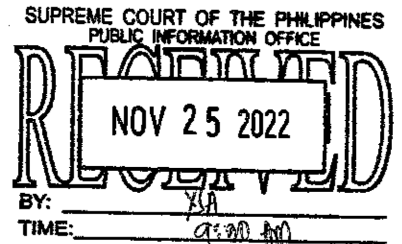


Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

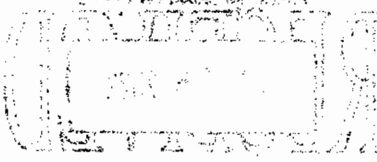
THE DEPARTMENT OF ENERGY, *Petitioner,*	**G.R. No. 260912**
	Present:
- versus -	CAGUIOA, *J., Chairperson,* INTING, GAERLAN, DIMAAMPAO, and SINGH, *J.J.*
COURT OF TAX APPEALS, *Respondent.*	
	Promulgated: August 17, 2022

x - x

DECISION

SINGH, *J.*

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision, dated 4 November 2021, and the Resolution, dated 24 May 2022, of the Court of Tax Appeals *en banc*, in CTA EB No. 2241 (CTA Case No. 10198). The assailed Decision and Resolution dismissed the Petition for Review filed by the petitioner Department of Energy, against the Warrants of Distraint and/or Levy and Garnishment issued by the Commissioner of Internal Revenue, for lack of jurisdiction over the dispute involving two national government agencies – the Department of Energy and the Bureau of Internal Revenue.



The Facts

The dispute can be traced to the Bureau of Internal Revenue's (**BIR**) issuance of a Preliminary Assessment Notice (**PAN**) for deficiency excise taxes amounting to ₱18,378,759,473.44, to petitioner Department of Energy (**DOE**) on 7 December 2018. The DOE was given fifteen (15) days to pay the assessed deficiency taxes.[1]

The BIR then issued a Formal Letter of Demand (**FLD/FAN**) for the assessed amount, received by the DOE on 17 December 2018, ten (10) days after the issuance of the PAN.[2]

On 21 December 2018, the DOE responded to the BIR and asserted that it is not liable for the assessed amounts as DOE is not among those liable to pay excise taxes under Section 130(A)(1) of the National Internal Revenue Code (**NIRC**). The DOE maintained that it is not the "owner, lessee, concessionaire or operator of the mining claim,"[3] and that the agency merely grants mining rights or service contracts on behalf of the State. The DOE further contended that the subject transactions involve condensates, which are classified as liquified natural gas, that are exempt from excise taxes under Item 3.2 of BIR Revenue Regulations No. 1-2018 dated 5 January 2018.[4]

On 17 July 2019, the DOE was notified by the BIR that the assessment has become final, executory, and demandable. According to the BIR, the DOE failed to file a formal protest on the FLD/FAN within the thirty (30)-day period prescribed under existing revenue rules and regulations. The BIR likewise informed DOE that the Department of Science and Technology confirmed the BIR's position that condensates are separate and distinct from natural gas, which is exempt from excise tax.[5]

On 31 July 2019, the DOE replied that it has not yet received the FLD/FAN and that based on its records, the only document it received from

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1 *Rollo*, p.58.

2 Id. at 102-103.

3 NATIONAL INTERNAL REVENUE CODE. sec. 130, viz: "Sec. 130. Filing of Return and Payment of Excise Tax on Domestic Products.

(A) Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax. –

(1) Persons Liable to File a Return. – Every person liable to pay excise tax imposed under this Title shall file a separate return for each place of production setting forth, among others the description and quantity or volume of products to be removed, the applicable tax base and the amount of tax due thereon: Provided, however, That in the case of indigenous petroleum, natural gas or liquefied natural gas, the excise tax, shall be paid by the first buyer, purchaser or transferee for local sale, barter or transfer, while the excise tax on exported products shall be paid by the owner, lessee, concessionaire or operator of the mining claim."

4 *Rollo*, pp. 60-61.

5 Id. at 62.

the BIR in December 2018 was the PAN, and no further notice or communication was received from the BIR until 17 July 2019.[6]

The Commissioner of Internal Revenue (**CIR**) issued the two assailed warrants on 19 September 2019.[7] This prompted the DOE to write the BIR. In its letter received by the BIR on 8 October 2019, the DOE recounted the exchanges between the two agencies and reiterated that it has yet to receive the FLD/FAN, from which the period for protest should be reckoned. The DOE claimed that the premature actions of the BIR deprived it of due process. Additionally, the DOE maintained that as natural gas is exempt from excise taxes, condensates which refer to a liquified form of natural gas, must similarly be exempt. Assuming *arguendo* that condensates are not so exempt, the DOE is not the entity liable for excise taxes as it is not the owner, lessee, concessionaire, operator, or service contractor of the mining claim.[8]

Finding no other recourse from the Warrants issued by the CIR, on October 18, 2019, the DOE filed a Petition for Review (with Urgent Motion for Suspension of Collection of Taxes), with the CTA assailing the said warrants.

The CTA Second Division Ruling

In a Resolution dated 8 November 2019, the CTA Second Division dismissed the petition for lack of jurisdiction. The CTA recognized that the matter was governed by this Court's ruling in *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue (PSALM v. CIR)*,[9] and that as such the CTA is not the proper forum to resolve what it characterized as a purely intra-governmental dispute.

> "In the present Petition for Review, both parties are public entities. Petitioner DOE is a department of the executive branch of government while respondent is the Commissioner of Internal Revenue, the head of the Bureau of Internal Revenue. Without a doubt, this is a purely intra-governmental dispute. Accordingly, this Court has no jurisdiction over the present case. Notably, this Court finds no merit in petitioner's arguments against the application of the PSALM in the present Petition for Review.
>
> Given that the Supreme Court has already spoken on the matter, this Court has no other option but to strictly uphold and apply the same. Until and unless the doctrine laid down in PSALM is modified or reversed by the Supreme Court *En Banc*, the same remains to be binding and should be applied in determining the proper forum to resolve the disputes and claims solely between and among the departments, bureaus, offices, agencies, and instrumentalities of the National Government, including government-owned or controlled corporations. The Supreme Court, by tradition and in

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6 Id. at 65-67.

7 Id. at 63-64.

8 Id. at 68-70.

9 G.R. No. 198146, August 8, 2017.

> our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.
>
> **WHEREFORE**, the present Petition for Review is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**"[10]

The DOE filed its Motion for Reconsideration which was likewise denied for lack of merit on 30 January 2020. 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.

> "**WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration (of the Resolution dated 08 November 2019)**, is **DENIED** for lack of merit.
>
> **SO ORDERED.**"[11]

Following the dismissal, on 21 February 2020, the BIR filed a Money Claim for the assessed deficiency excise tax amounting to ₱18,378,759,473.44 with the Commission on Audit (**COA**), citing the finality of its assessment against the DOE.[12]

In the pleadings filed before the COA, which the DOE included in its submissions, it was finally clarified that the FLD/FAN was indeed served on the DOE, albeit not through the DOE's Records Management Division, which is its centralized receiving and releasing unit for all communications. The FLD/FAN was served through one of the DOE's employees, who according to it was not authorized to receive the same. As a result, the document was not routed properly and remained unknown to the concerned offices of the agency until the BIR alluded to the same in subsequent communications.[13]

The CTA *En Banc* Ruling

On 28 February 2020, the DOE filed a Petition for Review before the CTA *En Banc*. In its Decision dated 4 November 2021, the CTA *En Banc* affirmed its Division's earlier Resolutions.

> "**WHEREFORE**, considering the required affirmative vote of at least five (5) members of the Court *En Banc* was not obtained in the instant case, pursuant to ***Section 2 of the CTA Law*** in relation to ***Section 3, Rule***

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[10] Resolution, CTA Case No. 10198, November 8, 2019.
[11] Resolution, CTA Case No. 10198, January 30, 2020.
[12] *Rollo*, pp. 91-101
[13] Id. at 111.

> *2 of the Revised Rules of the CTA*, the instant Petition is hereby **DENIED**. The Assailed Resolutions, dated 8 November 2019 and 30 January 2020, hereby **STAND AFFIRMED**.
>
> **SO ORDERED**."[14]

Following the denial, the DOE filed a Motion for Reconsideration on 3 December 2021. The CTA *En Banc*, through the Resolution dated 24 May 2022, denied the DOE's prayer to set aside the 4 November 2021 Decision for lack of merit. The assailed Resolution reads:

> "**WHEREFORE**, premises considered, the instant **MOTION FOR RECONSIDERATION (on the Decision dated 04 November 2021)** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."[15]

On June 9, 2022, petitioner DOE filed the present Petition for Review under Rule 45 before the Court.[16]

The Issue

For resolution of the Court is the issue of whether the CTA *En Banc* erred in dismissing the DOE's petition for lack of jurisdiction.

In resolving this issue, the Court is called to determine the proper tribunal or office which has jurisdiction over appeals on tax disputes solely involving agencies under the Executive Department – whether it is the CTA or the Executive, through the Secretary of Justice or the Solicitor General.

The DOE asserts that it is the CTA which has jurisdiction over the case as Republic Act **(R.A.)** No. 1125 prevails over Presidential Decree **(P.D.)** No. 242.[17] Moreover, the CTA has the requisite expertise and experience to resolve tax issues.[18]

The DOE further contends that the ruling in *PSALM v. CIR*[19] stemmed from a different factual milieu and should therefore not be applied to this instant case. Finally, it invokes that not all controversies between or among national government entities fall under the coverage of P.D. No. 242.[20]

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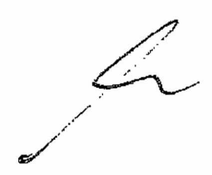
14 Decision, CTA EB NO. 2241 (CTA Case No. 10198), November 4, 2021.
15 Resolution, CTA EB NO. 2241 (CTA Case No. 10198), May 24, 2022.
16 *Rollo*, pp 3-30.
17 Id. at 13-15.
18 Id. at 10-11.
19 G.R. No. 198146, August 8, 2017.
20 *Rollo*, pp. 8-9,11-13.



Upon consideration of these points, the Court finds no reversible error on the part of the public respondent CTA. Hence, the Petition must be denied.

The Court's Ruling

The Court holds that all disputes, claims, and controversies, solely between or among executive agencies, including disputes on tax assessments, must perforce be submitted to administrative settlement by the Secretary of Justice or the Solicitor General, as the case may be.

The CTA correctly steered clear of the case as it lacked jurisdiction over this dispute between the DOE and the BIR.

It also correctly gave precedence to the provisions of P.D. No. 242,[21] now embodied in the Revised Administrative Code, which especially deals with the resolution of disputes, claims, and controversies between departments, bureaus, offices, agencies, and instrumentalities of the government, and carves out such disputes from the jurisdiction of the CTA, as provided in the NIRC and R.A. No. 1125.

This case falls squarely within the purview of *PSALM v. CIR,*[22] and the assailed Resolution of the CTA is consistent with our pronouncement therein. As will be hereafter discussed, the ratiocinations and conclusions of this Court, reflected therein, to this day remain valid and indisputable. Hence, *PSALM* remains good law and need not be revisited by this Court.

Special Laws prevail over General Laws

P.D. No. 242, as incorporated in the Revised Administrative Code in Chapter 14, Book IV, should prevail as against laws defining the general jurisdiction of the CTA, *i.e.,* R.A. No. 1125,[23] as amended, and the NIRC. This is consistent with the fundamental rule that special laws prevail over general laws. P.D. No. 242 deals specifically with the resolution of disputes, claims, and controversies where the parties involved are the various departments, bureaus, offices, agencies, and instrumentalities of the government.[24] P.D. No. 242 should be read as an exception to the general rule set in R.A. No. 1125 and the NIRC that the CTA has jurisdiction over tax disputes involving laws administered by the BIR.

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[21] Entitled "PRESCRIBING THE PROCEDURE FOR ADMINISTRATIVE SETTLEMENT OR ADJUDICATION OF DISPUTES, CLAIMS AND CONTROVERSIES, BETWEEN OR AMONG GOVERNMENT OFFICES, AGENCIES AND INSTRUMENTALITIES, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS AND FOR OTHER PURPOSES," effective July 9, 1973.

