

Aces

OLTS



Sessions

20 June 2023

- *Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue*, G.R. No. 226680, 30 August 2022, *En Banc*, J. Inting





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

FACTS / ANTECEDENTS:

- In 1995, PLDT entered into a *Gateway Agreement* with PT Asia Cellular Satellite (Aces Indonesia), for the supply of certain equipment, software, data and documentation to allow PLDT to construct, own and operate a gateway[s] in the Philippines.
- In the same year, petitioner was incorporated as PLDT's subsidiary to operate telecommunication gateways and equipment involving the processing, storage, monitoring, and retrieval of data, image, voice, audio, and tone





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

FACTS / ANTECEDENTS: (continuation)

- On March 12, 1997, PLDT entered into a *Founder NSP Air Time Purchase Agreement (Air Time Purchase Agreement)* with Aces Indonesia.
- So by the end of 1997, Aces Indonesia had two (2) executory contracts with PLDT, to wit: (1) the *Gateway Agreement*; and (2) the *Air Time Purchase Agreement*.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

FACTS / ANTECEDENTS: (continuation)

- The *Gateway Agreement* allowed Aces Indonesia to supply PLDT the equipment, software, data, and documentation necessary for the construction and operation of gateways in the Philippines.
- The *Air Time Purchase Agreement* allowed Aces Indonesia to sell satellite communications time (Aces Services) to PLDT, which, in turn, shall become the exclusive provider/distributor to Philippine subscribers.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

FACTS / ANTECEDENTS: (continuation)

→ The provision of these services depended upon the “Aces System,” which consisted of *satellite/s*, *terminals*, and *gateways*. The *satellite*, located in *outer space*, has the capacity to receive, switch, amplify, and transmit radio signals from and to *terminals* and *gateways*, which, on the other hand, are *ground station interlinks* with *terrestrial fixed-line telephone systems* and *terrestrial cellular telephone systems* located in various *geographical jurisdictions* within its coverage.





Garuda satellite
(Aces Indonesia)

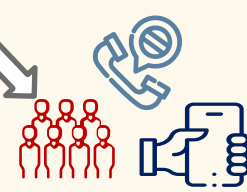


Gateway [Thailand]
(Aces Regional Services)

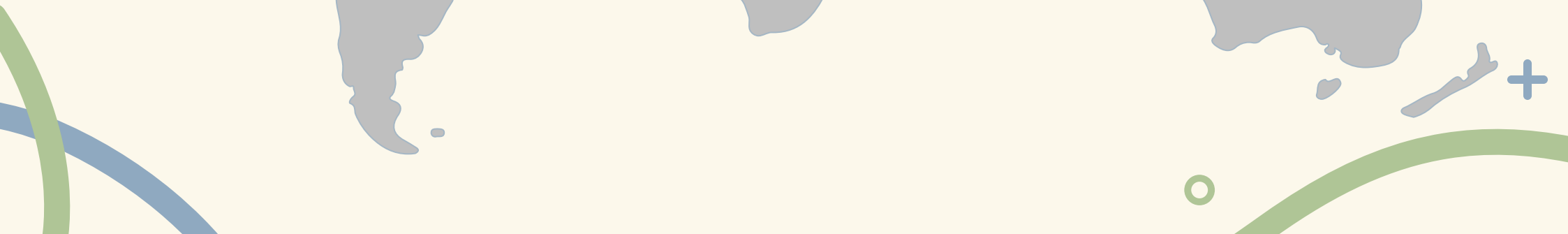
Gateway [Philippines]
(PLDT)

Network Control Center
[Batam, Indonesia]
(Aces Indonesia)

Gateway [Indonesia]
(Pacific Satelite Nusantara)



Subscribers
(mostly seafarers)





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

FACTS / ANTECEDENTS: (continuation)

- PLDT shall pay Aces Indonesia *satellite air time fees* as consideration for satellite communications time used by PLDT, which shall be measured in “Billable Units”.
- In 1998 (or a year later), the original parties to the *Air Time Purchase Agreement* transferred their rights and obligations under the contract to third parties, viz.: (a) Aces Indonesia transferred in favor of Aces International Limited, a company incorporated in Bermuda (Aces Bermuda), and (b) PLDT transferred to its subsidiary, petitioner herein.





Garuda satellite
(Aces Indonesia)

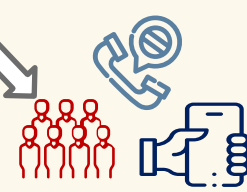


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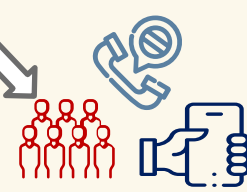
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Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

FACTS / ANTECEDENTS: (continuation)

- After the transfer, effectively, Aces Philippines had the authority to operate telecommunications gateways and related equipment within the Aces System, as well as the exclusive authority to provide Aces Services to its Philippine subscribers.
- Consequently, petitioner (formerly PLDT) shall pay Aces Bermuda (formerly Aces Indonesia) *satellite air time fees* as consideration for satellite communications time used by petitioner, which is measured in “Billable Units”.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

FACTS / ANTECEDENTS: (continuation)

- In 2007, the BIR commenced its audit of petitioner's records in relation to all internal revenue taxes for taxable year 2006. The BIR found that petitioner paid Aces Bermuda *satellite air time fees* in 2006, but did not withhold the proper amount of tax. According to the BIR, these satellite airtime fees are income payments to an NRFC that are subject to the 35% FWT.
- Petitioner protested the findings at the administrative level. However, respondent issued the FDDA against petitioner relative to the deficiency FWT for 2006, with surcharge, interest, and compromise penalty.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

FACTS / ANTECEDENTS: (continuation)

- Aggrieved, petitioner filed its judicial protest before the CTA.

- The CTA Division affirmed respondent's assessment against petitioner, with the following reasoning:
 - The payment terms in the agreement that petitioner pays satellite air time fees only when satellite air time is delivered to petitioner and its Philippine subscriber, and utilized in the Philippines for a voice or data call, excluding satellite utilization time for call set-up, unanswered calls and incomplete calls.
 - The activity that produces the income is the undertaking of providing satellite communication time to be delivered by Aces Bermuda and utilized by petitioner and its Philippines subscribers.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

FACTS / ANTECEDENTS: (continuation)

- Thus, the CTA Division concluded that the activity that produced the income took place in the Philippines .
- In its motion for reconsideration, petitioner insisted that Aces Bermuda rendered all services outside the Philippines; and that the law did not intend to impose a 20% deficiency interest and delinquency interest simultaneously.
- The CTA Division denied the said motion. This prompted petitioner to elevate the case to the CTA *En Banc*.

