hand, and disincentivizing idle assets on the other hand.

As Congress considers such policies as guideposts, a refined version of HB No. 10253 may focus more on the objectives sought to achieve in imposing a wealth tax. Hopefully, as more discussions on this matter are explored in Congressional debates, and as the rationale for imposing such a wealth tax is seen both in the short-term and long-term perspectives, we can hear a more nuanced take on wealth taxes for the Philippine context. This can categorize wealth more accurately, not only in terms of income but also in terms of assets that may cover a multitude of classes such as jewelry, shareholdings, and other similar properties. These assets may see an appreciation of the captured value, making them liable to a wealth tax. The Philippines can

64 Civil Code, as amended, RA No. 386 (18 June 1949), Art. 25.

look at the example of other jurisdictions worldwide to learn how they implemented and imposed wealth taxes.

Exploring “Wealth Taxes” in Other Jurisdictions

As of 2017, only four jurisdictions impose a wealth tax based on a 2018 study published by the Organisation for Economic Co-operation and Development (OECD): Switzerland, Norway, Spain, and France.⁶⁵

Switzerland

Switzerland imposes a personal net wealth tax called the *Vermögenssteuer*, which was gradually introduced in all country cantons as early as 1840 to 1970. Single taxpayers are exempt up to €67,500, while married couples are exempt up to €135,100 based on 2017 values. This wealth tax applies to all asset classes and accounted for 3.8 percent of Switzerland’s total tax revenue in 2017.⁶⁶

Norway

Norway imposed a personal net wealth tax called the *Formuesskatt*, which was introduced as a national tax in 1892. Single taxpayers are exempt up to €157,833, while married couples are exempt up to €315,666 based on 2017 values. This wealth tax applies to all asset classes and accounted for 1.1 percent of Norway’s total tax revenue in 2017.⁶⁷

Spain

Spain imposed a personal net wealth tax called the *Impuesto sobre el Patrimonio*, which was introduced as a national tax in 1977, repealed in 2008, and reinstated in 2011. Single taxpayers are exempt up to €700,000, while married couples are exempt up to €1,400,000 based on 2017 values. A person’s net wealth comprises all assets and economic

65 Organisation for Economic Co-operation and Development, *The Role and Design of Net Wealth Taxes in the OECD* (Paris: OECD Publishing, 2018): 15–25, <https://doi.org/10.1787/9789264290303-en>

66 Organisation for Economic Co-operation and Development, pp. 15–25. €1 = PhP 56.55 (as of 16 December 2021).

67 Organisation for Economic Co-operation and Development, pp. 15–25.

rights they own worldwide, with the deduction for encumbrances that decrease the values of these assets and debts or obligations. This wealth tax accounted for 0.01 percent of the total tax revenue of Spain in 2017.⁶⁸

France

France imposed a personal net wealth tax called the *Impôt de solidarité sur la fortune*, which was introduced as a national tax in 1982, repealed in 1986, and reinstated in 1989. Single or married taxpayers are exempt up to €1,300,000 based on 2017 values. All asset classes are subject to the wealth tax. This wealth tax accounted for 2.79 percent of the total tax revenue of France in 2016.⁶⁹

Based on these four examples, this paper shows that the asset classes used as the basis for the wealth tax and the exemption range for those liable to pay the tax may vary. Additionally, this paper also observes that these taxes generate a single-digit percentage of the country's total tax revenue. The OECD notes that the motivation for imposing these types of taxes often includes considerations of equity and the desire to bridge the wealth gap between the rich and the poor as reasons for enactment.⁷⁰

This paper states that the wealth taxes from these jurisdictions materialized from legal contexts that differ significantly from that of the Philippines. Inasmuch as this paper can state that all four countries have similar democratic and republican contexts, they each possess distinct historical and legal nuances that likely played a role in motivating their taxing authorities to impose such taxes on their wealthiest citizens. Nevertheless, this paper contends that the unique legal evolution of social justice in the Philippines can provide a distinctly Filipino impetus in motivating the political bodies of Congress and the Presidency. This motivation may lead them to consider and perhaps advocate for a wealth tax in the Philippines.

