Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

MANILA PENINSULA HOTEL, INC.,	**G.R. No. 229338**
Petitioner,	Present:
-versus-	CAGUIOA, *J.*, *Chairperson*, INTING, GAERLAN, DIMAAMPAO, and SINGH, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: April 17, 2024 MistDCBatt

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DECISION

CAGUIOA, *J.*:

This Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioner Manila Peninsula Hotel, Inc. (Manila Peninsula) seeks the reversal and setting aside of the Decision[2] dated July 12, 2016 and Resolution[3] dated January 17, 2017 of the Court of Tax Appeals *En Banc* (CTA EB) in CTA EB No. 1408. The CTA EB denied Manila Peninsula's petition for review and affirmed the Decision[4] dated August 14, 2015 and Resolution[5] dated December 10, 2015 of the CTA Third Division (CTA Division), which held that Manila Peninsula's sale of services to Delta

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[1] *Rollo*, pp. 83–132.

[2] *Id.* at 42–63. Penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justices Lovell R. Bautista, Erlinda P. Uy, Esperanza R. Fabon-Victorino, and Amelia R. Cotangco-Manalastas, concurring. Presiding Justice Roman G. Del Rosario wrote a Concurring and Dissenting Opinion and he was joined by Associate Justice Ma. Belen M. Ringpis-Liban. Associate Justices Caesar A. Casanova and Cielito N. Mindaro-Grulla were on leave.

[3] *Id.* at 65–79. Penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla, concurring. Presiding Justice Roman G. Del Rosario wrote a Dissenting Opinion. Associate Justice Ma. Belen M. Ringpis-Liban maintained her Concurring and Dissenting Opinion. Associate Justice Catherine T. Manahan took no part.

[4] *Id.* at 12–31. Penned by Associate Justice Esperanza R. Fabon-Victorino with Associate Justice Ma. Belen M. Ringpis-Liban, concurring. Associate Justice Lovell R. Bautista was on leave.

[5] *Id.* at 33–40. Penned by Associate Justice Esperanza R. Fabon-Victorino with Associate Justices Lovell R. Bautista and Ma. Belen M. Ringpis-Liban, concurring.

Air Lines, Inc. (Delta Air) is not subject to Value-Added Tax (VAT) zero-rating for failure to satisfy the requisites to be entitled to it.

The Facts

Petitioner Manila Peninsula, registered with the Large Taxpayers Division of the Bureau of Internal Revenue (BIR), is a duly registered domestic corporation with address at Ayala Avenue corner Makati Avenue, Makati City. It was incorporated on April 4, 1974, with the following primary purpose:

> "To lease real estate, and to erect thereon hotels and other buildings and improvements; to own, lease, operate, manage and administer hotels, apartment hotels, and all other facilities, accommodations, adjunct and accessories appurtenant to a general hostelry business; to furnish entertainment and otherwise perform any and all things for the pleasure, comfort and convenience of hotel guests, tenants and other customers; to promote travel and tourism; and otherwise, to handle and engage in other allied businesses; provided that the Corporation will cater only to its hotel customers and their guests.[6] (Citation omitted)

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), with the authority to act on claims for refund or tax credit of erroneously or excessively paid taxes. It holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

During taxable year (TY) 2010, Manila Peninsula provided hotel room accommodations and food and beverage services to Delta Air, a foreign corporation with a License to Transact Business in the Philippines (License) dated December 29, 2009, issued by the Securities and Exchange Commission (SEC). Under such License, Delta Air is allowed to establish a branch office in the Philippines to engage in international air transport services.[7]

Delta Air provides room accommodations and food and beverage services to its pilots and cabin crew during flight layovers in the Philippines. For this purpose, an agreement was executed between Delta Air and Manila Peninsula wherein the latter would provide room accommodations and food and beverage services to the former's pilots and cabin crew during flight layovers in the Philippines. The cost of hotel services would be directly charged to Delta Air and would not constitute compensable income for its crew but a business expense of the airline.[8]

For TY 2010, Manila Peninsula paid CIR the amount of PHP 74,764,313.49, net of VAT, with the Quarterly VAT Returns filed on the following dates:

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6 *Id.* at 12–13, CTA Division Decision.
7 *Id.* at 13.
8 *Id.* at 13–14.

Quarter (TY 2010)	Date of Filing Return	Date of Payment
First	April 23, 2010	April 23, 2010[9]
First (amended)	July 6, 2011	July 6, 2011
Second	July 23, 2010	July 23, 2010[10]
Second (amended)	July 6, 2011	July 6, 2011
Third	October 22, 2010	October 22, 2010
Fourth	January 25, 2011	January 25, 2011[11] (Emphasis in the original, citations omitted)

On June 19, 2012, Manila Peninsula filed with the BIR's Large Taxpayer Services (BIR-LTS) and Large Taxpayer's Regular Audit Division 2 (BIR-L TRAD 2) an administrative claim for refund of alleged erroneously paid or illegally collected VAT for TY 2010 amounting to PHP 3,807,771.77, consisting of the 12% VAT payments on its sales to Delta Air.[12]

On July 24, 2012, Manila Peninsula filed with the CTA Division a claim for tax refund or issuance of tax credit certificate (TCC), claiming inaction on the part of the CIR on its application for refund.[13]

On October 2, 2012, CIR filed an Answer, praying for the dismissal of the petition primarily on the ground of lack of cause of action since Manila Peninsula neither has a legal standing nor is the real party in interest as defined under Section 2, Rule 3 of the Rules of Court. CIR also asserted that prescription had already set in insofar as the period covering the first quarter up to a part of the second quarter of TY 2010. Notably, the receipts issued by Delta Air contain the words 'zero-rated', indicating that VAT should not have been imposed on the hotel services Manila Peninsula rendered to the airline's crew. CIR likewise maintained that Manila Peninsula failed to exhaust administrative remedies and observe the doctrine of primary jurisdiction as it prematurely filed the petition only 35 days from the institution of the administrative claim for refund. As well, there was also non-compliance by Manila Peninsula with Revenue Memorandum Order No. 53-98[14] requiring submission of complete documentary requirements in the administrative application for refund or issuance of TCC. Finally, CIR asserts that since a claim for refund or TCC is in the nature of tax exemptions, it should be

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9 *See* CTA EB Decision, *id.* at 57, which held that Manila Peninsula's e-payment was deemed paid on April 26, 2010.

10 *See* CTA EB Decision, *id.*, which held that Manila Peninsula's e-payment was deemed paid on July 26, 2010.

11 *Id.* at 14, CTA Division Decision.

12 *Id.*

13 *Id.*

14 Re: Checklist Of Documents To Be Submitted By A Taxpayer Upon Audit Of His Tax Liabilities As Well As Of The Mandatory Reporting Requirements To Be Prepared By A Revenue Officer, All Of Which Comprise A Complete Tax Docket (1998).

construed *strictissimi juris* against the claimant and liberally in favor of the taxing authority.[15]

On October 15, 2012, Manila Peninsula filed its Reply, arguing the following, among others: (a) it has the legal standing to file the claim for refund of erroneously paid VAT; (b) it timely and properly filed with the CIR the administrative claim for refund; and (c) its alleged failure to submit documents as provided in Revenue Memorandum Order No. 53-98 is not fatal to its claim for refund.[16]

After the pre-trial conference, the parties filed their Joint Stipulation of Facts and Issues upon which the Pre-Trial Order dated January 22, 2013 was based. To support its case, Manila Peninsula presented five witnesses, namely Gamiel Gumapon, Josefina P. Malpas, Atty. Ceazar Lorenzo T. Veneracion III, Atty. Noel M. Malaya, and Venus Villarosa.[17] On the other hand, CIR submitted the case for decision without presentation of any evidence in support of its position.[18]

CTA Division Ruling

In a Decision dated August 14, 2015, the CTA Division denied Manila Peninsula's Petition for Review for lack of merit.

The CTA Division found that Manila Peninsula, as the statutory taxpayer, has the legal standing to file the claim for refund.[19]

The CTA Division also ruled that Manila Peninsula's administrative and judicial claims for the third and fourth quarters of 2010 were both within the two-year prescriptive period pursuant to Section 229 of the National Internal Revenue Code of 1997[20] (NIRC), as amended.[21] However, as regards the first and second quarters of 2010, both the administrative and judicial claims were timely filed but only with respect to the output VAT paid per the amended returns. Hence, the output VAT paid per the original returns for the first and second quarters of 2010 was disallowed due to prescription.[22]

Finally, the CTA Division held that Manila Peninsula did not erroneously pay the alleged output VAT of PHP 3,807,771.77. Citing BIR Ruling No. 99-2011,[23] which was affirmed in Revenue Memorandum Circular No. 31-2011,[24] the CTA Division concluded that, since the services to Delta

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15 *Rollo*, p. 14, CTA Division Decision.
16 *Id.* at 16–20.
17 *Id.* at 16.
18 *Id.* at 20.
19 *Id.* at 21–22.
20 Republic Act No. 8424 (1997), National Internal Revenue Code of 1997.
21 *Rollo*, p. 23, CTA Division Decision.
22 *Id.*
23 BIR Ruling No. 99-11, April 6, 2011.
24 Re: Revocation Of BIR Ruling [DA-(VAT-057) 552-08] Dated December 18, 2008 Pursuant To BIR Ruling 99-2011 Dated April 6, 2011 (2011).

Air's pilots and cabin crew members during flight layovers were rendered within Manila Peninsula's premises, they have no direct connection with the transport of goods or passengers, and as such, they cannot be considered as services directly attributable to the transport of goods and passengers from a Philippine port directly to a foreign port entitled to zero-rating.[25]

Manila Peninsula moved for reconsideration, but the CTA Division denied the same in its Resolution dated December 10, 2015.

CTA EB Ruling

In the Decision dated July 12, 2016, the CTA EB affirmed the Decision and Resolution of the CTA Division.

The CTA EB held that the CTA Division is correct in disallowing Manila Peninsula's claim for refund involving the first quarter of TY 2010 due to prescription. However, Manila Peninsula's claim for refund for the second quarter of TY 2010 has not yet prescribed.[26]

Still, even if Manila Peninsula's claim for refund involving the second quarter of 2010 has not prescribed, the CTA EB emphasized that Manila Peninsula's claim must fail for failure to satisfy the requisites for its transaction with Delta Air to qualify for zero-rating.

The CTA EB also agreed with the CTA Division that Manila Peninsula should satisfy the requisites provided by Section 108(B)(4) of the NIRC, as amended, in relation to Section 4.108-5(b)(4) of Revenue Regulations No. 16-2005,[27] BIR Ruling No. 99-2011, Revenue Memorandum Circular No. 46-2008,[28] and Revenue Memorandum Circular No. 31-2011. The CTA EB stated that for Manila Peninsula's sale of services to Delta Air to qualify for zero-rating, it must comply not only with the requisites provided for under Section 108(B)(4) of the NIRC, as amended, but it must likewise be proved that: (1) the services pertain to or must be attributable to the transport of goods and passengers; (2) the transport of goods and passengers must emanate from a port in the Philippines; (3) the transport of goods and passengers must be directly to a foreign port; and (4) the common international air transport carrier must not dock or stop at any port in the Philippines.[29]

The CTA EB concluded that Manila Peninsula's room accommodations and food and beverage services to Delta Air do not entirely pertain to or are not attributable to Delta Air's transport of goods or passengers. It likewise held that Manila Peninsula failed to present evidence to prove the

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25 *Rollo*, pp. 24–30, CTA Division Decision.
26 *Id.* at 56–57, CTA EB Decision.
27 Re: Consolidated Value-Added Tax Regulations Of 2005 (2005).
28 Re: Application Of The National Internal Revenue Code Of 1997 On Air Transport Operators And Their Travel Agents (2008).
29 *Rollo*, pp. 50–54, CTA EB Decision.

abovementioned requisites.[30] In support of this finding, the CTA EB cites Manila Peninsula's Hotel Room Agreement 106750 with Delta Air, which reveals that Manila Peninsula's Agreement with Delta Air does not merely cover Delta Air's flight crew. The obligation of Manila Peninsula to provide hotel services extends even to individuals who are mere accommodation guests of Delta Air, i.e., non-crew employees of subsidiaries or affiliates of Delta Air and contractors of any of Delta Air's subsidiaries or affiliates performing work for such subsidiaries and affiliates.[31] Following the Destination Principle and Cross Border Doctrine, the CTA EB held that Manila Peninsula's transaction with Delta Air must be subject to 12% VAT.[32]

Presiding Justice Roman G. Del Rosario (Presiding Justice Del Rosario) wrote a Concurring and Dissenting Opinion,[33] where he opined that Manila Peninsula's services provided to Delta Air's flight crew, as shown in various invoices during flight layovers qualify for zero-rating because pilots and cabin crew of persons engaged in international air transport operations are indispensable in air transport operations.[34]

Furthermore, Presiding Justice Del Rosario submits that since Delta Air is duty-bound to provide accommodation and lodging to its pilot and crew as mandated by the Civil Aviation Authority of the Philippines (CAAP), the services rendered for such purpose must necessarily be attributable to the international air transport operations within the context of Section 108(B)(4) of the NIRC, as amended.[35] Accordingly, Presiding Justice Del Rosario voted to remand the case to the CTA Division to determine the amount refundable to Manila Peninsula relative to its services rendered to Delta Air's flight crew during layovers in the Philippines.[36]

In the Resolution dated January 17, 2017, the CTA EB denied Manila Peninsula's Motion for Reconsideration. Presiding Justice Del Rosario reinforced his position through a Dissenting Opinion[37] that Manila Peninsula's services provided to Delta Air's flight crew during flight layovers qualify for zero-rating.

Hence, the instant Petition.

In compliance with the Court's Resolution[38] dated July 17, 2017, the CIR, through the Office of the Solicitor General, filed its Comment,[39] to which Manila Peninsula filed a Reply.[40]

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30 *Id.* at 54–56.
31 *Id.* at 54–55.
32 *Id.* at 56.
33 *Id.* at 59–63.
34 *Id.* at 60–62.
35 *Id.* at 62.
36 *Id.* at 63.
37 *Id.* at 78–79.
38 *Id.* at 987.
39 *Id.* at 1014–1030.
40 *Id.* at 1034–1053.

