Digest of Select Supreme Court Decisions on Taxation for the Calendar Year 2022*

I. National Internal Revenue Code of 1997, as Amended

A. Organization and Function of the Bureau of Internal Revenue

Republic of the Philippines, Petitioner, vs. Robiegie Corporation, Respondent.
Third Division | G.R. No. 260261 | 03 October 2022

Doctrine: *The power of a Bureau of Internal Revenue (BIR) revenue officer to conduct taxpayer investigations flows from a validly issued Letter of Authority (LOA), which is the statutorily defined modality for the delegation of the investigatory powers vested in the Commissioner of Internal Revenue (CIR) by law. Thus, the reassignment of a taxpayer investigation to a different revenue officer must also be made pursuant to a LOA.*

Facts: The BIR issued a LOA that authorized Revenue Officer (RO) David to examine Robiegie's books of accounts and other accounting records for the Taxable Year (TY) 2008. A Memorandum Referral was issued, reassigning the LOA to RO Dy with notice to Robiegie. The Regional Director of BIR-Manila issued a Preliminary Assessment Notice (PAN) to Robiegie, informing the latter of the findings of the investigation conducted by RO Dy. Thereafter, BIR-Manila issued a Formal Letter of Demand (FLD) and Final Assessment Notices (FANs). After failing to find any leviable or garnishable property of Robiegie, the Republic, through the BIR, filed a complaint before the Court of Tax Appeals (CTA) to collect the claimed deficiency taxes.

The CTA Second Division dismissed the complaint on the ground that the assessments are null and void for lack of authority of RO Dy to investigate Robiegie's accounts. The Republic filed a motion for reconsideration, which the CTA Second Division denied, stating that the reassignment of an RO is not prohibited. However, it must also be made by a BIR official who is authorized to issue and sign a LOA—Regional Directors, Deputy Commissioners, and Commissioner, in compliance with the general principles on LOAs under Section 6(A) of the National Internal Revenue Code (NIRC) of 1997 in relation to Revenue Memorandum Order (RMO) No. 43-90.

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However, in the case at bar, the Memorandum Referral was issued and signed only by the Revenue District Officer. The CTA En Banc affirmed the ruling of the Second Division.

Issue: Whether the assessments issued against Robiegie are valid.

Ruling: No. The assessments against Robiegie are **invalid** as they are based on an unauthorized investigation into its account. In G.R. No. 222743[2], the Court held that a LOA is the authority given to the appropriate RO assigned to perform assessment functions. It empowers or enables said RO to examine a taxpayer's books of account and other accounting records to collect the correct amount of tax. Based on Sec. 6(A) of the NIRC of 1997, an examination of the taxpayer cannot ordinarily be undertaken unless authorized by the CIR himself or his duly authorized representative through a LOA. Likewise, Sec. 10(c) of the same Code directly authorizes the BIR Revenue Regional Directors to "[i]ssue LOAs for the examination of taxpayers within the region," subject to regulation by the CIR. In relation thereto, Sec. C(5) of RMO 43-90 specifically requires that any re-assignment/transfer of cases to another RO shall require the issuance of a new LOA.

The issuance of a new LOA as a requisite for the valid reassignment of a tax investigation to a different RO is not irreconcilable with the "one LOA per taxpayer" rule. RMO 8-2006 does not prohibit the issuance of a new LOA within the same taxable period if such new LOA is necessitated by the reassignment, retirement, or other inability of the incumbent RO to continue an investigation. The old LOA in favor of the reassigned RO shall be deemed cancelled, and the new LOA issued to the subsequently designated RO shall prevail.

In the case at bar, not only did the BIR fail to issue a new LOA in favor of RO Dy to investigate Robiegie's accounts, but the Memorandum Referral, which effected the transfer of the investigation to RO Dy, was issued by a BIR official who did not have the requisite authority to issue LOAs.

B. Tax on Income

Aces Philippines Cellular Satellite Corporation, Petitioner, vs. CIR, Respondent. En Banc | G.R. No. 226680 | 30 August 2022

Doctrine: *As an inherent attribute of sovereignty, the scope of taxing power is limited within a state's territorial jurisdiction. There must be an established nexus between the subject and the state that intends to tax it. In resolving the issue of whether payments to foreign entities are subject to Final Withholding Tax (FWT) requires a two-tiered approach: (a) source of the income; and (b) situs of that source.*

Facts: The Philippine Long Distance Telephone Company (PLDT) and Aces Indonesia entered into two executory contracts, to wit: (a) a *Gateway Agreement* that allowed Aces Indonesia to supply PLDT the equipment, software, data, documentation

[2] Medicard Philippines, Inc., Petitioner vs. CIR, Respondent, 05 April 2017.

necessary for the construction and operation of gateways in the Philippines; and (b) an *Air Time Purchase Agreement* which allowed Aces Indonesia to sell satellite communications time (Aces Services) to PLDT, which, in turn, shall become the exclusive provider/distributor thereof to Philippine subscribers. Eventually, the original parties to the *Air Time Purchase Agreement* transferred their rights and obligations to third parties, *viz.*: (a) Aces Indonesia transferred in favor of Aces International Limited, a company incorporated in Bermuda (Aces Bermuda); and (b) PLDT to Aces Philippines.

In 2007, the BIR audited Aces Philippines' books of account and other accounting records in relation to all internal revenue taxes for TY 2006. The BIR discovered that Aces Philippines failed to withhold 35% FWT when it paid Aces Bermuda, a non-resident foreign corporation (NRFC), satellite air time fees. Aces Philippines protested the findings at the administrative level. However, the CIR still issued a Final Decision on Disputed Assessment (FDDA). Aces Philippines filed its judicial protest before the CTA. It argues the income from these payments was not sourced from the Philippines because Aces Bermuda: (a) performed the relevant service completely outside of the Philippines; and (b) does not own equipment in the Philippines. Nonetheless, as affirmed by CTA En Banc, the CTA Division upheld the ruling of the CIR and held that the satellite air time fees are considered Philippine-sourced income.

Issue: Whether the satellite air time fee payments to Aces Bermuda constitute income from sources within the Philippines.

Ruling: Yes. As an inherent attribute of sovereignty, the scope of taxing power is limited within a state's territorial jurisdiction. There must be an established nexus between the subject (e.g., person, property, income, or business) and the state that intends to tax it. In resolving the issue of whether the satellite air time fee payments to Aces Bermuda are subject to FWT requires a two-tiered approach: (a) source of the income; and (b) situs of the source.

As to the source of income, "Aces System" is described in the Air Time Purchase Agreement as consisting of satellite/s, terminals, and gateways. The satellite (outer space) receives, switches, amplifies, and/or transmits radio signals to and from the terminals and gateways (terrestrial/ground, including Philippine territory). The Court identifies the gateway's receipt of the call as the income source as it coincides with (a) the completion or delivery of the service and (b) the inflow of economic benefits in favor of Aces Bermuda.

The fulfillment of Aces Bermuda's undertaking requires the satellite to have transmitted/routed the call (first segment) and a gateway to have received the call as routed by the satellite (second segment). The act of transmission alone does not constitute completion or delivery of the service; rather, it is completed when the call is actually routed to its gateway so that Aces Philippines can connect its local subscriber to the intended recipient of the call. Aces Bermuda's service fulfillment necessitates both the satellite's transmission and reception by the gateway. Aces Philippines gains access to the Aces System only when the call reaches its gateway, connecting the local subscriber to the intended recipient and marking the completion of Aces Bermuda's

service. Sec. 3.2 of the Air Time Purchase Agreement further reveals that satellite air time fees accrue only upon the delivery of satellite air time to Aces Philippines and are utilized by the Philippine subscriber for a voice or data call. The accrual of fees payable to Aces Bermuda signifies the inflow of economic benefits.