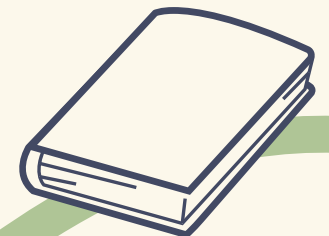




Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

FACTS / ANTECEDENTS: (continuation)

- In the assailed Decision, the CTA *En Banc* affirmed the ruling of the CTA Division, and upheld that the *satellite air time fees* are income sourced within the Philippines.
- The CTA *En Banc* pointed out that the services for *satellite air time fees* do not rely exclusively on the transmission signals from satellite in outer space. While the satellite transmits signals, the service would not be considered delivered to petitioner and its subscribers if those signals do not reach the gateways located in the Philippines.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

FACTS / ANTECEDENTS: (continuation)

- The CTA *En Banc* also upheld of deficiency interest, and ruled that when there is deficiency FWT, the withholding agent shall also be liable for the deficiency interest arising therefrom. Deficiency interest accrues based on any amount of due and unpaid tax.
- When petitioner moved for reconsideration, the CTA *En Banc* denied the motion through the assailed Resolution.
- Thus, petitioner the filed a *Petition for Review on Certiorari* before the SC, assailing the subject Decision and Resolution





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

→ Before the SC, petitioner insists that Aces Bermuda's income from satellite air time fee payments was sourced outside the Philippines for the following reasons:

- *First*, the act of transmission, which takes place in outer space, is the activity that produces the income for Aces Bermuda; and
- *Second*, Aces Bermuda does not have machinery, equipment and/or computers, or employees in the Philippines through which calls would reach and be received within the Philippines.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

1st Argument: The act of transmission, which takes place in outer space, is the activity that produces the income for Aces Bermuda.

- Petitioner limits Aces Bermuda's income-producing activity to the "receipt and beaming of satellite signals which all happen in the satellite and its control center, all located outside the Philippines."
- It claims that Aces Bermuda cannot be considered already as carrying out business operations in the Philippines by "[t]he mere fact that the satellite footprint reaches the Philippines."



Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

1st Argument: The act of transmission, which takes place in outer space, is the activity that produces the income for Aces Bermuda.

- Petitioner insists that the *situs* of the income derived from the payment of *satellite air time fees* by petitioner is considered income from sources outside the Philippines, inasmuch as Ace Bermuda's ground or earth station that performs the required service (*i.e.*, satellite monitoring, operations, control, and management) are located outside the Philippines.
- Per petitioner's testimonial evidence, the satellite which beams the signal and routes the call is situated in outer space (*i.e.*, 123 degrees above Indonesia) and clearly outside Philippines jurisdiction.





Garuda satellite
(Aces Bermuda)



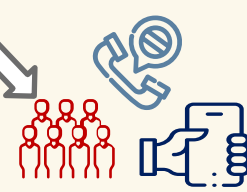
Gateway [Thailand]
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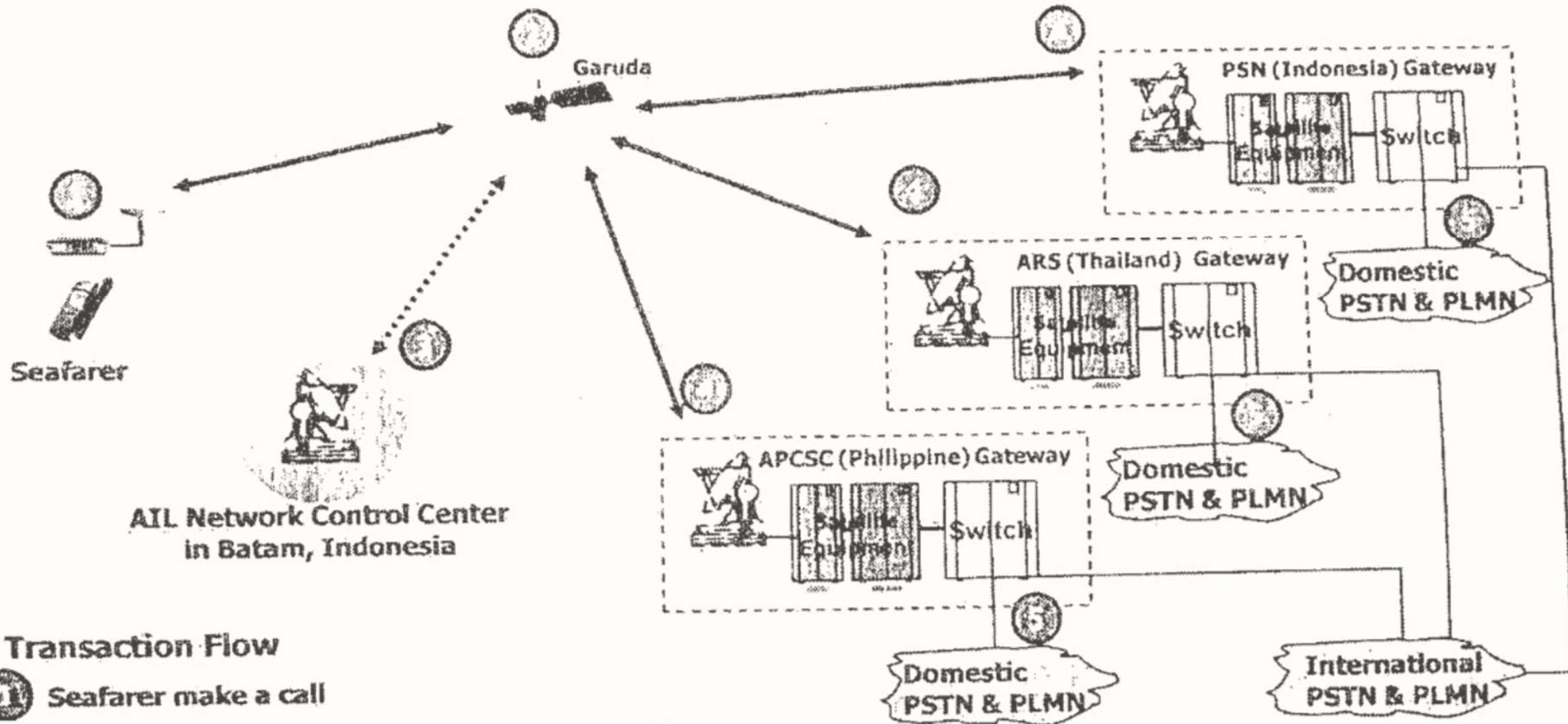
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Subscribers
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ACeS Network Topology and Transaction Flow



Transaction Flow

- 1 Seafarer make a call
- 2 Garuda satellite receive the call and query AIL Network Control Center where to route the call
- 3 AIL Network Control Center provide info on the Satellite Gateway to route the call
- 4 Satellite Gateway receive the call and route to switch
- 5 Switch process the call for routing and termination

Legend:

- PSN – Pacific Satellite Nusantara (Indonesia)
- ARS – ACeS Regional Services (Thailand)
- APCSC – ACeS Philippines Cellular Satellite Corp.
- PSTN – Public Switched Telephone Network (landline)
- PLMN – Public Land Mobile Network



Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

1st Argument: The act of transmission, which takes place in outer space, is the activity that produces the income for Aces Bermuda.

- According to petitioner, Aces Bermuda's service to petitioner is terminated when the former's Network Control Center provides information to the Garuda 1 as to which gateway the call shall be routed to.
- Thereafter, it will be petitioner's gateway/facilities that will receive the call, route the same to a local subscriber using its switch, and process it until termination.
- Further, the end-users/consumers of this service are most likely deployed in the high seas where is no wireless or tower.






Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

2nd Argument: Aces Bermuda does not have machinery, equipment and/or computers, or employees in the Philippines through which calls would reach and be received within the Philippines.