Before the Court, Manila Peninsula maintains that the services it provided to Delta Air are subject to VAT zero-rating under Section 108(B)(4) of the NIRC, as amended.[41] It also claims that contrary to the findings of the CTA EB, the amount of PHP 3,807,771.77 subject of the refund claim only involves hotel accommodations provided for Delta Air's crew.[42]

Manila Peninsula reiterates its argument that the interpretation provided in BIR Ruling No. 99-2011, Revenue Memorandum Circular No. 46-2008, and Revenue Memorandum Circular No. 31-2011 is contrary to Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337,[43] and therefore, null and void.[44]

Manila Peninsula likewise ascribes serious and reversible error to the CTA EB when it made a finding that its refund claim of erroneously collected VAT for the first quarter of TY 2010 had already prescribed.[45]

In response thereto, the CIR argues in its Comment that the services provided by Manila Peninsula to its guests for room accommodations, as well as food and beverages served within its premises, are not zero-rated because such are not attributable to Delta Air's transport of goods and passengers.[46] It also maintains that Manila Peninsula's refund claim for the first quarter of 2010 had prescribed.[47]

In its Reply, Manila Peninsula reiterates that its services to Delta Air's crew are directly related to international transport of goods and passengers for purposes of VAT zero-rating.[48]

The Issues

(1) Whether Revenue Memorandum Circular No. 46-2008 and Revenue Memorandum Circular No. 31-2011 are valid.

(2) Whether the hotel room accommodations and food and beverage services rendered by Manila Peninsula to Delta Air's pilots and crew members during flight layovers are subject to VAT zero-rating under Section 108(B)(4) of the NIRC, as amended, to consider Manila Peninsula to have erroneously paid the alleged output VAT amounting to PHP 3,807,771.77.

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41 *Id.* at 126, Petition.
42 *Id.* at 121.
43 An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 And 288 Of The National Internal Revenue Code Of 1997, As Amended, And For Other Purposes (2005).
44 *Rollo*, pp. 98–99, Petition.
45 *Id.* at 125.
46 *Id.* at 1018–1027, Comment filed by the CIR before the Court.
47 *Id.* at 1027–1028.
48 *Id.* at 1035–1038, Reply filed by Manila Peninsula before the Court.

The Court's Ruling

The Petition is meritorious.

Exhaustion of administrative remedies and requirements to assail BIR issuance.

Manila Peninsula claims that Revenue Memorandum Circular No. 46-2008 and Revenue Memorandum Circular No. 31-2011 are not controlling BIR issuances because they are contrary to Section 108(B)(4) of the NIRC, as amended. The CIR, on the other hand, argues that Manila Peninsula's challenge against the foregoing BIR issuances is a collateral attack on the duly issued administrative issuances which the law frowns upon.[49]

In *Banco De Oro, et al. v. Republic of the Phils., et al.*,[50] the Court, sitting *En Banc*, declared that the CTA has undisputed jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer in disputing or contesting an assessment or claiming a refund. The CTA may likewise 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). The Court *En Banc* further declared that:

> [W]ith respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. **Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7(1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424.**[51] (Emphasis supplied, citations omitted)

There is no dispute that what is involved in the present case is the CIR's exercise of the power to interpret tax laws under the first paragraph of Section 4 of the NIRC, as amended, which is subject to review by the Secretary of Finance:[52]

> 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**.

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49 *Id.* at 1024–1025, Comment filed by the CIR before the Court.

50 793 Phil. 97 (2016) [Per J. Leonen, *En Banc*].

51 *Id.* at 125.

52 *The Philippine American Life and General Insurance Co. v. Secretary of Finance, et al.*, 747 Phil. 811, 823–824 (2014) [Per J. Velasco, Jr., Third Division].

> 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. (Emphasis supplied)

The CIR's exercise of its power to interpret tax laws comes in the form of revenue issuances, which include Revenue Memorandum Circulars defined as "issuances that publish pertinent and applicable portions, as well as amplifications, of laws, rules, regulations and precedents issued by the BIR and other agencies/offices."[53] These revenue issuances are subject to the review of the Secretary of Finance. In relation thereto, Department of Finance Department Order No. 007-02[54] issued by the Secretary of Finance lays down the procedure and requirements for filing an appeal from the adverse ruling of the CIR to the said office. A taxpayer is granted 30 days from receipt of the adverse ruling of the CIR to file with the Office of the Secretary of Finance a request for review in writing and under oath.[55]

In the assailed Decision, the CTA EB upheld the validity of Revenue Memorandum Circular No. 46-2008 and BIR Ruling No. 99-2011 on the ground that Manila Peninsula failed to invoke the power of review of the Secretary of Finance.

The Court agrees with the CTA EB. The validity of Revenue Memorandum Circular No. 46-2008 and Revenue Memorandum Circular No. 31-2011 should have been first subjected to the review of the Secretary of Finance before Manila Peninsula sought judicial recourse with the CTA as dictated by the rule on exhaustion of administrative remedies.

The doctrine of exhaustion of administrative remedies is not without practical and legal reasons. For one thing, availing of administrative remedies entails lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with to give the administrative agency concerned every opportunity to correct its error and to dispose of the case.[56] While there are recognized exceptions[57] to this salutary rule, Manila Peninsula has failed to prove the presence of any of those in the instant case.

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53 https://www.bir.gov.ph/index.php/revenue-issuances.html (last accessed on February 7, 2024).

54 Re: Providing For The Implementing Rules Of The First Paragraph Of Section 4 Of The National Internal Revenue Code Of 1997, Repealing For This Purpose Department Order No. 005-99 And Revenue Administrative Order No. 1-99 (2002), *cited in Confederation for Unity, Recognition and Advancement of Government Employees, et al. v. Commissioner, Bureau of Internal Revenue, et al.*, 835 Phil. 297 (2018) [Per J. Caguioa, *En Banc*].

55 *Confederation for Unity, Recognition and Advancement of Government Employees, et al. v. Commissioner, Bureau of Internal Revenue, et al.*, *id.* at 314–315.

56 *Id.* at 316.

57 *See Rep. of the Phils. v. Lacap*, 546 Phil. 87 (2007) [Per J. Austria-Martinez, Third Division].

Nevertheless, despite the failure of Manila Peninsula to file an appeal with the Secretary of Finance in assailing the validity of Revenue Memorandum Circular No. 46-2008 and Revenue Memorandum Circular No. 31-2011, the Court deems it prudent, if not crucial, to take cognizance of, and accordingly act on, the Petition as they assail the validity of the actions of the CIR that affect the taxation of services in the hotel industry and international airlines, as addressing it can have significant economic implications. For this reason, the Court, following recent jurisprudence, avails itself of its judicial prerogative in order not to delay the disposition of the case at hand and to promote the vital interest of justice. As the Court held in *Bloomberry Resorts and Hotels, Inc. v. BIR*:[58]

> From the foregoing jurisprudential pronouncements, it would appear that in questioning the validity of the subject revenue memorandum circular, petitioner should not have resorted directly before this Court considering that it appears to have failed to comply with the doctrine of exhaustion of administrative remedies and the rule on hierarchy of courts, a clear indication that the case was not yet ripe for judicial remedy. **Notably, however, in addition to the justifiable grounds relied upon by petitioner for its immediate recourse (*i.e.*, pure question of law, patently illegal act by the BIR, national interest, and prevention of multiplicity of suits), we intend to avail of our jurisdictional prerogative in order not to further delay the disposition of the issues at hand, and also to promote the vital interest of substantial justice. To add, in recent years, this Court has consistently acted on direct actions assailing the validity of various revenue regulations, revenue memorandum circulars, and the likes, issued by the CIR. The position we now take is more in accord with latest jurisprudence.**[59] (Emphasis supplied)

At any rate, the issue in this case is not confined to the validity of Revenue Memorandum Circular No. 46-2008 and Revenue Memorandum Circular No. 31-2011 but, more appropriately, on the CIR's inaction on Manila Peninsula's administrative claims for refund or tax credit pursuant to Sections 204(C) and 229 of the NIRC, as amended. As will be discussed in further detail below, Manila Peninsula's administrative and judicial claims for refund involving the first quarter per the amended return, second, third, and fourth quarters of TY 2010 were filed within the two-year period prescribed by law. Thus, indubitably, the Court has jurisdiction over the instant Petition.

Accordingly, Manila Peninsula's recourse to the CTA and now, before the Court, are permissible and, hence, is not a ground to dismiss the case.

Excess Input VAT vis-à-vis Erroneously or Illegally Collected Taxes

There are two kinds of refund under the NIRC, as amended.

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58 792 Phil. 751 (2016) [Per J. Perez, Third Division].

59 *Id.* at 760–761.

The first one is under Section 112 of the NIRC, as amended, which deals specifically with the refund of unutilized creditable input VAT by reason of zero-rated or effectively zero-rated transactions:

> Section 112. *Refunds or Tax Credits of Input Tax.* —
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> (A) *Zero-rated or Effectively Zero-rated Sales.* — **Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales,** except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.
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> (D) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application** filed in accordance with Subsections (A) and (B) hereof.
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> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period,** appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied)

The second type of refund is covered under Sections 204(C) and 229 of the NIRC, as amended, which govern the filing of claims to recover any erroneously paid or illegally collected internal revenue tax. The provisions state:

> Section 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may:
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> . . . .
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> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the

> purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
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> . . . .
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> Section 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that way arise after payment**: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis supplied)

In *CIR v. San Roque Power Corporation*[60] (*San Roque*), the Court distinguished between "excess input tax" under Section 112 and "excessively collected taxes" under Section 229 of the NIRC, as amended:

> **The input VAT is not "excessively" collected as understood under Section 229 because at the time the input VAT is collected the amount paid is correct and proper.** The input VAT is a tax liability of, and legally paid by, a VAT-registered seller of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services. This tax liability is true even if the seller passes on the input VAT to the buyer as part of the purchase price. The second VAT-registered person, who is not legally liable for the input VAT, is the one who applies the input VAT as credit for his own output VAT. If the input VAT is in fact "excessively" collected as understood under Section 229, then it is the first VAT-registered person — the taxpayer who is legally liable and who is deemed to have legally paid for the input VAT — who can ask for a tax refund or credit under Section 229 as an ordinary refund or credit outside of the VAT System. In such event, the second VAT-registered taxpayer will have no input VAT to offset against his own output VAT.
>
> In a claim for refund or credit of "excess" input VAT under Section 110(B) and Section 112(A), the input VAT is not "excessively" collected as understood under Section 229. At the time of payment of the input VAT the amount paid is the correct and proper amount. Under the VAT System, there

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60 703 Phil. 310 (2013) [Per J. Carpio, *En Banc*].

is no claim or issue that the input VAT is "excessively" collected, that is, that the input VAT paid is more than what is legally due. The person legally liable for the input VAT cannot claim that he overpaid the input VAT by the mere existence of an "excess" input VAT. The term "excess" input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due. Thus, the taxpayer who legally paid the input VAT cannot claim for refund or credit of the input VAT as "excessively" collected under Section 229.

Under Section 229, the prescriptive period for filing a judicial claim for refund is two years from the date of payment of the tax "erroneously, . . . illegally, . . . excessively or in any manner wrongfully collected." The prescriptive period is reckoned from the date the person liable for the tax pays the tax. Thus, if the input VAT is in fact "excessively" collected, that is, the person liable for the tax actually pays more than what is legally due, the taxpayer must file a judicial claim for refund within two years from his date of payment. **Only the person legally liable to pay the tax can file the judicial claim for refund. The person to whom the tax is passed on as part of the purchase price has no personality to file the judicial claim under Section 229.**

. . . .

Any suggestion that the "excess" input VAT under the VAT System is an "excessively" collected tax under Section 229 may lead taxpayers to file a claim for refund or credit for such "excess" input VAT under Section 229 as an ordinary tax refund or credit outside of the VAT System. **Under Section 229, mere payment of a tax beyond what is legally due can be claimed as a refund or credit. There is no requirement under Section 229 for an output VAT or subsequent sale of goods, properties, or services using materials subject to input VAT.**

From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is "erroneously, . . . illegally, . . . excessively or in any manner wrongfully collected." In short, there must be a wrongful payment because what is paid, or part of it, is not legally due. As the Court held in *Mirant*, Section 229 should "apply only to instances of erroneous payment or illegal collection of internal revenue taxes." Erroneous or wrongful payment includes excessive payment because they all refer to payment of taxes not legally due. Under the VAT System, there is no claim or issue that the "excess" input VAT is "excessively or in any manner wrongfully collected." In fact, if the "excess" input VAT is an "excessively" collected tax under Section 229, then the taxpayer claiming to apply such "excessively" collected input VAT to offset his output VAT may have no legal basis to make such offsetting. The person legally liable to pay the input VAT can claim a refund or credit for such "excessively" collected tax, and thus there will no longer be any "excess" input VAT. This will upend the present VAT System as we know it.[61] (Emphasis supplied, citations omitted)

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61 *Id.* at 365–369.

San Roque categorically held that the plain text of Section 229 clearly shows that what can be refunded or credited is a tax that is "erroneously, . . . illegally, . . . excessively or in any manner wrongfully collected." In short, there must be a wrongful payment because what is paid, or part of it, is not legally due. Furthermore, *San Roque* stressed that "input VAT is not 'excessively' collected as understood under Section 229 because, at the time the input VAT is collected, the amount paid is correct and proper." That a VAT-registered taxpayer incurs excess input tax does not mean that it was wrongfully or erroneously paid. It simply means that the input tax is greater than the output tax, entitling the taxpayer to carry over the excess input tax to the succeeding taxable quarters. If the excess input tax is derived from zero-rated or effectively zero-rated transactions, the taxpayer may either seek a refund of the excess or apply the excess against its other internal revenue tax.[62]

To simplify, the foregoing table shows the differences between claims for refund under Section 112 and Section 229 of the NIRC, as amended:

Points of Distinction	**Section 112**	**Section 229**
Nature of refund	Unutilized creditable input VAT attributable to zero-rated or effectively zero-rated sales	Erroneously, illegally, excessively collected tax
Prescriptive period and reckoning date	Only the administrative claim must be filed within two years from the close of the taxable quarter when the relevant sales were made. The 30-day period within which to appeal to the CTA need not necessarily fall within the two-year prescriptive period.	Both the administrative and judicial claims must be filed within two years from the actual payment of tax or penalty sought to be refunded, regardless of the existence of any supervening cause after payment.

62 *CE Luzon Geothermal Power Company, Inc. v. CIR*, 814 Phil. 616, 635 (2017) [Per J. Leonen, Second Division].

Period for the CIR to decide the administrative claim	120 days[63] from the date of submission of complete documents in support of the application. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period.[64]	No specific period provided[65]
Judicial claim	Taxpayer must file an appeal to the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day[66] period without any action from the CIR.[67]	Taxpayer must file an appeal to the CTA within 30 days but a "decision" or "inaction deemed denial" is not required to seek judicial recourse.