As to the situs of the source, the following establishes the Philippines as the situs of Aces Bermuda's income from satellite air time fee payments: (a) the income-generating activity is directly associated with the gateways located within the Philippine territory; and (b) engaging in the business of providing satellite communication services in the Philippines is a government-regulated industry.

Aces Philippines admits receiving calls routed by the satellite (second segment of Aces System) occurs in the Philippines. The Court emphasizes that Aces Bermuda's services cover both the first and second segments of the Aces System, with the service extending beyond transmission until the satellite communication time is delivered to the Philippine gateway. Despite Aces Philippines being the legal owner/operator of the gateways, they were primarily constructed to serve the Aces System's needs. The income generation (i.e., accrual of satellite airtime fee payments and completion of the principal undertaking) coincides with receiving routed calls by gateways in Philippine territory. Although Aces Philippines legally owns the gateways, Aces Bermuda has significant economic interest in these properties, as its Philippine operations rely on these facilities. Further, only telecommunications entities with a state-granted franchise can operate within the country's territory. The involvement of a foreign satellite service provider in offering services to Philippine subscribers or participating in the telecommunications industry invokes Philippine sovereignty and government intervention/protection. The Court believes it is fair to subject the income of such foreign entities, like Aces Bermuda, to Philippine taxation. This is seen as a means of holding Aces Bermuda accountable for its share to compensate the government for the protection provided to its arrangements, operations, and transactions in the Philippines.

C. Value-Added Tax

Fritz Bryn Anthony M. Delos Santos, Petitioner, vs. CIR, Respondent.
Second Division | G.R. No. 222548 | 22 June 2022

Doctrine: *Secs. 105 to 108 of the NIRC of 1997, as amended, impose Value-Added Tax (VAT) on transactions involving the sale, barter, or exchange of goods, the rendition of services, and the use or lease of properties. However, condominium association dues, membership fees, and other charges do not arise from these transactions. They are not intended for profit but for maintaining condominium projects; thus, they are not subject to VAT.*

Facts: On 31 October 2012, then BIR Commissioner Kim S. Jacinto-Henares issued Revenue Memorandum Circular (RMC) No. 65-2012, imposing VAT on condominium owners' association dues. This has adversely affected the herein petitioner, Delos Santos, a resident of Classica Tower Makati, prompting him to file a Petition for Certiorari before the Supreme Court. Delos Santos contends that Sec. 105 of the NIRC of 1997, as amended, does not apply to condominium owners' or tenants' payment of

association dues, for they do not buy, transfer, or lease any goods, property, or services from the condominium corporation. The condominium corporation does not acquire ownership over the association dues, but only holds the same in a fiduciary capacity for payment of periodic maintenance costs of the project.

Issue: Whether RMC 65-2012 imposing VAT on association dues, membership fees, and other assessments and charges collected by homeowners associations and condominium corporations is valid.

Ruling: No. In 2020, the Court, in G.R. Nos. 215801 and 218924[3] already declared RMC 65-2012 invalid, holding that the Circular did not merely interpret or clarify but changed altogether the long-standing rules of the BIR. Secs. 105 to 108 of the NIRC of 1997, as amended, impose VAT on transactions involving the sale, barter, or exchange of goods, the rendition of services, and the use or lease of properties. However, condominium association dues, membership fees, and other charges do not arise from these transactions. These assessments or charges form part of a pool from which a condominium corporation must draw funds to bear maintenance, repair, improvement, reconstruction, and other administrative expenses. They are not intended for profit but to maintain the condominium project. Collecting association dues, membership fees, and other charges is purely for the benefit of the condominium owners. Thus, by their very nature, they are not subject to VAT.

Chevron Holdings, Inc. (Formerly Caltex Asia Limited), Petitioner, vs. CIR, Respondent.
En Banc | G.R. No. 215159 | 05 July 2022

Doctrine: *The request for a refund of unutilized input VAT from zero-rated sales shall not be denied on the basis that the taxpayer does not have "excess" input VAT from the output VAT.*

Facts: Chevron Holdings (petitioner) is a VAT-registered corporation licensed to transact business in the Philippines as a Regional Operating Headquarter (ROHQ). For the TY 2006, the petitioner rendered services to its affiliates in the Philippines and abroad. The services rendered to foreign and Philippine affiliates were subjected to a 0% and 12% rates respectively. The input taxes attributable to zero-rated sales were not credited against output taxes because of the substantial amounts of input taxes carried forward from the previous quarters. Chevron Holdings declared in its Amended Quarterly VAT Return for the fourth quarter of 2005 the amount of P55,784,357.71 as excess input tax.

On 28 March 2008, Chevron Holdings filed an administrative claim for refund or issuance of a tax credit certificate on the unutilized input VAT attributable to the sale of services to its foreign affiliates. The CIR failed to act on the claim; hence, on 24 April and 23 July of the same year, Chevron Holdings filed Petitions for Review before the CTA Division for the refund or credit of excess input VAT for TY 2006, which were denied for being prematurely filed. However, the CTA En Banc reversed the

[3] BIR, Petitioner, vs. First E-Bank Tower Condominium Corp., Respondent, 15 January 2020.

decision and held that the judicial claims were timely filed since the administrative and judicial claims were all filed during the period of validity of BIR Ruling No. DA-489-03.

As regards input VAT attributable to zero-rated sales, the CTA En Banc ruled that only P155,654,748.22 qualified for VAT zero-rating of sales of services to non-resident foreign affiliate clients under Sec. 108(B)(2) of the NIRC of 1997, as amended. The CTA En Banc declared that some of the foreign affiliate clients were not adequately supported by the required documents and that VAT official receipts issued to foreign affiliates must have the corresponding foreign currency inward remittances.

The CTA En Banc further disallowed a certain amount of input claims for having no supporting VAT invoices or official receipts and failing to comply with the invoicing requirements under the NIRC of 1997, as amended. The appellate Court also observed that there was no excess input VAT that may be the subject of a claim for refund or tax credit for the second, third, and fourth quarters of 2006, while the excess input tax for the first quarter shall be allocated to Chevron Holdings' valid zero-rated sales; thus, only P15,085.24 shall be refundable.

Issues:
1) Whether the sales rendered to Chevron Holdings' non-resident foreign affiliates qualify for VAT zero-rating under Sec. 108(B)(2) of the NIRC of 1997, as amended.
2) Whether it is proper to charge validated input taxes against output tax liabilities and only when excess input taxes exist that it allows the refund.

Ruling:

1) No. Chevron Holdings failed to meet the third and fourth requisites to qualify for VAT zero-rating. To qualify for VAT zero-rating, Sec. 108(B)(2) of the NIRC of 1997, as amended, requires the concurrence of four conditions: (a) the services rendered should be other than "processing, manufacturing, or repacking of goods"; (b) the services are performed in the Philippines; (c) the service-recipient is (1) a person engaged in business conducted outside the Philippines; or (2) a non-resident person not engaged in a business that is outside the Philippines when the services are performed; and (d) the services are paid for in acceptable foreign currency inwardly remitted and accounted for in conformity with Bangko Sentral ng Pilipinas (BSP) rules and regulations.

The first and second requisites were undisputed. As an ROHQ, Chevron Holdings' services in the Philippines are not in the same category as "processing, manufacturing, or repacking of goods" (e.g., general administration and planning, business planning and coordination, etc.). Anent the third requisite, the Court emphasized that for sales to a NRFC to qualify for zero-rating, there must be sufficient proof showing not only that the clients are foreign corporations but also that they are not doing business in the Philippines. Therefore, the taxpayer-claimant must present, at the very least, both the Securities and Exchange Commission (SEC) Certificates of Non-Registration — to prove that the affiliate is foreign; and the Articles or Certificates of Foreign Incorporation, printed screenshots of the US SEC website showing the

state/province/country where the entity was organized, or any similar document — to prove the fact of not engaging in trade or business in the Philippines at the time the sales are rendered. Here, these two documents did not adequately support some foreign affiliate clients.