→ Petitioner cites BIR Ruling No. ITAD-214-02 dated December 4, 2002, wherein respondent opined that when no equipment is installed in the Philippines and the services rendered by the NRFC had been coursed through satellites, the income from the service fees are regarded as derived from sources *outside* the Philippines and, thus, not subject to FWT.

→ Petitioner also cites *Commissioner of Internal Revenue vs. Piedras Negras Broadcasting Co.* [127 F.2d 260 (5th Cir. 1942)], wherein the US Circuit Court of Appeals ruled in connection with radio corporation that broadcasts directly to listeners in the US and elsewhere, to wit:



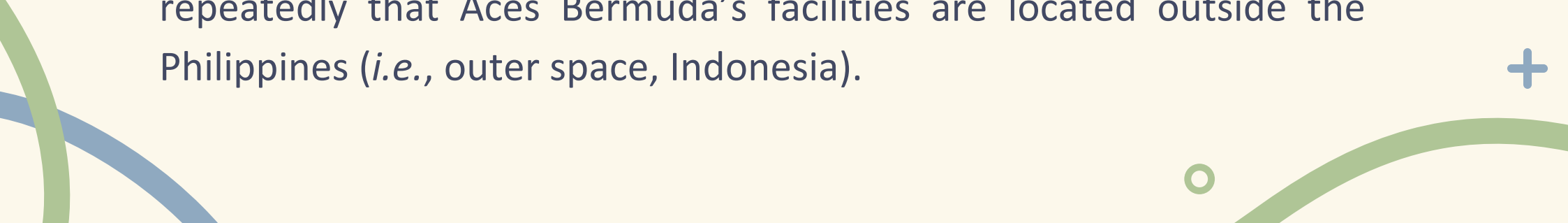
We think the language of the statutes clearly demonstrates the intendment of Congress that the source of income is the situs of the income-producing service. The repeated use of the words within and without the United States denotes a concept of *some physical presence, some tangible and visible activity*. If income is produced by the transmission of electromagnetic waves that cover a radius of several thousand miles, free of control or regulation by the sender from the moment of generation, *the source of that income is the act of transmission. All of respondent's broadcasting facilities were situated [outside] the United States, and all of the services it rendered in connection with its business were performed in Mexico. None of its income was derived from sources within the United States.*⁶⁵ (Citations omitted; italics supplied.)





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

2nd Argument: Aces Bermuda does not have machinery, equipment and/or computers, or employees in the Philippines through which calls would reach and be received within the Philippines.


- Other jurisdictions such as India, Singapore, Thailand, and Germany, also do not regard satellite airtime fee payments as subject to withholding tax.
 - Petitioner argues that the source of Aces Bermuda's income is the act of transmission of the call, which occurs in outer space, not the property, activity, or service that produced the income. It avers repeatedly that Aces Bermuda's facilities are located outside the Philippines (*i.e.*, outer space, Indonesia).
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Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

2nd Argument: Aces Bermuda does not have machinery, equipment and/or computers, or employees in the Philippines through which calls would reach and be received within the Philippines.

- As Aces Bermuda performs the required service outside the Philippines, the *satellite air time fees* paid by Aces Philippines in exchange therefor are not subject to FWT.
- Petitioner also cites the *US Internal Revenue Code*, which establishes special rules for determining the source of *international communications income, viz.:*



26 U.S.C.S. § 863, I.R.C. § 863
§ 863. Special rules for determining source

(e) International communications income.

(1) Source rules.

(A) United States persons.

In the case of any United States person, 50 percent of any international communications income shall be sourced in the United States and 50 percent of such income shall be sourced outside the United States.

(B) Foreign persons.

(i) In general. Except as provided in regulations or clause (ii), in the case of any person other than a United States person, any international communications income shall be sourced outside the United States.

(ii) Special rule for income attributable to office or fixed place of business in the United States. In the case of any person (other than a United States person) who maintains an office or other fixed place of business in the United States, any international communications income attributable to such office or other fixed place of business shall be sourced in the United States.

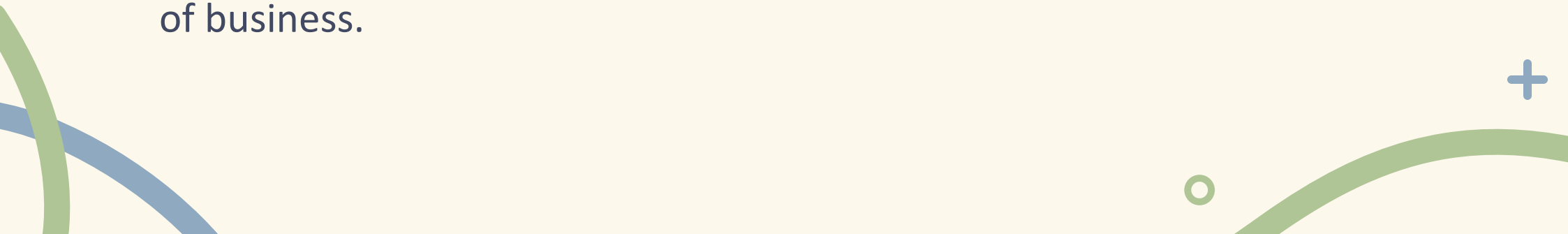
(2) Definition. For purposes of this section, the term “international communications income” includes all income derived from the transmission of communications or data from the United States to any foreign country (or possession of the United States) or from any foreign country (or possession of the United States) to the United States.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

2nd Argument: Aces Bermuda does not have machinery, equipment and/or computers, or employees in the Philippines through which calls would reach and be received within the Philippines.

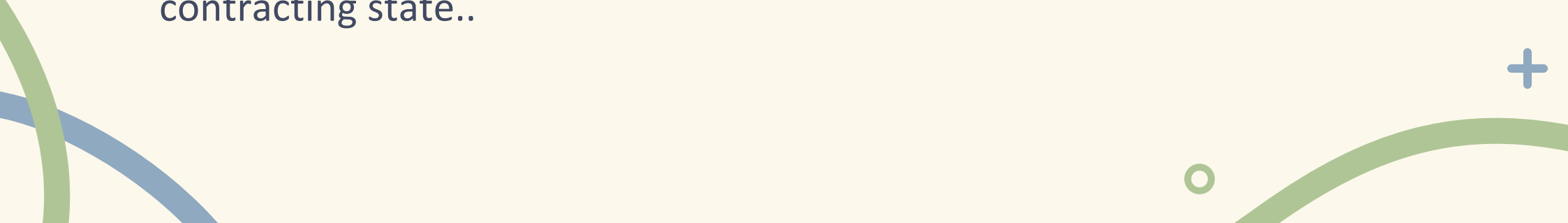
- In brief, under the *US taxation laws*, the international communications income of a foreign corporation is treated wholly as income sourced outside the US.
 - The only time such income is taxable in the US is in case the foreign corporation maintains an office or other fixed place of business in the US, in which case the income will be attributable to such fixed place of business.
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Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

2nd Argument: Aces Bermuda does not have machinery, equipment and/or computers, or employees in the Philippines through which calls would reach and be received within the Philippines.

→ Furthermore, based on the *Commentaries on Article 5 of the Model Tax Convention on Income and on Capital* of the OECD, “the particular area over which a satellite’s signals may be received (the satellite’s ‘footprint’) cannot be considered to be at the disposal of the operator of the satellite so as to make that area a place of business of the satellite’s operator.” In which case, the footprint alone does not constitute a *permanent establishment* in a contracting state..