68 Organisation for Economic Co-operation and Development, pp. 15–25.

69 Organisation for Economic Co-operation and Development, pp. 15–25.

70 Organisation for Economic Co-operation and Development, pp. 15–25.

A Social Justice Lens in the Philippine Legal Context

Using taxes to create a more equitable society is a familiar concept in the Philippines. In *National Power Corporation v. City of Cabanatuan*, the Supreme Court held the National Power Corporation (NPC), a government-owned and controlled corporation, liable for franchise taxes to the local government. In the decision, the Supreme Court gave the following disquisition on how taxation has become a tool to realize social justice and the equitable distribution of wealth:

Taxes are the lifeblood of the government, for without taxes, the government can neither exist nor endure. A principal attribute of sovereignty, the exercise of taxing power derives its source from the very existence of the state whose social contract with its citizens obliges it to promote public interest and common good. The theory behind the exercise of the power to tax emanates from necessity; without taxes, government cannot fulfill its mandate of promoting the general welfare and well-being of the people.

In recent years, the increasing social challenges of the times expanded the scope of state activity, and taxation has become a tool to realize social justice and the equitable distribution of wealth, economic progress and the protection of local industries as well as public welfare and similar objectives.⁷¹

Similarly, in *Dumaguete Cathedral Credit Cooperative v. Commissioner of Internal Revenue*, the Supreme Court interpreted withholding taxes in the NIRC as applied to interest from savings and time deposits of members of a cooperative. The Supreme Court held that “cooperatives, including their members, deserve a preferential tax treatment because of the vital role they play in the attainment of economic development and social justice.”⁷²

Social justice, as understood in the Philippine legal context, is inevitably rooted in the characterization provided by Justice Laurel as

71 *National Power Corporation v. City of Cabanatuan*, GR No. 149110, 449 Phil. 233 (9 April 2003).

72 *Dumaguete Cathedral Credit Cooperative v. Commissioner of Internal Revenue*, GR No. 182722, 624 Phil. 650 (22 January 2010).

*ponente*⁷³ in *Calalang v. Williams*, where the Supreme Court defined the concept of “social justice” as:

(neither) communism, nor despotism, nor atomism, nor anarchy,” but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*. Social justice, therefore, must be founded on the recognition of the necessity of interdependence among divers and diverse units of a society and of the protection that should be equally and evenly extended to all groups as a combined force in our social and economic life, consistent with the fundamental and paramount objective of the state of promoting the health, comfort, and quiet of all persons, and of bringing about “the greatest good to the greatest number.”⁷⁴

However, in laying down the beautiful structure of these words, readers must note that the Supreme Court in *Calalang* made such an interpretation to rule against the petitioner who argued that a city regulation will not produce an equitable outcome for those who drive or make a living from animal-drawn carriages.⁷⁵ This paper argues that

73 In the Philippine Supreme Court, a *ponente* is an associate justice assigned to write the decision of the majority in court decisions en banc.

74 *Calalang v. Williams*, GR No. 47800, 70 Phil. 726 (2 December 1940). Petitioner Maximo Calalang cites “social justice” as a legal basis to ask the courts to invalidate the rules regulating the hours of activity for animal-drawn vehicles which, according to Calalang, results to the detriment of animal-drawn vehicle owners and the riding public. The Supreme Court, however, held that the promotion of social justice is to be achieved not through a mistaken sympathy towards any given group.

75 *Calalang v. Williams*.

social justice in *Calalang* is a lens or mindset that should not necessarily and automatically side with the economically disadvantaged.

Nevertheless, the concept of social justice evolved in a more progressive direction from where *Calalang* as precedent left off. The exact contour and extent to how social justice has progressed are not yet clearly scoped. However, the Constitution itself has thus enshrined social justice in key clauses and as a major framework and theme of the charter itself. In Sec. 10 of Article II on State Policies, the Constitution provides: “The State shall promote social justice in all phases of national development.”⁷⁶

Article XII (National Economy and Patrimony), Section 15 of the Constitution mandates Congress to create “an agency to promote the viability and growth of cooperatives as instruments for social justice and economic development.”⁷⁷ Hence, in 1990, Congress enacted RA No. 6939, creating the Cooperative Development Authority.⁷⁸

Finally, Article XIII of the Constitution itself is entitled Social Justice and Human Rights, with the following overarching sections:

Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

Section 2. The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.⁷⁹

76 Philippine Constitution, Art. II, Sec. 10.

77 Philippine Constitution, Art. XII, Sec. 15.

78 An Act Creating the Cooperative Development Authority, RA No. 6939 (10 March 1990). This act was repealed by the Cooperative Development Authority Charter of 2019, RA No. 11364 (8 August 2019).