[22] G.R. No. 198146, August 8, 2017.

[23] Entitled "AN ACT CREATING THE COURT OF TAX APPEALS," approved June 16, 1954.

[24] PRES. DEC. NO. 242, sec 1.

The Court has defined a general law as "a law which applies *to all of the people* of the state or to *all of a particular class of persons* in the state, with equal force and obligation."[25] In *Valera v. Tuason, et al.*,[26] it was also described as "one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class."[27] On the other hand, a special law is one which "applies to particular individuals in the state or to a particular section or portion of the state only"[28] and which "relates to particular persons or things of a class."[29] As the Court has consistently held, where there are two laws which appear to apply to the same subject and where one law is general and the other special, the law specially designed for the particular subject must prevail over the other. Stated more simply, the special law prevails over the general law. *Generalia specialibus non derogant.*

The Court has had occasion to apply this principle in a number of cases such as in *City of Manila v. Teotico*[30] where it was ruled:

> "x x x The Court of Appeals, however, applied the Civil Code, and, we think, correctly. It is true that, insofar as its territorial application is concerned, Republic Act No. 409 is a special law and the Civil Code a general legislation; but, as regards the subject-matter of the provisions above quoted, Section 4 of Republic Act 409 establishes a general rule regulating the liability of the City of Manila for: "damages or injury to persons or property arising from the failure of" city officers "to enforce the provisions of" said Act "or any other law or ordinance, or from negligence" of the city "Mayor, Municipal Board, or other officers while enforcing or attempting to enforce said provisions." Upon the other hand, Article 2189 of the Civil Code constitutes a particular prescription making "provinces, cities and municipalities . . . liable for damages for the death of, or injury suffered by any person by reason" — specifically — "of the *defective condition of roads, streets, bridges, public buildings, and other-public works under their control or supervision.*" In other words, said section 4 refers to liability arising from negligence, in general, regardless of the object thereof, whereas Article 2189 governs liability due to "defective streets," in particular. Since the present action is based upon the alleged defective condition of a road, said Article 2189 is decisive thereon."

In *Bagatsing v. Ramirez*,[31] it was further elucidated:

> "There is no question that the Revised Charter of the City of Manila is a *special act* since it relates only to the City of Manila, whereas the Local Tax Code is a general law because it applies universally to all local governments. Blackstone defines general law as a universal rule affecting the entire community and special law as one relating to particular persons or things of a class. And the rule commonly said is that a prior special law is not ordinarily repealed by a subsequent general law. The fact that one is

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[25] *United States v. Serapio*, G.R. No. L-7557, December 7, 1912; emphasis in the original.
[26] G.R. No. L-1276, April 30, 1948.
[27] Id.
[28] *United States v. Serapio*, supra 25.
[29] *Valera v. Tuason, et al*, G.R. No. L-1276, April 30, 1948.
[30] G.R. No. L-23052, January 29, 1968.
[31] G.R. No. L-41631, December 17, 1976; citations omitted.

> special and the other general creates a presumption that the special is to be considered as remaining an exception of the general, one as a general law of the land, the other as the law of a particular case. However, the rule readily yields to a situation where the special statute refers to a subject in general, which the general statute treats in *particular*. This exactly is the circumstance obtaining in the case at bar. Section 17 of the Revised Charter of the City of Manila speaks of "ordinance" in general, i.e., irrespective of the nature and scope thereof, *whereas*, Section 43 of the Local Tax Code relates to "ordinances levying or imposing taxes, fees or other charges" in particular. In regard, therefore, to ordinances in general, the Revised Charter of the City of Manila is doubtless dominant, but, that dominant force loses its continuity when it approaches the realm of "ordinances levying or imposing taxes, fees or other charges" in particular. There, the Local Tax Code controls. Here, as always, a general provision must give way to a particular provision. Special provision governs.
>
> The case of *City of Manila v. Teotico* is opposite. In that case, Teotico sued the City of Manila for damages arising from the injuries he suffered when he fell inside an uncovered and unlighted catchbasin or manhole on P. Burgos Avenue. The City of Manila denied liability on the basis of the City Charter (R.A. 409) exempting the City of Manila from any liability for damages or injury to persons or property arising from the failure of the city officers to enforce the provisions of the charter or any other law or ordinance, or from negligence of the City Mayor, Municipal Board, or other officers while enforcing or attempting to enforce the provisions of the charter or of any other law or ordinance. Upon the other hand, Article 2189 of the Civil Code makes cities liable for damages for the death of, or injury suffered by any persons by reason of the defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision. On review, the Court held the Civil Code controlling. It is true that, insofar as its territorial application is concerned, the Revised City Charter is a special law and the subject matter of the two laws, the Revised City Charter establishes a *general rule* of liability arising from negligence in general, regardless of the object thereof, whereas the Civil Code constitutes a particular *prescription* for liability due to defective streets in particular. In the same manner, the Revised Charter of the City prescribes a rule for the publication of "ordinance" *in general*, while the Local Tax Code establishes a rule for the publication of ordinance levying or imposing taxes fees or other charges *in particular*."

Here, the NIRC and R.A. No. 1125, and specifically their provisions on the jurisdiction of the CTA over tax disputes involving tax laws enforced by the BIR, should be read as general provisions governing the settlement of disputes involving tax claims. These provisions apply to the resolution of this general class of tax cases involving all persons, without exception. Stated more simply, they apply with equal force to *all persons* involved in disputes pertaining to *all tax claims* arising from *all tax laws* being implemented by the BIR.

In clear contrast, P.D. No. 242, as now embodied in the Revised Administrative Code, applies only to particular persons involved in a uniquely specific category of cases – disputes, claims, and controversies where all the parties are government entities. The Court's ruling in *City of Manila v.*

Teotico, *Bagatsing v. Ramirez*, and other similar cases, dictate that an interpretation of P.D. No. 242 as a special law that functions as an exception to the general rule on the jurisdiction of courts, such as the CTA, to resolve disputes. Where the dispute involves government entities on opposing sides, P.D. No. 242, as embodied in the Revised Administrative Code, determines, in the first instance, the mode of dispute resolution.

In ruling that P.D. No. 242 is the special law (as opposed to R.A. No. 1125 and the NIRC), the Court also takes into consideration the rationale for the enactment of P.D. No. 242. The First and Second Whereas Clauses of P.D. No. 242 provide:

> "WHEREAS, it is necessary in the public interest to provide for the administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including government-owned or controlled corporations, **to avoid litigation in court where government lawyers appear for such litigants to espouse and protect their respective interests although, in the ultimate analysis, there is but one real party in interest the Government itself in such litigations;**
>
> WHEREAS, court cases involving the said government entities and instrumentalities have needlessly contributed to the clogged dockets of the courts, aside from dissipating or wasting the time and energies not only of the courts but also of the government lawyers and the considerable expenses incurred in the filing and prosecution of judicial actions;"[32] (emphasis supplied)

In the performance of our Constitutional duty to interpret the laws, it is essential that the Court do so with due regard to legislative intent. Given the purpose animating the enactment of P.D. No. 242, the Court must read it as a special law intended to govern the resolution of disputes involving government agencies. It is only by reading P.D. No. 242 as an exception to the general rule governing the jurisdiction of the CTA over tax disputes that the Court will be able to respect and uphold the legislative intent to submit all inter-governmental disputes to the jurisdiction of the Executive in the pursuit of avoiding litigation in cases where the opposing parties ultimately represent the government as the sole real party-in-interest. A contrary reading of P.D. No. 242 would defeat the purpose for its enactment as an entire class of cases (*i.e.*, tax cases under the jurisdiction of the CTA) would operate outside its ambit, thereby significantly limiting the Government's ability to resolve internal disputes and further clogging the CTA's dockets.

In *Philippine National Oil Company v. Court of Appeals (PNOC v. CA)*,[33] the Court found that R.A. No. 1125 should be read as an exception to P.D. No. 242. However, it cannot be overemphasized that *PNOC v. CA* did not involve the actual application of the P.D. No. 242 as we ultimately ruled

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[32] PRES. DEC. NO. 242, Whereas Clauses.

[33] G.R. Nos. 109976 and 112800, April 26, 2005.

in that case that P.D. No. 242 does not govern the dispute considering that it involved a private party and was therefore not a case involving solely the government. Given this, our elucidations on R.A. No. 1125 and P.D. No. 242 in that case was obiter. As for *Commission of Internal Revenue v. Secretary of Justice and the Philippine Amusement and Gaming Corporation,*[34] which relied on our obiter in *PNOC*, the case was decided prior to *PSALM*, and it was only in *PSALM* that the Court made the definitive and binding pronouncement that P.D. No. 242 is a special law and must be read as a carve out from the general jurisdiction of the CTA over tax cases. *PSALM* operates as *stare decisis* in this case and must, therefore, govern our ruling.

Ruling in PSALM v. CIR is not limited to disputes arising from contracts

The DOE insists that the CTA *En Banc* erred in relying on *PSALM v. CIR*[35] as the case stemmed from a different set of facts – the dispute involved a contract, a Memorandum of Agreement (**MOA**) executed by PSALM, BIR, and the National Power Corporation (**NPC**) relative to the payment of Value Added Tax deficiencies in relation to the NPC's sale of its two power plants. As the present case does not involve a similar contract or agreement between the parties, the DOE asserts that the ruling in *PSALM* does not apply to its Petition.

The Court is not persuaded.

A reading of *PSALM v. CIR*[36] clearly demonstrates that the decision was not merely hinged on the existence of the MOA among the government agencies concerned, but moreso on the very fact that there is a dispute among two government-owned or -controlled corporations, PSALM and the NPC, on the one hand, and a national government office, the BIR, on the other.

The CTA *En Banc* in the assailed Resolution correctly observed that the Court "was categorical in ruling that when the law says 'all disputes, claims and controversies solely among government agencies, the law means all, without exception."[37] So long as such dispute arises from any of the following – "the interpretation and application of statutes, contracts or agreements" – the same falls under the administrative settlement proceedings directed by P.D. No. 242.[38]

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34 G.R. No. 177387, November 9, 2016.

35 G.R. No. 198146, August 8, 2017.

36 Id.

37 *Rollo*, p. 39.

38 PRES. DEC. NO. 242, sec. 1, viz: "Section 1. Provisions of law to the contrary notwithstanding, all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies, arising from the interpretation and application of statutes, contracts or

Through *PSALM v. CIR*,[39] the Court harmonized conflicting laws, provided guidelines for when disputes ought to be referred to administrative settlement, and clarified the appropriate arbiter based on the nature of the issues. Thus, the decision was not limited to the same scenario which brought about the action, but was to be instructive for future scenarios conforming with the parameters drawn by the Court.

To hold that *PSALM v. CIR*[40] is applicable only to disputes, claims, or controversies, arising out of contracts or agreements among government agencies, to the exclusion of the other sources of disputes enumerated in Section 1 of P.D. No. 242, is to adopt a dangerously narrow interpretation.

Orion Water District v. GSIS and disposition in recent tax cases do not govern this dispute

The DOE argues that not all controversies between or among entities under the Executive fall under the coverage of P.D. No. 242. This is correct. The law itself limits its application to disputes, claims and conflicts solely involving offices under the Executive Department that arise from interpretation and application of statutes, contracts, or agreements. Beyond these instances, P.D. No. 242 should not apply.

However, the DOE speciously relies on *Orion Water District v. Government Service Insurance System (GSIS)*,[41] to justify its resort to the CTA. Indeed, the Court did mention that not all controversies between or among government agencies fall under the contested provision, but *Orion v. GSIS*[42] needs to be put in its proper context. The Court therein concluded that the situation does not fall under any of the instances warranting administrative settlement as essentially there was no dispute in the first place – there was no obscure question of law or ambiguous contract, there was only a clear violation of the Water District's duty to promptly remit GSIS contributions, which it did not even dispute or controvert.

Orion v. GSIS[43] cannot apply to this case as it involved not just the GSIS and the Water District, but also the latter's erring officials, clearly, removing it from the scope of P.D. No. 242.