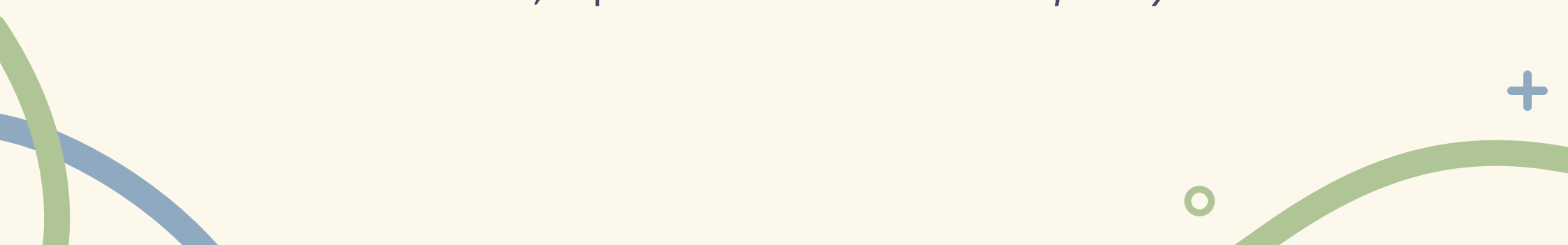




Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

Additional Argument: The law does not intend to impose *deficiency* and *delinquency* interests simultaneously (assuming for the sake of argument that the *satellite air time fee payments* are subject to FWT.

THE ISSUES

1. Are the *satellite air time fee payments* to Aces Bermuda, in consideration for services rendered using the Aces System, income from sources within the Philippines?
 2. If in the affirmative, is petitioner liable for *delinquency* interest?
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Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING:

The *Petition* is unmeritorious.

The assailed *Decision* and *Resolution* are
AFFIRMED WITH MODIFICATION
relative to interest computation.



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Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious:

- That taxation is inherent in sovereignty limits the scope of taxing power within a state's territorial jurisdiction.
- There must be an established *nexus* between the subject (*e.g.*, person, property, income, or business) and the state that intends to tax it.
- The existence of a *nexus* ensures that the taxing power does not extend beyond its territorial limits.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

- Under our income tax law, this nexus is established by one's *residence* and *source of income*.
- While resident individuals (?) and domestic corporations are taxed on their *worldwide* income, the NIRC of 1997, provides that any "*foreign corporation, whether engaged or not in trade or business in the Philippines, is taxable **only** on income derived from sources within the Philippines.*"





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

- In particular, an NRFC is subject to a 35% final tax on its “gross income received during each taxable year from *all sources within the Philippines.*”
- Any tax due shall be withheld at source by the income payor (withholding agent), who shall be responsible for filing the applicable return and remitting the tax withheld to the BIR.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

- In other words, the statute recognizes that the taxability of a foreign corporation's income is limited to that which is connected to Philippine territory or *Philippine-sourced income*.
- Certainly, other income the foreign corporation may derive from foreign sources is beyond the scope of the Philippines' taxing power.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

→ Resolving the issue of whether the *satellite air time fee payments* to Aces Bermuda is subject to FWT requires a two-tiered approach, where the identification of the following shall be made:

- *First*, the **source** of the income, and
- *Second*, the **situs** of that source.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

→ What is the *source* of the subject income?

The gateways' receipt of the call as routed by the satellite is the income source.

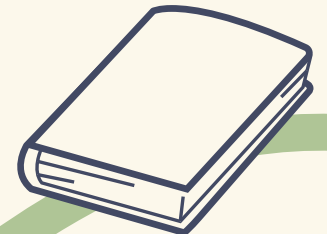




Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

- “Income” refers to the flow of wealth.
- In ascertaining the income source, We must inquire into the property, activity, or service that produced the income, or where the inflow of wealth originated.
- It is insufficient to identify just any property, activity, or service.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

→ The subject may only be regarded as an income source ***if*** the particular property, activity, or service cause an *increase in economic benefits*, which may be in the form of an inflow or enhancement of assets or a decrease in liabilities with a corresponding increase in equity other than that attributable to a capital contribution.

[Taken from the definition of “income” from the Framework for the Preparation and Presentation of Financial Statements (Conceptual Framework) – SEC Memorandum Circular No. 12, series of 2019 – Adoption of Revised Conceptual Framework; Summary of PFRS adopted by the SEC]

Refer also to *Ericsson Telecommunications, Inc. vs. City of Pasig* (G.R. No. 176667, 22 November 2007).





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

→ Petitioner attempts to remove the subject *satellite air time fees* from the reach of Philippine taxation by confining Aces Bermuda's service to the *first segment*, which takes place in/at locations outside the Philippines (*e.g.*, outer space, Indonesia) and attributing the income-generating activity exclusively to the *second segment*, which is handled by petitioner's facilities without any participation from Aces Bermuda.





Garuda satellite
(Aces Bermuda)

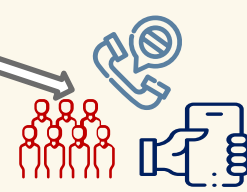


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Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

- Petitioner's theory misleads in that, for purposes of determining Aces Bermuda's income source, the satellite in outer space is completely independent from the terrestrial components of the Aces System, particularly the *gateways* located within the Philippine territory.
- The SC agreed with the CTA that the income-generating activity takes place *not* during the act of transmission *but* only upon the gateway's receipt of the call as routed by the satellite.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

- The gateway's receipt of the call is the income source as it coincides with (1) the completion or delivery of the service, and (2) the inflow of economic benefits in favor of Aces Bermuda.
- *First*, the gateway's receipt of the routed call marks the completion or delivery of the service.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

- By itself, the act of transmission only suggests that a Philippine subscriber has made a call and that the satellite received the call and signaled the control center to determine where the call should be routed.
- At this point, the satellite and its control center have only determined the location the call shall be directed to but have *not* actually routed the call.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

- Thus, *it is clear that nothing has been sold/delivered yet to petitioner.*
- At best, Aces Bermuda's provision of its service remains *in-progress* at this stage and requires further action to be completed.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

- The fulfillment of Aces Bermuda's undertaking requires the *satellite* to have *transmitted/routed* the call (first segment) *and* a gateway to have *received* the call as routed by the satellite (second segment).
- At the point of transmission, petitioner has not been given access to the Aces System yet.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

- It is only when the call is actually routed to its gateway that petitioner is able to connect its local subscriber to the intended recipient of the call.
- In this sense, the gateway's receipt of the call signifies **completion/delivery** of Aces Bermuda's service.



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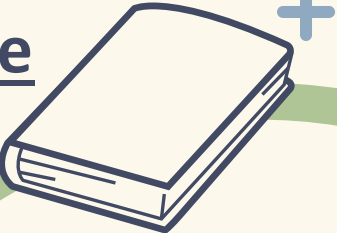
Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

→ *Second*, the accrual of *satellite air time fees* marks **the inflow of economic benefits.**

→ The *satellite air time fees* accrue only when the satellite air time is *delivered* to petitioner (*i.e.*, upon the gateway's receipt of the routed call) and is utilized by the Philippine subscriber for a voice or data call.