Regarding the fourth condition, the Court stressed that the certification of inward remittances proves the fact of payment in acceptable foreign currency and is accounted for under the BSP rules and regulations. In this case, however, Chevron Holdings failed to substantiate the inward remittance of the proceeds of P10,025,869.35 sales duly accounted for in conformity with BSP rules.

2) No. Under Sec. 112(A) of the NIRC of 1997, as amended, to be refunded or issued a tax credit certificate, the following must be complied with: (a) the input tax is a creditable input tax due or paid; (b) the input tax is attributable to the zero-rated sales; (c) the input tax is not transitional; (d) the input tax was not applied against the output tax; and (e) in case the taxpayer is engaged in mixed transactions, only the input taxes proportionately allocated to zero-rated sales based on sales volume may be refunded or issued a tax credit certificate.

The first, second, third, and fifth requisites have been established. In relation to the fourth requisite, the Court underscored that the taxpayer can only charge its input tax against its output tax. The taxpayer cannot request a refund or credit against its other internal revenue tax liabilities, the "excess" input tax because the tax is not an excessively collected tax under Sec. 229 of the NIRC of 1997, as amended. And, even if the "excess" input tax is, in fact, "excessively" collected, the person who can file the judicial claim for refund is the person legally liable to pay the input tax, not the person to whom the tax was passed on as part of the purchase price. The taxpayer will only be entitled to the refund or tax credit of the "excess" and unused input tax when its VAT registration is cancelled.

Thus, the input tax attributable to zero-rated sales may, at the option of the VAT-registered taxpayer, be: (a) charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (b) claimed for refund or tax credit in its entirety. It must be stressed that the remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative. Furthermore, the option is vested with the taxpayer-claimant, as the taxpayer is more interested in reducing the output tax payable. The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of "excess" creditable input taxes, which include the input taxes carried over from the previous periods, from the output taxes.

Maibarara Geothermal, Inc., Petitioner, vs. CIR, Respondent.
Second Division| G.R. No. 250479| 18 July 2022

Doctrine: *Sec. 112(A) of the NIRC of 1997, as amended, provides that any claim for refund or tax credit of unutilized VAT must be attributable to zero-rated or effectively zero-rated sales; thus, the refund or tax credit of unutilized input VAT is premised on the existence of zero-rated or effectively zero-rated sales.*

Facts: In 2013, Maibarara Geothermal, Inc. (MGI), a VAT-registered domestic corporation, filed administrative claims to refund its unutilized input VAT for the TY 2011 with the BIR. However, the CIR left these claims unacted, prompting MGI to file four Petitions for Review before the CTA. In a decision subsequently affirmed by the CTA En Banc, the CTA Division denied the consolidated petitions for review for lack of merit.

Issue: Whether MGI is entitled to the refund of its unutilized input VAT for the TY 2011.

Ruling: No. MGI is not entitled to a refund for its unutilized input VAT. Sec. 112(A) of the NIRC of 1997, as amended, provides that any claim for refund or tax credit of unutilized input VAT must be attributable to zero-rated or effectively zero-rated sales. It gives the option to export enterprises whose nature of sales does not incur output VAT to claim as a refund or apply as a tax credit the input VAT that is passed on to them. As laid down in G.R. No. 180345[4], to claim a refund or tax credit under Sec. 112(A), the petitioner must comply with the following criteria:

1) The taxpayer is VAT-registered;
2) The taxpayer is engaged in zero-rated or effectively zero-rated sales;
3) The input taxes are due or paid;
4) The input taxes are not transitional input taxes;
5) The input taxes have not been applied against output taxes during and in the succeeding quarters;
6) The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
7) For zero-rated sales under Secs. 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;
8) Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated based on sales volume; and
9) The claim is filed within two years after the close of the taxable quarter when such sales were made.

While the two-year prescriptive period for filing an administrative claim for refund begins to run from the close of the taxable quarter when the relevant sales were made and not from the time the input VAT was incurred, in this case, however, MGI admitted that it had no sales—particularly zero-rated or effectively zero-rated sales—during the TY 2011 and only started selling during the first quarter of 2014. Thus, there is no output VAT against which the input VAT may be deducted. It is clear under Sec. 112(A) that the refund or tax credit of unutilized input VAT is premised on the existence of zero-rated or effectively zero-rated sales.

[4] San Roque Power Corporation, Petitioner, vs. CIR, Respondent, 25 November 2009.

Domingo F. Estomo, Petitioner, vs. Civil Service Commission, Regional Office No. X, as represented by the Regional Director, CSC Region X, Respondent.
Third Division | G.R. No. 248971| 31 August 2022

Doctrine*: According to the definition of gross receipts under the NIRC of 1997, as amended, retention money is part of the contract price on which the withholding VAT shall be based.*

Facts: In 1997, Civil Service Commission (CSC) Region X and Domingo F. Estomo Trading & Construction executed a Contract for Works for the complete construction of the third floor of the CSC-X building. Estomo sent several demand letters to the CSC, including a final demand letter for P604,278.60, representing the balance from the Contract for Works and the extra work. Despite this, Estomo has not received payment. Thus, he filed before the Regional Trial Court (RTC) a complaint for specific performance, the sum of money, plus damages against the CSC. The RTC ruled in favor of the Estomo. However, the Court of Appeals (CA) held that, based on the detailed computation of previous payments made by the CSC, the remaining balance due to Estomo is P371,431.20, or a net amount of P217,174.42 after accounting for tax, recoupment fee, retention fee, and deficiencies.

Issue: Whether the deductions made on the Contract for Works, particularly the withholding taxes, are valid**.**

Ruling: No. The rates applied by CSC do not conform with the prevailing tax rates during the Contract for Works in 1997. According to Republic Act (RA) No. 8241, amending RA 7716, the applicable law for withholding VAT at that time, the government, its political subdivisions, instrumentalities, or agencies, including government-owned or -controlled corporations, were obliged to withhold VAT at a rate of 6% on gross receipts for services by contractors. The CSC withheld VAT at the 6% rate on progress payments after deducting the 10% retention money from the gross amount. However, "gross receipts" is defined by Sec. 102 of the NIRC of 1997, as amended, as "the total amount of money or its equivalent representing the contract price, compensation, service fee, rental, or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding VAT." Pursuant to this definition, the retention money is part of the contract price. Retention money is merely deducted and set aside by the government as a form of deposit or security, which, upon final acceptance of the works, will eventually be released to the contractor. By deducting the retention money from the tax base, the CSC effectively excluded it from the VAT coverage, resulting in underpayment.

D. Remedies

Asian Transmission Corporation, Petitioner, vs. CIR, Respondent.
Second Division | G.R. No. 230861 | 14 February 2022

Doctrine: *If a waiver suffers from defects on account of both parties, the waiver's validity in relation to the timeliness of the CIR's subsequent issuance of a tax assessment is not determined by a mere plurality of the defects committed between the BIR and the taxpayer.*

Facts: Based on a LOA dated 09 August 2004, the BIR initiated an audit and investigation of Asian Transmission Corporation's (ATC) books of account and other accounting records covering the TY 2002. Despite CIR's right to assess ATC was due to prescribe in the first quarter of 2006, the BIR's investigation period and CIR's assessment period were extended until 31 December 2018, through the Waivers executed. Consequently, the CIR issued a FLD on 15 July 2008, assessing ATC for deficiency withholding taxes. ATC filed an administrative protest contesting the assessment, alleging (a) violation of due process in the issuance of PAN; and (b) erroneous details of discrepancies in the FLD. The CIR denied ATC's protest and request for reconsideration. ATC then filed a judicial protest before the CTA, asserting the invalidity of LOAs due to lack of revalidation and defects in the waivers, rendering them ineffective in extending the assessment period. The CTA ruled in favor of ATC and canceled the tax assessments on account of prescription. However, on appeal, the CTA En Banc reinstated the assessments. Aggrieved, ATC assailed the CTA En Banc ruling before the Court.