As pointed out by Associate Justice Japar B. Dimaampao, the distinctions between Sections 112 and 229 also bear significance on the proper reckoning point of the prescriptive periods whenever a taxpayer files amended returns with the corresponding adjusted payments.

Section 112 of the NIRC, as amended, provides that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years **reckoned from the close of the taxable quarter when the purchase was made (for the input tax paid on**

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63 Republic Act No. 10963 (1997) or the "Tax Reform for Acceleration and Inclusion" Law reduced the period to 90 days.

64 *Mindanao II Geothermal Partnership v. CIR*, 706 Phil. 48, 86–87 (2013) [Per J. Carpio, Second Division].

65 *CIR v. Carrier Air Conditioning Philippines, Inc.*, G.R. No. 226592, July 27, 2021 [Per J. Leonen, *En Banc*].

66 Republic Act No. 10963 (1997) or the "Tax Reform for Acceleration and Inclusion" Law reduced the period to 90 days.

67 *See also CIR v. Toledo Power Company*, 774 Phil. 92 (2015) [Per J. Del Castillo, Second Division] on the exception to the mandatory and jurisdictional 120+30 day periods.

capital goods) or after the close of the taxable quarter when the zero-rated or effectively zero-rated sale was made (for input tax attributable to zero-rated sale).[68] Consequently, even if the quarterly VAT returns were amended, it would not adjust the two-year prescriptive period within which to lodge the administrative claim because it shall be counted from the close of the taxable quarter when the relevant sales were made.

On the other hand, Section 204 refers to the CIR's administrative authority to credit or refund erroneously paid or illegally collected taxes. Under this provision, an administrative claim for refund or credit must be filed **within two years from payment of the tax**. Section 229, in turn, requires two conditions for filing judicial claims: (1) an administrative claim must be filed first; and (2) the judicial claim must be filed within two years after payment of the tax sought to be refunded. Reading the two provisions together, both administrative and judicial claims must be filed within the two-year period **counted from the payment of the tax**.[69] Hence, when taxpayers amend their return and make an adjusted payment, the prescriptive period for the adjusted amount is reckoned from the later date.

It bears emphasis that, in the instant case, Manila Peninsula does not seek to refund its unutilized input VAT under Section 112, but its erroneous payment of output VAT arising from its sale of services to Delta Air which should have been subjected to 0% VAT under Section 108(B)(4). It follows, therefore, that the applicable provision is Section 229 of the NIRC, as amended, considering that the issue involves the recovery of taxes erroneously paid.

Manila Peninsula's right to claim for refund involving the first quarter of TY 2010 per the original return has prescribed.

On the issue of prescription, Manila Peninsula claims that the CTA EB erred when it ruled that its refund claim of erroneously or illegally collected VAT for the first quarter of 2010 had already prescribed. Manila Peninsula maintains that it was only on July 26, 2010 that it paid VAT to the BIR for sales attributable to Delta Air. Hence, the two-year prescriptive period should be reckoned from this date.[70]

The Court disagrees.

To stress, the applicable provisions in the instant case are Sections 204(C) and 229 of the NIRC, as amended, given that what is involved is the recovery of taxes erroneously paid or collected.

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68 *CIR v. Chevron Holdings, Inc.*, 870 Phil. 863, 871–873 (2020) [Per J. J.C. Reyes, Jr., First Division].

69 *CIR v. Carrier Air Conditioning Philippines, Inc.*, *supra* note 65.

70 *Rollo*, p. 125, Petition.

The pertinent dates to Manila Peninsula's administrative and judicial claims for all the four quarters of TY 2010 are summarized as follows:

Quarter (TY 2010)	Date of Payment	End of Two-Year Period	Administrative Claim	Judicial Claim
First (original)	April 26, 2010	April 26, 2012	July 19, 2012	July 24, 2012
First (amended)	July 6, 2011	July 6, 2013		
Second (original)	July 26, 2010	July 26, 2012		
Second (amended)	July 6, 2011	July 6, 2013		
Third	October 22, 2010	October 22, 2012		
Fourth	January 25, 2011	January 25, 2013		

As the CTA EB correctly determined, Manila Peninsula's e-payment of VAT for the first quarter of TY 2010 per the original return was deemed made on April 26, 2010, through Electronic Filing and Payment System pursuant to Revenue Memorandum Order No. 19-2002.[71] Thus, the two-year period for filing its judicial claim for refund ends on April 26, 2012. However, Manila Peninsula filed its judicial claim only on July 24, 2012, which was beyond the prescribed two-year period from the date of payment of VAT. Therefore, the CTA EB was correct in holding that Manila Peninsula's claim for the first quarter of 2010 per the original return is already barred by prescription.

However, for the first quarter of TY 2010 per the amended return, the Court notes that both the administrative and judicial claims related to the output VAT paid were timely filed.[72] As emphasized above, Sections 204 and 229 of the NIRC, as amended, prescribe a different starting point for the two-year prescriptive period for the filing of a claim, which is from the date of payment of tax. Considering that Manila Peninsula amended its return for the first quarter of TY 2010 and made an adjusted payment, the prescriptive period for the adjusted amount is reckoned from the later date. Thus, counting from Manila Peninsula's date of payment on July 6, 2011 for the first quarter of TY 2010 per the amended return, both the administrative and judicial claims clearly fall within the two-year prescriptive period.

For the second, third, and fourth quarters of 2010, the Court concurs with the findings of the CTA EB that Manila Peninsula's claim for refund involving these quarters had not yet prescribed as clearly shown in the table above.

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71 Re: Amending Paragraph III (G), (I) And (J) And Paragraph IV (B) (4.1) Of Revenue Memorandum Order No. 5-2002 Dated April 1, 2002, Implementing Revenue Regulations No. 9-2001, As Amended By Revenue Regulations No. 2-2002, As Further Amended By Revenue Regulations No. 9-2002, Prescribing The Guidelines And Procedures In The Adoption Of Electronic Filing And Payment System (2002); *Rollo*, p. 150, CTA EB Decision.

72 *Rollo*, p. 23, CTA Division Decision.

Item 11 of Revenue Memorandum Circular No. 46-2008 and Revenue Memorandum Circular No. 31-2011 are invalid.

As discussed, the Court deems it proper to rule on the issue of the validity of Revenue Memorandum Circular No. 46-2008 and Revenue Memorandum Circular No. 31-2011.

Manila Peninsula claims that there are only two requisites necessary for services rendered to persons engaged in international air transport operations to be entitled to VAT zero-rating, which are the following: (a) the service is performed or rendered in the Philippines by a VAT-registered service provider; and (b) the service is rendered to persons engaged in international air transport operations.[73] On the other hand, the CIR contends that since Revenue Memorandum Circular No. 46-2008 and Revenue Memorandum Circular No. 31-2011 remain valid issuances, Manila Peninsula must likewise prove the requisites found therein to qualify for VAT zero rating: (a) its services pertain to or must be attributable to the transport of goods and passengers; (b) the transport of goods and passengers must emanate from a port in the Philippines directly to a foreign port; and (c) the common international air transport carrier must not dock or stop at any port in the Philippines.[74]

The Court rules in favor of Manila Peninsula.

While the CIR is granted under the law the power to issue rulings or opinions interpreting the provisions of the NIRC or other tax laws, such administrative rulings or circulars cannot be inconsistent with the law sought to be applied. Indeed, administrative issuances must not override, supplant or modify the law but must remain consistent with the law they intend to carry out.[75]

Thus, in *Philippine Bank of Communications v. CIR*,[76] the Court upheld the nullification of Revenue Memorandum Circular No. 7-85[77] issued by the Acting CIR because it was contrary to the express provision of Section 230 of the 1977 National Internal Revenue Code. In issuing Revenue Memorandum Circular No. 7-85, the BIR did not simply interpret the law. Instead, it legislated guidelines contrary to the statute passed by Congress. The Court further held:

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73 *Id.* at 1043–1045, Reply filed by Manila Peninsula before the Court.

74 *Id.* at 1026, Comment filed by the CIR before the Court.

75 *Confederation for Unity, Recognition and Advancement of Government Employees, et al. v. Commissioner, Bureau of Internal Revenue, et al.*, *supra* note 54, at 325.

76 361 Phil. 916 (1999) [Per J. Quisumbing, Second Division].

77 Re: Processing Of Refund Or Tax Credit Of Excess Corporate Income Tax Resulting From The Filing Of The Final Adjustment Return (1985).

> It bears repeating that Revenue [Memorandum Circulars] are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by the Commissioner of Internal Revenue. It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.[78] (Citations omitted)

Also, in *CIR v. Fortune Tobacco Corporation*,[79] the Court upheld the tax refund claims of Fortune Tobacco after finding invalid the proviso in Section 1 of Revenue Regulations No. 17-99.[80]

Still more, in *Confederation for Unity, Recognition and Advancement of Government Employees, et al. v. Commissioner, BIR, et al.*,[81] the Court found that Section VI of Revenue Memorandum Order No. 23-2014[82] contravenes, in part, the provisions of the NIRC, as amended, and Revenue Regulations No. 2-98,[83] as amended. The Court declared therein that the CIR gravely abused its discretion in issuing Section VI of Revenue Memorandum Order No. 23-2014 insofar as it includes the Governor, City Mayor, Municipal Mayor, Barangay Captain, and Heads of Office in agencies, Government Owned and Controlled Corporations, and other government offices, as persons required to withhold and remit withholding taxes, as they are not among those officials designated by the NIRC, as amended, and Revenue Regulations No. 2-98, as amended.

In the recent case of *Saint Wealth Ltd. v. BIR*,[84] the Court *En Banc* declared Revenue Memorandum Circular No. 102-2017,[85] and consequently, Revenue Memorandum Circular No. 78-2018,[86] insofar as they imposed franchise taxes on Philippine Offshore Gaming Operators (POGOs), invalid and unconstitutional for being issued without any statutory basis and for encroaching upon legislative power to enact tax laws:

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78 *Philippine Bank of Communications v. CIR, supra* note 76, at 928–929.

79 581 Phil. 146 (2008) [Per J. Tinga, Second Division].

80 Re: Implementing Sections 141, 142, 143 And 145 (A) And (C) (1), (2), (3) And (4) Of The National Internal Revenue Code Of 1997 Relative To The Increase Of The Excise Tax On Distilled Spirits, Wines, Fermented Liquors And Cigars And Cigarettes Packed By Machine By 12% On January 1, 2000 (1999).

81 *Supra* note 54.

82 Re: Obligations Of Government Agencies, Bureaus And Instrumentalities As Withholding Agents (2014).

83 Re: Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, As Amended" Relative To The Withholding On Income Subject To The Expanded Withholding Tax And Final Withholding Tax, Withholding Of Income Tax On Compensation, Withholding Of Creditable Value-Added Tax And Other Percentage Taxes (1998).

84 G.R. Nos. 252965 & 254102, December 7, 2021 [Per J. Gaerlan, *En Banc*].

85 Re: Taxation Of Taxpayers Engaged In Philippine Offshore Gaming Operations (2017).

86 Re: Registration Requirements Of Philippine Offshore Gaming Operators And Its Accredited Service Providers (2018).

Prior to the Bayanihan 2 Law, there is No Law which Imposes a Five Percent (5%) Franchise Tax on POGO Licensees.

To recall, in 2017, the BIR issued RMC No. 102-2017, which is the first issuance which dealt with the taxability of POGOs. RMC No. 102-2017 imposed, among others, a five percent (5%) franchise tax upon the gross gaming revenues derived from gaming operations of POGOs. Supposedly, such franchise tax is based on the PAGCOR Charter and settled jurisprudence.

However, as stated above, the franchise tax liability of PAGCOR licensees only applies to those which operate casinos and other related amusement places. It is undeniable that POGOs do not fall within the contemplation of licensees who operate casinos and other related amusement places. The PAGCOR Charter is clear, and when a law is clear, there is no room for any interpretation.

Moreover, as aptly observed by Senior Associate Justice Estela Perlas-Bernabe (Justice Perlas-Bernabe), when the PAGCOR Charter was enacted, offshore gaming was not yet in existence. Thus, the PAGCOR Charter could not have contemplated virtual gaming websites as "casinos and other related amusement places" mentioned under Section 13(2)(b) thereof. Consequently, the PAGCOR Charter cannot be said to have been the basis for imposing tax on POGO Licensees.

Simply then, when RMC No. 102-2017 was issued, there was no law imposing any franchise tax on POGOs. Thus, RMC No. 102-2017 is invalid, insofar as it imposed franchise taxes on POGOS, because it was passed without any statutory basis.

....

... The BIR encroached upon the authority reserved exclusively for Congress when it issued RMC No. 102-2017 and imposed a five percent (5%) franchise tax upon POGOs when the PAGCOR Charter itself does not tax POGOs. RMC No. 102-2017 likewise failed to indicate which provisions of the PAGCOR Charter it was implementing when it imposed the franchise tax. Accordingly, RMC No. 102-2017, and consequently, RMC No. 78-2018, insofar as they imposed franchise taxes on POGOS, are invalid and unconstitutional for being issued without any statutory basis and for encroaching upon legislative power to enact tax laws.[87] (Emphasis supplied, citations omitted)

In the present case, the Court rules that Revenue Memorandum Circular No. 46-2008 and Revenue Memorandum Circular No. 31-2011 are invalid for expanding the statutory requirements in Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337.

Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337, reads:

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87 *Saint Wealth Ltd. v. BIR, supra* note 84.

> Sec. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> . . . .
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> . . . .
>
> (4) **Services rendered to persons engaged in** international shipping or **international air transport operations**, including leases of property for use thereof. (Emphasis supplied)

To implement the afore-quoted provision, Section 4.108-5 of Revenue Regulations No. 16-2005,[88] as amended by Revenue Regulations No. 04-2007,[89] provides that:

> Section 4.108-5. *Zero-Rated Sale of Services.* –
>
> . . . .
>
> (b) *Transactions Subject to Zero Percent (0%) VAT Rate.* – The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:
>
> . . . .
>
> (4) Services rendered to persons engaged in international shipping or air transport operations, including leases of property for use thereof; ***Provided, however*, that the services referred to herein shall not pertain to those made to common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines, the same being subject to twelve percent (12%) VAT under Sec. 108 of the Tax Code starting Feb. 1, 2006.** (Emphasis supplied)

Clearly, under Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337, services rendered to persons engaged in international shipping or international air transport operations, including lease of property for their use, are subject to zero-rated VAT.

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88 Re: Consolidated Value-Added Tax Regulations Of 2005 (2005).