79 Philippine Constitution, Art. XIII, Secs. 1–2.

The people gave Congress the heavy mandate of “giving the highest priority to enacting measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove inequalities by equitably diffusing wealth.”⁸⁰ Commissioner Nieva, in her sponsorship of these clauses in the Constitutional Commission, further elaborates on how readers can understand social justice in the Constitution:⁸¹

Commissioner Nieva:

Madam President, our Committee on Social Justice is now presenting Committee Report No. 34 which is contained in Proposed Resolution No. 534, to wit: RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A SEPARATE ARTICLE ON SOCIAL JUSTICE.

Our Committee hopes that social justice will be the centerpiece of the 1986 Constitution. The rationale for this is that social justice provides the material and social infrastructure for the realization of basic human rights the enhancement of human dignity and effective participation in democratic processes. Rights, dignity and participation remain illusory without social justice.

Our February 1986 Revolution was not merely against the dictatorship nor was it merely a fight for the restoration of human rights; rather, this popular revolution was also a clamor for a more equitable share of the nation’s resources and power, a clamor which reverberated in the many public hearings which the Constitutional Commission conducted throughout the country.

If our 1986 Constitution would enshrine the people’s aspirations as dramatically expressed in the revolution and ensure the stability, peace and progress of our nation, it must provide for social justice in a stronger and more comprehensive manner than did the previous Constitutions.

80 Philippine Constitution, Art. XIII, Secs. 1–2.

81 *Records of the Constitutional Commission*, no. 46 (2 August 1986).

Social justice, in its substance and as a reflection of the needs of Philippine society, must include the following: provision for basic needs, equalization of access to productive resources and promotion of people's organizations. In a nation where more than half of the people are below the poverty line, the first target of a social justice measure should, therefore, be provisions, direct and indirect, for adequate responses to these basic needs such as health, shelter and education. It is not the intent, however, that the State will take away the initiative from the people and will do everything. This is against the principle of enhancing human dignity. The State should only provide, in most cases, the necessary and sufficient condition for the people to take the active role. And one such important condition is the democratization of productive resources. In a very real way, inequality in the sharing of the fruits of development can be traced to the concentration of productive resources in the hands of a very small minority, and this is especially true of land and capital resources. There-fore, access to these resources must be democratized if the nation is to permanently achieve social justice. Here, the State must go beyond merely affirming the social character of property or the concept of stewardship for the common good. It must also promote measures to realize this democratization; and models and experiences also of other countries abroad in land reform, cooperatives, profit sharing and workers' participation in industry are not lacking. (Emphasis supplied)

In using a social justice lens in the Philippine context, one needs to move further from *Calalang* and instead proactively imbibe the vibrant concept of social justice that permeates and lives in the Constitution. *Calalang* provides a sober application that maintains a tempered assessment of social justice, which does not necessarily entail siding automatically with the economically disadvantaged. However, the extent by which the Constitution has progressed or paved the way to move forward from *Calalang* remains at an exciting forefront. There are still boundaries that still need to be explored.

An Exercise in Approximation: Possible Refinements on the Envisioned Wealth Tax Amidst Anticipated Challenges

Anticipating Constitutional Challenges to the Proposed Wealth Tax and Possible Refinements

As presently filed, the wealth tax envisioned by HB No. 10253 requires Congressional refinement to address possible constitutional challenges. The Constitution limits the State’s power to tax.⁸² Taxes must be uniform, equitable,⁸³ and must not be confiscatory or arbitrary.⁸⁴ They must be “exercised reasonably and in accordance with the prescribed procedure.”⁸⁵

The limitation placed on Congress in the exercise of its taxing power is provided in Sec. 28(1) of Article VI of the Constitution, which states that: “The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.”⁸⁶

In *Churchill v. Concepcion*, the Supreme Court instructs that “uniformity in taxation means that all taxable articles or kinds of property of the same classes shall be taxed at the same rate. A tax is uniform when it operates with the same force and effect in every place where the subject of it is found.”⁸⁷ This paper can illustrate the difference in the composition of assets within the Philippines based on HB No. 10253, as filed in the 18th Congress in the table below:

82 *Chamber of Real Estate and Builders’ Association, Inc. v. Romulo*, GR No. 160756, 628 Phil. 508 (9 March 2010).

83 Philippine Constitution, Art. VI, Sec. 28(1).

84 *Commissioner v. Algue, Inc.*

85 *Commissioner v. Algue, Inc.*

86 Philippine Constitution, Art. VI, Sec. 28(1).

87 *Churchill v. Concepcion*, GR No. 11572, 34 Phil. 969 (22 September 1916).

