

The Legality of Imposing Local Business Tax on a Holding Company’s Dividend Income

*Roberto Romalio G. Reyes**

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I. INTRODUCTION

The power of taxation is one of the three inherent powers of a sovereign State.¹ A State’s existence necessitates the power to tax to promote the general

* ’18 J.D., Ateneo de Manila University School of Law. The Author is currently an Assistant Vice President in the Legal Department of the Pryce Group of Companies and an Assistant Professional Lecturer in the Commercial Law Department of De La Salle University. This Note is an abridged version of the Author’s Juris Doctor thesis (on file with the Professional Schools Library, Ateneo de Manila University).

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1. *Legaspi v. City of Cebu*, G.R. No. 159110, 711 SCRA 771, 785 (2013).

welfare of the people.² Thus, a State may impose taxes without an express law granting it such power.³

A State's power to tax, however, is not without boundaries.⁴ Laws may limit a State's power to tax.⁵ The tax exemption on "intercorporate dividends" is one of the limitations provided by law.⁶ Under Section 27 (D) (4) of the National Internal Revenue Code of 1997 (NIRC),⁷ the dividend income of domestic corporations from another domestic corporation is exempt from tax.⁸

The exemption on intercorporate dividends, however, is violated when Local Government Units (LGUs) levy local business tax (LBT) on a holding company's dividend income.⁹ LGUs justify their tax assessments by classifying holding companies as financial institutions since the latter are subject to LBT under the Local Government Code of 1991 (LGC).¹⁰

A. Background of the Study

A holding company is "a company formed to control other companies[.]"¹¹ Holding companies exercise control through the shares they own.¹² It is part of a holding company's function to hold shares and collect dividends from the

2. Commissioner of Internal Revenue v. Bank of the Philippine Islands, G.R. No. 134062, 521 SCRA 373, 387-88 (2007) (citing National Power Corporation v. City of Cabanatuan, G.R. No. 149110, 401 SCRA 259, 269-70 (2003)).

3. *See id.*

4. Mactan Cebu International Airport Authority v. Marcos, G.R. No. 120082, 261 SCRA 667, 679 (1996).

5. *See id.*

6. *See* An Act Amending the National Internal Revenue Code, as Amended, and for Other Purposes [NAT'L INTERNAL REVENUE CODE], Republic Act No. 8424, § 27 (D) (4) (1997).

7. An Act Amending the National Internal Revenue Code, as Amended, and for Other Purposes [NAT'L INTERNAL REVENUE CODE], Republic Act No. 8424 (1997).

8. *Id.* § 27 (D) (4).

9. *See id.* § 27 (D) (4).

10. An Act Providing for a Local Government Code of 1991, as Amended [LOCAL GOV'T CODE], Republic Act No. 7160, § 143 (f) (1991).

11. *See* BLACK'S LAW DICTIONARY 315 (10th ed. 2019).

12. *Id.*

same.¹³ Due to their function, holding companies may easily be confused with financial institutions since the latter also perform the functions of holding shares and receiving income from the same.¹⁴

Holding companies earn income through dividends.¹⁵ As a general rule, dividends are subject to the final withholding tax.¹⁶ As an exception to the general rule, a domestic corporation's dividend income from another domestic corporation, called intercorporate dividends, is exempt from tax.¹⁷ Hence, a holding company's intercorporate dividends are tax-exempt.

Contrary to the tax exemption for intercorporate dividends, Makati and Davao impose LBT on a holding company's dividend income.¹⁸

LGUs were empowered by the 1987 Constitution to generate their own source of funds and to levy charges, fees, and taxes.¹⁹ Congress then passed the LGC to execute the Constitution's mandate to empower LGUs.²⁰ The LGC vested LGUs with the power to tax businesses within their territorial jurisdiction.²¹ The power to tax, however, is not absolute since the LGC provides limitations on an LGU's taxing authority.²² The LGC prohibits LGUs from levying income tax.²³ Notwithstanding the LGC's limitation,

13. See Bureau of Internal Revenue, Implementing the Provision on Improperly Accumulated Earnings Tax Under Section 29 of the Tax Code of 1997, Revenue Regulation No. 2-2001 [BIR RR No. 2-2001], § 7, para. 2 (Mar. 9, 2001).

14. See Bangko Sentral ng Pilipinas, Manual of Regulations for Non-Bank Financial Institutions: Volume 1, § 4101Q.1 (2017).