→ The accrual of fees payable to Aces Bermuda signifies **the inflow of economic benefits.**





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

→ Where is the *situs* of the income source?

The situs of the income-producing activity is within the Philippines.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

- It is settled that where the inflow of wealth and/or economic benefits proceeds from, and occurs within Philippine territory, it enjoys protection of the Philippine government.
- In consideration of such protection, the flow of wealth should share the burden of supporting the government, and thus, is subject to tax.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

→ The following establishes the Philippine *situs* of Aces Bermuda's income from satellite air time fee payments:

- (1) the income-generating activity is directly associated with the *gateways located within the Philippine territory*;
- and (2) engaging the business of providing satellite communication services in the Philippines is a *government-regulated industry*.





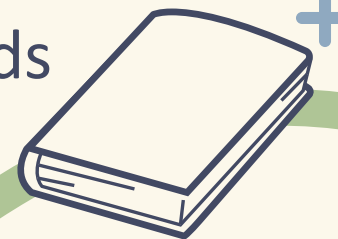
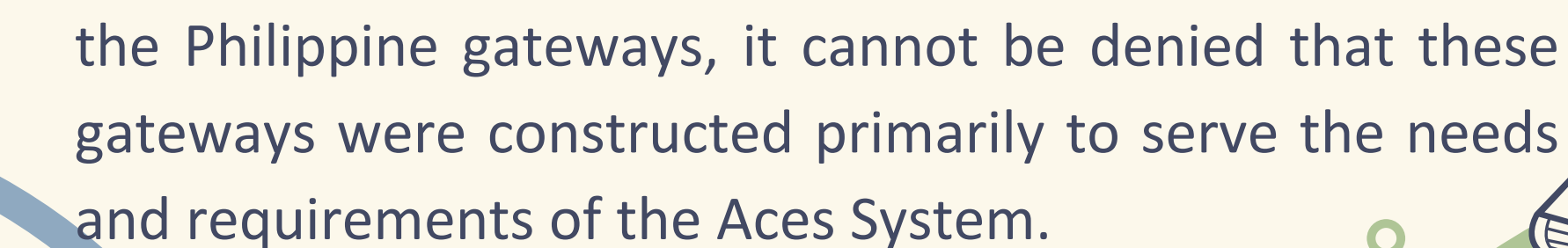
Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

Anent the income-generating activity...

→ *First*, as already discussed, the performance of the service does not cease at the point of transmission but continues until such time Aces Bermuda delivers the satellite communication time (*i.e.*, routes the call) to the Philippine gateway.

→ *Second*, while petitioner is the legal owner/operator of the Philippine gateways, it cannot be denied that these gateways were constructed primarily to serve the needs and requirements of the Aces System.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

Anent the income-generating activity...

- The income-generating activity (*i.e.*, accrual of satellite airtime fee payments and completion of the principal undertaking) coincides with the receipt of the routed call by gateways located within Philippine territory.
- That income generation is dependent on the operations of facilities situated in the Philippines contributes to the income's Philippine *situs*.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

Anent the income-generating activity...

→ Verily, the gateways are legally owned by petitioner.

→ Nonetheless, Aces Bermuda has sufficient economic/beneficial interest in these properties, inasmuch as its Philippine operations are dependent on these local facilities.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

The provision of satellite communication services in the Philippines is a government-regulated industry.

→ That a foreign satellite service provider seeks to provide telecommunications services to Philippine subscribers or otherwise participate in the Philippine telecommunications industry necessarily invokes Philippine sovereignty and government intervention/protection.

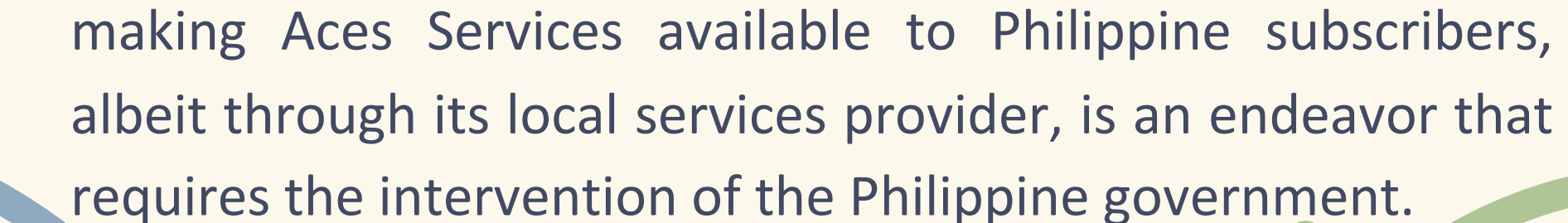




Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

The provision of satellite communication services in the Philippines is a government-regulated industry.

- That the main asset is situated in outer space cannot be determinative of the income source and *situs* thereof.
 - It is clear that: (a) Aces Bermuda's income attaches to property operated and maintained in the Philippines, and (b) making Aces Services available to Philippine subscribers, albeit through its local services provider, is an endeavor that requires the intervention of the Philippine government.
- 

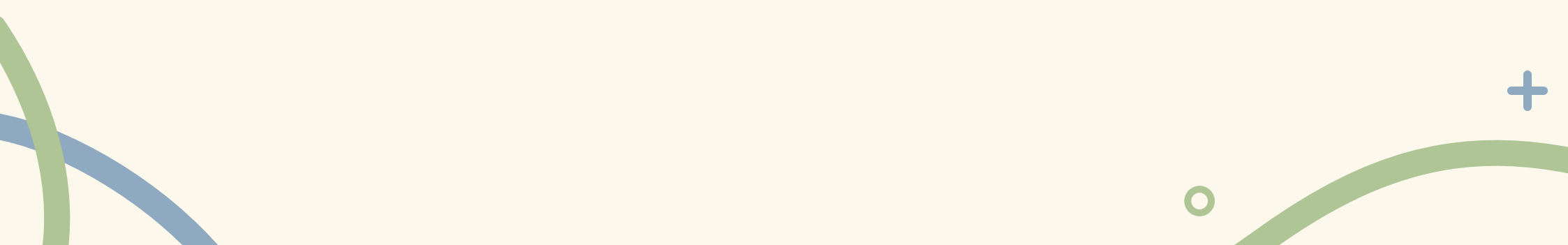


Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

The provision of satellite communication services in the Philippines is a government-regulated industry.

→ In the SC's view, it is only fair that this income be subjected to Philippine taxation; to hold Aces Bermuda accountable for its share in compensating the government for the protection it accords to Aces Bermuda's arrangements, operations, and related transactions in the Philippines.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

The references cited by petitioner do not have the force of law in our jurisdiction.



Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

Aces Philippines cites the following references to refute the satellite airtime fee's Philippine *situs*:

- 1) BIR Ruling No. ITAD-214-02;
- 2) *Commissioner of Internal Revenue v. Piedras Negras Broadcasting* decided by the US Circuit Court of Appeals, as well as other cases decided in *India, Singapore, Thailand, and Germany*;
- 3) Section 863(e) of the US Internal Revenue Code; and
- 4) OECD Commentaries on Article 5 of the Model Tax Convention on Income and on Capital.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

- The authority of the issuing bodies/tribunals from which the above-enumerated references is derived is not in question.
- However, as these rulings and legislation do not have the force of law in the Philippines, these shall not persuade the SC.