The Court affirmed the decision of the CTA En Banc, stating that both parties were at fault. While the BIR failed to observe the procedures in the execution of a valid waiver, ATC was also remiss in its responsibility of preparing the waiver prior to submission to and filing before the BIR. Hence, the ATC filed a motion for reconsideration.

Issue: Whether the CIR is divested of its right to assess and collect deficiency taxes on account of alleged defects caused by the BIR that outnumber the ones caused by ATC.

Ruling: No. If a waiver suffers from defects on account of both parties, the waiver's validity in relation to the timeliness of the CIR's subsequent issuance of a tax assessment is not determined by a mere plurality of the defects committed between the BIR and the taxpayer. The defects attributable to one party had been greater in number, which cannot diminish the seriousness of the counter-party's fault or negligence. Further, the taxpayer's contributory fault or negligence, coupled with belated action on questioning the waiver's validity, will render an otherwise flawed waiver effective, regardless of the physical number of mistakes attributable to a party. ATC raised the waivers' validity for the first time in its appeal to the CTA after obtaining an unfavorable CIR decision on their administrative protest. Certainly, no taxpayer may be allowed to execute haphazard waivers deliberately, go through the motions that the waivers are effective, and lead the tax authorities to believe that the assessment period has been extended, only to deny the validity thereof when it becomes unfavorable to him.

Republic of the Philippines, represented by the BIR, Petitioner, vs. First Gas Power Corporation, Respondent.
First Division| G.R. No. 214933 | 15 February 2022

Doctrine: *Sec. 222(b) of the NIRC of 1997, as amended, authorizes the extension of the original three-year prescriptive period for assessment and collection upon the execution of a valid waiver between the taxpayer and the BIR, provided: (a) the agreement was made before the expiration of the three-year period, and (b) the guidelines in the proper execution of the waiver are strictly followed (e.g., date of acceptance and due date for payment must be indicated in the waiver).*

Facts: On 24 October 2002, First Gas Power Corporation (First Gas) received an LOA from the BIR representative to examine its book of accounts and other accounting records for TYs 2000 and 2001 revenue taxes. Thereafter, on 11 March 2004, First Gas received a PAN dated 15 December 2003, and 28 January 2004, for deficiency taxes and penalties for TYs 2000 and 2001. Then, on 06 September 2004, it received FANs and FLDs, all dated 19 July 2004. Records also show that First Gas and the BIR executed three Waivers of Defense of Prescription under the Statute of Limitations, the summary of which are as follows:

Waiver	Date of waiver	Period extended	Person who signed the waiver
First	12 April 2004	15 June 2004	Celia C. King
Second	14 June 2004	15 August 2004	Celia C. King
Third	13 August 2004	15 October 2004	Celia C. King

On 05 October 2004, First Gas filed a Letter of Protest, which the BIR did not act upon. Thus, on 30 June 2005, it filed a petition for review before the CTA to assail the FANs and FLDs. The CTA Third Division ruled in favor of First Gas, which CTA En Banc affirmed.

Issue: Whether the deficiency tax assessments for TYs 2000 to 2001 issued by the BIR against First Gas are valid.

Ruling: No. The FANs and FLDs issued are all invalid assessments. First, as to the validity of the FANs and FLDs for TY 2000, the Court held that the period of the BIR to issue the same has already been prescribed. While Sec. 203 of the NIRC of 1997, as amended, provides that internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return or the day the return was filed, if filed beyond the period prescribed, Sec. 222(b) of the NIRC of 1997, as amended, authorizes the extension of the original three-year prescriptive period upon the execution of a valid waiver between the taxpayer and the BIR, provided: (a) the agreement was made before the expiration of the three-year period; and (b) the guidelines in the proper execution of the waiver are strictly followed.

Records show that the respondent filed two Income Tax Returns (ITRs) for the TY 2000 on 16 October 2000 and 16 April 2001. Thus, in accordance with Sec. 203 of the NIRC of 1997, as amended, the petitioner had until 16 October 2003 and 16 April 2004, within which to assess the respondent for deficiency income tax for TY 2000. However, in this

case, the respondent received the FAN and FLD, all dated 19 July 2004, only on 06 September 2004. Although the BIR contends that the prescription had not set in because the parties executed three waivers, such waivers are defective because the date of acceptance by the petitioner is not indicated therein as mandated by RMO 20-90 and Revenue Delegation of Authority Order No. 05-01. This is necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period. Further, the date of notarization cannot be regarded as the date of acceptance for the same refers to different aspects, as the notary public is distinct from the Commissioner of the BIR, who is authorized by law to accept Waivers of the Statute of Limitations.

Second, as to the validity of the FAN and FLD for TY 2001, the Court likewise finds that the same is not valid due to BIR's failure to indicate a definite due date for payment. The statement made by the BIR in the FAN failed to clearly indicate the due date of payment, which made it seem that the total amount depended upon when the respondent decided to pay.

CIR, Petitioner, vs. Philippine Bank of Communications, Respondent.
Second Division | G.R. No. 211348 | 23 February 2022

Doctrine: *Failing to comply with the requirements of an administrative claim for Creditable Withholding Tax (CWT) refund/credit does not preclude filing a judicial claim. Secs. 204(C) and 229 of the NIRC of 1997, as amended, allow the filing of both claims contemporaneously within the two-year prescriptive period, provided that the administrative claim must be filed for the judicial claim to be maintained.*

Facts: On 16 April 2007, the Philippine Bank of Communications (PBCOM) filed with the BIR its annual ITR for TY 2006, which was subsequently amended on 02 May 2007, reflecting a net loss of P903,582,307.00 and a creditable tax withheld for the fourth quarter of 2006 in the amount of P24,716,655.00. In the said ITR, PBCOM also indicated its intention to apply for the issuance of a tax credit certificate (TCC) for its excess/unutilized CWT. Almost two years later, on 03 April 2009, PBCOM requested the BIR to issue a TCC for the excess CWT. Due to the inaction of the CIR, on 15 April 2009, PBCOM filed a petition for review with the CTA for the issuance of a TCC for its excess/unutilized CWT for the year 2006. In its answer, the CIR argued that PBCOM's claim is in the nature of a refund and thus subject to administrative examination by the BIR and that PBCOM failed to fully comply with the requirements provided in Revenue Regulations (RR) No. 6-86 and jurisprudence.

The CTA Third Division partially granted the petition and ruled that PBCOM timely filed the claim for refund within the two-year prescriptive period, but the other requirements were only satisfied as to the amount of P4,624,554.63. The CTA En Banc affirmed the Division's decision in toto.

Issue: Whether PBCOM's non-submission of the required documents under RMO 53-98 and RR 2-2006 rendered its administrative claim for issuing a TCC pro forma; thereby making its judicial claim premature.

Ruling: No. The failure of PBCOM to comply with the requirements of an administrative claim for CWT refund/credit does not preclude the filing of its judicial claim. The independence of the judicial claim for a CWT credit/refund from its administrative counterpart is implied in Secs. 204(C) and 229 of the NIRC of 1997, as amended, which allow the filing of both claims contemporaneously within the two-year prescriptive period.

The provisions require both administrative and judicial claims to be filed within the same two-year prescriptive period. With reference to Sec. 229 of the NIRC of 1997, as amended, the only requirement for a judicial claim of tax credit/refund is that a claim of refund or credit has been filed before the CIR; there is no mention in the law that the claim before the CIR should be acted upon first before a judicial claim may be filed. Clearly, the legislative intent is to treat the judicial claim as an independent and separate action from the administrative claim; provided that the latter must be filed for the former to be maintained. While the CIR should be given the opportunity to act on PBCOM's claim, PBCOM should not be faulted for lawfully filing a judicial claim before the expiration of the two-year prescriptive period, notwithstanding the alleged defects in its administrative claim. This is considering that, unlike administrative claims for Input Tax refund/credit before the CIR, which have a required specific period of action (the expiration of which shall be deemed as a denial), there is no such period of action required in administrative claims for CWT refund/credit before the CIR.