15. See BIR RR No. 2-2001, § 7, para. 2.

16. NAT'L INTERNAL REVENUE CODE, § 24 (B) (2).

17. *Id.* § 27 (D) (4).

18. See *Makati and the City Treasurer of Makati City v. Metro Pacific Tollways Corporation*, CTA Civil Case No. 13-982, Sept. 20, 2017, at 2, available at <http://cta.judiciary.gov.ph/home/download/d2e8d3eeaf35a1affc4fbbf8eaf45422> (last accessed May 11, 2021) & *Te Deum Resources, Inc. v. City of Davao*, CTA AC No. 150, May 8, 2018, at 3, available at <http://cta.judiciary.gov.ph/home/download/d8bc341a3fe809365a885c7d7dad9a8> (last accessed May 11, 2021).

19. PHIL. CONST. art. X, § 5.

20. See LOCAL GOV'T CODE, § 2.

21. LOCAL GOV'T CODE, § 143.

22. *Id.* § 133.

23. *Id.* § 133 (a).

however, LGUs continue to levy taxes on dividends despite the same being considered income tax.²⁴

Take note that Makati and Davao issue LBT assessments for material amounts. To illustrate, the amounts involved in the court cases covered by this study are shown below —

Table 1.1. Materiality of the Assessments

<i>Entity</i>	<i>Docket No.</i>	<i>Period</i>	<i>Amount</i> ²⁵
AP Holdings	CTA AC No. 129	Six months only	₱1,400,000
AP Holdings	CTA AC No. 156	Six months only	₱700,000
ASC Investors, Inc.	CTA AC No. 134	Six months only	₱5,000,000
ASC Investors, Inc.	CTA AC No. 157	Six months only	₱3,500,000
CEMCO Holdings, Inc.	CTA AC No. 166	Four years	₱19,100,000
Fernandez Holdings, Inc.	CTA AC No. 133	Six months only	₱800,000
Fernandez Holdings, Inc.	CTA AC No. 162	Six months only	₱400,000
First Meridian Development, Inc.	CTA AC No. 132	Six months only	₱900,000
First Meridian Development, Inc.	CTA AC No. 159	Six months only	₱500,000
Metro Pacific Investments Corporation	CTA AC No. 143	One year only	₱4,500,000
Metro Pacific Resources, Inc.	CTA AC No. 174	One year only	₱6,900,000

24. See NAT'L INTERNAL REVENUE CODE, § 24 (B) (2).

25. The amounts have been rounded off to the nearest hundred-thousands.

<i>Entity</i>	<i>Docket No.</i>	<i>Period</i>	<i>Amount²⁵</i>
Michigan Holdings, Inc.	CTA AC No. 99	One year only	₱700,000
Randy Allied Ventures, Inc.	CTA AC No. 131	Six months only	₱1,000,000
Randy Allied Ventures, Inc.	CTA AC No. 160	Six months only	₱500,000
Rock Steel Resources, Inc.	CTA AC No. 139	Six months only	₱2,400,000
Rock Steel Resources, Inc.	CTA AC No. 158	Six months only	₱1,200,000
San Miguel Officers Corps, Inc.	CTA AC No. 136	Six months only	₱2,200,000
San Miguel Officers Corps, Inc.	CTA AC No. 161	Six months only	₱1,100,000
Soriano Share, Inc.	CTA AC No. 141	Six months only	₱1,200,000
Soriano Share, Inc.	CTA AC No. 151	Six months only	₱600,000
Te Deum Resources, Inc.	CTA AC No. 142	Six months only	₱2,400,000
Te Deum Resources, Inc.	CTA AC No. 150	Six months only	₱1,200,000
Toda Holdings, Inc.	CTA AC No. 138	Six months only	₱3,100,000
Toda Holdings, Inc.	CTA AC No. 152	Six months only	₱1,600,000
Valhalla Properties Ltd, Inc.	CTA AC No. 137	Six months only	₱1,300,000
Valhalla Properties Ltd, Inc.	CTA AC No. 154	Six months only	₱700,000

In an opinion issued by the Bureau of Local Government Finance (BLGF), the agency tasked with supervision over local government operations on assessment and treasury,²⁶ the BLGF opined that a city treasurer has no other option but to impose tax on holding companies if the city ordinance explicitly provides so.²⁷ While the assessments are subject to judicial review, the Court of Tax Appeals (CTA), a court devoted to the exclusive study of tax problems,²⁸ rendered conflicting decisions on the matter. To illustrate, the conflicting decisions concerning the same entity are tabulated below —