89 Re: Amending Certain Provisions Of Revenue Regulations No. 16-2005, As Amended, Otherwise Known As The Consolidated Value-Added Tax Regulations Of 2005 (2007).

Further, Section 4.108-5 of Revenue Regulations No. 16-2005, as amended by Revenue Regulations No. 04-2007, which implements the NIRC, clarifies that the services made to common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines are not zero-rated, and thus, are subject to 12% VAT. Otherwise stated, for as long as the services rendered to persons engaged in international shipping or air transport operations do not pertain to the transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines, such services shall be subject to VAT at 0%.

However, following the issuance of Revenue Regulations No. 16-2005, as amended by Revenue Regulations No. 04-2007, BIR issued Revenue Memorandum Circular No. 46-2008 and Revenue Memorandum Circular No. 31-2011 (assailed BIR issuances), expanding the requirements for zero-rating provided under the law and its implementing rules. The pertinent portions of these assailed BIR issuances are as follows:

Revenue Memorandum Circular No. 46-2008:

Q-11: *Are sales of goods, supplies, equipment, fuel and services to persons engaged in international air transport operation subject to VAT?*

A-11: The sale of goods, supplies, equipment, fuel and **services** (including leases of property) to the common carrier to be used in its international air transport operations is **zero-rated**. *Provided*, that the **same is limited to** goods, supplies, equipment, fuel and **services pertaining to or attributable to the transport of goods and passengers from a port in the Philippines directly to a foreign port without docking or stopping at any other port in the Philippines to unload passengers and/or cargoes loaded in and from another domestic port**; *Provided*, further, that if any portion of such fuel, equipment, goods or supplies and services is used for purposes other than that mentioned in this paragraph, such portion of fuel, equipment, goods, supplies and services shall be subject to 12% VAT. (Emphasis supplied, italics in the original)

Revenue Memorandum Circular No. 31-2011:

[I]n order to qualify for zero-rating, the services rendered by a VAT-registered person to a person engaged in international air transport operations **must pertain to or must be attributable to the transport of goods and passengers from a port in the Philippines directly to a foreign port without docking or stopping at any port in the Philippines**.

Accordingly, applying Section 108 (B) (4) of the 1997 Tax Code, as amended, in connection with Section 4.108-5 (b) (4) of Revenue Regulations (RR) No. 16-2005, as amended by RR 4-2007, **the services provided by hotels to their clients engaged in international air**

> **transport operations pertaining to room accommodations and food and beverage services should be subject to the 12% VAT.** (Emphasis supplied)

As can be gleaned from the foregoing, Revenue Memorandum Circular No. 46-2008 and Revenue Memorandum Circular No. 31-2011 limited the services that qualify for zero-rating to services that are attributable to the transport of goods and passengers from a port in the Philippines directly to a foreign port without docking or stopping at any port in the Philippines. Thus, services provided by hotels to entities engaged in international transport was explicitly excluded from zero-rating.

Additionally, in BIR Ruling No. 99-2011 addressed to Delta Air, the BIR ruled that the services rendered by a hotel to international air carrier do not qualify for zero-rating as they are rendered within the hotel's premises. According to the BIR, for purposes of zero-rating the sale of service to international air carriers, such service must be rendered to the *aircraft* itself, thus:

> **[I]n order to qualify for zero-rating, the services rendered by a VAT-registered person to a person engaged in international air transport operations must pertain to or must be attributable to the transport of goods and passengers from a port in the Philippines directly to a foreign port without docking or stopping at any port in the Philippines.**
>
> It is worthy to mention that in the case of international vessels, for which the same rule on zero-rating is applied, this Office held that the VAT zero-rated services contemplated in the VAT law only refer to services rendered to the international vessel itself. Examples of such services are crewing, repair, catering, and other similar arrangements. (VAT Ruling No. 021-01 dated May 15, 2001) Inasmuch as this rule applies as well to international air carriers, it is our opinion, therefore, that **for purposes of zero-rating the sale of service to international air carriers, such service must be rendered to the aircraft itself**.
>
> In the instant case, **the services provided by the Hotel to its clients engaged in international air transport operations pertain to room accommodations and food and beverage services. As they are rendered within the Hotel's premises, they have no direct connection with the transport of goods or passengers, and as such, they cannot be considered as services directly attributable to the transport of goods and passengers from a Philippine port directly to a foreign port entitled to zero-rating. Such being the case, the sale of the foregoing services by the Hotel is not zero rated, but is appropriately subject to the 12% VAT.** (Emphasis and underscoring supplied)

The Court finds that the CIR overstepped the boundaries of its authority in interpreting Section 108(B)(4) of the NIRC, as amended. Nowhere in Section 108(B)(4) of the NIRC, as amended, would one find the requirements that the transport of goods and passengers must originate from a port in the Philippines and proceed directly to a foreign port, or vice versa and that the international air transport carrier must not dock or stop at any other port within

the Philippines. To simplify, the additional conditions imposed by Revenue Memorandum Circular No. 46-2008 and Revenue Memorandum Circular No. 31-2011, which are not found in Section 108(B)(4) of the NIRC, as amended, are the following:

(a) The transport of goods or passengers must come from a port in the Philippines directly to a foreign port or vice versa; and

(b) The international air transport carrier must not dock or stop at any other port in the Philippines.

Hence, Item 11 of Revenue Memorandum Circular No. 46-2008 and Revenue Memorandum Circular No. 31-2011 are invalid for adding requirements not found in the plain language of Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337. Consequently, BIR Ruling No. 99-2011, which relies on the assailed BIR issuances, is likewise invalid.

It is a well-settled doctrine that the rule-making power of administrative agencies cannot be extended to amend or expand statutory requirements or to embrace matters not originally encompassed by the law.[90] As the Court held in *Secretary of Finance Purisima, et al. v. Rep. Lazatin, et al.*:[91]

> *RR 2-2012 is unconstitutional.*
>
> According to the respondents, the power to enact, amend, or repeal laws belong exclusively to Congress. In passing RR 2-2012, petitioners illegally amended the law — a power solely vested on the Legislature.
>
> We agree with the respondents.
>
> **The power of the petitioners to interpret tax laws is not absolute. The rule is that regulations may not enlarge, alter, restrict, or otherwise go beyond the provisions of the law they administer; administrators and implementors cannot engraft additional requirements not contemplated by the legislature.**
>
> It is worthy to note that RR 2-2012 does not even refer to a specific Tax Code provision it wishes to implement. *While it purportedly establishes mere administration measures for the collection of VAT and excise tax on the importation of petroleum and petroleum products, not once did it mention the pertinent chapters of the Tax Code on VAT and excise tax.*[92] (Emphasis supplied, italics in the original, citations omitted)

By adding conditions not found in the plain wording of Section 108(B)(4), Item 11 of Revenue Memorandum Circular No. 46-2008 and Revenue Memorandum Circular No. 31-2011 effectively expanded Section 108(B)(4) of the NIRC and embraced matters not covered in the law.

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90 *CS Garment, Inc. v. CIR*, 729 Phil. 253, 275 (2014) [Per C.J. Sereno, First Division].

91 801 Phil. 395 (2016) [Per J. Brion, *En Banc*].

92 *Id.* at 425–426.

To be sure, the Court, in *CIR v. Euro-Philippines Airline Services, Inc.*,[93] held that Section 108(B)(4) of the NIRC, as amended, imposes 0% VAT on services performed in the Philippines by VAT-registered persons to persons engaged in international air transport operations. In ruling in favor of Euro-Philippine Airline Services, the Court said:

> Here, there is no dispute that Euro-Phil is VAT registered. Next, it is also not disputed that the services rendered by Euro-Phil was to a person engaged in international air-transport operations. Thus, by application, Section 108 of the NIRC of 1997 subjects the services of Euro-Phil to British Airways PLC, to the rate of zero percent VAT.[94]

The Court notes that Section 108(B)(4) of the NIRC was subsequently amended by Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion law (TRAIN Act).

Section 108(B)(4) of the NIRC, as amended by the TRAIN Act, explicitly limits services subject to zero-rating to those exclusively for international or air shipping:

> Section 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> . . . .
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate.
>
> . . . .
>
> (4) **Services rendered to persons engaged in international shipping or international air transport operations**, including leases of property for use thereof: *Provided*, That **these services shall be exclusively for international shipping or air transport operations**. (Emphasis supplied)

In turn, Section 2 of Revenue Regulations No. 13-2018[95] clarified the above provision in this wise:

> SECTION 2. AMENDMENTS. – Sections 4.106-5, 4.108-3, 4.108-5, 4.109-1, 4.109-2, 4.110-3, 4.112-1, 4.114-1, 4.114-2, and 4.116 of RR No. 16-2005, as amended, are hereby further amended to read as follows:

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93 836 Phil. 744 (2018) [Per J. Reyes, Jr., Second Division].

94 *Id.* at 753.

95 Re: Regulations Implementing The Value-Added Tax Provisions Under The Republic Act (Ra) No. 10963, Or The "Tax Reform For Acceleration And Inclusion (Train)," Further Amending Revenue Regulations No. 16-2005 (Consolidated Value-Added Tax Regulations Of 2005, As Amended) (2018); *See also* Revenue Regulations No. 21-2021 Re: Amending Certain Provisions Of Revenue Regulations No. 16-2005, As Amended By Revenue Regulations Nos. 4-2007, 13-2018, 26-2018 And 9-2021 To Implement Sections 294 (E) And 295 (D), Title XIII Of The National Internal Revenue Code Of 1997 (Tax Code), As Amended By Republic Act No. 11534 (CREATE Act), And Section 5, Rule 2 And Section 5, Rule 18 Of The Create Act Implementing Rules And Regulations (2021).

. . . .

Sec. 4.108-5. Zero Rated Sale of Services. –

. . . .

(b) *Transactions Subject to Zero Percent (0%) VAT Rate.* – The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:

. . . .

(4) Services rendered to persons engaged in international shipping or air transport operations, including leases of property for use thereof: ***Provided, that these services shall be exclusively for international shipping or air transport operations.*** Thus, the services referred to herein shall not pertain to those made to common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines, the same being subject to twelve percent (12%) VAT under Sec. 108 of the Tax Code. (Emphasis and underscoring supplied)

The essence of the original language of Section 108(B)(4) stating that services must be rendered to persons engaged in international air transport operations remains unaltered by the TRAIN Act. However, the TRAIN Act now explicitly mentions that such services should be exclusively for international shipping or air transport operations.

A comparison of Section 108(B)(4) before and after its amendment by the TRAIN Act is necessary:

Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337	Section 108(B)(4) of the NIRC, as amended by TRAIN Act
Sec. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –	Sec. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
. . . .	. . . .
(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:	(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
. . . .	. . . .

(4) Services rendered to persons engaged in international shipping or international air transport operations, including leases of property for use thereof.	(4) Services rendered to persons engaged in international shipping or international air transport operations, including leases of property for use thereof: ***Provided*, That these services shall be exclusively for international shipping or air transport operations.** (Emphasis supplied)

The Court highlights that nowhere in the TRAIN Act are specifications or conditions stating that services must originate from a port in the Philippines and directed straight to a foreign port, or vice versa. There is also no mention that the international air transport carrier must not dock or stop at any other port within the Philippine territory. The lack of additional stipulations in the TRAIN Act underscores that the conditions introduced in Revenue Memorandum Circular No. 46-2008 and Revenue Memorandum Circular No. 31-2011, particularly concerning the route, origin, and stops of international air transport carriers, are not prerequisites to qualify for zero-rating under Section 108(B)(4).

It is worth highlighting that one condition, as stipulated in Revenue Memorandum Circular No. 46-2008 and Revenue Memorandum Circular No. 31-2011, which requires that a service must be attributable to the transport of goods and passengers, is explicitly stated in the TRAIN Act. Again, this proviso under the TRAIN Act requires that the "services shall be exclusively for international shipping or air transport operations."

Air transport, by definition, refers to the transportation of persons, property, mail or cargo by aircraft.[96] Within the context of the TRAIN Act, the proviso specifying that "services shall be exclusively for international … air transport operations" signifies that these services must be exclusively related to the transportation of persons, property, mail, or cargo by aircraft. Put simply, the condition that services must be attributable to the transport of goods and passengers to qualify for VAT zero-rating under Revenue Memorandum Circular No. 46-2008 and Revenue Memorandum Circular No. 31-2011 is expressly stated in the TRAIN Act.

With the introduction of the proviso in the TRAIN Act, the next question that the Court must resolve is whether this proviso, which limits the services subject to zero-rated VAT to those exclusively for international shipping or air transport operations, is also applicable under Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337.

The Court answers in the affirmative.

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[96] Republic Act No. 9497 (2008), Civil Aviation Authority Act of 2008, sec. 3(x).

The services contemplated under Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337, are rendered to persons engaged in international shipping or international air transport operations and shall be exclusively for international shipping or air transport operations.

Manila Peninsula points out the amendment introduced by Republic Act No. 9337 on Section 108(B)(4) of the NIRC on the type of transaction subject to zero-rated VAT, i.e., from "vessels" to "persons" engaged in international air transport operations. According to Manila Peninsula, the change in the language expanded the coverage of the provision to include any and all services rendered to persons engaged in international air transport operations,[97] including services provided by a hotel to clients engaged in international air transport operations.[98]

Section 108(B)(4) of the NIRC, before its amendment by Republic Act No. 9337, reads:

> Section 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> . . . .
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> . . . .
>
> **(4) Services rendered to <u>vessels</u> engaged exclusively in international shipping**. (Emphasis and underscoring supplied)

On this point, the Court agrees with Manila Peninsula and the observation of the CTA EB that the amendment of Republic Act No. 9337 to Section 108(B)(4) of the NIRC, which replaced "services rendered to vessels" with "services rendered to persons," is intended to clarify that services are essentially provided not to the vessel but rather to the person that owns the vessel.[99] As the CTA EB correctly pointed out, this interpretation is evident during the Senate deliberations on the bill that eventually became Republic Act No. 9337:

> On another matter, Senator Enrile asked why "vessels" was replaced with PERSONS on line 4 of page 8 of the bill. Senator Recto explained that

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97 *Rollo*, p. 108, Petition.
98 *Id.* at 944, Manila Peninsula's Memorandum filed before the CTA EB.
99 *Id.* at 67, CTA EB Resolution.