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agreements, shall henceforth be administratively settled or adjudicated as provided hereinafter: Provided, That, this shall not apply to cases already pending in court at the time of the effectivity of this decree."

39 G.R. No. 198146, August 8, 2017.

40 Id.

41 G.R. No. 195382, June 15, 2016.

42 Id.

43 Id.

The Court also observes that the assailed Resolution, while supported by the majority was not a unanimous disposition of the CTA *En Banc*, as three (3) Justices registered their dissent. The dissent pointed to a number of fairly recent tax related cases involving government agencies, which have proceeded with the CTA, or all the way to the Supreme Court, and which have not been dismissed on account of lack of jurisdiction – in particular, *Bases Conversion and Development Authority (BCDA) v. CIR,*[44] *CIR v. BCDA*,[45] and *PSALM v. CIR*[46] (decided in 2019, and which should not be confused with the *PSALM v. CIR* case decided in 2017 extensively discussed herein).

A quick look at these cases would reveal that they are glaringly silent on the issue of jurisdiction. Since the CTA's jurisdiction or the need for administrative settlement was not raised in these cases, they cannot be deemed controlling when there are unequivocal pronouncements from this Court that such disputes must be submitted to administrative settlement.

Executive's power of control necessitates administrative settlement of disputes

The President, under the Constitution, enjoys the power of control over the entire Executive Department.[47] Given that the President, as Chief Executive, has control over all the agencies in dispute, it is only proper and logical that he first be given a chance to resolve the dispute before resort to the courts. Only after the President has decided or settled the dispute can the court's jurisdiction be invoked.[48]

Neither the Judiciary, by prematurely taking cognizance of actions which are otherwise subject to administrative discretion, nor the Legislature, by circumscribing such power through legislation, can curtail such exercise of the President's power of control.

Veritably, the power to tax is legislative in nature, and under our constitutional framework, the power to execute and administer laws, tax laws included, pertains to the Executive.[49] Pursuant to this design, the Legislature, by enacting the NIRC, has yielded the power to assess and collect taxes to the BIR and the CIR, under the supervision and control of the Secretary of Finance.

> "Section 2. Powers and Duties of the Bureau of Internal Revenue. – **The Bureau of Internal Revenue shall be under the supervision and**

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44 G.R. No. 205466, January 11, 2021.
45 G.R. No. 217898, January 15, 2020.
46 G.R. No. 226556, July 3, 2019.
47 Constituion, Art. VII, sec. 17.
48 G.R. No. 198146, August 8, 2017.
49 const., art. VII, sec. 17.

> **control of the Department of Finance** and **its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts.** The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws."[50] (emphasis supplied)

The Secretary of Finance, in turn, is subject to the control of the President, along with all other executive departments, bureaus, and offices, through which he is expected to faithfully execute all laws.[51]

By the power of control we mean "the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter."[52] In *National Electrification Administration v. COA*,[53] this Court illustrated just how encompassing the President's power over the Executive Branch is.

> "**The presidential power of control over the executive branch of government extends to all executive employees from Cabinet Secretary to the lowliest clerk. The constitutional vesture of this power in the President is self-executing and does not require statutory implementation,** nor may its exercise be limited, much less withdrawn, by the legislature.
>
> Executive officials who are subordinate to the President should not trifle with the President's constitutional power of control over the executive branch. There is only one Chief Executive who directs and controls the entire executive branch, and all other executive officials must implement in good faith his directives and orders. This is necessary to provide order, efficiency and coherence in carrying out the plans, policies and programs of the executive branch." (emphasis supplied)

Corollary to this, the President may also exercise powers conferred by law to his subordinates. In *City of Iligan v. Director of Lands*,[54] the Court acknowledged that the President, by virtue of his control over the Executive Department, may directly dispose of portions of public domain in exercise of the authority vested in the Director of Lands, one of his subordinates.

The following conclusions are, thus, inescapable: the President has the power of control over the BIR and the CIR; such power of control authorizes the President to alter, modify, or nullify decisions of the BIR and the CIR; the

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[50] NATIONAL INTERNAL REVENUE CODE. sec. 2.

[51] const. art. VII, sec. 17.

[52] *Mondano v. Silvosa,*, G.R. No. L-7708, May 30, 1955.

[53] G.R. No. 143481, February 15, 2002, 427 PHIL 464-485.

[54] G.R. No. L-30852, February 26, 1988.

President can likewise act in the stead of his or her subordinates, and exercise powers directly conferred by law to the BIR and the CIR.

Because of such broad power vested in the President over the acts of subordinates in the Executive Department, it is not only constitutionally infirm, but likewise downright impractical, to allow the Judiciary to take cognizance of a matter which can still be undone, modified, or otherwise subjected to the discretion of the Executive.

It must be clarified that the administrative settlement procedure, as it applies to tax disputes between the BIR and other executive agencies, is not meant to supplant or override the power of Congress to tax. Foremost, it is circumscribed by the very duty of the Executive to "faithfully execute all laws."[55] In deciding such conflicts, the Executive is bound to observe tax laws – it cannot wantonly disregard them by haphazardly exempting executive agencies or transactions therefrom nor can it proceed with a pre-determined result in mind, as feared by the petitioners. Rather, the process must result in a determination of the most appropriate arrangement or course of action for the agencies involved, after the Executive has taken stock of all applicable laws, rules, and regulations, and how they may be reconciled and adhered to in relation to the dispute. It cannot be utilized as a vehicle for circumventing or disregarding existing laws or justifying illegalities, as these will undoubtedly constitute grave abuse of discretion. In *National Artist for Literature Virgilio Almario v. Executive Secretary*, the Court underscored the limits of Presidential discretion.

> "The President's discretion in the conferment of the Order of National Artists should be exercised in accordance with the duty to faithfully execute the relevant laws. The faithful execution clause is best construed as an obligation imposed on the President, not a separate grant of power. It simply underscores the rule of law and, corollarily, the cardinal principle that the President is not above the laws but is obliged to obey and execute them."[56]

The Executive has the expertise to settle administrative disputes

The DOE further argues that the CTA has the requisite expertise and experience in resolving tax issues. There is no dispute that this expertise lies with the CTA.

However, the resolution of disputes among agencies and offices of the Executive Department does not simply require technical or subject matter expertise, but necessarily demands an understanding of how the different and

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55 const. art.7, sec.17.

56 *National artist for literature Virgilio Almario v. Executive secretary*, G.R. No. 189028, July 16, 2013.

competing mandates and goals of its comprising agencies and offices affect one another, a determination which the Chief Executive is in the best position to make.

The astonishing breadth of the Executive Branch spans agriculture, land reform, environment, health, trade, finance, tourism, to name a few, and extends through many other critical areas of governance and general welfare of our countrymen.

Given the extensive scope of this branch, the Chief Executive must often navigate through a chasmic maze of laws, rules, regulations, mandates, and interests, often seemingly conflicting and irreconcilable, but more often capable of being harmonized and balanced. To this end, the Chief Executive must be given sufficient latitude to harmonize these differences and address conflicts and disagreements arising therefrom, with due consideration to the necessities of the day, and with the aim of ensuring government efficiency and agility. The Court recognized this in *National Electrification Administration v. Commission on Audit,*[57] when it reiterated that the President as administrative head of the government "is vested with the power to execute, administer and carry out laws into practical operation." Like our Constitution, our laws must not operate in a vacuum, but must be applied and adapted to persisting realities.

It has also been said that the procedure is not much different from arbitration, as it is "an alternative to, or a substitute for, traditional litigation in court with the added advantage of avoiding the delays, vexations and expense of court proceedings."[58]

P.D. No. 242 itself highlights the practical considerations for administrative settlement – to avoid litigation wherein the Government is ultimately the only party in interest, and to avoid needlessly contributing to clogged court dockets, and wasting government resources.[59]

By stepping in to resolve disputes between executive agencies before they are ripe for adjudication, the Chief Executive is not trespassing into the exclusive realm of the Legislature, nor is it arrogating judicial power. He or she is merely positively carrying out his or her mandate to execute laws

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57 G.R. No. 143481, February 15, 2002, 427 PHIL 464-485

58 *Philippine Veterans Investment Development Corp. v. Velez*, G.R. No. 84295, July 18, 1991.

59 PRES. DEC. NO. 242, recitals, viz: "WHEREAS, it is necessary in the public interest to provide for the administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including government-owned or controlled corporations, to avoid litigation in court where government lawyers appear for such litigants to espouse and protect their respective interests altho, in the ultimate analysis, there is but one real party in interest the Government itself in such litigations;

WHEREAS, court cases involving the said government entities and instrumentalities have needlessly contributed to the clogged dockets of the courts, aside from dissipating or wasting the time and energies not only of the courts but also of the government lawyers and the considerable expenses incurred in the filing and prosecution of judicial actions; x x x"

faithfully. The Executive's attempt to reconcile disputes, claims, and controversies stemming from implementation of laws must be viewed as deference to the Legislature, for it is essentially an effort to breathe life and force to laws they have enacted whilst recognizing the complexities attendant to their implementation. It likewise guards the Judiciary from actions where there are no actual controversies between parties, as there is ultimately one real party-in-interest. Fealty to constitutional mandate demands no less.

Tax disputes involving executive agencies are of a unique character

This Court concedes that taxes are not ordinary claims for they are central to the very existence of government. Time and again, we have held that "taxes are the lifeblood of the government, and their prompt and certain availability an imperious need."[60]

Subjecting tax disputes among government agencies to administrative settlement does not contravene this precept.

Tax disputes concerning the BIR and other national government agencies are unique in the sense that taxes that might be due are already public funds. Regardless of the dispute's outcome, they will be dedicated for a public purpose in keeping with P.D. No. 1445.[61]

The BIR's collection does not change the nature of the funds, as they will remain public funds, but it may circumscribe the ways through which they may be used.

Under the NIRC, the national internal revenue collected shall accrue to the National Treasury and will be made available for general purposes of the Government, subject to certain exceptions.[62] Annual appropriations for the operation of the entire government are sourced from such funds with the National Treasury.[63] Thus, taxes paid are pooled before they are allotted for a public purpose, and it will be inherently impossible to attribute expenditures to the specific taxpayer. For a government agency paying taxes, this means that its funds may then be used for purposes other than its own mandate.

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60 *Bull v. U.S.* 295, U. S. 247 as cited in a number of cases decided by this Court – *Northern Camarines Lumber Co., v. CIR* (G.R. No. L-12353, *Roman Catholic Archbishop of Cebu v. CIR* (G.R. No. L-16683), *Valley Trading Co., Inc., v. Court of First Instance of Isabela, Branch II* (G.R. No. L-49529), *Asian Transmission Corp. v. CIR* (G.R. No. 230861), *Proton Pilipinas Corp. v. Republic* (G.R. No. 165027), among others.

61 GOVERNMENT AUDITING CODE, sec 4., viz: "Fundamental principles. Financial transactions and operations of any government agency shall be governed by the fundamental principles set forth hereunder, to wit: x x x 2. Government funds or property shall be spent or used solely for public purposes."

62 NATIONAL INTERNAL REVENUE CODE, sec. 283. A similar provision is likewise found in the R.A. No. 11639, the General Appropriations Act FY 2022.

63 REP. ACT. NO. 11636, sec. 1.

This of course, does not give the Executive unbridled discretion, nor does it relieve the Executive from its duty to correctly determine the propriety of the BIR's assessments or the proper amount of taxes to be paid. However, it behooves us to distinguish the nature of taxes owed by government agencies, from those owed by private individuals or entities.

On a final note, it appears from the records that this case involves questions of fact beyond the Court's jurisdiction. These are inappropriate for a Petition under Rule 45 which is limited only to questions of law.[64] It should not be necessary for us to reiterate that this Court is not a trier of facts.