Table 1.2. Conflicting Decisions Concerning the Same Entity

<i>Entity</i>	<i>Docket No.</i>	<i>Ruling</i>
AP Holdings	CTA AC No. 156	Taxable
AP Holdings	CTA AC No. 129	Not Taxable
ASC Investors, Inc.	CTA AC No. 134	Taxable
ASC Investors, Inc.	CTA AC No. 157	Not Taxable
Fernandez Holdings, Inc.	CTA AC No. 133	Taxable
Fernandez Holdings, Inc.	CTA AC No. 162	Not Taxable
First Meridian Development, Inc.	CTA AC No. 159	Taxable
First Meridian Development, Inc.	CTA AC No. 132	Not Taxable
Rock Steel Resources, Inc.	CTA AC No. 139	Taxable
Rock Steel Resources, Inc.	CTA AC No. 158	Not Taxable
Soriano Share, Inc.	CTA AC No. 141	Taxable

26. Reorganizing the Ministry of Finance [Reorganization Act of the Ministry of Finance], Executive Order No. 127, § 43 (b) (1987).

27. Bureau of Local Government Finance, BLGF Opinion, Series of 2013 (addressed to Atty. Garth F. Castañeda) (July 5, 2013).

28. Commissioner of Internal Revenue v. Court of Appeals, G.R. No. 115712, 303 SCRA 614, 615 (1999) (citing Comm’r. of Internal Revenue v. Wander Philippines, Inc., G.R. No. L-68375, 160 SCRA 579, 579 (1988)).

<i>Entity</i>	<i>Docket No.</i>	<i>Ruling</i>
Soriano Share, Inc.	CTA AC No. 151	Not Taxable
Te Deum Resources, Inc.	CTA AC No. 150	Taxable
Te Deum Resources, Inc.	CTA AC No. 142	Not Taxable
Valhalla Properties Ltd, Inc.	CTA AC No. 154	Taxable
Valhalla Properties Ltd, Inc.	CTA AC No. 137	Not Taxable

The rulings of the CTA pertaining to the same entity should have been consistent with each other since it is absurd for a taxpayer's dividend income to be taxable and tax-exempt at the same time.

In one of the cases that reached the Supreme Court, the Court ordered the refund of the tax paid in its decision in 2020.²⁹ Note that the holding company paid the tax in 2011,³⁰ nine years prior to the time the Supreme Court rendered its decision. In that case, while the Court eventually granted a refund, it did not award interest.³¹ Hence, the taxpayer was not compensated with the time value of money for losing millions in working capital for nine years.

On a practical note, taxpayers are forced to pay assessments since city governments will withhold the taxpayer's business permit if the taxpayer does not pay its assessment.³² If the taxpayer does not pay the assessment, the business will risk being shut down by the LGU for not having the requisite business permit to operate within the LGU's territorial jurisdiction.³³

29. *City of Davao v. AP Holdings, Inc.*, G.R. No. 245887, Jan. 22, 2020, at 8, available at <https://sc.judiciary.gov.ph/11745> (last accessed May 11, 2021).

30. *Id.* at 3.

31. *Id.*

32. See Bureau of Local Government Finance, Updated Reminders in the Assessment of the Local Business Tax (LBT), Registration and Renewal of Business Permits and Licenses, and the Imposition of Local Taxes, Fees and Charges, Memorandum Circular No. 001-2020 [BLGF Memo. Circ. No. 001-2020], at 1 (Jan. 2, 2020).

33. *Id.*

B. Statement of the Problem

The levy of taxes on intercorporate dividends violates the tax exemption under Section 27 (D) (4) of the NIRC. Makati and Davao are two of the violators of the said provision.

Makati, through its Revised Makati Revenue Code,³⁴ taxes the gross receipts of owners of financial institutions and owners of establishments rendering services,³⁵ and holdings companies.³⁶ Section 3A.02 (h) of the Revised Makati Revenue Code applies to owners of financial institutions or service establishments,³⁷ while Section 3A.02 (p) of the Revised Makati Revenue Code applies to holding companies.³⁸

Davao, meanwhile, imposes LBT on holding companies by treating them as financial institutions.³⁹ In that regard, note that the LGC allows LGUs to impose income tax on financial institutions, and LBT on the gross receipts of financial institutions pursuant to Sections 133 (a)⁴⁰ and 143 (f)⁴¹ of the LGC, respectively.