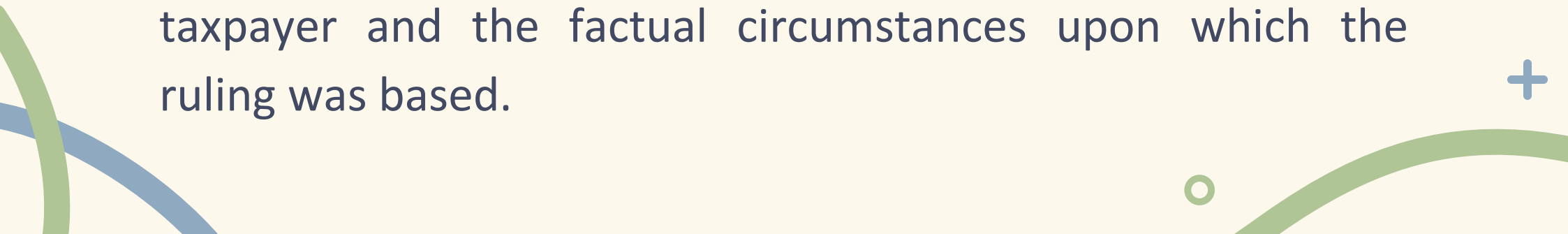




Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

BIR Ruling No. ITAD-214-02.

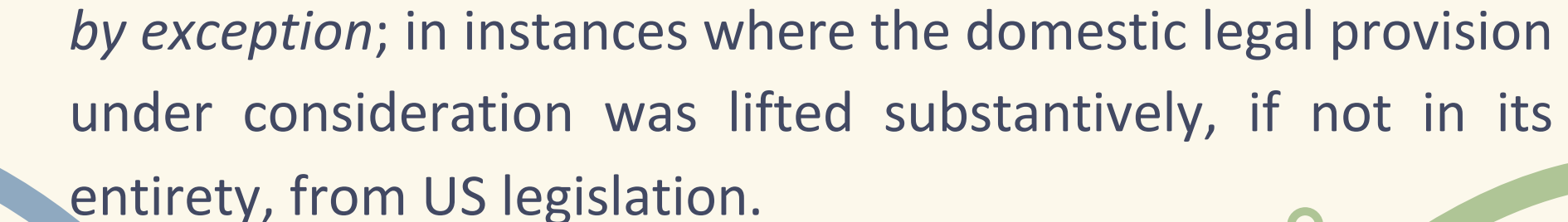
- Being a specific interpretative rule addressing issues raised by a particular taxpayer, it binds respondent only with respect to the inquiring taxpayer.
 - In other words, all other taxpayers are not at liberty to rely on this ruling as its application is limited to the specific taxpayer and the factual circumstances upon which the ruling was based.
- 



Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

US cases/legislation and jurisprudence from foreign jurisdiction.

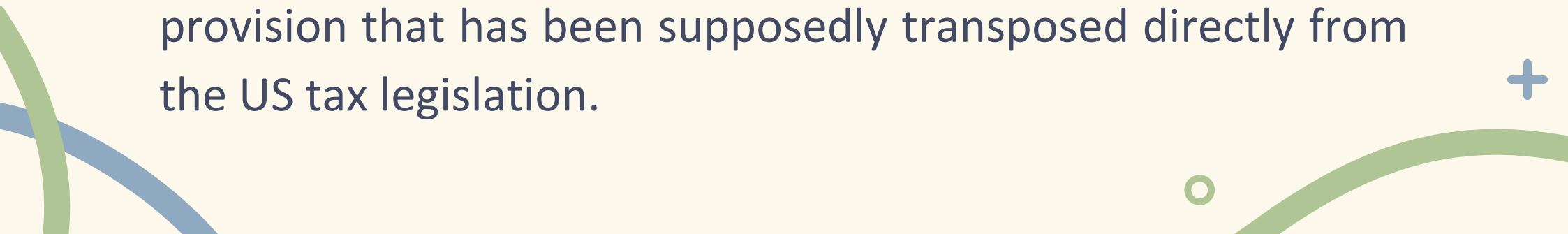
- While the Court has on occasion relied on US cases and legislation in resolving tax cases, the general rule is that these are *not binding* and are *merely persuasive* in our jurisdiction.
 - To be clear, the SC relies on US tax laws and regulations only *by exception*; in instances where the domestic legal provision under consideration was lifted substantively, if not in its entirety, from US legislation.
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Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

US cases/legislation and jurisprudence from foreign jurisdiction.

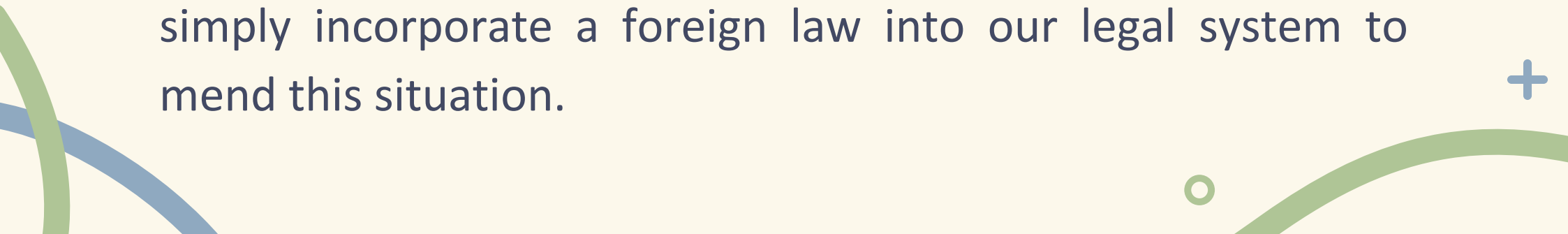
- If the party relying on the foreign law and/or jurisprudence fails to demonstrate this, the application thereof in our jurisdiction shall not be justified.
 - Petitioner merely states that the Philippine income tax law is of American origin. It did not point to any domestic tax law provision that has been supposedly transposed directly from the US tax legislation.
- 



Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

US cases/legislation and jurisprudence from foreign jurisdiction.

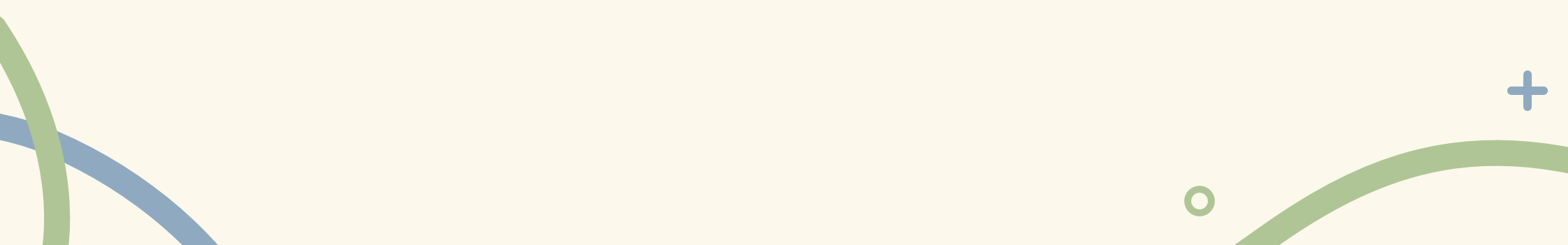
- This bare statement as to the origins of Philippine income tax law is not a sufficient justification for the SC to apply the US Internal Revenue Code in resolving the present controversy.
 - Whether there have been few developments in the field of taxation of satellite communications, the SC cannot be simply incorporate a foreign law into our legal system to mend this situation.
- 



Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

US cases/legislation and jurisprudence from foreign jurisdiction.