Clearly, the CTA *En Banc* committed no error in denying the petition. The foregoing discussions leave this Court with no other recourse but to deny the Petition, and to hold, as it did in *PSALM v. CIR*,[65] that:

> "(1) As regards **private entities and the BIR**, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR is vested in the CIR subject to the exclusive appellate jurisdiction of the CTA, in accordance with Section 4 of the NIRC; and (2) Where the disputing parties are **all public entities** (covers disputes between the BIR and other government entities), the case shall be governed by PD 242." (emphasis in the original)

WHEREFORE, the Petition is **DENIED**. The Decision, dated 4 November 2021, and the Resolution, dated 4 November 2021, of the Court of Tax Appeals *en banc* in CTA EB No. 2241 (CTA Case No. 10198) are **AFFIRMED**.

SO ORDERED.

MARIA FILOMENA D. SINGH
Associate Justice

WE CONCUR:

See Concurring Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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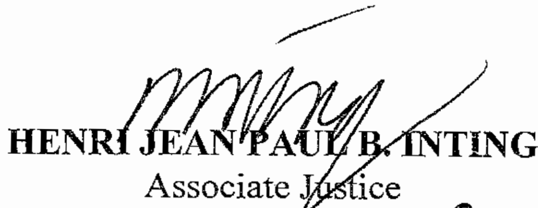
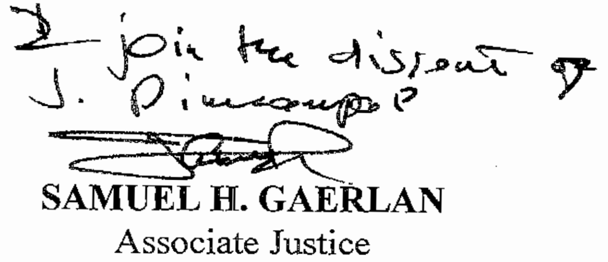
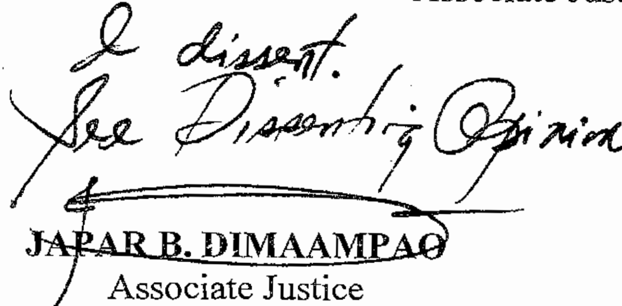
64 RULES OF COURT, Rule 45, sec. 1.
65 G.R. No. 198146, August 8, 2017.

HENRI JEAN PAUL B. INTING
Associate Justice

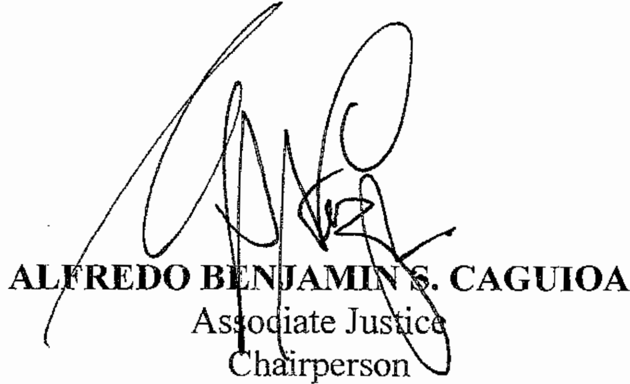
SAMUEL H. GAERLAN
Associate Justice



JAPAR B. DIMAAMPAO
Associate Justice

ATTESTATION

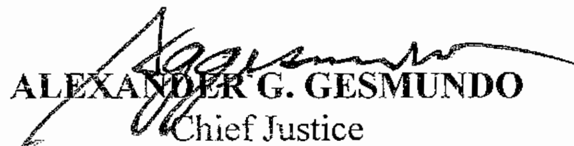
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO
Chief Justice

THIRD DIVISION

G.R. No. 260912 ***(The Department of Energy v. Court of Tax Appeals)***

Promulgated: August 17, 2022

x---x

DISSENTING OPINION

DIMAAMPAO, *J.*:

At the pith of this controversy lies the seemingly innocuous question: does the Court of Tax Appeals (CTA) have exclusive appellate jurisdiction over tax controversies involving government agencies and offices?

The *ponencia* answers this in the negative based on a straight application of the Court's doctrine in *Power Sector Assets and Liabilities Management Corporation (PSALM) v. Commissioner of Internal Revenue.*[1] The *ponencia* clarifies that the pronouncement in *PSALM* did not limit the application of the provisions of Presidential Decree (PD) No. 242 to instances where there is an agreement or contract between opposing government bodies. Resultingly, the *ponencia* dismisses the present Petition and upholds the CTA's own dismissal of the case before it for lack of jurisdiction.

While I agree with how the *PSALM* doctrine was applied by the *ponencia,* I must nevertheless register my disagreement to the disposition of this case. I laud the prudence of the majority in upholding this doctrine as it is concededly based on defensible logic and reasoning. Nevertheless, I offer my humble dissent with the hope that perhaps the Court may re-examine this interpretation of PD No. 242 in the future.

In my considered opinion, the Court should revisit the *PSALM* ruling and revert to its earlier pronouncement in *Philippine National Oil Co.* (*PNOC*) *v. Court of Appeals*,[2] where We held that Section 7 of Republic Act (RA) No. 1125, as amended, constitutes an exception to PD No. 242, such that the resolution of disputes included in the enumerated circumstances under Section 7 solely among government offices, agencies, and instrumentalities, including government-owned and controlled corporations, remains within the exclusive appellate jurisdiction of the CTA.

I expound on my position with the aid of a narration of the historical evolution of this doctrine.

In 1973, then President Ferdinand E. Marcos, in the exercise of his extraordinary legislative powers, issued PD No. 242, entitled "Prescribing the

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[1] 815 Phil. 966-1035 (2017).

[2] 496 Phil. 506-636 (2005).

Procedure for Administrative Settlement or Adjudication of Disputes, Claims and Controversies Between or Among Government Offices, Agencies and Instrumentalities, including Government-Owned or Controlled Corporations, and for Other Purposes."[3] The thrust of the law was to avoid court litigation between and among different government entities where there was only one real party in interest, *i.e.,* the Government itself. Thus, Section 1 thereof provided:

> SECTION 1. Provisions of law to the contrary notwithstanding, all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations but excluding constitutional offices or agencies, arising from the interpretation and application of statutes, contracts or agreements, shall henceforth be administratively settled or adjudicated as provided hereinafter: Provided, That this shall not apply to cases already pending in court at the time of the effectivity of this decree.

The statute itself, however, provides no further detail as to the nature of "the disputes, claims and controversies" which fell under its coverage. Its implementing rules and regulations (IRR), *i.e.,* Department of Justice (DOJ) Administrative Order No. 121,[4] was likewise silent in this regard.

Eventually, PD No. 242 was incorporated into Book IV, Chapter 14 of Executive Order (EO) No. 292 or the Revised Administrative Code of 1987. Section 66 of the latter mirrored Section 1 of the former law, *viz.*:

> SECTION 66. How Settled. — All disputes, claims and controversies, solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, such as those arising from the interpretation and application of statutes, contracts or agreements, shall be administratively settled or adjudicated in the manner provided in this Chapter. This Chapter shall, however, not apply to disputes involving the Congress, the Supreme Court, the Constitutional Commissions, and local governments.

Still, EO No. 292 did not define what constituted "disputes, claims and controversies" and whether it applied to tax assessments against, or refund claims of, government entities.

This question was not resolved until the case of *Development Bank of the Phils. (DBP) v. Court of Appeals*,[5] which involved a claim for refund of

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[3] Issued on 9 July 1973.

[4] Entitled "RULES IMPLEMENTING PRESIDENTIAL DECREE NO. 242 "PRESCRIBING THE PROCEDURE FOR ADMINISTRATIVE SETTLEMENT OR ADJUDICATION OF DISPUTES, CLAIMS AND CONTROVERSIES BETWEEN OR AMONG GOVERNMENT OFFICES, AGENCIES AND INSTRUMENTALITIES, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, AND FOR OTHER PURPOSES." Issued on 25 July 1973.

[5] 259 Phil. 1096-1104 (1989).

the custom duties, taxes, and processing fees that petitioner DBP paid to the Bureau of Customs (BOC) for importing some computer equipment. The Customs Commissioner argued that the CTA should not have taken cognizance of DBP's claim considering the provisions of PD No. 242. This issue on jurisdiction was then elevated for the Court's consideration which held that "that there is an 'irreconcilable repugnancy . . . between Section 7(2) of R.A. No. 1125 and P.D. No. 242,' and hence, that the later enactment (P.D. No. 242), being the latest expression of the legislative will, should prevail over the earlier."[6]

Despite the Court *En Banc*'s pronouncement in *DBP,* in 1990, the Court promulgated *National Power Corp. (NAPOCOR) v. Presiding Judge, RTC, 10th Judicial Region, Br. XXV, Cagayan De Oro City,*[7] which involved a real property tax assessment by a local government unit against petitioner NAPOCOR. In this case, the Court held that as between PD No. 242 and PD No. 464, or the Real Property Tax Code, the latter should prevail against the former:

> An examination of these two decrees shows that P.D. 242 is a general law which deals with administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including government-owned or controlled corporations. The coverage is broad and sweeping, encompassing all disputes, claims and controversies.
>
> P.D. 464 on the other hand, governs the appraisal and assessment of real property for purposes of taxation by provinces, cities and municipalities, as well as the levy, collection and administration of real property tax. It is a special law which deals specifically with real property taxes.
>
> It is a basic tenet in statutory construction that between a general law and a special law, the special law prevails. *GENERALIA SPECIALIBUS NON DEROGANT.*
>
> Where a later special law on a particular subject is repugnant to, or inconsistent with, a prior general law on the same subject, a partial repeal of the latter will be implied to the extent of the repugnancy or an exception grafted upon the general law.
>
> A special law must be intended to constitute an exception to the general law in the absence of special circumstances forcing a contrary conclusion.
>
> The conflict in the provisions on jurisdiction between P.D. 242 and P.D. 464 should be resolved in favor of the latter law, since it is a special law and of later enactment. P.D. 242 must yield to P.D. 464 on the matter of who or which tribunal or agency has jurisdiction over the enforcement

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6 Id.

7 268 Phil. 507-516 (1990).

and collection of real property taxes. Therefore, respondent court has jurisdiction to hear and decide Civil Case No. 9901.

A year later, the Court was tasked to rule on the constitutionality of PD No. 242 in the case of *Philippine Veterans Investment Development Corp. (PHIVIDEC) v. Velez.*[8] Petitioners asserted that PD No. 242 was unconstitutional for emasculating and impairing the judicial power of review of the courts under the 1987 Constitution. In rejecting this contention, the First Division of the Court simply held that PD No. 242 did not diminish the jurisdiction of the courts but only prescribed an administrative procedure for the settlement of certain types of disputes between or among government bodies. The Court likened the procedure therein to arbitration proceedings.

On 30 March 2004, RA No. 9282[9] was passed which amended RA No. 1125 by elevating the status of the CTA to a collegiate court with special jurisdiction and further expanding its jurisdiction over tax matters.

Several years after, the Court *En Banc* would again re-examine the import of PD No. 242 in the case of *PNOC.*[10] The controversy in *PNOC* centered on the attempts of the Bureau of Internal Revenue (BIR) to recover the final income taxes due on PNOC's interest earnings arising from its money placements with Philippine National Bank (PNB). Both PNOC and PNB insisted that the CTA had no jurisdiction over their case and sought to have it dismissed. Before the CTA could render its decision, however, the parties elevated the BIR's assessment to the DOJ pursuant to PD No. 242. They then filed a Motion to Suspend Proceedings before the CTA pending the DOJ's resolution of their appeal. Eventually, the CTA ruled that it had jurisdiction over the case and declared the parties liable for the assessments issued against them. When the matter was elevated to this Court, the *Banc* upheld the CTA's jurisdiction over the case and again reconciled RA No. 1125 with PD No. 242:

> The PNB and DOJ are of the same position that P.D. No. 242, the more recent law, repealed Section 7(1) of Rep. Act No. 1125, based on the pronouncement of this Court in *Development Bank of the Philippines v. Court of Appeals, et al.*, quoted below:
>
> x x x x
>
> In the said case, it was expressly declared that P.D. No. 242 repealed Section 7(2) of Rep. Act No. 1125, which provides for the exclusive appellate jurisdiction of the CTA over decisions of the Commissioner of Customs. PNB contends that P.D. No. 242 should be deemed to have

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8 276 Phil. 439-444 (1991).