34. *Sangguniang Panlungsod* of the City of Makati, An Ordinance Adopting the Revised Makati Revenue Code [The Revised Makati Revenue Code], Makati City Ordinance No. 025-A-04 (Oct. 27, 2005).

35. *Id.* ch. III, art. A, § 3A.02 (h).

36. *Id.* ch. III, art. A, § 3A.02 (p).

37. *Id.* ch. III, art. A, § 3A.02 (h).

38. *Id.* ch. III, art. A, § 3A.02 (p).

39. *See Sangguniang Panlungsod* of the City of Davao, An Ordinance Approving the 2005 Revenue Code of the City of Davao, as Amended [The 2005 Revenue Code of the City of Davao], Davao City Ordinance No. 158-05, art. 10, § 69 (f) (Nov. 16, 2005).

40. LOCAL GOV'T CODE, § 133 (a). The provision states —

[Section] 133. *Common Limitations on the Taxing Powers of Local Government Units.* — Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

- (1) Income tax, except when levied on banks and other financial institutions[.]

Id.

41. *Id.* § 143 (f). The provision states —

[Section] 143. *Tax on Business.* — The municipality may impose taxes on the following businesses:

Davao’s classification of holding companies as financial institutions overlooks the fact that The 2005 Revenue Code of the City of Davao does not define “banks and other financial institutions.”⁴² The LGC likewise does not define “banks and other financial institutions.”⁴³ The LGC merely enumerates businesses it considers as such.⁴⁴

The courts, in resolving what are considered “banks and other financial institutions,” refer to Bureau of Internal Revenue (BIR) and Bangko Sentral ng Pilipinas (BSP) issuances.⁴⁵

...

- (2) On banks and other financial institutions, at a rate not exceeding ... [50%] of one percent [] on the gross receipts of the preceding calendar year derived from interest, commissions[,] and discounts from lending activities, income from financial leasing, dividends, rentals on property[,] and profit from exchange or sale of property, insurance premium.

Id.

42. *First Meridian Development, Inc. v. City of Davao*, CTA AC No. 159, Nov. 29, 2016, at 6, *available at* <http://cta.judiciary.gov.ph/home/download/abd09c42ed86e6afdc33cf2d4bofb837> (last accessed May 11, 2021) & *Soriano Shares, Inc. v. City of Davao*, CTA AC No. 141, July 22, 2016, at 14, *available at* <http://cta.judiciary.gov.ph/home/download/cbbc5c868b23a79473908cb578916doo> (last accessed May 11, 2021).
43. *ASC Investors, Inc. v. City of Davao*, CTA AC No. 134, July 14, 2016, at 4, *available at* <http://cta.judiciary.gov.ph/home/download/ee0a603fc8395c4393f2cd6064a2c400> (last accessed May 11, 2021); *First Meridian Development, Inc.*, CTA AC No. 159, at 6; *Rock Steel Resources, Inc. v. City of Davao*, CTA AC No. 139, Aug. 11, 2016, at 12, *available at* <http://cta.judiciary.gov.ph/home/download/af68cc64e39520394acbc3fec95ec149> (last accessed May 11, 2021); *Soriano Shares, Inc.*, CTA AC No. 141, at 14; *Te Deum Resources, Inc. v. City of Davao*, CTA AC No. 150, Feb. 10, 2017, at 12, *available at* <http://cta.judiciary.gov.ph/home/download/7e5eae3doofae4b581b92145ce96770> (last accessed May 11, 2021); & *Valhalla Properties, Limited, Inc. v. City of Davao*, CTA AC No. 154, Mar. 2, 2017, at 12, *available at* <http://cta.judiciary.gov.ph/home/download/94783e9b5497d64ec1a90598564998c7> (last accessed May 11, 2021).