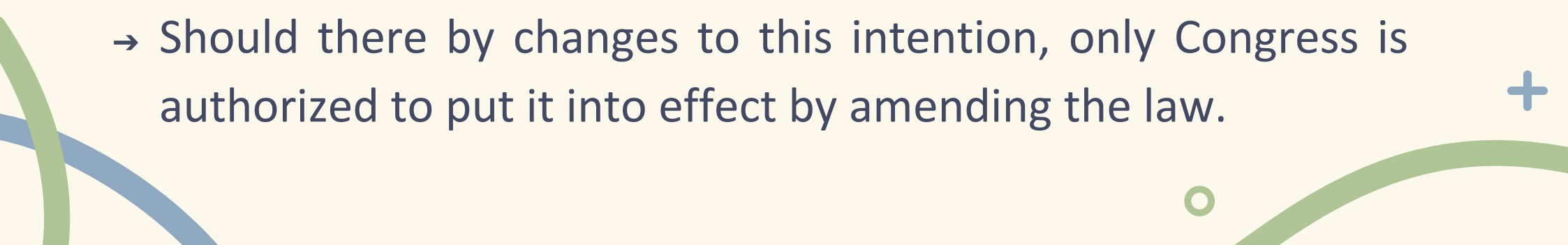
- It is fundamental that the power to determine the nature, object, extent, coverage, and *situs* of taxation rests with Congress.
 - The SC cannot freely delve into those matters which, by constitutional fiat, rightly rest on legislative judgment.
- 



Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

US cases/legislation and jurisprudence from foreign jurisdiction.

- That at this time, no Philippine tax law characterizes international satellite communications income as foreign-sourced only reveals that the Legislative did not intend to remove automatically the income of foreign satellite companies from the reach of Philippine taxation.
 - Should there be changes to this intention, only Congress is authorized to put it into effect by amending the law.
- 

What Is the OECD?

(Organization for Economic Cooperation and Development)



- It aids developing countries outside membership and promotes reform

- It is an association of 38 nations in Europe, the Americas, and the Pacific

- It helps member countries formulate economic and social policies

- Members and key partners represent 80% of world trade





 the balance

PHOTO: THE BALANCE / HILARY ALLISON



What is the OECD?

- 
- A forum in which governments work together to address the economic, social and environmental challenges of interdependence and globalisation
 - A provider of comparative data, analysis and forecasts to underpin multilateral co-operation



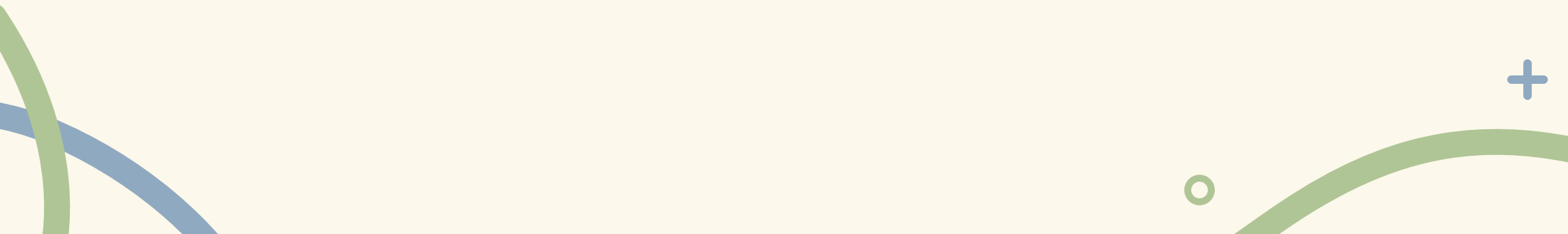


Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

OECD Commentaries on Article 5 of the Model Tax Convention on Income and on Capital.

→ The OECD is an international standard-setting body that, among others, develops a model or pro-forma tax convention, which contracting states may adopt in executing or amending tax treaties or double tax agreements.



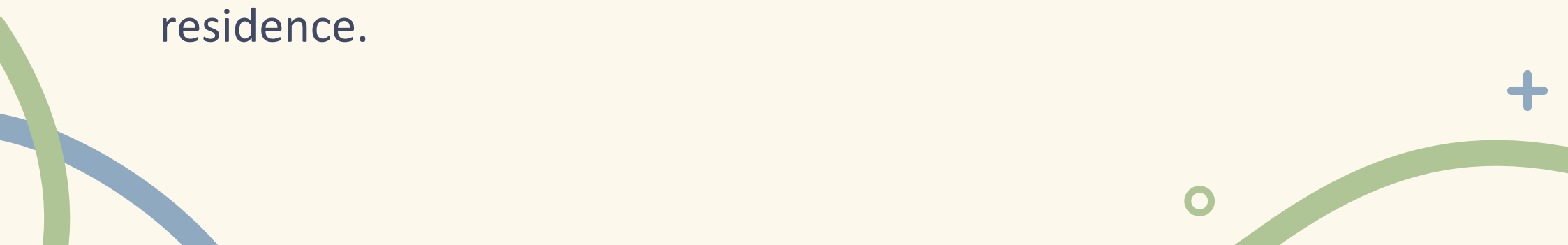


Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

OECD Commentaries on Article 5 of the Model Tax Convention on Income and on Capital.

→ The model treaty provisions of the OECD Model Tax Convention on Income and on Capital and the accompanying commentary are irrelevant to the present case for the obvious reason that there is no double tax agreement between the Philippines and Aces Bermuda's country of residence.






Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

OECD Commentaries on Article 5 of the Model Tax Convention on Income and on Capital.

- Interestingly, Bermuda was recognized as a tax haven or a low or no-tax jurisdiction.
 - Aces Bermuda's consolidated FS expressly declared that it does not pay any income tax in its residence country.
- 



Garuda satellite
(Aces Bermuda)



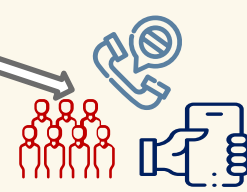
Gateway [Thailand]
(Aces Regional Services)

Gateway [Philippines]
(Petitioner)

Network Control Center
[Batam, Indonesia]
(Aces Bermuda)



Gateway [Indonesia]
(Pacific Satelite Nusantara)



Subscribers
(mostly seafarers)



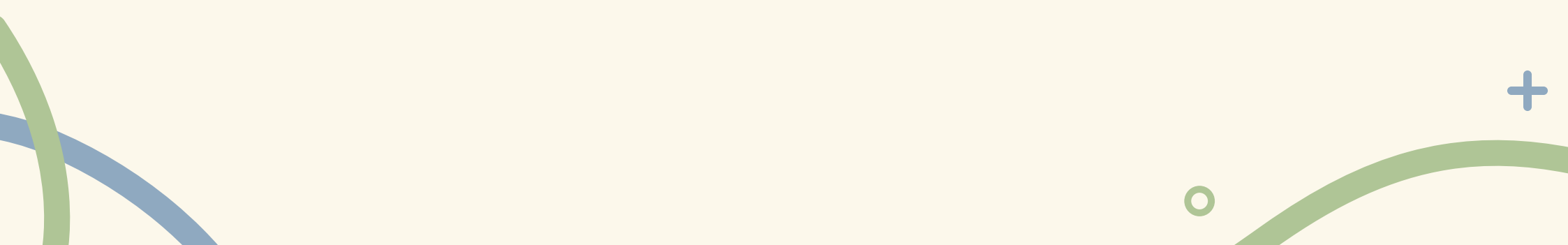


Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

OECD Commentaries on Article 5 of the Model Tax Convention on Income and on Capital.