Harte-Hanks Philippines, Inc., Petitioner, vs. CIR, Respondent.
Second Division | G.R. No. 205189 | 07 March 2022

Doctrine: *The 120+30-day period provided under Sec. 112(C) of the NIRC of 1997 is generally mandatory and jurisdictional from the effectivity of the NIRC of 1997 on 01 January 1998 up to the present. By way of exception, judicial claims filed during the window period from 10 December 2003 to 06 October 2010 need not wait for the exhaustion of the 120-day period.*

Facts: On 23 March 2010, Harte-Hanks Philippines, Inc. filed with the CIR a written application (administrative claim) for refund or issuance of a tax credit for its excess and unutilized input VAT for the first and second quarters of 2008. The CIR did not act on the application. On 29 June 2010, Harte-Hanks filed a petition for review (judicial claim) with the CTA Second Division, or before the lapse of the 120-day period on 21 July 2010. The CIR filed his answer on 19 August 2010, and a supplemental answer on 04 October 2010, praying that the petition for review be dismissed for failure of Harte-Hanks to exhaust administrative remedies under Sec. 112(C) of the NIRC of 1997, as amended, and for lack of jurisdiction, as there had been no decision or inaction that is tantamount to a denial by the CIR and appealable to the CTA. The CTA Second Division dismissed the petition for having been prematurely filed. The CTA En Banc affirmed the assailed resolutions of the CTA Second Division and dismissed the petition for lack of merit.

Issue: Whether the petition for review by Harte-Hanks Philippines was prematurely filed.

Ruling: No. The petition was not prematurely filed; thus, the CTA has jurisdiction over the judicial claim. Sec. 112(C) of the NIRC of 1997, as amended, clearly provides that the CIR has "120 days from the date of the submission of the complete documents in support of the application [for tax refund/credit]" within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the CIR's decision. However, if after the 120-day period, the CIR fails to act on the application for tax refund/credit, the taxpayer may appeal the inaction of the CIR to the CTA within 30 days. An exception, however, is provided in BIR Ruling No. DA-489-03, which expressly states that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of a petition for review." Considering that it is a general interpretative rule issued by the CIR, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal in G.R. No. 184823[5] on 06 October 2010, where the Court held that the 120+30-day period is mandatory and jurisdictional.[6]

CIR, Petitioner, vs. CTA Second Division and QL Development, Inc., Respondents.
First Division | G.R. No. 258947 | 29 March 2022

Doctrine: *(1) The CTA has jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes but also on "other matters" arising under the NIRC of 1997, as amended, which covers the issue of prescription of the CIR's right to collect taxes; (2) In cases of assessments issued within the three-year ordinary period, the CIR has another three years within which to collect taxes due by distraint, levy, or court proceeding. The tax assessment is deemed made, and the three-year period for collection of the assessed tax begins to run on the date the assessment notice was released, mailed, or sent to the taxpayer.*

Facts: On 12 November 2012, QL Development, Inc. (QLDI) received an LOA dated 30 October 2012, covering the TY 2010 for deficiency taxes. On 28 November 2014, the CIR served the PAN along with the Details of Discrepancies to QLDI. QLDI filed its reply to the PAN on 15 December 2014. On 12 December 2014, the CIR sent out the FAN or FLD with Details of Discrepancies, which QLDI failed to protest within the 30-day period provided by law. The CIR issued a FDDA, which QLDI received on 03 March 2015. QLDI filed with the CIR a request for reconsideration dated 30 March 2015, which the CIR denied in the Decision dated 04 February 2020. Consequently, the CIR ordered QLDI to pay the deficiency taxes and the compromise penalty for the TY 2010.

QLDI filed a Petition for Review before the CTA Division, challenging the validity of the assessment against it and the prescription of the CIR's right to collect taxes. QLDI alleged that the CIR's right to collect taxes had been prescribed as early as 12 December

[5] CIR, Petitioner, vs. Aichi Forging Company of Asia, Inc., Respondent, 06 October 2010.

[6] CIR, Petitioner, vs. San Roque Power Corporation, Respondent, consolidated with Taganito Mining Corporation, Petitioner, vs. CIR, Respondent, and Philex Mining Corporation, Petitioner, vs. CIR, Respondent, G.R. No. 187485, 12 February 2013.

2019, or five years from the date of mailing/release/sending of the FAN/FLD on 12 December 2014. The CTA Division held that the period within which the CIR may collect deficiency taxes had already lapsed and was already barred by prescription. The CIR issued the BIR letters for the collection of taxes on various dates in 2020, which were all beyond the five-year period (12 December 2019) to collect the assessed tax.

Issues:
1) Whether the CTA has jurisdiction over the case.
2) Whether the CIR's right to collect taxes had already been prescribed.

Ruling:
1) Yes. The CTA has jurisdiction over the case. The CIR claims that QLDI's failure to file a valid protest to the FAN/FLD rendered the assessment against it already final, executory, and demandable. As such, it is already beyond the CTA Division's jurisdiction. Based on Sec. 7(a)(1) of RA 1125, as amended by RA 9282, the CTA has jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes but also "other matters" arising under the NIRC of 1997, as amended. In G.R. No. 169225[7], the Court held that the issue of prescription of the CIR's right to collect taxes is covered by the term "other matters" over which the CTA has appellate jurisdiction. The fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. However, the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has been prescribed. This issue of prescription, being a matter provided for by the NIRC of 1997, as amended, is well within the jurisdiction of the CTA to decide.

2) Yes. The CIR's right to collect taxes had already prescribed. Sec. 203 of the NIRC of 1997, as amended, which provides for the prescriptive period in the assessment and collection of internal revenue taxes, reads:

> SEC. 203. Period of Limitation Upon Assessment and Collection. — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

In G.R. No. 197515[8], the Court held that in cases of assessments issued within the three-year ordinary period, the CIR has another three years within which to collect taxes due by distraint, levy, or court proceeding. The tax assessment is deemed made, and the

[7] CIR, Petitioner, vs. Hambrecht & Quist Philippines, Inc., Respondent, 17 November 2010.

[8] CIR, Petitioner, vs. United Salvage and Towage (Phils.), Inc., Respondent, 02 July 2014.

three-year period for collection of the assessed tax begins to run on the date the assessment notice was released, mailed, or sent to the taxpayer.

Accordingly, the Court held that the three-year, and not the five-year, period of limitation upon assessment and collection applies to this case. The five-year period for collection of taxes only applies to assessments issued within the extraordinary period of 10 years in cases of a false or fraudulent return or failure to file a return, as provided under Sec. 222 of the NIRC of 1997, as amended.

Here, since the FAN/FLD was mailed on 12 December 2014, the CIR had another three years reckoned from said date, or until 12 December 2017, to enforce the collection of the assessed deficiency taxes. Verily, prescriptions had already set in when the CIR initiated its collection efforts only in 2020. The Court also notes that regardless of which period to apply, i.e., five years as determined by the CTA Division or three years, the CIR's collection efforts were, as they are, barred by prescription.

The CIR's collection efforts are initiated by distraint, levy, or court proceedings. The distraint and levy proceedings are validly begun or commenced by issuing a warrant of distraint and levy and the service thereof on the taxpayer. And a judicial action for the collection of a tax is initiated: (a) by the filing of a complaint with the court of competent jurisdiction; or (b) where the assessment is appealed to the CTA, by filing an answer to the taxpayer's petition for review, wherein payment of the tax is prayed for. However, in this case, no warrant of distraint and/or levy was served on QLDI, and the CIR initiated no judicial proceedings within the prescriptive period to collect.