44. *Id.*

45. *Id.*

The BIR defines a “financial institution” as an entity whose principal functions include the lending, investing, or placement of funds,⁴⁶ while the BSP defines the same term as an entity performing any of a financial intermediary’s functions such as holding assets consisting principally shares of stock.⁴⁷ Both definitions are confusingly similar to the definition of a “holding company,” which is defined as a business organization that controls other entities by owning shares and collecting dividends from the same.⁴⁸ In fact, every corporation has the power to purchase and hold equity securities of other corporations.⁴⁹ Consequently, every corporation is likewise authorized to own shares and earn dividends from the same.⁵⁰ Non-holding companies, however, do not perform those acts as their primary function.

The lack of a clear standard in differentiating holding companies from financial institutions allows holding companies to be classified as financial institutions for purposes of taxation. When LGUs classify an entity as a financial institution, however, they encroach upon the BSP’s exclusive power to determine whether or not an entity is bank or a financial institution.⁵¹ The BSP, not LGUs, is the proper agency to determine whether a taxpayer is a financial institution.

When a holding company is improperly taxed by the LGU as a financial institution, the holding company may protest the assessment by filing a case in court.⁵² At the CTA level, however, the Justices were conflicted on the issue. The broad definition of financial institutions caused separate CTA divisions to

46. Bureau of Internal Revenue, Implementing Certain Provisions of Republic Act No. 9238, Re-Imposing the Gross Receipts Tax on Bank and Non-Bank Financial Intermediaries Performing Quasi-Banking Functions and Other Non-Bank Financial Intermediaries Beginning January 1, 2004, Revenue Regulation No. 9-2004 [BIR RR No. 9-2004], § 2.3 (June 21, 2004).

47. Manual of Regulations for Non-Bank Financial Institutions: Volume 1, § 4101Q.1.

48. See Black’s Law Dictionary, *supra* note 11 & BIR RR No. 2-2001, § 7, para. 2.

49. An Act Providing for the Revised Corporation Code of the Philippines [REV. CORP. CODE], Republic Act No. 11232, § 41 (2019).

50. *Id.*

51. An Act Providing for the Regulation of the Organization and Operations of Banks, Quasi-Banks, Trust Entities and for Other Purposes [The General Banking Law of 2000], Republic Act No. 8791, § 4 (2000).

52. LOCAL GOV’T CODE, § 195.

arrive at different conclusions with regard to the same entity.⁵³ Thus, the broad definition of financial institutions also causes problems for the courts.

On the one hand, there is an unjust levy of taxes when taxpayers are misclassified as financial institutions. On the other hand, there is also injustice when the actual financial institutions are not classified as such. Assuming that the taxpayer is actually a financial institution, the government will lose revenue if it fails to classify the taxpayer as a financial institution.

The broad and overlapping definitions of financial institutions and holding companies causes injustice to both the taxpayer and the government.

II. POWER OF TAXATION: NATIONAL GOVERNMENT VIS-À-VIS LOCAL GOVERNMENT

The power of taxation is a sovereign attribute inherently possessed by the State.⁵⁴ The national government's inherent taxing authority is codified under the NIRC.⁵⁵

LGUs, however, do not possess the inherent power to tax.⁵⁶ For LGUs to validly impose taxes, there must be a law conferring such power to them.⁵⁷

The LGUs have been empowered by the Constitution to generate their own revenues, subject to the guidelines and limitations that Congress may provide.⁵⁸ The lawmakers passed the LGC to allow LGUs to develop into self-reliant communities through the conferment of local autonomy.⁵⁹ The LGC granted LGUs the power to impose different kinds of taxes such as LBT, real property tax, and local transfer tax. The LGC, however, also limited an LGU's power to tax.⁶⁰ The limitations on an LGU's taxing power are

53. See Table 1.2 of this Note.

54. *Pelizloy Realty Corporation v. Province of Benguet*, G.R. No. 183137, 695 SCRA 491, 500 (2013) (citing *Reyes v. Almanzor*, G.R. No. 49839, 196 SCRA 322, 327 (1991)).

55. See generally NAT'L INTERNAL REVENUE CODE.

56. *Pelizloy*, 695 SCRA at 500 (citing *Icard v. City Council of Baguio*, 83 Phil. 870, 873 (1949) & *City of Iloilo v. Villanueva*, 105 Phil. 337, 343 (1959)).