9 Entitled "AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES." Approved on 30 March 2004.

10 Supra note 2.

> likewise repealed Section 7(1) of Rep. Act No. 1125, which provides for the exclusive appellate jurisdiction of the CTA over decisions of the BIR Commissioner.
>
> After re-examining the provisions on jurisdiction of Rep. Act No. 1125 and P.D. No. 242, this Court finds itself in disagreement with the pronouncement made in *Development Bank of the Philippines v. Court of Appeals, et al.*, x x x
>
> x x x x
>
> It has, thus, become an established rule of statutory construction that between a general law and a special law, the special law prevails — *Generalia specialibus non derogant.*
>
> Sustained herein is the contention of private respondent Savellano that P.D. No. 242 is a general law that deals with administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including government-owned or controlled corporations. Its coverage is broad and sweeping, encompassing all disputes, claims and controversies. It has been incorporated as Chapter 14, Book IV of E.O. No. 292, otherwise known as the Revised Administrative Code of the Philippines. On the other hand, Rep. Act No. 1125 is a special law dealing with a specific subject matter — the creation of the CTA, which shall exercise exclusive appellate jurisdiction over the tax disputes and controversies enumerated therein.
>
> Following the rule on statutory construction involving a general and a special law previously discussed, then P.D. No. 242 should not affect Rep. Act No. 1125. Rep. Act No. 1125, specifically Section 7 thereof on the jurisdiction of the CTA, constitutes an exception to P.D. No. 242. Disputes, claims and controversies, falling under Section 7 of Rep. Act No. 1125, even though solely among government offices, agencies, and instrumentalities, including government-owned and controlled corporations, remain in the exclusive appellate jurisdiction of the CTA. Such a construction resolves the alleged inconsistency or conflict between the two statutes, and the fact that P.D. No. 242 is the more recent law is no longer significant.

Notably, the Court in *PNOC,* also held that assuming *arguendo* that PD No. 242 would prevail over RA No. 1125, the dispute therein would still not be covered by PD No. 242. The Court emphasized that Section 1 thereof explicitly limited the procedure to resolving disputes solely between government bodies. In this case, respondent Savellano was a private citizen whose claims for his informer's reward was also at issue before the CTA.

In 2016, the Court rendered the decision in *Orion Water District v. Government Service Insurance System,*[11] which herein petitioner Department of Energy (DOE) relies upon to justify its resort to the CTA. There, the Government Service Insurance System (GSIS) instituted a claim for sum of

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[11] G.R. No. 195382 (Resolution), 15 June 2016.

money against Orion Water District (OWD) to recover unremitted premium contributions that the latter, as an employer, should have paid to the former. On the other hand, OWD asserted that the administrative settlement procedure under Book IV, Chapter 14 of EO No. 292 should have applied. The Court rejected the OWD's contention and echoed *PHIVIDEC* in its *ratio.* It held that the Book IV, Chapter 14 of EO No. 292, and its precursor PD No. 242, only prescribed an administrative procedure for the settlement of certain types of disputes among government entities arising from the interpretation and application of statutes, contracts, or agreements. Since GSIS' complaint in this case was for sum of money and did not involve an obscure question of law or ambiguous provision of contract, it did not fall within the coverage of the cited provisions in EO No. 292. Citing *PNOC,* the Court therein ratiocinated that even assuming *arguendo* that the dispute fell within the enumerated circumstances in Book IV, Chapter 14 of EO No. 292, the administrative procedure would still not apply since the present case also involved the officials of OWD.

In the same year, the Court ruled on *Commissioner of Internal Revenue v. Secretary of Justice,*[12] which involved tax deficiency assessments issued against the Philippine Amusement and Gaming Corporation (PAGCOR). In the course of its administrative protest, PAGCOR eventually elevated the matter to the Secretary of Justice who declared PAGCOR exempt from all taxes except the five percent (5%) franchise tax provided in its charter. The Commissioner of Internal Revenue (CIR) filed a petition for *certiorari* before Us questioning the actions of the Secretary of Justice, essentially arguing that it was the CTA that had appellate jurisdiction in this case, and not the Secretary of Justice. The Court therein agreed with the CIR and held that the Secretary of Justice erred in insisting to exercise jurisdiction on PAGCOR's appeal instead of referring the case to the CTA per Court's pronouncement in *PNOC.* The Court elucidated that "doctrine of stare decisis required him to adhere to the ruling of the Court, which by tradition and conformably with our system of judicial administration speaks the last word on what the law is, and stands as the final arbiter of any justiciable controversy."

Finally, in 2017, the Court ruled on *PSALM.*[13] This case involved a deficiency value-added tax (VAT) assessment issued against PSALM for its sale of two power plants which it was constrained to pay under protest. PSALM disputed its assessment before the DOJ which ruled in its favor. The BIR moved for reconsideration insisting that the DOJ did not have jurisdiction over the case and that PSALM should have filed instead its petition before the CTA. The DOJ rejected this contention. The BIR then filed a petition for *certiorari* with the CA which found its petition meritorious and annulled the decision of the Secretary of Justice. PSALM then elevated the matter to this Court. In granting its petition, the Court *En Banc*, speaking through the

[12] 799 Phil. 13-46 (2016).

[13] Supra note 1.

esteemed retired Senior Associate Justice Antonio Carpio, upheld the Secretary of Justice's jurisdiction to adjudicate the claims of competing government bodies pursuant to the mandatory tenor of PD No. 242. In reconciling this case with the Court's earlier pronouncements, the *ponencia* therein observed that *PNOC,* in particular, was grounded on a different factual circumstance, *i.e.,* that it involved a private citizen. "Clearly, PD 242 is not applicable to the case of *PNOC v. CA*. Even the *ponencia* in *PNOC v. CA* stated that the dispute in that case is not covered by PD 242." The Court emphasized that it was only proper for inter-governmental disputes to be settled administratively considering that all these entities are under the President's executive control and supervision which is a power vested by the Constitution and cannot be diminished by law. Likewise, the judiciary cannot substitute its decision over that of the President. Additionally, the Court emphasized that PD No. 242 provided a relief that must be availed of before going to court pursuant to the doctrine of exhaustion of administrative remedies. The Court also reconciled PD No. 242 with Section 4[14] of the 1997 National Internal Revenue Code (NIRC) which vests appellate jurisdiction over tax matters with the CTA in this wise:

> To harmonize Section 4 of the 1997 NIRC with PD 242, the following interpretation should be adopted: (1) As regards private entities and the BIR,the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR is vested in the CIR subject to the exclusive appellate jurisdiction of the CTA, in accordance with Section 4 of the NIRC; and (2) Where the disputing parties are all public entities (covers disputes between the BIR and other government entities), the case shall be governed by PD 242.

In arriving at this conclusion, the Court noted that "1997 NIRC is a general law governing the imposition of national internal revenue taxes, fees, and charges. On the other hand, PD 242 is a special law that applies only to disputes involving solely government offices, agencies, or instrumentalities."

The doctrine in *PSALM* on the Secretary of Justice's jurisdiction over tax disputes between government bodies was again reiterated in *Commissioner of Internal Revenue v. Secretary of Justice*.[15]

After a careful consideration of the foregoing, and with all due respect, it is my modest assertion that the doctrine in PSALM is erroneous.

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[14] Section 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

[15] G.R. No. 209289, 9 July 2018.

At the outset, I would like to clarify that despite the Court's attempt to allow *PSALM* and *PNOC* to co-exist by claiming that they rest on different circumstances, it is clear that they are repugnant to each other.

PNOC's resolution was hinged on the proper interpretation of PD No. 242 vis-à-vis RA No. 1125 anent the Secretary of Justice's jurisdiction over tax disputes. There, the Court in no uncertain terms abandoned the *DBP* ruling and declared that RA No. 1125 should be construed as an exception to PD No. 242, the former being a special law on the jurisdiction of the CTA whereas the latter is a general statute encompassing the settlement of all disputes, claims, and controversies between government agencies. On the other hand, *PSALM* recognized that appellate jurisdiction over tax disputes rested with the Secretary of Justice and even construed PD No. 242 as the more specialized law, albeit as juxtaposed with the NIRC. These two interpretations undoubtedly cannot stand side by side. Thus, *PSALM* operated to overturn *PNOC*.

Now, with regard to my concerns on the doctrine itself espoused by *PSALM*, I rest my arguments on the very nature of tax disputes and the basic rules on statutory construction.

One. It must be stressed that my position is not derived from an assertion of superiority of jurisdiction by the Judiciary over the Executive Department. Rather, it stems from a recognition that there are clear lines that separate the functions of the three great branches of government.

It is well-established that the power to tax is legislative in nature and is vested exclusively in Congress.[16] Moreover, the power to tax carries with it the power to collect tax,[17] which Congress may validly delegate to the Executive branch. Thus, in exercising their mandate of collecting taxes and duties, the BIR and the BOC are merely enforcing the Legislative's will by applying the pertinent tax laws. To interpret PD No. 242 as to include tax disputes would result in situations where the Secretary of Justice would be able to supplant the actions of the taxing agencies and effectively thwart the power of collecting taxes delegated by Congress. This would be an overreach into the Legislative sphere, especially when considered in light of the "final and binding" nature of the Secretary of Justice's decision on the parties involved pursuant to Sections 5[18] and 6[19] of PD No. 242. Thus, contrary to the

[16] See *Purisima v. Lazatin*, 801 Phil. 395-427 (2016).

[17] See *Churchill v. Rafferty*, 32 Phil. 580-618 (1915).

[18] SECTION 5. The decisions of the Secretary of Justice, as well as those of the Solicitor General or the Government Corporate Counsel, when approved by the Secretary of Justice, shall be final and binding upon the parties involved. Appeals may be taken to and entertained by the Office of the President only in cases wherein the amount of the claim or value of the property exceeds P1 million. The decisions of the Office of the President on appealed cases shall be final.

[19] SECTION 6. The final decisions rendered in the settlement or adjudication of all such disputes, claims or controversies shall have the same force and effect as final decisions of the courts of justice.

Court's position in *PSALM,* the settlement of tax disputes is not a matter that can be justified by the President's power of control and supervision since the power to collect taxes, even as against certain taxable government bodies, resides *ultimately* with Congress.

In contrast, the CTA's exercise of appellate jurisdiction over such controversies would not be an overstep into legislative power since judicial review in such instances would merely ensure that the enforcement of the law by the duly delegated agency is within the bounds intended by Congress. Indeed, the CTA is a highly specialized court "specifically created for the purpose of reviewing tax and customs cases" and "is dedicated exclusively to the study and consideration of revenue-related problems, and has necessarily developed an expertise on the subject."[20] It was in recognition of Congress' intent to have the CTA exercise **exclusive jurisdiction to resolve all tax problems** that the Court declared in the landmark case of *Banco De Oro v. Republic*,[21] that the CTA had the authority to "take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings)."

Two. A plain reading of the pertinent provisions in either PD No. 242 or Book IV, Chapter 14 of EO No. 292 does not necessarily support the position that the same should cover tax disputes. As earlier intimated, neither law provides any further definition to the phrase "disputes, claims, and controversies." Therefore, the phrase should be understood in its most common and general sense. However, taxes are not in the nature of ordinary civil debt, demand, or contract which may be the subject of setting off or recoupment.[22] The primacy of tax matters, as opposed to all other civil disputes, claim, controversies, is an offshoot the simple truism that taxes are the lifeblood of the government as whole,[23] not just of the Executive. Its collection cannot be left to the will of the taxpayers lest it hamper government operations.[24]

Even assuming that tax disputes are necessarily included under this broader term, the application of the basic rules of statutory construction would yield the same conclusion as found in *NAPOCOR,*[25] *PNOC,*[26] and *Commissioner of Internal Revenue v. Secretary of Justice.*[27]

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20 *Bureau of Customs v. Devanadera*, 769 Phil. 231-278 (2015).
21 G.R. No. 198756 (Resolution), 16 August 2016.
22 See *Republic v. Mambulao Lumber Co.*, 114 PHIL 549-555 (1962).
23 See *Roman Catholic Archbishop of Cebu v. Collector of Internal Revenue*, 114 PHIL 219-225 (1962).
24 See *Film Development Council of the Philippines v. Colon Heritage Realty Corp.*, G.R. Nos. 203754 & 204418 (Resolution), 15 October 2019.
25 Supra note 7.
26 Supra note 2.
27 Supra note 12.