Table 1: Net Value of Taxable Asset as applied per taxable person under HB No. 10253

Taxable Person	Sources of “Net Value of Taxable Asset”
Resident Citizen	Derived within and outside the Philippines
Nonresident Citizen	Derived within the Philippines
Resident Alien	Derived within the Philippines

The difference in the composition of assets within the Philippines between resident aliens and resident and nonresident citizens is discriminatory in favor of the former. It may thus fail the standard of uniformity. Hence, Congress may consider taxing resident and nonresident citizens based on assets within and outside the Philippines.

Congress should consider this categorization to address the situation that a non-resident citizen can convert some or most of their assets in the Philippines to avoid the tax on assets HB No. 10253 envisions imposing.

Similarly, HB No. 10253, as crafted, may have to be refined to address anticipated challenges in the due process and equal protection clauses of the Constitution. Article III, Section 1 of the Constitution provides that “[n]o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.”⁸⁸

HB No. 10253 presently seeks to tax net accumulations on assets. This accumulation has happened for several years. To impose such a tax liability on the act of the owner of the assets would be a retroactive imposition, violative of the due process clause, on accumulations or growth of assets that may have happened through the years.⁸⁹ This paper submits that a fairer imposition, which may address the due process clause, is to design the tax in a way that requires the super-wealthy taxpayer to make an initial declaration of wealth or assets. Congress may base the tax burden on accumulations or growth of the

88 *Churchill v. Concepcion*.

89 *Churchill v. Concepcion*; cf. Civil Code, Art. 4.

declared assets in subsequent regular intervals, such as, for example, an annual wealth declaration akin to the annual income tax declaration. The OECD has also considered this design to have worked in other jurisdictions.⁹⁰

Anticipating Institutional Challenges to the Proposed Wealth Tax and Possible Refinements

HB No. 10253 will pose administrative challenges and compliance issues with the Bureau of Internal Revenue (BIR). Monitoring and assessing assets would incur additional costs and require additional human resources, considering the numerous aspects of the taxpayer's wealth. To address this, HB No. 10253 may benefit from including clauses that will provide fiscal support for BIR to create the necessary *plantilla*⁹¹ positions dedicated to obtaining revenues from this tax on assets.

The valuation of worldwide assets of resident citizens poses an administrative challenge for the tax authority. It stresses the need for an exchange-of-information agreement with other countries to gather information necessary to identify the tax base.⁹² Hence, Congress may consider designing a tax regime for HB No. 10253, incorporating a system of initial wealth declaration and self-assessment with stringent penalty clauses in cases of non-declaration as well as misdeclaration of wealth. This self-assessment may include the possibility of asset seizure, following due notice and hearing, for wealth not declared by super-wealthy taxpayers, as well as expropriation with just compensation based on the declared value of an asset wrongly declared to reduce tax liability.

Such a system design will address the need for more reliable information for wealth valuation because the information will be

90 *Churchill v. Concepcion*; Organisation for Economic Co-operation and Development, "The Role and Design of Wealth Taxes," p. 89.

91 The term *plantilla* refers to regular and permanent job positions in government agencies in the Philippines.

92 Organisation for Economic Co-operation and Development, p. 89.

newly acquired based on the starting date of the initial filing of wealth declarations by the individuals liable for the tax.

Anticipating Possible Economic Challenges to the Proposed Wealth Tax and Possible Refinements

There is a risk of capital flight if Congress passes the wealth tax in the Philippines, as what happened in countries with wealth taxes before repealing these measures. This risk primarily arises from increased capital mobility and access to tax havens from other countries.⁹³ Here, Congress may consider exploring legislative pathfinding by the United States, which is presently studying US Senate Bill No. 510, or the Ultra-Millionaire Tax Act of 2021, during its 117th Congress from 2021 to 2022.⁹⁴ The bill envisions billions of dollars of investment in modernizing the Internal Revenue Service (IRS) to equip the agency with new tools to determine the value of assets and tighten and expand rules on the valuation or appraisal of assets.⁹⁵ Similarly, an “exit tax” is envisioned to ensure that individuals who renounce their US citizenship will not be subject to the proposed tax regime.⁹⁶

Other than an “exit tax,” which US senators are considering in their Ultra-Millionaire Tax bill, other solutions in addressing “super-rich” capital flight should consider the following:

- “a rule that continues to impose a tax on all assets for a certain period after the residency status changes,” or
- a rule that continues “to impose a tax on all assets if tax avoidance was a primary motivation for the person’s change in residency.”⁹⁷

93 Organisation for Economic Co-operation and Development, pp. 89–90; Nicolas, “Tax for ‘Super Rich.’”

94 Ultra-Millionaire Tax Act of 2021, US S. 510, 117th Cong., 1st sess. (1 March 2021).

95 Ultra-Millionaire Tax Act of 2021.

96 Ultra-Millionaire Tax Act of 2021.

97 Rebecca S. Rudnick and Richard K. Gordon, “Taxation of Wealth,” in *Tax Law Design and Drafting*, ed. Victor Thuronyi, vol. 1. (Washington, DC: International Monetary Fund, 1996), 311.

Rudnick and Gordon, in exploring exit tax clauses in similar wealth tax measures, note that “[b]oth measures suffer from the limitation that it is generally difficult for a country to enforce its tax laws in the territory of another country. An alternative would be to impose a tax at a much higher rate in the year of expatriation.”⁹⁸

Anticipating Other Avoidance or Evasion from the “Super-Rich” and Possible Remedies

While capital flight is a significant economic consideration when Congress determines the imposition of a wealth tax, it is not the only means through which the super-rich can legally avoid or unlawfully evade the wealth tax. The super-rich may also utilize, among others: foundations, trusts, joint ventures, investment in life insurance, and hiding assets abroad.⁹⁹

Avoiding the Wealth Tax

1. Donation to a Foundation

To avoid or minimize wealth taxes, the super-rich may donate to a nonstock, nonprofit charitable, educational, or religious foundation where they and their heirs may have controlling interests. Not only would this donation be deductible from the donor’s gross income,¹⁰⁰ but this would also remove the net taxable wealth liable to any future wealth tax, provided that such foundation is accredited “in accordance with rules and regulations promulgated by the Secretary of Finance upon recommendation of the Commissioner [of Internal Revenue].”¹⁰¹ This avoidance scheme may be attractive since such donation is exempt from donor tax.¹⁰²

98 Rudnick and Gordon, p. 311.

99 DM Boo, “Study on the Tax Avoidance and Evasion Schemes on the Transfer of Real Property” *NTRC Tax Research Journal* 17, no. 4 (2005).

100 National Internal Revenue Code, Sec. 34(H).

101 National Internal Revenue Code, Sec. 34(H)(2)(c).

102 National Internal Revenue Code, Sec. 101(2).

Congress may consider this a valid trade-off to incentivize donations to accredited non-stock, non-profit charitable, educational, or religious foundations. It bears noting that Congress ensured only “accredited” foundations might qualify for this tax avoidance strategy.¹⁰³

2. Creation of an Irrevocable Trust or Transfers to Family Members or Proxies

According to the Civil Code, “[a] person who establishes a trust is called the trustor; one in whom confidence is reposed as regards property for the benefit of another person is known as the trustee; and the person for whose benefit the trust has been created is referred to as the beneficiary.”¹⁰⁴ Creating an irrevocable trust means that the trustor virtually cedes his interests over the trust property in favor of the beneficiary. Hence, the trustor may utilize irrevocable trusts to lessen the wealth base that may be liable to the proposed wealth tax. This utilization may cover donations or transfers to family members or proxies with a trust relationship established such that it is challenging to determine beneficial ownership of an asset even as the title is officially transferred to family members to distribute wealth and minimize possible wealth tax liability.

Here, Congress may consider treating trusts as “see-through” entities because the trustee must legally identify the settlor or the beneficiaries to the tax authorities. The super-rich may also be required in their annual or periodic wealth tax return filing to disclose assets that may be held by a trust or by trusts for the benefit of the super-rich.¹⁰⁵

3. Formation of a Joint Venture

The super-rich may also utilize the formation of a joint venture (JV) to avoid the proposed wealth tax. A JV or consortium “formed to undertake construction projects or engage in petroleum, coal, geothermal, and other energy operations pursuant to an operating consortium agreement under a service contract with the Government”

103 National Internal Revenue Code, Secs. 34(H), 101(2).

104 Civil Code, Art. 1440.

105 Organisation for Economic Co-operation and Development, *The Role*, p. 90.

is exempt from income tax and likewise not subject to withholding of creditable tax at source.¹⁰⁶ The JV is likewise exempt from payment of capital gains tax, value-added tax, and documentary stamp tax under Section 196 of the NIRC.¹⁰⁷