BIR, Petitioner, vs. Tico Insurance Company, Inc., Glowide Enterprises, Inc., and Pacific Mills, Inc., Respondents.
Second Division| G.R. No. 204226 | 18 April 2022

Doctrine: *Sec. 219 of the NIRC of 1997, as amended, provides that a tax lien is enforceable against all property and rights to property belonging to the taxpayer, and retroacts on the time when the tax assessment was made. However, the tax lien shall not be valid against any judgment creditor until notice of such lien is filed and annotated with the Register of Deeds of the city, or province, where the taxpayer's properties are located.*

Facts: Tico Insurance Company, Inc. (TICO) is a domestic corporation engaged in the sale of life insurance, whereas Glowide Enterprises, Inc. (Glowide) and Pacific Mills, Inc. (PMI) are its clients who secured fire insurance policies in 1997. While their fire insurance policy with TICO was in effect, a fire broke out that destroyed the properties insured. Due to TICO’s failure to pay the full amount of the insurance proceeds, despite demand, Glowide and PMI filed a complaint for a sum of money and damages with prayer for a writ of preliminary attachment against TICO before the RTC. Concurrently, TICO was served several final assessment notices for its alleged deficiency in internal revenue taxes with the BIR for the TYs 1996 and 1997. As a consequence of non-payment, BIR resorted to issuing a warrant of distraint and/or levy on TICO's real and personal properties and caused the annotation of the notice of tax lien on the condominium units of TICO. BIR asserted that it has a superior claim over the

condominium units, considering its claim for unpaid revenue taxes enjoys absolute preference under the New Civil Code, and a tax lien over TICO's properties had already been attached at the time the assessments were made.

TICO filed a complaint for interpleader with the RTC to determine which party, between Glowide and PMI on one hand and BIR on the other, has a superior right over the condominium units. The RTC ruled that BIR's claim over the condominium units is superior to that of Glowide and PMI. However, the same was overturned by the CA.

Issue: Which party, between the BIR on one hand and Glowide and PM on the other, is entitled to ownership of the condominium units?

Ruling: The Court ruled that Glowide and PMI's rights over the condominium units are superior to the BIR's claim and are thus entitled to the possession and conveyance of the units. Sec. 219 of the NIRC of 1997, as amended, provides that a tax lien is enforceable against all property and rights to property belonging to the taxpayer, and retroacts on the time when the tax assessment was made. However, the tax lien shall not be valid against any judgment creditor until notice of such lien is filed and annotated with the Register of Deeds of the city, or province, where the taxpayer's properties are located. In this case, the BIR annotated its tax lien in February 2005, which was already after the annotation of Glowide and PMI's levy on attachment and sale of the condominium units; hence, Glowide and PMI already had rights over the condominium units, subject only to TICO's right of redemption. Further, pursuant to the New Civil Code, TICO's tax claim is only an ordinary preferred credit under Article 2244 since it is not based on taxes due on the condominium units but on TICO's deficiency in payment of its internal revenue taxes. On the other hand, Glowide and PMI's claim is a special preferred credit under Art. 2242(7) of the Civil Code and is thus superior to BIR's tax claim, which is only an ordinary preferred credit.

Department of Energy, Petitioner, vs. CTA, Respondent.
Third Division | G.R. No. 260912 | 17 August 2022

Doctrine: *All disputes, claims, and controversies solely between or among executive agencies, including disputes on tax assessments, must be submitted to administrative settlement by the Secretary of Justice or the Solicitor General, as the case may be.*

Facts: The BIR issued a PAN and FLD/FAN to the Department of Energy (DOE) on 07 December 2018, and 17 December 2018, respectively, for its deficiency excise taxes. On 21 December 2018, the DOE responded to the BIR, asserting that it is not liable for the assessed amounts as DOE is not among those liable to pay excise taxes under Sec. 130(A)(1) of the NIRC of 1997, as amended, and that the subject transactions are exempt from excise taxes under Item 3.2 of BIR RR 1-2018. On 17 July 2019, the BIR notified the DOE that the assessment had become final, executory, and demandable for its failure to file a formal protest within the thirty (30)-day period prescribed under existing revenue rules and regulations. The CIR issued the two assailed warrants on 19 September 2019.

On 18 October 2019, the DOE filed a Petition for Review (with Urgent Motion for Suspension of Collection of Taxes) with the CTA Second Division, which was dismissed for lack of jurisdiction. The DOE filed a Motion for Reconsideration, which was likewise denied for lack of merit. The CTA Second Division maintained that the case before it is a purely intra-governmental dispute, and as such, it is bereft of jurisdiction to take cognizance of the same. On 28 February 2020, the DOE filed a Petition for Review before the CTA En Banc. The CTA En Banc affirmed its Division's earlier Resolutions in its decision.

Issue: Whether the CTA has jurisdiction over appeals on tax disputes solely involving agencies under the Executive Department.

Ruling: No. All disputes, claims, and controversies solely between or among executive agencies, including disputes on tax assessments, must be submitted to administrative settlement by the Secretary of Justice or the Solicitor General, as the case may be.

It is a fundamental rule that special laws prevail over general laws. Presidential Decree (PD) No. 242 deals specifically with resolving disputes, claims, and controversies where the parties involved are the government's various departments, bureaus, offices, agencies, and instrumentalities. Thus, PD 242 should be read as an exception to the general rule set forth in RA 1125, as amended, and the NIRC of 1997, as amended, that the CTA has jurisdiction over tax disputes involving laws administered by the BIR.

Prime Steel Mill, Incorporated, Petitioner, vs. CIR, Respondent.
Third Division | G.R. No. 249153| 12 September 2022

Doctrine: *The failure to observe the 15-day period provided by RR 12-99 to allow taxpayers to reply to the PAN constitutes a violation of due process, resulting in void assessments.*

Facts: On 07 January 2009, Prime Steel Mill, Inc. (Prime Steel) received a PAN dated 19 December 2008 from the BIR, assessing it with deficiency income tax, VAT, and Expanded Withholding Tax (EWT) for TY 2005. Prime Steel filed a letter protesting the PAN on 22 January 2009. Nonetheless, on 12 February 2009, Prime Steel received a FAN and FLD dated 14 January 2009 from the BIR, reiterating the findings contained in the PAN. Prime Steel disputed the same, but eventually, the BIR issued the FDDA dated 14 April 2014.

Prime Steel filed a Petition for Review before the CTA, challenging the validity of the assessments. The CTA Third Division partially granted the Petition, which was affirmed by CTA En Banc, and cancelled the deficiency VAT assessment against the petitioner while still upholding its deficiency income tax assessment.

Issue: Whether the petitioner's right to due process was violated when the BIR issued the FAN without observing the 15-day period provided by RR 12-99 to allow taxpayers to reply to the PAN.

Ruling: Yes. The failure of the BIR to observe the 15-day period requirement before the issuance of the FAN renders the tax assessment against Prime Steel null and void. The FAN was issued within the 15-day period for the petitioner to reply to the PAN. Without waiting for the petitioner's reply, the BIR apparently issued the FAN on 14 January 2009, albeit it was received by the petitioner only on 12 February 2009. The Court held that the PAN is part and parcel of the due process requirement in issuing a deficiency tax assessment, and the BIR must strictly comply with the requirements laid down by the law and by its own rules. Further, the PAN stage cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without needing to issue a FAN. Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements set forth in Sec. 228 of the NIRC of 1997, as amended, and RR 12-99 is void and produces no effect.