> a service is rendered to a person, for example, a shipbuilding facility that provides repairs to foreign ships docked in the Philippines would be zero-rated. On the observation that a vessel is not a person, he pointed out that a corporation which owns the vessel is a juridical person.[100]

The legislative amendment was enacted to dispel any ambiguity and reaffirm that services are, in essence, provided to juridical persons who own and operate the vessel or aircraft, and the term "persons" in this context encompasses such juridical persons. In this connection, the Court clarifies that the VAT zero-rated services contemplated under Section 108(B)(4) of the NIRC, as amended, encompass services rendered to persons engaged in international shipping or international air transport operations. These services are not limited to those rendered to the international vessel or aircraft itself as erroneously provided in BIR Ruling No. 99-2011, the pertinent portions of which are restated:

> It is worthy to mention that in the case of international vessels, for which the same rule on zero-rating is applied, this Office held that the VAT zero-rated services contemplated in the VAT law only refer to services **rendered to the international vessel itself. Examples of such services are crewing, repair, catering, and other similar arrangements.** (VAT Ruling No. 021-01 dated May 15, 2001) Inasmuch as this rule applies as well to international air carriers, it is our opinion, therefore, that **for purposes of zero-rating the sale of service to international air carriers, such service must be rendered to the aircraft itself**. (Emphasis and underscoring supplied)

To be sure, the lawmakers had contemplated that the services performed by a VAT-registered entity are indeed rendered to persons engaged in international shipping or air transport operations and not to the vessel or aircraft itself. During the April 26, 2017 discussion of the House of Representatives Committee on Ways and Means on the proposed amendment to Section 108(B)(4) of the NIRC relative to the passage of the TRAIN Act, the body had the occasion to discuss to whom the services are rendered under the existing Section 108(B)(4) and the rationale for inserting the proviso found under the TRAIN Act:

> THE CHAIRPERSON. ...
>
> ....
>
> So number four, *may typo lang dun sa* line 37 engaged for international shipping. Okay. So let me just try to clarify *'no, ang ginagawa kasi ng* DOF *dito*, services rendered to persons engaged in international shipping or international air transport operations, including lease of property for use thereof provided that these services shall be exclusively for international shipping or air transport operations. So *parang naninigurado na hindi puwede doon sa domestic or non-international shipping or transport operations.* So *may ... sinimplipay* (simplify) *ko lang, tinanggal ko 'yung proviso, ginawa ko lang* services rendered to persons engaged for international ... *hindi tinanggal ko pala 'yung* to persons engaged... "services rendered for international shipping

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[100] Senate Journal, Session No. 68, March 8, 2005, p. 743.

or international air transport operations, including leases of property for use thereof". *Kasi iyon lang naman talaga* exempted. *Tama ba? Iyon lang naman talaga.* So *tinanggal lang 'yung* "to persons engaged in" *at nilagay mo* "services rendered for international shipping". It's the same idea. *Pero kasi parang ang* weird *lang lang kasi nung* proviso.

....

REP. TINIO. Pero, Chair, the existing law ... in the existing law, services rendered to persons engaged in international shipping or international air transport operations. *Bakit nga* to persons, Chair?

....

THE CHAIRPERSON. Taxpayer *'yung person. Ibig sabihin ...*

....

THE CHAIRPERSON. Yeah. **Juridical person.** Yeah. Yeah.

....

THE CHAIRPERSON. *Pagka ire-retain natin ... totoo naman. Pag ni-retain lang kasi natin, lalagyan nila ng proviso. Ang prino-propose nila,* provided that these services shall be exclusively for international shipping or air transport operation. *So, ang sinasabi nila, kung ikaw 'yung person,* you have both activities that are international shipping, you may also have non-international shipping or air transport operations, '*yun lang doon sa* international shipping and air transport *mo ang* zero-rated or zero percent VAT. *Ibig sabihin, huwag mo gamitin 'yung* privilege *mo* for your activities not related to the international shipping operations. *Halimbawa, meron ka ring domestic, hindi ka zero doon sa domestic, zero ka sa international.* So, that's why I proposed to word it "Services rendered for international shipping or international air transport operations including lease of property for use thereof." *Tanggalin mo 'yung person, it just defines 'yung transaction lang,* services for those activities. Okay. Do you agree with it?

....

REP. TINIO. That's why I'm clarifying the existing law, *paano ba 'yan inaapply* and why it's the language... **why does it refer to persons?**

MR. CHUA. Mr. Chair, I think, Congressman Tinio, 'yung persons actually it's I think it's a legal term, so I cannot comment on that. But si Chairman explained it quite well. I'll just use a clear example. A Philippine Airlines *may* both domestic and international flights. So, Philippine Airlines is engaged in international shipping or transport, but this cannot be used for Manila-Cebu routes, it should be used for [Manila-Hong Kong]. We just want to make it-clear, because that is a potential leakage. *Kasi hindi natin alam* what the company really does. It's just to add more teeth to the law.

....

THE CHAIRPERSON. Services rendered to persons engaged in international shipping. So, that means everybody who is engaged in international shipping. *Tama, hindi ba,* and enjoy the privilege. So, *ang nili-limit lang natin dito ...*

....

REP. TINIO. *Pero* their ... so it's not the services rendered by persons engaged in, it's services rendered to. So, in other words, a supplier or a contractor engaged by PAL, as far as their international services are concerned. That's what it's referring to.

THE CHAIRPERSON. Yes. *Parang 'yung ...*

REP. TIONIO. *Kunwari*, caterer.

THE CHAIERPERSON. ***O, 'yun,* caterer. *Pagka* international flight, zero VAT. *Pagka* domestic flight, with VAT.** *Ganon.* Services

> rendered for international shipping is... Yeah, **it's the activity that you are defining**, not the person anymore. *Hindi naka-consistent pero mas limited 'yung* scope, *hindi ba? Tama ba mas* limited '*yung* scope?
>
> . . . .
>
> MS. MARISSA O. CABREROS (Director III, Assistant Commissioner, Legal Service, Bureau of Internal Revenue). *Hindi po.* ***Kasi* persons *po* is defined in Section 22 as persons referring to individual's estate, trust and corporation. So, *kasama po* si juridical persons.**
>
> . . . .
>
> THE CHAIRPERSON. So, let's just decide, are we fine with the ... *Okay lang naman sa akin* if you want the longer way of writing it, '*yung may* persons *pero* may *proviso* or do we go with the shortcut, services rendered for international shipping. It really doesn't *ano naman*, styling *lang 'yan*. Which the same objective, it's a different way of saying it. Ma'am, you're the expert, what do you think?
>
> MS. CABREROS. Sir, yeah, it's the same objective. **However, with due respect, *sana po 'yung dating* provision with the *proviso* just to emphasize *na dati naabused 'yung provision na 'yun*, that's why we're limiting it with the *proviso na* limited only on international operation. *Kung baga 'yung dating wordings kasi ng* tax code is, services rendered to persons engaged in international shipping or international air transport operation including leases of property for use thereof. *Para ma-emphasize na* what is new is the *proviso* to emphasize *na* we are limiting it *kasi na-abused dati 'yung implementation nung* zero rating.**[101] (Emphasis and italics supplied)

While specifically concerning only the TRAIN Act, the foregoing exchanges offer invaluable insights in understanding the following:

First, the services under Section 108(B)(4) are rendered to persons engaged in international air transport operations and not to the airline itself;

Second, even before the TRAIN Act, the VAT zero-rating privilege under Section 108(B)(4) extended to services rendered to international shipping or air transport operators only in relation to their international operations, and not their domestic operations; and

Third, the insertion of the proviso in the TRAIN Act was made in recognition of the fact that Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337, had been subject to abuse by taxpayers. The amendment aimed to strengthen the language of the provision to prevent such abuse from recurring in the future. In other words, the inclusion of the proviso was seen as a way to emphasize the limitation to cover only international operations.

As Associate Justice Maria Filomena D. Singh astutely highlighted during the deliberations for this case, the legislature, with the inclusion of the proviso in the TRAIN Act, sought to codify what was already the position of the BIR even prior to the enactment of the TRAIN Act. Specifically, it

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[101] Ad Hoc Subcommittee on TRAIN, Committee on Ways and Means, April 26, 2017, pp. 1274–1279.

reinforces the principle that the VAT zero-rating privilege solely pertains to services rendered to international shipping or air transport operators in connection with their international operations. By adding the proviso, the legislature sought to mitigate potential loopholes and ensure the proper application of the law.

That such was already the position of the BIR is highlighted under item 14 of Revenue Memorandum Circular No. 46-2008 which states that services rendered to persons engaged in both domestic and international operations shall be zero-rated only with respect to the portion that will be used in their international operations, thus:

Revenue Memorandum Circular No. 46-2008:

Q-14: *Which transactions with international air transport operators are zero-rated?*

A-14: Sale of services to persons engaged exclusively in international air transport operations, including leases of property for use thereof, and the sale of goods, supplies, equipment and fuel are zero-rated. However, sale of goods, supplies, equipment and fuel as well as **services rendered to persons engaged in both domestic and international operations shall be zero-rated only with respect to the portion that will be used in their international operations.** (Emphasis supplied, italics in the original, underscoring omitted)

It must also be stressed that the implementing rules of Section 108(B)(4) of the NIRC, as outlined in Section 4.108-5 of Revenue Regulations No. 16-2005, as amended by Revenue Regulations No. 04-2007, explicitly exclude services rendered to common carriers by air and sea for the transport of passengers, goods, or cargoes from one place in the Philippines to another place in the Philippines from the scope of zero-rating. These services are instead subject to a 12% VAT, in accordance with Section 108(A) of the NIRC, as amended by Republic Act No. 9337. This delineation further underscores the legislative intent to limit the application of VAT zero-rating to services specifically related to international operations.

The insertion of the proviso in the TRAIN Act, which specifies that services must be exclusively for international shipping or air transport operations to qualify for VAT zero-rating, does not imply that prior to the amendment, services did not need to be related to international operations. While the language of Section 108(B)(4) before the amendment may not have explicitly stated the exclusivity requirement, legislative deliberations on the TRAIN Act show that the zero-rating privilege was for services tied solely to international shipping or air transport operations. In short, the proviso added by the TRAIN Act serves to clarify and emphasize this requirement, rather than introduce a new condition. The legislative discussions and intent behind the insertion of the proviso in the TRAIN Act reinforce the longstanding

requirement for services to be exclusively related to international operations to qualify for VAT zero-rating.

Therefore, the Court holds that even before the TRAIN Act, services rendered by VAT-registered entities to persons engaged in international shipping or air transport operations shall be zero-rated only with respect to the portion that will be used in their international operations.

Manila Peninsula's hotel room accommodations and food and beverage services to Delta Air's pilots and cabin crew members during flight layovers are subject to VAT at 0% under Section 108(B)(4) of the NIRC, as amended.

Considering the Court's ruling that Revenue Memorandum Circular No. 46-2008 and Revenue Memorandum Circular No. 31-2011 are invalid BIR issuances, the CTA EB, therefore, erred when it required Manila Peninsula to comply with the following requisites to be entitled to VAT zero-rating: (a) the transport of goods and passengers must emanate from a port in the Philippines directly to a foreign port; and (b) the common international air transport carrier must not dock or stop at any port in the Philippines.[102]

Here, the services rendered by Manila Peninsula to Delta Air were made during TY 2010, before the effectivity of the TRAIN Act. In light of the discussion above that only services exclusively related to international shipping or air transport operations are subject to VAT at 0% even before the effectivity of the TRAIN Act, the Court holds that the requisites for services to qualify for zero-rated VAT under Section 108(B)(4) of the NIRC remain consistent both before and after the amendment introduced by the TRAIN Act. These requisites are as follows:

(a) The service was performed in the Philippines by a VAT-registered person;

(b) The service was rendered to persons engaged in international shipping or international air transport operations including leases of property for use in these operations; and

(c) The service shall be exclusively for international shipping or air transport operations.

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[102] *Rollo*, p. 54, CTA EB Decision.

The presence of the first essential element is beyond question, as Manila Peninsula is a local VAT-registered entity with BIR Certificate of Registration No. OCN8RC0000019694 dated June 26, 1998.[103]

Furthermore, the hotel room accommodation services were performed in the Philippines. Hotel Room Agreement 106750[104] (Hotel Room Agreement) between Manila Peninsula and Delta Air dated August 26, 2010 proves that the former agreed to render hotel services to the latter's pilots and cabin crew members during flight layovers in the Philippines. The provision of these services is substantiated by documentary evidence, including but not limited to billings and invoices, collectively affirming the transaction between these two entities.

As to the second requisite, it is also undisputed that Manila Peninsula rendered services in the form of hotel room accommodations and food and beverage services to Delta Air—a juridical person engaged in international air transport operations. Manila Peninsula presented the following evidence to prove that Delta Air is engaged in the business of international air transport operations:

1) Delta Air's License to Transact Business in the Philippines dated December 29, 2009, issued by the SEC;[105]

2) Foreign Air Operator's Operation Specifications No. F10-012-10 by CAAP.[106]

The aforementioned documentary exhibits support Manila Peninsula's contention that Delta Air is a corporation organized and existing under the laws of Delaware, United States of America, and its main object is to engage in international air transportation services.

As to the third requisite, which mandates that the services must be exclusively for international shipping or air transport operations, the Court holds that in the context of Manila Peninsula's provision of hotel room accommodations and food and beverage services to Delta Air during flight layovers, only those that are directly used in, or attributable, to international air transport operations of Delta Air, shall be subject to VAT at 0%.

The foregoing clarification is essential, especially considering that paragraph 1 of Manila Peninsula's Hotel Room Agreement with Delta Air shows that Manila Peninsula was bound to provide services not only to Delta Air's flight crew but also to a wider range of individuals:

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103 *Id.* at 24, CTA Division Decision; *See also id.* at 311, Manila Peninsula's Formal Offer of Evidence.
104 *Id.* at 600–609; *See also id.* at 330, Manila Peninsula's Formal Offer of Evidence.
105 *Id.* at 504 & 585.
106 *Id.* at 342, Manila Peninsula's Formal Offer of Evidence; *See also id.* at 747–749.