Prefatorily, it should be emphasized that *PSALM* erroneously characterized PD No. 242 as the more specialized law. However, it is evidently meant to have more general application since it is intended to apply in all kinds of "disputes, claims and controversies" between government entities. By its express terms, all claims, regardless of the nature thereof, would call for PD No. 242's application in determining the appropriate appellate jurisdiction. In contrast, RA No. 1125, as well as the provisions of the NIRC which echo the exclusive appellate jurisdiction of the CTA, describe a more particular form of claim, *i.e.,* tax claims. Indeed, the appellate jurisdiction contemplated in these two laws only apply to tax matters. Thus, by no stretch of the imagination can it be said that either RA No. 1125 or the NIRC is the more general law **at least when it comes to determining appellate jurisdiction.**

Generalia specialibus non derogant. "Where there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment."[28]

As the Court correctly held in *PNOC,* "[f]ollowing the rule on statutory construction involving a general and a special law previously discussed, then P.D. No. 242 should not affect Rep. Act No. 1125. Rep. Act No. 1125, specifically Section 7 thereof on the jurisdiction of the CTA, constitutes an exception to P.D. No. 242. Disputes, claims and controversies, falling under Section 7 of Rep. Act No. 1125, even though solely among government offices, agencies, and instrumentalities, including government-owned and controlled corporations, remain in the exclusive appellate jurisdiction of the CTA. Such a construction resolves the alleged inconsistency or conflict between the two statutes, and the fact that P.D. No. 242 is the more recent law is no longer significant."

Furthermore, it should be pointed out that RA No. 1125 was amended by RA No. 9282 which, as above-discussed, further expanded its jurisdiction. RA No. 8424 or the 1997 NIRC also contained a provision reiterating that disputed assessments were subject to the exclusive appellate jurisdiction of the CTA.[29] Both laws came much later than either PD No. 242 or EO No. 292.

Legis posteriores priores contraries abrogant. "The rationale is simple: a later law repeals an earlier one because it is the later legislative will. It is to be presumed that the lawmakers knew the older law and intended to change

[28] *Commissioner of Internal Revenue v. Yumex Philippines Corp.*, G.R. No. 222476, 5 May 2021.
[29] Section 4, RA No. 8424.

it. In enacting the older law, the legislators could not have known the newer one and hence could not have intended to change what they did not know."[30]

Armed with these two aids in statutory construction, the result should be clear: Section 7 of RA No. 1125, as amended by RA No. 9282, should be taken as an exception to PD No. 242 and Book IV, Chapter 14 of EO No. 292 as enunciated in the case of PNOC.

Incidentally, the doctrines in *PHIVIDEC* and *Orion Water District* that PD No. 242 were not repugnant to judicial power, as it merely described an administrative procedure akin to arbitration proceedings, should likewise be abandoned at least insofar as tax disputes are concerned. Similarly, the portion of *PSALM* which declared that PD No. 242 dictates a relief that must be availed of before going to court pursuant to the doctrine of exhaustion of administrative remedies, should also be cast aside. The disquisition above already explains excruciatingly that tax disputes are not covered by the said law and/or operates as an exception thereto. Necessarily, there is no need to "exhaust administrative remedies" so to speak.

It bears stressing that in the passage of statutes, it is presumed that Congress acted "with full knowledge of all existing ones on the subject."[31] At the time that RA No. 9282 was enacted in 2004, both PD No. 242 and EO No. 292 were already in existence. Moreover, the Court's prevailing interpretation at that time for PD No. 242 in relation to tax disputes would have been the doctrines in *DBP*[32] and *PHIVIDEC*.[33] Since judicial decisions interpreting the law forms part of Our legal system,[34] the Legislature would have been aware that PD No. 242 was viewed as an exception to RA No. 1125 and that it merely added an administrative procedure for the settlement of disputes between government entities, but did not diminish the CTA's jurisdiction. If Congress really intended to allow PD No. 242 and EO No. 292 to continue operating for tax disputes among government entities as an additional administrative process, then it would have been a simple matter to incorporate the same under the amendments introduced to Section 7 of RA No. 1125. Nonetheless, there is no mention of decisions of the Secretary of Justice, or even the Office of the President, from among the cases subject to the CTA's widely expanded appellate jurisdiction. This finds special significance when considered in light of the aforementioned "final and binding" nature of the Secretary of Justice's decision on such tax disputes.[35] Since the decision would be final, it would only theoretically be reviewable by the CTA on a writ of *certiorari,* and only for grave abuse of discretion. Conspicuously, no such special mode of review was incorporated in the provisions of RA No. 9282.

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30 *David v. Commission on Elections*, 337 Phil. 534-554 (1997).
31 See Mecano v. Commission on Audit, 290-A Phil. 272, 283 (1992).
32 Supra note 5.
33 Supra note 8.
34 See Article 8 of Republic Act No. 386, or the Civil Code of the Philippines.
35 See Sections 5 and 6 of Presidential Decree No. 242.

To my mind, this only further bolsters the argument that it was never Congress' intent to continue allowing tax disputes to remain within the jurisdiction of the Secretary of Justice.

All in all, I vote to grant the Petition and to set aside the Resolutions of the CTA *En Banc* and the CTA Second Division.

JAPAR B. DIMAAMPAO
Associate Justice

THIRD DIVISION

G.R. No. 260912 – THE DEPARTMENT OF ENERGY, *petitioner*, ***versus*** **COURT OF TAX APPEALS,** *respondent*.

Promulgated:

August 17, 2022

x- x

CONCURRING OPINION

CAGUIOA, *J.*:

The crux of the controversy in the present case is which authority has jurisdiction to resolve the controversy involving the disputed tax assessment issued by the Bureau of Internal Revenue (BIR) against the Department of Energy (DOE), both of which are government entities.

In affirming the Decision of the Court of Tax Appeals (CTA) *En Banc* (CTA EB) that it is the Secretary of Justice, and not the CTA, that has jurisdiction over the controversy, the *ponencia* applied the ruling in *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*[1] (*PSALM*), where the Supreme Court *En Banc* categorically resolved that for tax disputes solely between government entities, including, government-owned and controlled corporations (GOCC), it is the Secretary of Justice that has jurisdiction over the case and not the CTA.

I concur with the *ponencia* in denying the instant Petition.

I submit this Concurring Opinion to underscore that settled and prevailing jurisprudence indeed recognizes the Secretary of Justice to have the exclusive jurisdiction to resolve tax disputes between the BIR and another government entity — pursuant to Presidential Decree No. (PD) 242[2] and the Administrative Code of 1987.[3]

Sections 1, 2, and 3 of PD 242 read:

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[1] 815 Phil. 966 (2017). Penned by Associate Justice Antonio T. Carpio, with Chief Justice Maria Lourdes P.A. Sereno and Associate Justices Teresita J. Leonardo-De Castro, Diosdado M. Peralta, Jose C. Mendoza, Marvic Mario Victor F. Leonen, Francis H. Jardeleza, Alfredo Benjamin S. Caguioa, Samuel R. Martires, Noel G. Tijam, and Andres B. Reyes, Jr. concurring. Associate Justice Presbitero J. Velasco, Jr. penned a Concurring Opinion. Associate Justice Mariano C. Del Castillo penned a Dissenting Opinion and he is joined by Associate Justice Lucas P. Bersamin. Associate Justice Estela M. Perlas-Bernabe took no part.

[2] PRESCRIBING THE PROCEDURE FOR ADMINISTRATIVE SETTLEMENT OR ADJUDICATION OF DISPUTES, CLAIMS AND CONTROVERSIES BETWEEN OR AMONG GOVERNMENT OFFICES, AGENCIES AND INSTRUMENTALITIES, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, AND FOR OTHER PURPOSES, approved on July 9, 1973.

[3] Executive Order No. 292, July 25, 1987.

Section 1. Provisions of law to the contrary notwithstanding, **all disputes, claims and controversies** solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations but excluding constitutional offices or agencies, **arising from the interpretation and application of statutes, contracts or agreements, shall henceforth be administratively settled or adjudicated as provided hereinafter**: *Provided*, That this shall not apply to cases already pending in court at the time of the effectivity of this decree.

Section 2. **In all cases involving only questions of law, the same shall be submitted to and settled or adjudicated by the Secretary of Justice**, as Attorney General and *ex-officio* legal adviser of all government-owned or controlled corporations and entities, in consonance with Section 83 of the Revised Administrative Code. His ruling or determination of the question in each case shall be conclusive and binding upon all the parties concerned.

Section 3. Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:

(a) The **Solicitor General**, with respect to disputes o[r] claims or controversies between or among the departments, bureaus, offices and other agencies of the National Government;

(b) The **Government Corporate Counsel**, with respect to disputes or claims or controversies between or among the government-owned or controlled corporations or entities being served by the Office of the Government Corporate Counsel; and

(c) The **Secretary of Justice**, with respect to all other disputes or claims or controversies which do not fall under the categories mentioned in paragraphs (a) and (b). (Emphasis supplied, italics in the original)

The above-cited provisions were incorporated into Book IV, Chapter 14 of the Administrative Code of 1987 on Controversies Among Government Offices and Corporations. Relevant provisions read:

Section 66. *How Settled.* – All **disputes, claims and controversies, solely** between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, **<u>such as those arising from the interpretation and application of statutes, contracts or agreements</u>**, *shall be administratively settled or adjudicated in the manner provided in this Chapter.* This Chapter shall, however, not apply to disputes involving the Congress, the Supreme Court, the Constitutional Commissions, and local governments.

Section 67. *Disputes Involving Questions of Law.* – All cases involving only questions of law shall be submitted to and settled or adjudicated by the Secretary of Justice as Attorney-General of the National Government and as *ex officio* legal adviser of all government-owned or controlled corporations. His ruling or decision thereon shall be conclusive and binding on all the parties concerned.

Section 68. *Disputes Involving Questions of Fact and Law.* – Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:

(1) The **Solicitor General**, if the dispute, claim or controversy involves only departments, bureaus, offices and other agencies of the National Government as well as government-owned or controlled corporations or entities of whom he is the principal law officer or general counsel; and

(2) The **Secretary of Justice**, in all other cases not falling under paragraph (1). (Emphasis, italics and underscoring supplied)

From the foregoing, all disputes, claims, and controversies ***solely*** between government agencies and offices, including GOCCs, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved. For cases involving only questions of law, it is the Secretary of Justice that has jurisdiction to settle or adjudicate such controversy. For cases involving mixed questions of law and of fact, or purely factual issues, they shall be submitted to the Solicitor General if the latter is the principal law officer or general counsel of the parties, otherwise, the issues shall be submitted to and resolved by the Secretary of Justice.

On the other hand, Section 4 of the National Internal Revenue Code of 1997[4] (1997 NIRC), as amended, as well as Section 7 of Republic Act No. (RA) 9282,[5] vest the CTA with jurisdiction over the decisions or inactions of the Commissioner of Internal Revenue (CIR) involving disputed assessments:

[Section 4, Title I, 1997 NIRC]

Section 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide **disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, **subject to the exclusive appellate jurisdiction of the Court of Tax Appeals**.

[Section 7, RA 9282]

Section 7. *Jurisdiction.* – The CTA shall exercise:

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4 Republic Act No. 8424, AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES, otherwise known as the "TAX REFORM ACT OF 1997," approved on December 11, 1997.

5 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS, ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES, approved on March 30, 2004.

