

PGDNL 2017
Memo Assignment
10th July, 2017

1. Memo: Outline

To:

From:

Date:

Subject:

- 1) Background Facts:**
- 2) Issues- Question(s) presented:**
- 3) Brief Answer:**
- 4) Relevant Provisions of the Law:**
- 5) Analysis:**
- 6) Conclusion**
- 7) Respectfully submitted,**
- 8) Honour Code:**

2. Background Facts:

- Post award of the constitutional tax case judgment by the Supreme Court, the Government implemented fiscal incentives without its endorsement by the Parliament. Druk Phuensum Tshogpa (DPT) Fiscal Incentives 2010-2015- total estimated revenue waives amounts to Nu. 4.844 million. It also includes Nu. 186.59 million-on account of Sales Tax and Customs Duty exemption for Hotel Industries granted from 17th April, 2013 to 31st December, 2015.
- The present government, People's Democratic Party continued to implement the fiscal incentives previously granted by the DPT Government. The total estimated revenue waived from 1st January, 2016 till 7th May, 2017 amounts to Nu. 42.36 million.
- The Finance Minister, in line with the Fiscal Incentives (FI) of 2010 presented the 2016 fiscal incentives in the Parliament as a report for information along with the Budget.
- The fiscal incentives 2016 have been categorized as Direct Tax Incentives and Indirect Tax Incentives in both general and sector-specific incentives. Some of the incentives offered under the Fiscal Incentive 2016 include tax holiday, reinvestment allowance, income exemption, Tax Deducted at Source exemption and Sales Tax and Customs Duty exemptions. Performance based incentives in the form of tax rebates, tax holiday, sales tax and customs duty exemptions are also offered in the Fiscal Incentive, 2016. The newly launched fiscal Incentives is said to supersede the previous incentives and come into force from 1st January 2016, unless specified otherwise.
- The Fiscal Incentive 2016 mostly restates similar clauses mentioned in the Fiscal Incentive 2010 with few alterations in the duration of tax breaks. New provisions featured are separate inclusion of mining and energy sector, under specific incentives, to promote energy efficient sectors and investment in research and development. The Fiscal Incentive 2016 is aimed at creating conducive environment for doing business by providing a transparent and suitable tax regime.

- When the Fiscal Incentives 2016 was presented as a report in the parliament, concerns were raised against it on the grounds that Fiscal incentives ought to be tabled before the Parliament as a money bill for endorsement prior to its implementation, which in fact was not complied by the Government.
- The Government as an afterthought tabled the fiscal incentives unilaterally approved on 1st January, 2016 during the Spring Session of the Parliament on 7th May, 2017, and the Speaker using his prerogative declared it to be a 'money bill'.
- As a consequence, many entities started voicing their concerns against the Fiscal Incentives. It was also reported in print media that one of the registered political parties of our country, namely, Druk Nyamrup Tshogpa, may file a constitutional case against the ruling government.

3. Exercise: Based on these facts, write a memorandum covering, but not limiting to, the following issues: Also, identify and critically analyze issues and process in Parliament- provide a legal analysis (IRAC)- Methodology of legal skill at case and statute analysis and rules of constitutional application and interpretation and the doctrine of stare decisis (precedent).

- i. Whether the implementation of the Fiscal Incentives from January 2016, prior to it being endorsed by the Parliament violates the provisions of the Constitution of Bhutan? And whether its retroactive application is justifiable?
- ii. As the fiscal incentives has been later declared as a money bill and thereafter tabled in Parliament and passed accordingly, what action should be taken as regards the taxes exempted from the date the fiscal incentives was unilaterally declared by the Government till the date it was tabled in the Parliament? Are the tax payers liable?
- iii. Whether Druk Nyamrup Tshogpa has the legal standing to file a constitutional case against the Government in the present matter?
- iv. Are both the parties in Parliament, the Ruling and the Opposition, liable for the violation of the Constitution?
- v. Should the Court be involved in issuing directives in the fiscal incentive matter as proposed by the Speaker of the National Assembly?

***Due Date for the submission of the assignment: 31st July, 2017.**