> 1. Premises and Services. [Manila Peninsula] agrees to provide room accommodations and other hotel services at certain premises located at Corner of Ayala & Makati Avenues, Makati City, 1226 Philippines (the "Premises") to Delta [Air] Guests for consideration paid by Delta [Air] to [Manila Peninsula] pursuant to the terms of this Agreement. For the purpose of this Agreement, **"Delta [Air] Guests" shall include the following categories of persons:** (a) Scheduled Delta [Air] flight crews and scheduled flight crews of any Affiliate of Delta [Air] ("Flight Crew Guests"); and **(b) Delta [Air] employees on company business; non-crew employees of subsidiaries or affiliates of Delta [Air]; contractors of any of the foregoing entities engaged in work for any of the same; and any third party for whom occupancy is authorized by Delta [Air] or by [Manila Peninsula] on Delta [Air's] behalf, including parties holding a Delta [Air] voucher (e.g., inconvenienced passengers) ("Non-Crew Guests").** "Affiliate" means any individual, corporation, partnership, association, or business that directly or indirectly through intermediaries, controls, is controlled by or is under common control with Delta [Air].[107] (Emphasis supplied, underscoring in the original)

The Hotel Room Agreement outlines that Manila Peninsula agreed to offer room accommodations and other hotel services to Delta Air's guests. It further defines Delta Air guests to include two main categories: (a) flight crew guests; and (b) non-crew guests, who are Delta Air's employees on company business, non-crew employees of Delta Air's subsidiaries or affiliates, and contractors engaged in work for any of Delta Air's subsidiaries or affiliates. In essence, Manila Peninsula's contractual obligations extend beyond the flight crew of Delta Air. While the flight crew members are directly involved in international air transport operations, non-crew guests may not be involved in such operations at all, making the services provided to them not directly related to, or attributable to, the international transport of goods and passengers.

Accordingly, that portion of hotel services rendered to Delta Air's non-crew guests is subject to 12% VAT for the simple reason that they are not related to the international air transport of passengers and cargoes of Delta Air. This notwithstanding, the Court holds and so rules that the hotel services rendered to Delta Air's flight crew members during layovers in the Philippines are directly related to international air transport operations. Consequently, such services are subject to VAT at 0%.

The Court shall discuss in detail.

First, hotel room accommodations provided during layovers are essential for the rest and recuperation of flight crew members to ensure they are adequately refreshed and ready for subsequent flights, particularly in long-haul international air transport operations. While the direct beneficiaries of the hotel room accommodation services are the individual pilots and crew members of Delta Air and not Delta Air itself as a juridical person, it is evident that these flight personnel are an integral part of the overall air transport

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[107] *Id.* at 600, Hotel Room Agreement.

operations. The hotel accommodation services contribute to the well-being, rest, and readiness of the pilots and cabin crew members, which directly impact the safety and efficiency of the international air transport operations as a whole.

Pilots are in control of an airplane,[108] ensuring the safety of passengers and cargo throughout the journey. Similarly, cabin crew members are assigned to perform duties on an aircraft in flight.[109] Their roles extend beyond mere transportation, as they ensure the seamless and efficient international transport of goods and passengers. This indicates that the pilots and cabin crew members are part of a continuous cycle of Delta Air's international air transport operations.

Put simply, pilots and cabin crew members are integral to air transport operations, and services for accommodation and lodging rendered to these personnel during flight layovers in the Philippines are considered services rendered to Delta Air as a juridical person engaged in international air transport operations, as well as directly used in, or attributable to, Delta Air's international air transport operations.

In *Yrasuegui v. Pilippine Airlines, Inc.*,[110] the Court had the opportunity to underscore the nature of the responsibilities of cabin crew members, especially in relation to passenger safety and the overall public confidence in airline operations, thus:

> It cannot be gainsaid that cabin attendants must maintain agility at all times in order to inspire passenger confidence on their ability to care for the passengers when something goes wrong. It is not farfetched to say that airline companies, just like all common carriers, thrive due to public confidence on their safety records. **People, especially the riding public, expect no less than that airline companies transport their passengers to their respective destinations safely and soundly.** A lesser performance is unacceptable.
>
> **The task of a cabin crew or flight attendant is not limited to serving meals or attending to the whims and caprices of the passengers. The most important activity of the cabin crew is to care for the safety of passengers and the evacuation of the aircraft when an emergency occurs. Passenger safety goes to the core of the job of a cabin attendant.** Truly, airlines need cabin attendants who have the necessary strength to open emergency doors, the agility to attend to passengers in cramped working conditions, and the **stamina to withstand grueling flight schedules**.[111] (Emphasis supplied, underscoring omitted)

Second and more importantly, that the services for accommodation and lodging rendered to pilots and cabin crew members during flight layovers in the Philippines are attributable to Delta Air's international air

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[108] Black's Law Dictionary, 9th Edition.
[109] Republic Act No. 9497 (2008), sec. 3(jj).
[110] 590 Phil. 490 (2008) [Per J. Reyes, R.T., Third Division].
[111] *Id.* at 515–516.

transport operations is evident when their mandatory rest period before their next duty is considered. The mandatory rest period requirement for pilots and cabin crew members engaged in air transport operations is outlined in the Civil Aviation Regulations Part 8 on Operations as issued by the CAAP, which reads:

> 8.11.1.10 FLIGHT CREW FLIGHT TIME, DUTY AND REST PERIODS: SCHEDULED AND NON[-]SCHEDULED INTERNATIONAL COMMERCIAL AIR TRANSPORT OPERATIONS
>
> (a) This Subpart prescribes flight time, duty and rest period requirements for flight crew members on scheduled and non-scheduled international commercial air transport operations.
>
> . . . .
>
> 8.11.1.10.2 FLIGHT TIME, DUTY AND REST PERIODS: AIRCRAFT TYPE CERTIFICATED FOR TWO PILOTS AND ONE OTHER FLIGHT CREW MEMBER
>
> (a) No scheduled and non-scheduled international operator may schedule any flight crew member and no flight crew member may accept an assignment for flight time in commercial flying if that flight crew member's total flight time in all flying will exceed:
>
> (1) 12 hours during any 24 consecutive hours;
> (2) 120 hours during any 30 consecutive days;
> (3) 300 hours during any 90 consecutive days; or
> (4) 1,000 hours during any calendar year.
>
> (b) **A rest period of twice the number of hours flown since the last rest period or 12 hours, whichever is greater, shall be scheduled following any flight segment.**
>
> (c) **If a flight crew member has flown 20 or more hours during any 48 consecutive hours or 24 or more hours during any 72 consecutive hours, he must be given at least 18 hours of rest before being assigned to any duty with the operator.**
>
> . . . .
>
> 8.11.1.12 CABIN CREW DUTY TIME AND REST PERIODS REQUIREMENTS: SCHEDULED AND NON-SCHEDULED INTERNATIONAL AND DOMESTIC OPERATORS
>
> An operator conducting domestic or international operations may assign a cabin crew member to a duty period only when the applicable duty period and rest requirements of this Subpart are met.
>
> (a) Except as provided in paragraphs (d), (e), and (f) of this section, no operator may assign a cabin crew member to a scheduled duty period of more than 14 hours.

> (b) Except as provided in paragraph (c) of this section, a cabin crew member scheduled to a duty period of 14 hours or less as provided under paragraph (a) of this section, must be given a scheduled rest period of at least 9 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.[112] (Emphasis supplied)

Upon the aircraft's touchdown in the Philippines, pilots and cabin crew members of Delta Air are not immediately permitted to embark on their return journey to any country outside the Philippines. As highlighted in the Civil Aviation Regulations above, the regulatory protocols require a rest period to be scheduled, which should be twice the number of hours flown since the last rest or a minimum of 12 hours, whichever is longer. If a crew member has flown 20 or more hours in 48 consecutive hours or 24 or more hours in 72 consecutive hours, an 18-hour rest period is mandated before their next duty. Owing to these mandatory regulations, Delta Air is obligated to furnish accommodations and lodging to its pilots and cabin crew, which Manila Peninsula, in turn, provided.

Thus, the services for accommodation and lodging rendered to the pilots and cabin crew members of Delta Air during flight layovers in the Philippines cannot be considered as anything but services rendered to Delta Air and directly used in, or attributable to, Delta Air's international operations. Consequently, services rendered to cater to this essential requirement directly correlate with Delta Air's primary function in "international air transport operations," thereby squarely falling within the purview of Section 108(B)(4) of the NIRC, as amended.

Based on the foregoing, the Court finds that Manila Peninsula was able to prove that its sale of services to Delta Air qualify for VAT zero-rating pursuant to Section 108(B)(4) of the NIRC, as amended.

The CIR argues that services provided by a hotel to its guests for room accommodations and food and beverages served within its premises, are not included within the purview of Section 108(B)(4) of the NIRC, as amended. For the CIR, they have no direct connection with the transport of goods or passengers since the services to Delta Air's pilots and cabin crew members during flight layovers were rendered within Manila Peninsula's premises.[113]

The Court does not agree.

It is of no moment that the accommodation services were rendered within the physical confines of Manila Peninsula. The core consideration anchors on the fact that the service was rendered to a juridical person engaged in international air transport operations and that is exclusively for its international operations. The CTA EB, thus, erred when it concluded that

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[112] https://caap.gov.ph/wp-content/uploads/2023/09/PART-8-Operations.pdf (last accessed on February 7, 2024).

[113] *Rollo*, p. 1023, Comment filed by the CIR before the Court.

Manila Peninsula's sale of services to Delta Air could not be deemed zero-rated because the services rendered to the pilots and cabin crew of Delta Air did not cross the Philippine territory.[114] The first requisite to qualify for zero-rating under Section 108(B)(4) of the NIRC, as amended, is that the service was performed in the Philippines by a VAT-registered person. It is, therefore, not required that the service be performed outside the Philippines.

In light of the foregoing observations, it is evident that the services rendered by Manila Peninsula to its flight crew members in the form of hotel room accommodations and food and beverages services during layovers qualify for zero-rated VAT under Section 108(B)(4) of the NIRC, as amended. Consequently, the services were not appropriately subject to the imposition of 12% VAT.

Manila Peninsula alleged that the billings it provided to Delta Air, which is the subject of the refund claim amounting to PHP 3,807,771.77, only involves hotel accommodation services provided to Delta Air's flight crew members.[115] However, considering that this is a Rule 45 petition, which is an appeal on pure questions of law, and further taking into account that this Court is not a trier of facts, the Court is unable to make a determination as to the refundable or creditable amount due to Manila Peninsula, if any. Thus, even as the Court reverses the CTA EB's assailed Decision and assailed Resolution, it cannot make a factual and definitive finding as to the amount refundable to Manila Peninsula relative to its services rendered to Delta Air's pilots and cabin crew members during flight layovers in the Philippines that are attributable to Delta Air's international operations.

While the Court is constrained to make factual determinations, the evidence provided by Manila Peninsula sheds light on the services it rendered to Delta Air. Manila Peninsula submitted Official Receipts and Invoices to prove that it rendered hotel services to Delta Air's flight crew members, including its pilots, United States of America flight attendants, and Asian flight attendants. These services encompass accommodations, room service charges, and taxes.[116]

After a proper and judicious review of Manila Peninsula's evidence on record to ascertain the refundable amount, the CTA Third Division is directed to render a decision confirming the exact amount of refund attributable to international air transport operations of Delta Air. The CTA Third Division is directed to proceed in this case with dispatch.

ACCORDINGLY, the Petition for Review on *Certiorari* is **PARTLY GRANTED**. The Decision dated July 12, 2016 and Resolution dated January 17, 2017 of the Court of Tax Appeals *En Banc* in CTA EB No. 1408, are **REVERSED and SET ASIDE**.

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114 *Id.* at 56, CTA EB Decision.

115 *Id.* at 121, Petition.

116 *See id.* at 120–123, Petition; and *id.* at 319–325, Manila Peninsula's Formal Offer of Evidence.

Item 11 of Revenue Memorandum Circular No. 46-2008 and Revenue Memorandum Circular No. 31-2011 are **DECLARED NULL** and **VOID** insofar as they imposed additional conditions which are not found in Section 108(B)(4) of the 1997 National Internal Revenue Code, as amended by Republic Act No. 9337.

The case is **REMANDED** to the Court of Tax Appeals Third Division for the proper determination of the refundable or creditable amount due to petitioner Manila Peninsula Hotel, Inc., if any.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

See Separate Concurring Opinion

MARIA FILOMENA D. SINGH
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, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified 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. 229338 – MANILA PENINSULA HOTEL, INC., Petitioner **v. COMMISSIONER OF INTERNAL REVENUE,** Respondent.

Promulgated:
April 17, 2024
misdcbatt

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SEPARATE CONCURRING OPINION

SINGH, *J.*:

The present controversy arose from the denial of Manila Peninsula Hotel, Inc.'s (**Manila Peninsula**) administrative claim for refund of alleged erroneously paid or illegally collected Value-Added Tax (**VAT**) for taxable year (**TY**) 2010 amounting to PHP 3,807,771.77, consisting of the 12% VAT payments on its sale of services to Delta Air Lines, Inc. (**Delta Air**).[1] The nature of the services consisted of room accommodations, as well as food and beverage services to the former's pilots and cabin crew during flight layovers in the Philippines. The cost of said hotel services were directly charged to Delta Air and did not constitute compensable income for its crew but a business expense of the airline.[2]

Both the Court of Tax Appeals (**CTA**) Division and the CTA *En Banc* disallowed Manila Peninsula's claim for refund involving the first quarter of TY 2010 due to prescription. With respect to its claim for refund for the second, third, and fourth quarters of TY 2010, the CTA Division and *En Banc* held that Manila Peninsula's claim must fail for failure to satisfy the requisites for its transaction with Delta Air to qualify for zero-rating.[3]

Thus, the present Petition.

The *ponencia* affirms the ruling on the prescription of Manila Peninsula's claim for refund involving the first quarter of TY 2010. However, it reverses the ruling of the CTA Division and the CTA *En Banc* with respect to the claim for refund for the second, third, and fourth quarters of TY 2010. The *ponencia* holds that the hotel room accommodations, as well as the food and beverage services rendered by Manila Peninsula to Delta Air pilots and crew members during flight layovers are subject to VAT zero-rating under

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1 *Ponencia,* p. 3.
2 *Id.* at 2.
3 *Id.* at 4–6, CTA *En Banc* Decision.

Section 108(B)(4) of the National Internal Revenue Code (**NIRC**), as amended. The *ponencia* also declares Item 11 of Revenue Memorandum Circular (**RMC**) No. 46-2008 and RMC No. 31-2011 as invalid, for expanding the statutory requirements in Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337.[4]

I register my concurrence with the finding that the subject services rendered to Delta Air in the second, third, and fourth quarters of TY 2010 are subject to VAT zero-rating, such that Manila Peninsula should be considered to have erroneously paid in TY 2010 the output VAT amounting to PHP 3,807,771.77.

I respectfully wish to add to the discussion regarding the effect of the amendment of Section 108(B)(4) of the NIRC by Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion law (**TRAIN Act**) to explicitly limit services subject to zero-rating to those exclusively for international or air shipping.[5] As the *ponencia* now states, the *proviso* which limits the services subject to zero-rated VAT to those exclusively attributable to the recipient's international shipping or air transport operations, is also applicable under Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337,[6] or before the TRAIN Act amendment in 2018.