4. Investing in Life Insurance Policies

If the super-rich “holds a large sum of cash on bank deposit accounts, the money will be included in the wealth tax calculation, along with the value other assets.” However, the super-rich can “reduce” this exposure by “investing in life insurance policies” that the law excludes from gross income.¹⁰⁸ Congress may consider including life insurance policies in taxable wealth since wealth taxes are not confined to income but may also cover assets. Similarly, Congress may consider imposing a limit or floor on the life insurance proceeds that will not be liable to the wealth tax.¹⁰⁹

Evading the Wealth Tax

1. Hiding Assets Abroad

The super-rich may unlawfully withhold information and hide taxes abroad due to “[t]he combination of increasing capital mobility and lack of transparency.”¹¹⁰ Tax havens abroad entice the super-rich to “move their capital” or assets “offshore without declaring it.”¹¹¹ One possible remedy is for Congress to introduce safeguards such as empowering the Department of Foreign Affairs (DFA) to enter into Automatic Exchange of Information (EOI) agreements to reduce tax evasion opportunities.¹¹²

106 National Internal Revenue Code, Secs. 22(B), 57(B).

107 National Internal Revenue Code, Sec. 196.

108 National Internal Revenue Code, Sec. 32(B)(1).

109 Organisation for Economic Co-operation and Development, *The Role*, p. 91.

110 Organisation for Economic Co-operation and Development, p. 92.

111 Organisation for Economic Co-operation and Development, p. 92.

112 Organisation for Economic Co-operation and Development, p. 92.

2. Reduction of Tax Base or Non-Filing of Wealth Tax Return

As stated in earlier discussions, Congress may consider a self-assessment and personal filing of wealth tax returns by the super-rich. This self-assessment may encourage the super-rich to underdeclare their assets to reduce their tax liability. Congress may address this by introducing a mechanism for expropriating wrongly declared or underdeclared assets. In this mechanism, the State may acquire the asset with the declared value in the wealth tax return. This expropriation measure may disincentivize fraud in filing returns as the State may acquire the assets in a manner disadvantageous to the super-rich. Similarly, it may be considered fraud to evade or defeat the wealth tax.¹¹³

As an aside, this paper submits that it may not be prudent for the super-rich to completely disregard the obligation to file their wealth tax return. Because they are few, the super-rich is relatively easy for tax collecting agencies to monitor and penalize the non-filing of returns regularly.¹¹⁴

3. Bribery or Connivance with Concerned Officials

One way for the super-rich to evade paying taxes is to bribe or connive with the assessors, examiners, and collectors of the Bureau of Internal Revenue who handle their case. The law punishes such practices through several statutes, such as the Anti-Graft and Corrupt Practices Act,¹¹⁵ the Code of Conduct and Ethical Standards for Public Officials and Employees,¹¹⁶ the Revised Penal Code,¹¹⁷ and the NIRC.¹¹⁸ Congress may consider insulating or incentivizing tax-collecting officials with

113 National Internal Revenue Code, Sec. 254.

114 National Internal Revenue Code, Sec. 255.

115 Anti-Graft and Corrupt Practices Act, as amended, RA No. 3019 (17 August 1960).

116 Code of Conduct and Ethical Standards for Public Officials and Employees, RA No. 6713 (20 February 1989).

117 Revised Penal Code, as amended, Act No. 3815 (8 December 1930), art. 210. this article defines direct bribery.

118 National Internal Revenue Code, sec. 269. This section covers public officers.

competitive salaries to implement the proposed wealth tax properly. In any case, the proper rollout of the wealth tax necessitates that the government has the proper human resources to assess and collect the wealth tax liability of the super-rich.

Conclusion

HB No. 10253, as filed, is observably in rough shape and will require thorough refinement to become a measure that can face tough challenges, such as the Secretary of Finance publicly announcing that such a tax will be self-defeating. While constitutional challenges may be addressed, the challenge lies more in designing a wealth tax system that will address anticipated administrative costs, tax avoidance or evasion by the super-rich, and capital flight. While a social justice lens invites sober dissection of issues pertaining to conflicting interests of persons in varying economic classes or segments, the evolution of the principle of social justice in the Constitution remains vibrant. It may direct a path that can accommodate tax measures like HB No. 10253 or even provide fuel or impetus for its passage into law.

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