→ If Aces Bermuda's income from satellite air time fees is not taxed in the Philippines, in other jurisdictions where Aces Bermuda has local service providers, or even in its residence country, it appears that these amounts will escape completely the imposition of any income tax.



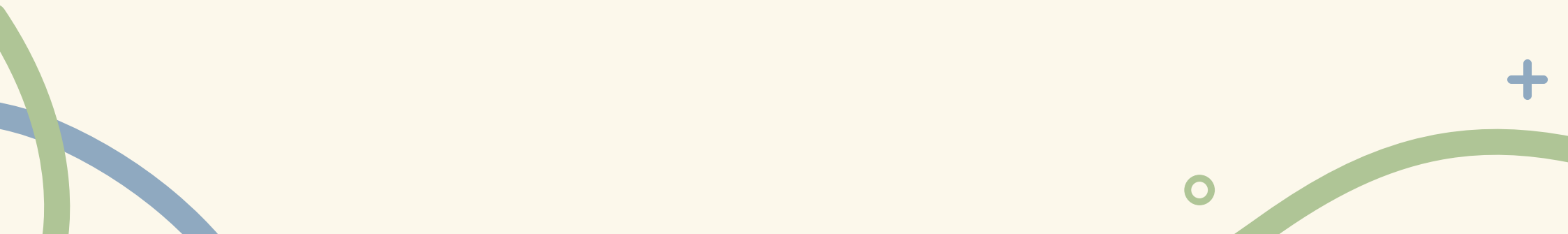


Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

OECD Commentaries on Article 5 of the Model Tax Convention on Income and on Capital.

→ These are indicative of a *profit shifting* strategy: a method of tax avoidance that artificially shifts profits to low or no-tax locations where there is little or no economic activity.

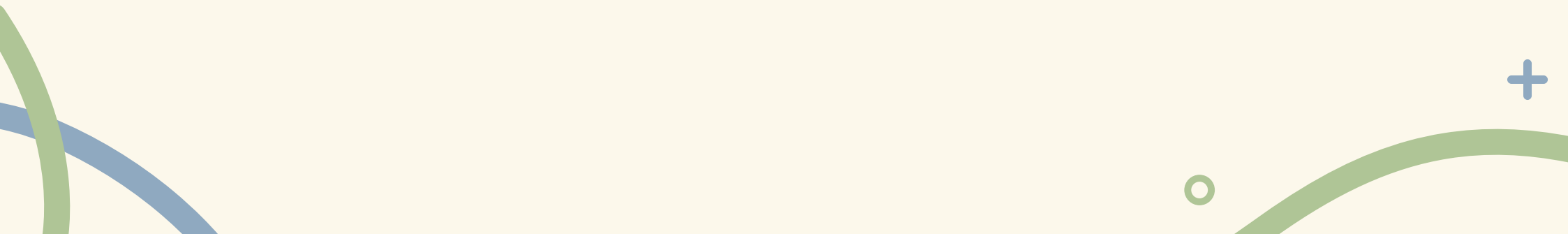




Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

OECD Commentaries on Article 5 of the Model Tax Convention on Income and on Capital.

- While most tax avoidance schemes are legal, the OECD itself underscores that these undermine “the fairness and integrity of tax systems because businesses that operate across borders can use [these strategies] to gain a competitive advantage over enterprises that operate at a domestic level.
- 



Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

Petitioner failed to established that the satellite air time fee payments are foreign-sourced.

The rule is that the taxpayer bears the burden of proving that the “income was from sources outside the Philippines and exempt from the application of our income tax law.”



Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

The SC likewise rejected petitioner's theory that the imposition of deficiency interest and delinquency interest, simultaneously, was not the intent of the law.

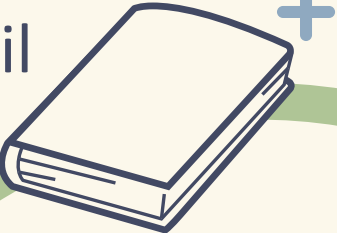
The law is clear. The imposition of deficiency interest and delinquency interest is simultaneous, pursuant to Section 249(A) (B) (C) of the NIRC [of 1997], as amended [Prior to the TRAIN Law (RA No. 10963)].



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○

Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

- The NIRC imposes deficiency interest at the rate of 20% per annum on any deficiency in the tax due from the date prescribed for its payment under the relevant tax law until full payment thereof.
 - In addition, the NIRC imposes delinquency interest at the rate of 20% per annum on any deficiency tax, or any surcharge or interest thereon from its due date, appearing in the notice and demand of respondent, until the amount is fully paid.
- 



Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

→ Failure to pay the deficiency tax assessed, including any surcharge or interest thereon, within the time prescribed for its payment justifies the imposition of delinquency interest.

-Takenaka Corporation Philippine Branch vs. Commissioner of Internal Revenue [G.R. No. 211589 (Notice), 12 March 2018]





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

- Significantly, the TRAIN Law (RA No. 10963), a later law, bars the simultaneous imposition of deficiency and delinquency interests.
- Instead, interest equal to the prevailing rate as set by the BSP shall accrue on any amount of unpaid tax until it is fully paid.





Aces Philippines Cellular Satellite Corporation vs. The Commissioner of Internal Revenue

SC RULING – The Petition is unmeritorious: (continuation)

- Taking the amendments into consideration and guided by RR No. 21-2018, as well as the SC's Resolution in *E.E. Black Ltd. – Philippine Branch vs. CIR*,* deficiency and delinquency interests under the 1997 NIRC shall be imposed simultaneously but only until 31 December 2017.
- Beginning 1 January 2018 or upon the TRAIN Law's effectivity, only deficiency interest at the prevailing legal rate of 12% shall accrue on the unpaid amount of tax until fully paid.

*G.R. No. 221655 (Notice), 20 January 2021



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○ **N.B.:**

- A single corporate entity cannot be both a resident and a non-resident corporation depending on the nature of the particular transaction involved. [***Marubeni Corporation vs. CIR, et al., G.R. No. 76573, 14 September 1989***]
- In order that a corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as an appointment of a local agent, and not one of a temporary character. [***CIR vs. British Overseas Airways Corporation, et al., Nos. L-65773-74, 30 April 1987***]
- A casual business activity in the Philippines by a foreign corporation does not amount to engaging in trade or business in the Philippines for income tax purposes. [***N.V. Reederij "Amsterdam", et al. vs. CIR, et al., G.R. No. L-46029, 23 June 1988***]