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving **disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving **disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial[.][6] (Emphasis supplied)

In 2005, the Court declared in *Philippine National Oil Company v. Court of Appeals*[7] (*PNOC*) that the CTA retained exclusive appellate jurisdiction over tax disputes, even though they were solely between government entities. According to the Court, PD 242 is a general law while RA 1125[8] is a special law and constitutes an exception to PD 242. Nevertheless, the Court also said that:

Even if, for the sake of argument, that P.D. No. 242 should prevail over Rep. Act No. 1125, the present dispute would still not be covered by P.D. No. 242. Section 1 of P.D. No. 242 explicitly provides that only disputes, claims and controversies solely between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including constitutional offices or agencies, as well as government-owned and controlled corporations, shall be administratively settled or adjudicated. While the BIR is obviously a government bureau, and both PNOC and PNB are government-owned and controlled corporations, respondent Savellano is a private citizen. His standing in the controversy could not be lightly brushed aside. It was private respondent Savellano who gave the BIR the information that resulted in the investigation of PNOC and PNB; who requested the BIR Commissioner to reconsider the compromise agreement in question; and who initiated CTA Case No. 4249 by filing a Petition for Review.[9] (Italics and underscoring omitted)

In the 2016 case of *CIR v. Secretary of Justice, et al.*,[10] the Court reiterated its ruling in *PNOC* that the Secretary of Justice lacks jurisdiction to review disputed tax assessments between government entities. The Court once again reasoned that RA 1125, being a special law, is an exception to PD 242, a general law. It also held that the Secretary of Justice should have adhered to

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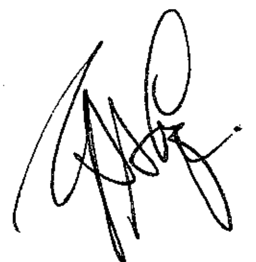
[6] *See also* A.M. No. 05-11-07-CTA, REVISED RULES OF THE COURT OF TAX APPEALS, Rule 4, Sec. 3.
[7] 496 Phil. 506 (2005) (Supreme Court *En Banc*).
[8] AN ACT CREATING THE COURT OF TAX APPEALS, approved on June 16, 1954.
[9] *Philippine National Oil Company v. Court of Appeals*, supra note 7, at 558.
[10] 799 Phil. 13 (2016) (Supreme Court First Division).



PNOC by desisting from acting on the tax dispute between the BIR and the Philippine Amusement and Gaming Corporation.

Then, on August 8, 2017, the Court *En Banc* promulgated *PSALM*, in which it upheld the jurisdiction of the Secretary of Justice over a tax dispute between Power Sector Assets and Liabilities Management Corporation and National Power Corporation, on the one hand, and the BIR, on the other. In *PSALM*, the Court adopted the following interpretation in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the 1997 NIRC or other laws administered by the BIR to harmonize PD 242 and the 1997 NIRC:

> [(1) As regards **private entities and the BIR**, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR is vested in the CIR subject to the exclusive appellate jurisdiction of the **CTA**, in accordance with Section 4 of the NIRC; and
>
> (2) Where the **disputing parties are all public entities** (covers disputes between the BIR and other government entities), the case shall be governed by **PD 242.**][11] (Emphasis supplied)

Clearly, the Court in *PSALM* specifically and purposely overturned its earlier pronouncements in *PNOC* that the CTA has jurisdiction over tax disputes between government entities. The Court also distinguished *PSALM* from *PNOC* by emphasizing that the dispute in *PSALM* is solely between a bureau and two (2) GOCCs, whereas the controversy in *PNOC* involved a private citizen, *viz.*:

> This case is different from the case of *Philippine National Oil Company v. Court of Appeals*, (*PNOC v. CA*) which involves not only the BIR (a government bureau) and the PNOC and PNB (both government-owned or controlled corporations), but also respondent Tirso Savellano, **a private citizen**. Clearly, PD 242 is not applicable to the case of *PNOC v. CA*. Even the *ponencia* in *PNOC v. CA* stated that the dispute in that case is not covered by PD 242 x x x.[12] (Emphasis in the original)

The Court's ruling in *PSALM* was squarely applied in the 2018 case of *CIR v. Secretary of Justice, et al.*,[13] where the Court, by a unanimous vote, held that:

> Nevertheless, the SOJ's jurisdiction over tax disputes between the government and government-owned and controlled corporations has been finally settled by this Court in the recent case of *Power Sector Assets and*

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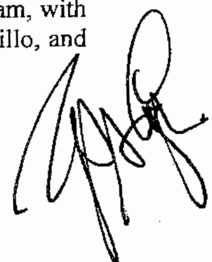
[11] *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*, supra note 1, at 1001-1002.

[12] Id. at 996; citation omitted.

[13] 835 Phil. 931 (2018). Rendered by the First Division; penned by Associate Justice Noel G. Tijam, with Associate Justices Teresita J. Leonardo-De Castro, Diosdado M. Peralta, Mariano C. Del Castillo, and Alexander G. Gesmundo, concurring.



Liabilities Management Corporation v. Commissioner of Internal Revenue, to wit:

x x x x

Since this case is a dispute between the CIR and respondent, a local water district, which is a GOCC pursuant to P.D. No. 198, also known as the Provincial Water Utilities Act of 1973, clearly, the SOJ has jurisdiction to decide over the case.[14]

Just last year, in the case of *Philippine Mining Development Corp. v. CIR*,[15] the Court unanimously held that the Secretary of Justice has jurisdiction over disputes solely between or among government agencies and GOCCs, ***regardless of the nature of the dispute*** — be it a protest on a tax assessment or a conflict in the interpretation of a contract.

Evidently, prevailing jurisprudence recognizes the jurisdiction of the Secretary of Justice over tax disputes between government agencies and offices. PD 242 will apply when all the parties involved are government offices and GOCCs. On the other hand, if the dispute involves a private citizen, PD 242 is no longer applicable.

Going back to the case of *PSALM*, the Court's ruling therein was correctly justified on the following grounds:

(a) Under Section 17, Article VII of the Constitution, the President's constitutional power of control over all the executive departments, bureaus and offices must be guaranteed;

(b) Under the doctrine of exhaustion of administrative remedies, relief under PD 242 must be sought first before seeking judicial recourse; otherwise, the action will be premature and the case will not be ripe for judicial determination; and

(c) Because the 1997 NIRC is a general law and PD 242 is a special law, the latter must take precedence over the former.

I expound on the above-mentioned points discussed in *PSALM vis-à-vis* the observations of Associate Justice Japar B. Dimaampao (Justice Dimaampao) in his Dissenting Opinion for this case.

According to Justice Dimaampao, contrary to the Court's position in *PSALM*, the settlement of tax disputes cannot be justified by the President's power of control and supervision because the power to collect taxes ultimately rests with Congress. Justice Dimaampao opines that interpreting PD 242 to

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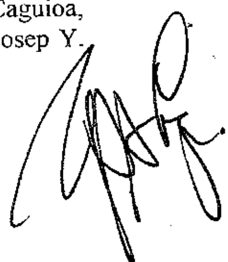
[14] Id. at 938-942; citations omitted.

[15] G.R. No. 250748, October 6, 2021 (Unsigned Resolution). Rendered by the First Division composed of Chief Justice Alexander G. Gesmundo, Chairperson; Associate Justice Alfredo Benjamin S. Caguioa, Working Chairperson; and Associate Justices Amy C. Lazaro-Javier, Mario V. Lopez, and Jhosep Y. Lopez, Members.



include tax disputes would result in situations where the Secretary of Justice would be able to supplant the actions of the taxing agencies, thereby undermining the power delegated by Congress to collect taxes. In contrast, the CTA's exercise of appellate jurisdiction over such controversies would not be an overstep into legislative power because judicial review in such cases would merely ensure that the duly delegated agency is enforcing the law within the bounds intended by Congress.[16]

I disagree. I join the *ponencia* in ruling that the administrative settlement procedure in PD 242 is not meant to supplant or override the power of Congress to tax.[17] The application of PD 242 to tax disputes between the BIR and another government entity does not, ***in any way***, encroach upon the legislative taxing power. Neither does it impede with the BIR's power to enforce and collect taxes.

The power to levy taxes is inherent in the State, such power being inherently legislative.[18] On the other hand, the power to enforce tax laws, through assessment and collection of taxes is exercised by the BIR,[19] which is under the executive department of the government. Next, judicial review is essential to ensure the maintenance and enforcement of the separation of powers and the balancing of powers among the three great departments of the government.[20] As such, actions involving issues related to taxation may be brought before and reviewed by the courts based on the judicial power of review granted to them by the Constitution and relevant statutes.

As stated at the outset, the application of PD 242 to tax disputes between government entities does not outweigh legislative power nor supplant the BIR's tax assessment and collection powers. To be sure, PD 242 does not prohibit the enforcement of tax laws, or the assessment and collection of taxes against government entities. All that PD 242 does is, as explained by the Court in *PSALM*, to simply recognize the President's power of control over the executive department and provides an administrative remedy to settle intra-government disputes. Section 17, Article VII of the Constitution states that "[t]he President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed." This constitutional power of control of the President is self-executing and does not require any implementing law. Congress cannot limit or curtail the President's

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16 *J.* Dimaampao, Dissenting Opinion, pp. 8-9.

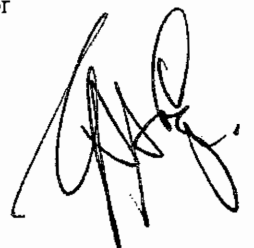
17 *Ponencia*, pp. 12-14.

18 *Commissioner of Internal Revenue v. Fortune Tobacco Corp.*, 581 Phil. 146, 158 (2008).

19 Section 2, Title I of the 1997 NIRC reads:

> Section 2. *Powers and Duties of the Bureau of Internal Revenue.* – The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws.

20 *Sps. Imbong, et al. v. Hon. Ochoa, Jr.*, 732 Phil. 1, 122 (2014).



power of control over the Executive branch.[21] In other words, if the office is part of the Executive branch, it must remain subject to the control of the President.[22]

Thus, the Court ruled in *PSALM* that it is only proper that intra-governmental disputes be settled administratively since the opposing government offices, agencies and instrumentalities are all under the President's executive control and supervision:

> x x x Thus, if two executive offices or agencies cannot agree, it is only proper and logical that the President, as the sole Executive who under the Constitution has control over both offices or agencies in dispute, should resolve the dispute instead of the courts. The judiciary should not intrude in this executive function of determining which is correct between the opposing government offices or agencies, which are both under the sole control of the President. Under his constitutional power of control, the President decides the dispute between the two executive offices. The judiciary cannot substitute its decision over that of the President. **Only after the President has decided or settled the dispute can the courts' jurisdiction be invoked.** Until such time, the judiciary should not interfere since the issue is not yet ripe for judicial adjudication. Otherwise, the judiciary would infringe on the President's exercise of his constitutional power of control over all the executive departments, bureaus, and offices.[23] (Emphasis supplied)

I also agree with the Court's characterization in *PSALM* of the process under PD 242 as an administrative remedy that parties must observe before resorting to judicial action, non-observance of which results in a lack of cause of action, which is one of the grounds in the Rules of Court justifying the dismissal of the complaint.[24]

The doctrine of exhaustion of administrative remedies calls for resort first to the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before being elevated to the courts of justice for review.[25] This is under the theory that the administrative agency, by reason of its particular expertise, is in a better position to resolve particular issues:

> One of the reasons for the doctrine of exhaustion is the separation of powers, which enjoins upon the Judiciary a becoming policy of non-interference with matters coming primarily (albeit not exclusively) within the competence of the other departments. **The theory is that the administrative authorities are in a better position to resolve questions addressed to their particular expertise and that errors committed by subordinates in their resolution may be rectified by their superiors if given a chance to do so.** A no less important consideration is that

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21 *Rufino v. Endriga*, 528 Phil. 473, 504 (2006).

22 Id. at 506.

23 *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*, supra note 1, at 998-999.

24 *Teotico v. Baer*, 523 Phil. 670, 676 (2006).

25 *Castro v. Sec. Gloria*, 415 Phil. 645, 651 (2001).