Any ambiguity in the construction of Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337, must be construed strictly against the taxpayer

It is a basic rule in statutory construction that "when the law is clear and unambiguous, the court is left with no alternative but to apply the same according to its clear language."[7]

Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337, provides:

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> (A) . . . .

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4 *Id.* at 18.
5 *Id.*
6 *Id.* at 27.
7 *H. Villaraca Pawnshop, Inc. v. Social Security Commission*, 824 Phil. 613, 628 (2018) [Per J. Gesmundo, Third Division].

> (B) *Transactions Subject to [Zero Percent] Rate*. - The following services performed in the Philippines by VAT-registered persons shall be subject to [zero percent] rate:
>
> . . . .
>
> 4) *Services rendered to persons engaged in international shipping or international air transport operations, including leases of property for use thereof*; . . . . (Emphasis supplied)

The above provision is clear and unambiguous only when applied to either of the following instances: *first*, when the recipient of the services is engaged exclusively in international shipping or air transport operations, in which case, all the services rendered are subject to zero percent VAT; and *second*, when such recipient is exclusively engaged in domestic shipping or air transport operations, in which case, none of the services rendered is subject to zero percent VAT.

However, when the person to whom the services are rendered is engaged in both domestic and international shipping or air transport operations, the aforequoted provision is ambiguous and may be subject to conflicting interpretations. On the one hand, it may be argued that all services rendered to such person are automatically subject to zero percent VAT by the mere fact that the said person has international shipping or air transport operations, and there is no limitation on the type of services rendered. This is the interpretation being advanced by Manila Peninsula.

On the other hand, the above provision may be interpreted as only applying to services attributable to the recipient's international shipping or air transport operations. Hence, when services rendered are attributable to the aforementioned person's domestic shipping or air transport operations, the same are not subject to zero percent VAT.

I submit that the VAT zero-rating under Section 108(B)(4) of the NIRC is a form of tax exemption and must, therefore, be interpreted strictly against the taxpayer. Taxpayers with zero-rated sales may claim a refund or tax credit for the VAT previously charged by the suppliers (i.e., the input tax).[8] In relation with this, the Court has consistently ruled that "a claim for tax refund or credit is similar to a tax exemption and should be strictly construed against

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[8] *Commissioner of Internal Revenue v. Filminera Resources Corporation*, 885 Phil. 515, 536 (2020) [Per J. Lopez, First Division].

the taxpayer. The burden of proof to show that he is ultimately entitled to the grant of such tax refund or credit rests on the taxpayer."[9]

In this case, the interpretation which limits the application of the VAT zero-rating privilege under Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337, is more in line with the above rule.

Applying Manila Peninsula's interpretation of Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337, will lead to absurd situations and runs counter to other provisions of the NIRC

In *Philippine American Life and General Insurance Company v. Secretary of Finance*,[10] the Court held that "laws should be given a reasonable interpretation which does not defeat the very purpose for which they were passed. Courts should not follow the letter of a statute when to do so would depart from the true intent of the legislature or would otherwise yield conclusions inconsistent with the purpose of the act. *This Court has, in many cases involving the construction of statutes, cautioned against narrowly interpreting a statute as to defeat the purpose of the legislator, and rejected the literal interpretation of statutes if to do so would lead to unjust or absurd results*."[11]

In this case, extending the VAT zero-rating privilege to services rendered to a person's domestic shipping or air transport operations, so long as such person has international operations, will lead to absurd situations that are clearly inconsistent with the nature of the VAT system. To illustrate, services rendered to a person whose international operations only account for five percent of such person's total operations will automatically be subject to zero percent VAT, even if the services are related to such person's domestic operations. This is contrary to the general principle behind the country's VAT system. The Philippine VAT system adheres to the *Cross Border Doctrine*, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority.[12] Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be subject to VAT. To be sure, the

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9 *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*, 787 Phil. 57, 67 (2016) [Per J. Bersamin, First Division].

10 747 Phil. 811 (2014) [Per J. Velasco, Jr., Third Division].

11 *Id.* at 824. (Emphasis supplied)

12 *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.) Inc.*, 503 Phil. 823, 823-845 (2005) [Per J. Chico-Nazario, Second Division].

treatment of a transaction between a service provider and its client or customer, as zero-rated, is anchored on the Cross Border Doctrine.[13]

Moreover, in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,[14] the Court ruled that "[i]t is a cardinal rule in statutory construction that *no word, clause, sentence, provision or part of a statute shall be considered surplusage or superfluous, meaningless, void and insignificant.* To this end, *a construction which renders every word operative is preferred over that which makes some words idle and nugatory.* This principle is expressed in the maxim *Ut magisvaleat quam pereat*, that is, we choose the interpretation which gives effect to the whole of the statute – its every word."[15]

The same rule was expounded by the Court in *Commissioner of Internal Revenue v. TMX Sales, Inc.*,[16] as follows:

> *Section 292 (now Section 230) of the National Internal Revenue Code should be interpreted in relation to the other provisions of the Tax Code in order to give effect to legislative intent and to avoid an application of the law which may lead to inconvenience and absurdity. In the case of People vs. Rivera, this Court stated that statutes should receive a sensible construction, such as will give effect to the legislative intention and so as to avoid an unjust or an absurd conclusion. INTERPRETATIO TALIS IN AMBIGUIS SEMPER FRIENDA EST, UT EVITATUR INCONVENIENS ET ABSURDUM.* Where there is ambiguity, such interpretation as will avoid inconvenience and absurdity is to be adopted. Furthermore, ***courts must give effect to the general legislative intent that can be discovered from or is unraveled by the four corners of the statute, and in order to discover said intent, the whole statute, and not only a particular provision thereof, should be considered. Every section, provision or clause of the statute must be expounded by reference to each other in order to arrive at the effect contemplated by the legislature. The intention of the legislator must be ascertained from the whole text of the law and every part of the act is to be taken into view.***
>
> Thus, in resolving the instant case, it is necessary that we consider not only Section 292 (now Section 230) of the National Internal Revenue Code but also the other provisions of the Tax Code, particularly Sections 84, 85 (now both incorporated as Section 68), Section 86 (now Section 70) and Section 87 (now Section 69) on Quarterly Corporate Income Tax Payment and Section 321 (now Section 232) on keeping of books of accounts. All these provisions of the Tax Code should be harmonized with each other.[17] (Emphasis supplied; citations omitted)

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13 *Allegro Microsystems Philippines, Inc. v. CCT-Toyo Consortium*, G.R. No. 229537, February 10, 2020 [Notice, First Division].

14 808 Phil. 528 (2017) [Per J. Reyes, Third Division].

15 *Id.* at 552. (Emphasis supplied)

16 282 Phil. 119 (1992) [Per J. Gutierrez, Jr., *En Banc*].

17 *Id.*

Manila Peninsula's interpretation of Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337, runs counter to the other provisions of the same statute.

First, under Section 106(A)(i)(2)(a)(6), the sale of goods, supplies, equipment, and fuel to persons engaged in international shipping or international air transport operations, are subject to zero percent VAT because such transaction is considered an "export sale." Notably, Section 106(A)(i)(2)(a)(6) and Section 108(B)(4) have very similar construction. In fact, the wordings as to the recipient of the goods or services is identical. As such, the interpretation as to the applicability of the zero rating under Section 108(B)(4) will necessarily be used in applying for VAT zero rating under Section 106(A)(i)(2)(a)(6). In connection with this, extending the zero rating to sales to a person to be used in his or her domestic shipping or air transport operations contradicts the rationale behind the VAT zero rating under Section 106(A)(i)(2)(a)(6). In *Commissioner of Internal Revenue v. Filminera Resources Corporation*,[18] the Court declared that the VAT zero rating of export sales is applicable only to the actual export of goods and services from the Philippines to a foreign country, pursuant to the Cross Border Doctrine and Destination Principle of the Philippine VAT system, thus:

> SEC. 106. Value-added Tax on Sale of Goods or Properties. - (A) Rate and Base of Tax. – . . . .
>
> . . . .
>
> (2) The following sales by VAT-registered persons shall be subject to [zero percent] rate:
>
> (a) Export Sales. - The term 'export sales' means: . . . .
>
> . . . .
>
> *The tax treatment of export sales is based on the Cross Border Doctrine and Destination Principle of the Philippine VAT system. Under the Destination Principle, goods and services are taxed only in the country where these are consumed. In this regard, the Cross Border Doctrine mandates that no VAT shall be imposed to form part of the cost of goods destined for consumption outside the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with VAT. Plainly, sales of export products to another producer or to an export trader are subject to zero percent rate provided the export products are actually exported and consumed in a foreign country.*[19] (Emphasis supplied and citations omitted)

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[18] 885 Phil. 515 (2020) [Per J. Lopez, First Division].

[19] *Id.* at 530–531. (Emphasis supplied)

Second, several other provisions under the NIRC, as amended by Republic Act No. 9337, show that with respect to the shipping and air transport industry, the regular VAT rate should be applied with respect to domestic shipping and air transport operations. Under Section 108(A)(ii) the phrase "sale or exchange of services," which shall be subject to 10% VAT, includes "common carriers by air and sea relative to their transport of passengers, goods, or cargoes from one place in the Philippines to another place in the Philippines." Also, under Section 108(B)(6), only "[t]ransport of passengers and cargo by air or sea vessels from the Philippines to a foreign country" is subject to zero percent VAT.

Based on the foregoing discussion, if the services rendered by Manila Peninsula to Delta Air do not directly form part of the cost components of Delta Air's flights or services outside the territorial border of the Philippines, the same does not fall under the ambit of exported goods or services that must be free of VAT.

The legislative intent behind the amendments to Section 108(B)(4) of the NIRC

It is, likewise, a fundamental principle in statutory construction that when the law is ambiguous or of doubtful meaning, the Court may interpret or construe its true intent.[20] In this case, the legislative deliberations in relation to the enactment of Republic Act No. 9337, as well as the TRAIN Act, reveals the legislative intent to limit the application of the zero percent VAT under Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337, to services which are attributable to the recipient's international shipping or international air transport operations.

When the NIRC was enacted in 1997, Section 108(B)(4) thereof only applied to "[s]ervices rendered to vessels engaged exclusively in international shipping." However, the qualifier exclusively was deleted under Republic Act No. 9337. I submit that this was intended to broaden the scope of zero-rating eligibility. However, such broadening did not, and was not intended by Congress to, amount to encompassing all services rendered, without imposing limitations or conditions on the nature of the services provided.

Prior to the enactment of Republic Act No. 9337, it was clear that the zero-rating under Section 108(B)(4) of the NIRC only applied to "[s]ervices rendered to vessels engaged exclusively in international shipping[.]" Under this provision, when a vessel is engaged in both domestic and international operations, services rendered to it are automatically not subject to zero percent

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[20] *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, 826 Phil. 329, 344 (2018) [Per J. Peralta, Second Division].

VAT. This interpretation is supported by the deliberations in the Senate relative to the enactment of Republic Act No. 9337, when Senator Ralph G. Recto proposed to maintain the inclusion of the term "exclusively" in Section 106(A)(2)(a)(6) of the NIRC, which had a similar construction to the proposed Section 108(B)(4):

> *In regard to lines 1 to 3, page 6, (sale of goods, supplies and fuel to persons engaged exclusively in international shipping or international air transport), Senator Osmeña expressed concern that this provision, along with two other existing provisions in the law, would extend VAT exemption [sic] suppliers of raw materials or intermediate goods and all finished products as well as exporters of goods or services. He stated that if Petron and Shell would sell fuel to Cebu Pacific, Northwest or Philippine Airlines, these would be zero-rated.*
>
> *Senator Recto clarified that if the fuel is sold to PAL or Cebu Pacific, the sale would not be zero-rated because they are not exclusively in international air transport. He added that the transaction would be covered by a different provision so that the BIR would not have difficulty in administering the tax.*
>
> To the suggestion to simply delete the provision and just limit the zero-rating to the actual exporters themselves and not the suppliers, Senator Recto agreed to the suggestion. However, he reasoned that it would be better not to touch the provision now and just wait for the conference committee.[21] (Emphasis supplied)

On the other hand, the congressional deliberations in enacting Republic Act No. 9337 are clear that in situations wherein the recipient of the services is engaged in both international and domestic operations, the zero-rating under the amended Section 108(B)(4) is limited only to those services attributable to the recipient's international operations.

During the meeting of the Bicameral Conference Committee on the Disagreeing Provisions of House Bill Nos. 3705 and 3555 and Senate Bill No. 1950 re: Value-Added Tax Bills,[22] Representative Luis R. Villafuerte raised his objection with respect to the use of the qualifier "exclusively" in case of international air transport operations, thus:

> REP. VILLAFUERTE. Mr. Chairman, I just want to point out an unfairness in the language of the Senate version when it uses that it [sic] zero-VAT if... for aircraft and vessels engaged and then you used the word "exclusively" in international transport. I just want to...
>
> ....

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21 Journal, Senate, 13th Congress, 1st Session (April 12, 2005).

22 Republic Act No. 9337 (May 24, 2005).

REP. VILLAFUERTE. … because the word "exclusive" … let me give you an example. For example, a Philippine Airline flies to Cebu in the course of the day and later on it goes to Hong Kong. So, that plane is not exclusively used for international transport and, therefore, what happens now? If we interpret the word "exclusively"…

CHAIRMAN RECTO. *If I can explain Congressman Villafuerte, how this will operate, as far as Senate is concerned, is this: Total gross sales of an airline company, if 80% of the gross sales was used for international, then the 80% is immediately refundable. If 20% of his gross sales, which is domestic, by way of cargo or passengers, then the 20% is subject now to creditable VAT on a quarterly basis. So, it's ratably. Now, it's easier for the BIR as well to collect. For example, in this case, as far as the zero-rating for exclusively an international transport, let's say, those service providers of Lufthansa, Cathay Pacific, I think who provide service with them, let's say, Macro Asia, maliwanag ngayon under the Senate version that these people are zero-rate. Maliwanag ngayon because right now, hindi maliwanag iyan under the Tax Code.*

REP. VILLAFUERTE. What happens to the Philippine Airlines plane that flies to domestic and then…

CHAIRMAN RECTO. Again, let me reiterate, Congressman Villafuerte, the entire gross sales for that month or for that quarter of Philippine Airlines is 80% is attributable to international passenger and international cargo, then its 80% of his VAT input is refundable, is zero-rated.

REP. VILLAFUERTE. Yeah, but you are not really applying exclusively then.