II. Local Government Code of 1991

A. Local Business Taxes

City of Davao and Bella Linda N. Tanjili, in her official capacity as City Treasurer of Davao City, Petitioners, vs. Arc Investors, Inc., Respondent.
Third Division | G.R. No. 249668 | 13 July 2022

Doctrine: *Money market placements of dividends of holding companies cannot amount to "doing business" as a non-bank financial intermediary (NBFI) subject to local business tax (LBT) lacking the element of regularity or recurrence for the purpose of earning a profit.*

Facts: On 20 January 2014, Arc Investors, Inc. (ARCII) was assessed by the City of Davao and City Treasurer Tanjili of LBT amounting to P4,381,431.90, equivalent to 0.55% of the foregoing dividends from its preferred shares of stocks in San Miguel Corporation (SMC) and interest income from its money market placements. This prompted ARCII to file an administrative protest with the City Treasurer of Davao, claiming that the assessment made was erroneous and illegal. Following the alleged inaction on the protest, ARCII filed a petition for review, questioning the LBT assessment with the RTC. ARCII contented that, based on its Articles of Incorporation, it is not characterized as a banking or financial institution and that the receipt of dividends and interest is merely incidental to its ownership of SMC shares and money market placements; hence, not constitutive of "business activity" subject to LBT. It also invoked Sec. 27(D) of the NIRC of 1997, as amended, and the case of G.R. Nos. 177857-58 and 178193[9], which provides that dividends received by a domestic corporation from another domestic corporation are not subject to tax and that the Coconut Industry Investment Fund (CIIF) block of SMC shares is characterized as government-owned funds not subject to local taxation.

The RTC denied the petition and upheld the validity of the LBT assessments. However, the CTA Division reversed the ruling of the RTC, which was subsequently affirmed by

[9] COCOFED, Petitioner, vs. Republic of the Philippines, Respondent, 24 January 2012.

the CTA En Banc, stating that ARCII cannot be considered either as a financial intermediary or a NBFI subject to LBT.

Issue: Whether ARCII is an NBFI subject to LBT under Sec. 143(f), in relation to Sec. 151 of the Local Government Code (LGC).

Ruling: No. ARCII is not an NBFI and should not be subject to LBT. Local government units have the power to impose LBT on the privilege of doing business within their territorial jurisdictions, which contemplates some "trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit." Under Sec. 143(f) of the LGC, banks or other financial institutions, whose principal functions include lending, investing, or placement of funds or evidence of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others, are liable to pay LBT.

In this case, however, ARCII's placement of dividends derived from its SMC shares in the market incidentally earning interests does not negate the corporation's restricted underlying purpose as a CIIF holding company—i.e., to manage the dividends of SMC preferred shares for and on behalf of the government—as would convert it into an active investor or dealer in securities. Lacking in the element of regularity or recurrence for the purpose of earning a profit, ARCII's money market placements cannot amount to "doing business" as an NBFI subject to LBT. The Court, likewise, cited the opinion of the Bureau of Local Government Finance that any tax imposed on interests, dividends, and gains from the sale of shares of non-bank and non-financial institutions are merely passive investment income.

B. Real Property Taxes

Unimasters Conglomeration Incorporated, Petitioner, vs. Tacloban City Government, Privatization and Management Office, Philippine Tourism Authority, and Province of Leyte, Respondents.
Third Division | G.R. No. 214195 | 23 March 2022

Doctrine: *Sec. 234(a) of the LGC exempts the real properties owned by the Republic from RPT except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person. A contractual assumption of tax liability by the Republic does not automatically exonerate the "taxable person" from the burden created by law, especially when the validity of the contractual stipulation of the parties is being questioned before the Courts.*

Facts: Leyte Park Hotel, Inc. (LPHI) is a 61,322-square meter property that stands on Magsaysay Boulevard, Tacloban City. It is co-owned by Assets Privatization Trust (APT), now Privatization and Management Office (PMO), the Province of Leyte, and the PTA, now Tourism Infrastructure and Enterprise Zone Authority, holding 34%, 26%, and 40% of the shares, respectively. Then APT, representing the owners of LPHI, and Unimasters Conglomeration Incorporated (UCI) entered into a Contract of Lease over LPHI, which provides that "RPTs shall be for the account of the lessor and any payment of RPT by the lessee shall be credited against any amount due to the lessor."

In December 2000, UCI stopped paying its obligations, prompting PMO to send several letters demanding compliance with the contract's provisions, but to no avail. Meanwhile, the City Treasurer of Tacloban sent several demand letters to collect the unpaid RPT of LPHI for the years 1989 to 2012, but the same remained unpaid despite notice. Hence, the City Treasurer of Tacloban instituted a collection case against LPHI, UCI, APT, PTA, and the Province of Leyte before the CTA. After trial, the CTA found UCI liable, which was subsequently affirmed by the CTA En Banc.

Issue: Whether the payment of realty taxes should rest on the Republic if it has waived its tax exemption by contractually assuming the payment of RPT in the lease contract.

Ruling: No. Sec. 234(a) of the LGC exempts real properties owned by the Republic from payment of RPT except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person. Certainly, LPHI is owned in common by the Province of Leyte, a political subdivision, and by PMO and PTA, both government instrumentalities that are exempt from payment of RPT. The subsequent execution of a Contract of Lease between the co-owners of LPHI and UCI, a private entity, did not divest the former of their exemption from realty taxes, only that the hotel lost the exemption from being taxed and the burden to pay the taxes due thereon passed on to UCI as the beneficial user thereof. Any remedy for collecting taxes should then be directed against the "taxable person," the same being a personal action. While the Court recognized the existence of the provision in the Lease Contract pertaining to PMO and PTA's assumption of tax liability, such assumption of the obligation to pay RPT does not automatically exonerate UCI from the burden created by law, especially so that the validity of the contractual stipulation of the parties is being questioned before the RTC.

Light Rail Transit Authority, Petitioner, vs. City of Pasay, Represented by the City Treasurer and the City Assessor, Respondent.
En Banc | G.R. No. 211299 | 28 June 2022

Doctrine: *Light Rail Transit Authority (LRTA) is a government instrumentality, not a government-owned and controlled corporation (GOCC). Being such, the LRTA cannot be taxed by local governments pursuant to Sec. 133(o) of the LGC, which recognizes the basic principle that local governments cannot tax the national government. The only exception is when LRTA grants the beneficial use of its real property to a "taxable person" of the LGC, in which case, the specific real property leased becomes subject to real property tax, which must be paid by the "taxable person".*

Facts: From 1985 to 2001, the City of Pasay (City) assessed the LRTA of real estate taxes on its properties. LRTA proposed to pay its tax liabilities on an installment basis and requested the condonation of penalties on its arrears. Nonetheless, the City issued a notice of delinquency with warrants of levy. Aggrieved, LRTA filed a Petition for Certiorari, Prohibition, and Mandamus against the City, questioning its assessments before the RTC of Pasay and claiming that it is a government instrumentality exempt from local taxation. It operates the light rail transit system for the Republic of the Philippines, which is the true owner of the subject real properties.

The RTC dismissed the Petition for being an improper remedy and for lack of merit. LRTA then appealed before the CA, which affirmed the RTC ruling in toto, stating that LRTA was already found to be a taxable entity pursuant to G.R. No. 127316[10].

Issue: Whether LRTA, a government instrumentality, is exempt from realty taxes.

Ruling: Yes. The LRTA is exempt from realty taxes. Under Secs. 2(10) and (13) of the Introductory Provisions of the Administrative Code, which govern the legal relation and status of government units, agencies, and offices within the entire government machinery, LRTA is a government instrumentality and not a GOCC. Being such, the LRTA cannot be taxed by local governments pursuant to Sec. 133(o) of the LGC, which recognizes the basic principle that local governments cannot tax the national government, as the former's power to tax is, historically, merely delegated by the latter. The only exception is when LRTA grants the beneficial use of its real property to a "taxable person" as provided in Sec. 234(a) of the LGC, in which case, the specific real property leased becomes subject to real property tax, which must be paid by the "taxable person". Thus, only portions of the LRT leased to taxable persons like private parties are subject to real property tax by the City.