> administrative decisions are usually questioned in the special civil actions of certiorari, prohibition and mandamus, which are allowed only when there is no other plain, speedy and adequate remedy available to the petitioner. **It may be added that strict enforcement of the rule could also relieve the courts of a considerable number of avoidable cases which otherwise would burden their heavily loaded dockets.** x x x[26] (Emphasis supplied)

Thus, for disputes solely between government entities, PD 242 applies and the same must first be settled or adjudicated administratively by the Secretary of Justice. In turn, the decision of the Secretary of Justice may be appealed to the Office of the President following Section 70,[27] Chapter 14, Book IV of the Administrative Code of 1987 and Section 5[28] of PD 242. Thereafter, if the appeal to the Office of the President is denied, then the aggrieved party, ***and only then***, may file an appeal to the Court of Appeals under Section 1, Rule 43 of the 1997 Rules of Civil Procedure.[29] PD 242 does not eliminate the government entity's judicial recourse for tax controversies resolved by the Office of the President.

Clearly, the application of PD 242 also does not, in any way, manner or form, diminish the jurisdiction of the courts. Again, at the risk of being repetitious, all it does is to prescribe an administrative procedure for the settlement of disputes, claims, or controversies between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including GOCCs. It is an alternative to, or substitute for, traditional court litigation, with the added benefit of avoiding the delays, vexations, and expense of court proceedings.[30]

Justice Dimaampao further states that neither PD 242 nor the Administrative Code of 1987 provide further detail as to the nature of "the disputes, claims and controversies" which fall under its coverage.[31] From this he concludes that the phrase should be understood in its most common and general sense, but taxes are not in the nature of ordinary civil debt, demand, or contract which may be the subject of setting off or recoupment.[32]

The premise of the above argument is that the "disputes, claims, and controversies" covered by PD 242 exclude tax disputes. On the contrary,

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[26] *International Container Terminal Services, Inc. v. The City of Manila, et al.*, 842 Phil. 173, 212-213 (2018); citation omitted.

[27] Section 70. *Appeals.* – The decision of the Secretary of Justice as well as that of the Solicitor General, when approved by the Secretary of Justice, shall be final and binding upon the parties involved. Appeals may, however, be taken to the President where the amount of the claim or the value of the property exceeds one million pesos. The decision of the President shall be final.

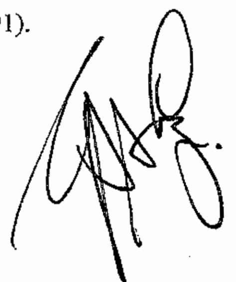
[28] Section 5. The decisions of the Secretary of Justice, as well as those of the Solicitor General or the Government Corporate Counsel, when approved by the Secretary of Justice, shall be final and binding upon the parties involved. Appeals may be taken to and entertained by the Office of the President only in cases wherein the amount of the claim or value of the property exceeds P1 million. The decisions of the Office of the President on appealed cases shall be final.

[29] *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*, supra note 1, at 1005.

[30] *Phil. Veterans Investment Dev't. Corp. (PHIVIDEC) v. Judge Velez*, 276 Phil. 439, 443 (1991).

[31] *J.* Dimaampao, Dissenting Opinion, p. 2.

[32] Id. at 9.



disputed tax assessments are included under the term "disputes, claims and controversies" under PD 242 and Section 66 of the Administrative Code of 1987.

Section 1 of PD 242 states that it applies to "all disputes, claims and controversies x x x arising from the interpretation and application of statutes, contracts or agreements x x x." A closer reading of Section 66 of the Administrative Code of 1987, however, reveals that it slightly deviated from the original language of Section 1 of PD 242. Section 66 of the Administrative Code of 1987 states: "[a]ll disputes, claims and controversies x x x ***such as* those arising from the interpretation and application of statutes**, contracts or agreements x x x."[33]

Tax disputes between the BIR and another government entity necessitate the "interpretation and application of statutes," such as the 1997 NIRC. For instance, if the issue involves the validity of the assessment issued by the BIR against another government entity, the applicable provisions under the 1997 NIRC pertaining to the tax imposed upon the government entity and the remedies for assessment and collection thereof, among others, must be "interpreted" and "applied." The resolution of such issue through the interpretation and application of the 1997 NIRC falls within the purview of the examples of disputes mentioned in PD 242 and the Administrative Code of 1987.

In any event, the phrase "such as," which was added to Section 66 of the Administrative Code of 1987, is commonly known, understood and used to introduce an example or series of examples. This additional phrase does not imply that the disputes, claims, or controversies are limited only to those arising from the interpretation and application of statutes, contracts or agreements. On the contrary, the phrase "such as" connotes that the enumeration is merely illustrative. Section 66 of the Administrative Code of 1987 did not intend said enumeration to be exclusive. Consequently, the jurisdiction of the Secretary of Justice over disputes between or among government agencies and GOCCs cannot be limited to those arising from the interpretation and application of statutes, contracts, or agreements, as Section 66 of the Administrative Code of 1987 merely refers to them as an example of such disputes covered.[34] This was emphasized by the Court in *PSALM* when it categorically ruled that, when the law says "all disputes, claims and controversies solely" among government agencies, **the law means all, without exception.**[35]

Justice Dimaampao adds that even assuming that tax disputes are necessarily included under the term "disputes, claims and controversies," the application of the basic rules of statutory construction would still yield to the

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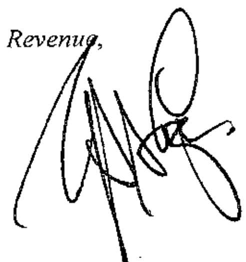
[33] Emphasis and italics supplied.

[34] *Philippine Mining Development Corp. v. CIR*, supra note 15.

[35] *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*, supra note 1, at 994.



conclusion that the Secretary of Justice has no jurisdiction over tax disputes. In support of this claim, Justice Dimaampao finds that *PSALM* erroneously characterized PD 242 as the more specialized law. Rather, according to Justice Dimaampao, Section 7 of RA 1125, as amended by RA 9282, should be taken as an exception to PD 242 and the Administrative Code of 1987.[36]

As stated, I agree with the Decision in *PSALM*.

In *PNOC*, the Court considered PD 242 as a general law and RA 1125 as a special law. However, the Court modified this interpretation in *PSALM* when it ruled that it is PD 242 that is the special law as it applies only to disputes involving solely government offices, agencies, or instrumentalities, whereas the 1997 NIRC is the general law as it governs the imposition of national internal revenue taxes, fees, and charges. Given that PD 242 is a special law, its provisions are paramount to the provisions of the 1997 NIRC and hence, must be followed.

While the Court in *PSALM* weighed PD 242 against the 1997 NIRC, I submit that even if the Court were to consider PD 242 against RA 9282, the provisions of PD 242 must still prevail over the provisions of RA 9282.

As early as *Valera v. Tuason, Jr.*,[37] the Court defined a general law as one that embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class, whereas a special law relates to particular persons or things of a class.[38] The definitions of a general law and a special law even more support the conclusion that RA 9282 is the general law governing the CTA's jurisdiction over decisions or inactions of the CIR involving disputed assessments. PD 242, on the other hand, is the special law specifically dealing with disputes, claims, and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including GOCCs.

A fundamental tenet of statutory construction is that a special law prevails over a general law regardless of the dates of enactment of both laws.[39] When there is an inconsistency between two statutes, and one is a general law and the other is a special law, courts should not assume that Congress intended to enact a repeal of the older law. The Court explained this principle in one case[40] in this way:

> Where there are two acts or provisions, one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, would include the same matter and thus conflict with the special act or provision, **the special must be taken as intended to constitute an exception to the general act or provision,**

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[36] *J.* Dimaampao, Dissenting Opinion, pp. 9-10.
[37] 80 Phil. 823 (1948).
[38] Id. at 828.
[39] *Goldenway Merchandising Corp. v. Equitable PCI Bank*, 706 Phil. 427, 434 (2013).
[40] *Lichauco & Co. v. Apostol and Corpus*, 44 Phil. 138 (1922).

> especially when such general and special acts or provisions are contemporaneous, as the Legislature is not to be presumed to have intended a conflict. x x x
>
> **It is well settled that repeals by implication are not to be favored.** And where two statutes cover, in whole or in part, the same matter, and are not absolutely irreconcilable, the duty of the court—no purpose to repeal being clearly expressed or indicated—is, if possible, to give effect to both. In other words, it must not be supposed that the Legislature intended by a later statute to repeal a prior one on the same subject, unless the last statute is so broad in its terms and so clear and explicit in its words as to show that it was intended to cover the whole subject, and therefore to displace the prior statute. x x x[41] (Emphasis supplied)

Justice Dimaampao likewise argues that since the 1997 NIRC and RA 9282 came later than either PD 242 or the Administrative Code of 1987, then "a later law repeals an earlier one because it is the later legislative will. It is to be presumed that the lawmakers knew the older law and intended to change it. In enacting the older law, the legislators could not have known the newer one and hence could not have intended to change what they did not know."[42]

I disagree with the above postulation and find it to be illogical syllogism. Even though RA 9282 is a later enactment, which took effect only on April 23, 2004, PD 242 still prevails.

That a special law is passed before or after the general law does not change the principle. If the special law is enacted later, it will be regarded as an exception to, or a qualification of, the prior general act. If the general law is enacted after the special law, the special law will be construed as remaining an exception to the general law's terms, unless repealed expressly or by necessary implication.[43] Verily, the relevant provisions in PD 242 and the Administrative Code of 1987 are worded in such a way that they serve as exceptions to the terms of RA 9282 only with regard to intra-government disputes.

Similarly, every new statute should be construed in connection with those already existing in relation to the same subject matter, ***and all should be made to harmonize and stand together***, if any fair and reasonable interpretation can do them.[44] Instead of having one considered repealed in favor of the other, the best method of interpretation is one that makes laws consistent with other laws that are to be harmonized. Time and again, it has been held that every statute must be so interpreted and brought in accord with other laws to form a uniform system of jurisprudence. Thus, if diverse statutes relate to the same thing, they ought to be taken into consideration in construing

41 Id. at 147; citations omitted.
42 *J.* Dimaampao, Dissenting Opinion, pp. 10-11; citation omitted.
43 *Vinzons-Chato v. Fortune Tobacco Corporation*, 552 Phil. 101, 111 (2007).
44 *Akbayan-Youth v. COMELEC*, 407 Phil. 618, 639 (2001).

any one of them, as it is an established rule of law that all acts in *pari materia* are to be taken together, as if they were one law.[45]

Applying the foregoing jurisprudential pronouncements, I reiterate that when there are disputes, claims, or controversies between or among government offices, agencies and instrumentalities, including GOCCs, regardless of whether such dispute, claim or controversy involves a disputed tax assessment or any of the matters mentioned in RA 9282, the relevant provisions of PD 242 and Administrative Code of 1987 shall apply. The CTA does not have jurisdiction to take cognizance of the case, which involves a dispute solely between government offices.

All told, considering that the disputing parties in the present case are both government entities — the BIR and the DOE — the case should be governed by PD 242 and the Administrative Code of 1987 rather than the 1997 NIRC or RA 9282. Accordingly, the Secretary of Justice has the jurisdiction over the present case. Because the DOE and the BIR are both under the executive control and supervision of the President of the Philippines, there is but one real party in interest: the Government itself. Thus, the mechanism for resolving disputes between and among government offices should be respected.

A last point. It must be underscored that, as PD 242 itself explains, its purpose is to provide for the administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including GOCCs, **to avoid litigations in court where government lawyers appear for such litigants to espouse and protect their respective interests although, in the ultimate analysis, there is but one real party in interest <u>in such litigations</u> — *the Government itself*.** Thus, disregarding PD 242 despite its clear objective will contribute to the clogged dockets of the courts and dissipate or waste time and energies not only of the courts, but also of the government lawyers. Hence, it is only proper that disputed tax assessments made by the CIR against government offices and agencies, including GOCCs, that are both subject to the President's executive control and supervision be governed by PD 242, which is now embodied in Book IV, Chapter 14 of the Administrative Code of 1987.

Accordingly, I concur that the Petition should be **DENIED**.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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[45] *Phil. International Trading Corp. v. COA*, 635 Phil. 447, 458 (2010).