CHAIRMAN RECTO. Now, for domestic because we are VAT[-]ing domestic passengers and domestic cargo.

REP. VILLAFUERTE. No, no, no. It says here "exclusively"…

CHAIRMAN RECTO. Yes, but there is another provision Congressman Villafuerte that says here that transport of passengers and cargo by air or sea to foreign countries is zero-rated. There is another provision that will apply to that.

REP. VILLAFUERTE. Zero-rate. But what I'm trying to say is that you are not applying the word "exclusively" to a particular vessel or airplane, you know. It is the used [sic] that you are saying, but can be done both ways, domestic and foreign or international, even if that plane is used for both.

CHAIRMAN RECTO. That's right. That's ratably.

REP. VILLAFUERTE. *So, in other words, that particular airplane will not forgo the zero VAT even if it is used domestically.*

CHAIRMAN RECTO. *If you uses [sic] it domestically…*

REP. VILLAFUERTE. *And also internationally.*

> CHAIRMAN RECTO. *...then you cannot get a refund. The portion, again, let me reiterate...*
>
> REP. VILLAFUERTE. *The portion on foreign only.*
>
> CHAIRMAN RECTO. *Yes, that's right.*
>
> REP. VILLAFUERTE. That's why, I'm saying (Inaudible/Did not use the microphone)...
>
> CHAIRMAN RECTO. We'd be willing to work with you but at the moment, at the moment, that's how the Senate interprets the different sections in relation to international and sea, overseas travel. But we'd be willing to work with the House and the Chairman on the House panel on the appropriate languages.[23] (Emphasis supplied)

Based on the above deliberations, it was clarified that the when services are provided to persons engaged in both domestic and international shipping or air transport operations, the application of the zero percent VAT must be pro-rated between the recipient's international and domestic operations. Only those services attributable to international operations are subject to zero percent VAT.

Additionally, the non-imposition of zero percent VAT to domestic shipping or air transport operations was confirmed by Senator Ralph G. Recto during Senator Sergio R. Osmeña III's interpellation on the Republic Act No. 9337 Bicameral Conference Committee Report:

> Senator Osmeña. *At the top of page 9, lines 1 to 3, the provision reads as follows: "Services rendered to PERSONS engaged in international shipping OR INTERNATIONAL AIR TRANSPORT OPERATIONS, INCLUDING LEASES OF PROPERTY FOR USE THEREOF;". Now, Mr. President, may I just have to clarify this because I could be engaged in international business but some of my sales might be domestic. Does this include domestic sales?*
>
> Senator Recto. *No. Mr. President. Section 1112 [sic] identifies that the ones that are exported or consumed externally or the transport of passengers and cargo from the Philippines outside the Philippines are zero-rated.*
>
> Senator Osmeña. *So it is allocated ratably between zero-rated and nonzero-rated?*
>
> Senator Recto. *Yes, ratably, between zero-rated and nonzero-rated. That is correct.*

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[23] BICAMERAL CONFERENCE COMMITTEE ON THE DISAGREEING PROVISIONS OF H.B. NOS. 3705 AND 3555 AND SB NO. 1950 RE: VALUE-ADDED TAX BILLS, HOUSE COMMITTEE ON WAYS AND MEANS, SENATE COMMITTEE ON WAYS AND MEANS, 18TH CONGRESS, 1ST SESSION, PP. 71-74 (April 18, 2005).

Senator Osmeña. Thank you for this clarification.[24] (Emphasis supplied)

Based on the foregoing, the legislative intent behind Section 108(B)(4), even before the enactment of the TRAIN Act, is clear. When a shipping or air transport company is engaged in both international and domestic operations, the VAT zero-rating only applies to services rendered to it which are related to its international operations.

This legislative intent was even strengthened by the implementing rules of Section 108(B)(4) of the NIRC under Section 4.108-5 of RR No. 16-2005, which confirmed the interpretation that the VAT zero-rating privilege only extends to services rendered to international shipping or air transport operators in relation to their international operations, and not their domestic operations.

Section 4.108-5 of RR No. 16-2005 provides that:

> Sec. 4.108-5. Zero-Rated Sale of Services. –
>
> . . . .
>
> (b) Transactions Subject to [Zero Percent] VAT Rate. – The following services performed in the Philippines by a VAT-registered person shall be subject to [zero percent] VAT rate:
>
> . . . .
>
> (4) Services rendered to persons engaged in international shipping or air transport operations, including leases of property for use thereof; **Provided, however, that the services referred to herein shall not pertain to those made to common carriers by air and sea relative to their transport of passengers, goods or[,] cargoes from one place in the Philippines to another place in the Philippines, the same being subject to [12%] VAT under Sec. 108 of the Tax Code starting Feb. 1, 2006**. (Emphasis supplied)

It bears stressing that interpretations of administrative agencies in charge of enforcing a law are entitled to great weight and consideration by the courts, unless such interpretations are in a sharp conflict with the governing statute or the Constitution and other laws.[25]

Notably, under the TRAIN Act, Section 108(B)(4) was amended, and now reads as follows:

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[24] II Record, Senate, 13th Congress, 1st Session (May 10, 2005).

[25] *Nestle Philippines, Inc. v. Court of Appeals* 280 Phil. 548 (1991) [Per J. Feliciano, First Division].

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> (A) . . . .
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to [zero percent] rate:
>
> . . . .
>
> 4) Services rendered to persons engaged in international shipping or international air transport operations, including leases of property for use thereof: *Provided, That these services shall be exclusively for international shipping or air transport operations*; . . . . (Emphasis supplied)

However, the Congressional deliberations in relation to the enactment of the TRAIN Act show that in adding the *proviso* in Section 108(B)(4) of the NIRC, the legislature never intended to give a new interpretation to the said provision, but only sought to emphasize that the previous provision under Section 108(B)(4) was being abused, as well as to clarify its application in order to avoid said abuse in the future.

In order to fully understand the rationale for the insertion of the *proviso*, there is a need to look into its legislative history.

The *proviso* was originally proposed by Representative Dakila Carlo E. Cua (**Representative Cua**), the Chairperson of the Ad Hoc Subcommittee on Tax Reform for Acceleration and Inclusion, Committee on Ways and Means, in House Bill No. 4774. However, Congressional deliberations on the TRAIN Act reveal that it was the Department of Finance (**DOF**) which actually proposed the insertion of the *proviso* in Section 108(B)(4) of the NIRC:

> THE CHAIRPERSON [REPRESENTATIVE CUA]. . . . . So number four, *may typo lang dun sa* line 37 engaged for international shipping. Okay. *So let me just try to clarify 'no, ang ginagawa kasi ng DOF dito, services rendered to persons engaged in international shipping or international air transport operations, including lease of property for use thereof provided that these services shall be exclusively for international shipping or air transport operations.* ***So parang naninigurado na hindi puwede doon sa domestic or non-international shipping or transport operations.*** So *may... sinimplipay* (simplify) *ko lang, tinanggal ko 'yung proviso ginawa ko lang* services rendered to persons engaged for international... *hindi tinanggal ko pala 'yung* to persons engaged... "services rendered for international shipping or international air transport operations, including leases of property for use thereof". ***Kasi iyon lang naman talaga***

> ***exempted. Tama ba? Iyon lang naman talaga***. *So tinanggal lang 'yung* "to persons engaged in" *at nilagay ko* "services rendered for international shipping". It's the same idea. *Pero kasi parang weird lang kasi nung proviso.*
>
> . . . .
>
> THE CHAIRPERSON. *Pagka-ire-retain natin... totoo naman. Pag ni-retain lang kasi natin, lalagyan nila ng proviso. Ang prino-propose nila, provided that these services shall be exclusively for international shipping or air transport operation. So, ang sinasabi nila, kung ikaw 'yung person, you have both activities that are international shipping, you may also have non-international shipping or air transport operations, 'yun lang doon sa international shipping and air transport mo ang zero rate or zero percent VAT. Ibig sabihin, huwag mo gamitin 'yung privilege mo for your activities not related to the international shipping operations. Halimbawa, meron ka ring domestic, hindi ka zero doon sa domestic, zero ka sa international.* So, that's why I proposed to word it "Services rendered for international shipping or international air transport operations including lease of property for use thereof." *Tanggalin mo yung* person, it just defines *'yung* transaction and, services for those activities. Okay. Do you agree with it? (Emphasis supplied)

Responding to the queries of Representative Antonio L. Tinio, Mr. Karl Kendrick T. Chua (**Chua**), the Undersecretary of the Department of Finance, shed light on the reason why the *proviso* was sought to be inserted by the DOF, which is to make the application of Section 108(B)(4) of the NIRC *clear* in order to avoid potential leakage, and to *add more teeth to the law*:

> REP. TINIO. That's why I'm clarifying the existing law, paano ba 'yan ina-apply and why it's the language... why does it refer to persons?
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> MR. CHUA. Mr. Chair, I think, Congressman Tinio, *yung* persons actually it's I think it's a legal term, so I cannot comment on that. But *si* Chairman explained it quite well. I'll just use a clear example. *A Philippine Airlines may both [sic] domestic and international flights. So, Philippine Airlines is engaged in international shipping or transport, but this cannot be used for Manila-Cebu routes, it should be used for Manila-Hong Kong. We just want to make it clear, because that is a potential leakage.* ***Kasi hindi natin alam what the company really does. It's just to add more teeth to the law.*** (Emphasis supplied)

Additionally, when asked by Representative Cua for her opinion on how Section 108(B)(4) of the NIRC should be phrased, Ms. Marissa O. Cabreros (**Cabreros**), Director III, Assistant Commissioner, Legal Service, of the Bureau of Internal Revenue, made it clear that the *proviso* is intended to emphasize the limitation of the application of Section 108(B)(4) to international operations only, because of the abuse in the implementation of the zero rating under this provision prior to the enactment of the TRAIN Act:

> THE CHAIRPERSON. So, let's just decide, are we fine with the... Okay *lang naman sa akin* if you want the longer way of writing it. *'Yung may* persons *pero may* provision or do we go with the shortcut, services rendered for international shipping. It really doesn't *ano naman*, styling *lang 'yan*. Which *(sic)* the same objective, it's a different way of saying it. Ma'am, you're the expert, what do you think?
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> MS. CABREROS. Sir, yeah, it's the same objective. *However, with due respect, sana po 'yung dating provision with the proviso just to emphasize na dati na-abused yung provision na 'yun, that's why we're limiting it with the proviso na limited only on international operation. Kung baga 'yung dating wordings kasi ng tax code is, services rendered to persons engaged in international shipping or international air transport operation including leases of property for use thereof. Para ma-emphasize na what is new is the proviso* ***to emphasize na we are limiting it kasi na-abused dati yung implementation nung zero rating***. (Emphasis supplied)

Nothing in these deliberations show that prior to the enactment of the TRAIN Act, Section 108(B)(4) of the NIRC applied to all services rendered to a person engaged in international shipping or air transport operation, without qualification as to service. What is clear from the said deliberations is that the lawmakers recognized that the previous provision was abused by taxpayers. This recognition supports the position that the legislature did not intend, in the first place, to make VAT zero-rating applicable to domestic shipping or air transport operations. In adding the *proviso* in the current version, the legislature only sought to codify what was already the position of the BIR even prior to the enactment of the TRAIN Act, i.e., that the VAT zero-rating privilege only extends to services rendered to international shipping or air transport operators in relation to their international operations, and not their domestic operations. In other words, there was no intention to change the coverage and application of Section 108(B)(4) of the NIRC. Instead, the legislature only intended to clarify the wording of the same, to abate future abuse of the provision.

Under the *principle of legislative approval of administrative interpretation by reenactment*, the re-enactment of a statute, substantially unchanged, is persuasive indication of the adoption by Congress of a prior executive construction.[26] The amendment in Section 108(B)(4) of the NIRC specifically limiting the services subject to zero-rating to those exclusively for international or air shipping, affirms the interpretation of the BIR under Section 4.108-5 of RR No. 16-2005, i.e., that the VAT zero-rating privilege extends only to services rendered to international shipping or air transport operators in relation to their international operations, and not their domestic operations, and confirms that such regulation carries out the legislative intent.

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[26] *Dumaguete Cathedral Credit Cooperative v. Commissioner of Internal Revenue*, 624 Phil. 650 (2010) [Per J. Del Castillo, Second Division].

Violation of the equal protection clause

I further submit that extending the VAT zero-rating privilege to sales of services in relation to the domestic operations of international air or shipping transport operators may be violative of the equal protection clause.[27] In effect, it gives such operators a privilege not enjoyed by their domestic counterparts *for the same local operations* just because they are separately engaged in international air or shipping transport.

The principle of equal protection ensures that all persons under like circumstances or conditions are given the same privileges and required to follow the same obligations.[28] However, equal protection permits reasonable classification. The Court has ruled that one class may be treated differently from another when classification is germane to the purpose of the law, concerns all members of the class, and applies equally to present and future conditions.[29]

Certainly, granting a VAT zero-rating privilege to international transport operators in relation to their international operations, rests on real and valid distinctions. They engage in operations and render services that domestic carriers do not provide.

However, when such international transport operators also engage in domestic operations, it is my respectful view that the privilege provided due specifically to their international operations should not apply to their domestic operations. In such case, the substantial distinction that separates them from purely domestic carriers–and which justifies the preferential treatment–no longer exists. Extending the VAT zero-rating privilege to their local operations gives rise to undue discrimination against their domestic counterparts engaged in the very same local operations. Both types of operators now engage in the same activity, i.e., transporting goods or passengers within the Philippines.

Finally, granting this privilege exclusively to international operators puts purely domestic operators at a disadvantage. It distorts the level playing field in the industry by favoring one group over another, based on the international or domestic nature of their overall operations.

ACCORDINGLY, I concur with the Decision to **PARTLY GRANT** the Petition. The Decision, dated July 12, 2016, and the Resolution, dated

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[27] CONST., art. III, sec. 1.

[28] *Conrado L. Tiu, at al., v. Court of Appeals*, 361 Phil. 229 (1999) [Per J. Panganiban, *En Banc*].

[29] *Zomer Development Company, Inc. v. Court of Appeals*, 868 Phil. 93, 108 (2020) [Per J. Leonen, *En Banc*].

January 17, 2017, of the Court of Tax Appeals *En Banc* in CTA EB No. 1408, should be **REVERSED**.

The case should be **REMANDED** to the Court of Tax Appeals Third Division for the proper determination of the refundable or creditable amount due to petitioner Manila Peninsula Hotel, Inc.

MARIA FILOMENA D. SINGH
Associate Justice