Art. 420 of the Civil Code provides that the railroads and terminals of the LRT, being devoted to public use, are properties of public dominion and thus owned by the State or the Republic of the Philippines. Thus, the LRT railroads and terminals are expressly exempt from real estate tax under Sec. 234(a) of the LGC and are not subject to execution or foreclosure sale.

When local governments invoke the power to tax national government instrumentalities, such power is construed strictly against local governments. Another rule is that a tax exemption is strictly construed against the taxpayer claiming the exemption. However, when Congress grants a national government instrumentality exemption from local taxation, such exemption is construed liberally in favor of the national government instrumentality.

III. Special Laws

A. Tax Amnesty

BIR, Petitioner, vs. Samuel B. Cagang, Respondent.
Second Division | G.R. No. 230104 | 16 March 2022

Doctrine: *Withholding taxes are not covered by the amnesty program. Moreover, only those who have pending criminal cases before the courts of justice or at the prosecutor's office for tax evasion and other criminal offenses under Chapter II of Title X of the NIRC of 1997, as amended, at the time of availment of tax amnesty or submission of requirements, are disqualified from availing tax amnesty.*

[10] LRTA, Petitioner, vs. Central Board of Assessment Appeals, Board of Assessment Appeals of Manila and the City Assessor of Manila, Respondents, 12 October 2000.

Facts: CEDCO Inc. received a LOA from the BIR dated 20 February 2003, covering TYs 1997 to 2001. In seeking the cancellation of the LOA, CEDCO pointed out that its records had been examined yearly by the BIR, that it had availed of the Voluntary Assessment and Abatement Program for TYs 2000 and 2001, and that it had already paid all deficiency taxes against it. Further, CEDCO informed the BIR that its records from 1997 to 2000 were no longer available for examination as it had already disposed them pursuant to Sec. 235 of the NIRC of 1997, as amended. The BIR denied CEDCO's request and issued a PAN. CEDCO was assessed the following taxes for TYs 2000 and 2001: (a) Income Tax; (b) VAT; (c) EWT; and (d) Withholding Tax on Compensation. Despite its protests, the BIR still issued a FLD. CEDCO, through Cagang, as Director for Administration and Finance, protested the FLD/FAN. Nonetheless, BIR issued a FDDA.

Subsequently, CEDCO availed of the tax amnesty under RA 9480, which covered "all national internal revenue taxes for the TY 2005 and prior years, with or without assessments duly issued therefor, and that have remained unpaid as of December 31, 2005 x x x."

In a collection letter, the BIR directed CEDCO to pay its tax liabilities based on the FDDA. A complaint-affidavit was filed against Cagang and Paredes, in their official capacities as CEDCO's treasurer and president, respectively, for violating Sec. 255 of the NIRC of 1997, as amended, due to CEDCO's failure to settle its tax obligations.

Issues: Whether CEDCO is entitled to avail of the tax amnesty under RA 9480.

Ruling: Yes, CEDCO is entitled to avail of the tax amnesty, but only as to its income tax and VAT for the TYs 2000 and 2001. Tax amnesty refers to the "absolute waiver by a sovereign of its right to collect taxes and power to impose penalties on persons or entities guilty of violating a tax law." RA 9480 granted a tax amnesty covering "all national internal revenue taxes for the TY 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005." These national internal revenue taxes include (a) Income Tax; (b) VAT; (c) Estate Tax; (d) Excise Tax; (e) Donor's Tax; (f) Documentary Stamp Tax; (g) Capital Gains Tax; and (h) Other Percentage Taxes. However, Sec. 8 of the said law enumerates those persons and cases not covered by the law.

> Section 8. Exceptions. — The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of RA 9480:
> (a) Withholding agents with respect to their withholding tax liabilities; x x x
> (e) Those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code; x x x

Clearly, the amnesty program does not cover withholding taxes. Thus, the BIR's submission that CEDCO is not qualified to avail of the tax amnesty with respect to its withholding tax liabilities is merited.

As such, while the CA was correct in ruling that "there was no pending case yet against CEDCO whether before the courts of justice or at the prosecutor's office" considering that the complaint-affidavit was filed on 14 August 2009, and the 2007 Tax Amnesty Law took effect on 24 May 2007 which CEDCO availed of on 28 November 2007, CEDCO is nevertheless disqualified to avail of the tax amnesty for its withholding tax liabilities in accordance with Sec. 8(a) of RA 9480 and Section 5(a) of its implementing rules and regulations.

A tax amnesty, similar to a tax exemption, is never favored or presumed in law. The grant of a tax amnesty must be construed strictly against the taxpayer and liberally in favor of the taxing authority.

B. Data Privacy Act

Philippine Stock Exchange, Inc., et al., Petitioners, vs. Secretary of Finance, CIR, and Chairperson of the SEC, Respondents.
En Banc | G.R. No. 213860 | 05 July 2022

Doctrine: *The taxpayer identification number (TIN) is a sensitive personal information. In processing the TINs of investors, Sec. 13(b) should be observed, which requires that the regulatory enactments guarantee the protection of sensitive personal information and privileged information, and the law or regulation does not require the consent of the data subject.*

Facts: The Philippine Stock Exchange, Inc., Bankers Association of the Philippines, Philippine Association of Securities Brokers and Dealers, Inc., Fund Managers Association of the Philippines, Trust Officers Association of the Philippines, and Marmon Holdings, Inc. (collectively, petitioners) filed a Petition for Certiorari and Prohibition before the Court assailing the constitutionality of RR 1-2014, RMC 5-2014, and the SEC Memorandum Circular (MC) No. 10-2014 (collectively, questioned regulations). The petitioners allege, among others, that these regulations violate their right to privacy and are ultra vires. BIR RR 1-2014 and RMC 5-2014 require all withholding agents to submit to the BIR an alphabetical list (alphalist) of employees and payees with their respective TIN, among others. On the other hand, SEC MC 10-2014 directs the Philippine Depository and Trust Corporation and broker dealers to provide the listed companies or their transfer agents an alphalist of all depository account holders with their TIN, among others. It also seeks to enforce compliance with a tax regulation issued by the Secretary of Finance.

Respondents argue that there is no violation of the right to privacy or the Data Privacy Act (DPA) in collecting and forwarding information as mandated by the questioned regulations. They assert that Sec. 4 of the DPA explicitly excludes information necessary in the performance of regulatory agencies' constitutionally and statutorily mandated functions from the scope of the law. Further, respondents maintain that the

NIRC of 1997, as amended, and SEC confidentiality rules cover all withholding agents who received personal information relating to each disclosed investor.

Issue: Whether the questioned regulations violate the right to privacy.

Ruling: The Court found the questioned regulations void for violating petitioners' right to privacy. The questioned regulations failed the second requirement under the "*strict scrutiny test,*" which requires the State to show that the regulation not only serves compelling interest, but is narrowly drawn to prevent abuses. While the regulations aim to achieve the compelling state interest of effective and proper tax collection, the regulations lack evidence to show that they are narrowly tailored as the "least restrictive means for effecting the invoked interest." The absence of proof that taxes were improperly collected or that a deficit resulted from insufficient disclosure further weakens the State's position. Further, the questioned regulations failed to include guarantees to protect the sensitive information to be collected as required under Sec. 13(b) of the DPA.

The Court holds that collecting information pursuant to the questioned regulations is unnecessary for the BIR to carry out its functions. There was no showing that there was a problem or inefficacy with the system prior to the issuance of the questioned regulations. Respondents failed to show the aspects of operations under the prior rule that will be improved by collecting the information. As it stands, the prior rule is effective and does not require additional information to collect the taxes properly. Accordingly, the State cannot just use the exception of the performance of mandated functions under the DPA to carry out actions that abridge the right to privacy, there must be a showing of necessity.