57. *Id.*

58. PHIL. CONST. art. X, § 5.

59. LOCAL GOV'T CODE, § 2 (a).

60. See *id.* § 133.

enumerated under Section 133 of the LGC.⁶¹ The imposition of income tax, except on banks and other financial institutions, is one of the limitations on an LGU's taxing power.⁶² Further, should there be any ambiguity in an LGU's authority to tax, the ambiguity is resolved in favor of the taxpayer.⁶³

The NIRC and the LGC are the two major laws studied in this Note. The NIRC governs the taxes imposed by the national government through the BIR, while the LGC covers the taxes imposed by LGUs.⁶⁴ The BIR's collections go to the national government and are allotted to different departments, bureaus, agencies, LGUs, and other government offices, while the taxes collected by LGUs accrue exclusively to the use and disposition of the LGU concerned.⁶⁵

The key for an LGU to validly levy taxes is to be granted such power in the first place.⁶⁶ The LGU must then ensure that its levy of taxes does not fall within the limitations of its taxing power.⁶⁷ LGUs must tread lightly within its taxing authority because, as previously mentioned, any ambiguity against its taxing power must be resolved in favor of the taxpayer.⁶⁸

III. OPINIONS OF THE BUREAU OF LOCAL GOVERNMENT FINANCE

Presidential Decree No. 509⁶⁹ was enacted in 1974 for the purpose of aiding the Secretary of Finance in reviewing ordinances, handling, and deciding cases

61. LOCAL GOV'T CODE, § 133.

62. *Id.* § 133 (a).

63. *Pelizloy*, 695 SCRA at 500 (citing *Cu Unjieng v. Patstone*, 42 Phil. 818, 830 (1922); *Pacific Commercial Co. v. Romualdez*, 49 Phil. 917, 924 (1927); *Batangas Transportation Co. v. Provincial Treasurer of Batangas*, 52 Phil. 190, 196 (1928); *Baldwin v. City Council*, 53 Ala. 437 (1875) (U.S.); *State v. Smith*, 31 Iowa 493 (1871) (U.S.); & 38 AM. JUR. at 68, 72-73)).

64. *See* NAT'L INTERNAL REVENUE CODE & LOCAL GOV'T CODE.

65. LOCAL GOV'T CODE, §§ 284-285.

66. *See Pelizloy*, 695 SCRA at 500.

67. *See* LOCAL GOV'T CODE, § 133.

68. *Pelizloy*, 695 SCRA at 500 (citing *Cu Unjieng*, 42 Phil. at 830; *Pacific Commercial Co.*, 49 Phil. at 924; *Batangas Transportation Co.*, 52 Phil. at 196; *Baldwin*, 53 Ala. at 437; *Smith* 31 Iowa at 493; & 38 AM. JUR. at 68, 72-73)).

69. Creating a Local Tax Ordinance Advisory Board in the Office of the Secretary of Finance, Defining Its Functions, Prescribing Certain Guidelines for the Staffing Thereof and Appropriating Funds Therefor, Further Amending for the Purpose

of taxpayer complaints or protests; answering requests for advice; and interpreting certain legal provisions, and other related matters.⁷⁰ It was then called the Local Tax Ordinance Advisory Board (LTOAB).⁷¹ Presidential Decree No. 1266⁷² restructured the LTOAB into the Office of the Local Government Finance.⁷³ The same issuance also established regional offices to promote regional development.⁷⁴ In 1987, Executive Order No. 127⁷⁵ reorganized the office into a bureau, the BLGF.⁷⁶

The BLGF is tasked to perform, among others, the following functions:

- (1) Aid local governments in formulating and implementing revenue administration policies;⁷⁷
- (2) Provide technical and administrative coordination and supervision over local government operations on assessment and treasury;⁷⁸ and
- (3) Provide consultation and technical assistance to local governments and the general public on matters of local taxation, real property tax, and other related matters.⁷⁹

In accordance with the BLGF's functions, it has previously released opinions regarding the taxability of holding companies' dividend income.⁸⁰

Presidential Decree No. 231, as Amended by Presidential Decree No. 426, Presidential Decree No. 509 (1974).

70. *Id.* § 1.

71. *Id.* §§ 1-2.

72. Providing for the Establishment of Regional Offices of the Department of Finance and Other Related Purposes, Presidential Decree No. 1266 (1977).

73. *Id.* § 11.

74. *Id.* whereas cl. para. 4.

75. Reorganizing the Ministry of Finance [Reorganization Act of the Ministry of Finance], Executive Order No. 127 (1987).

76. *Id.* § 2.

77. *Id.* § 43 (a).

78. *Id.* § 43 (b).

79. *Id.* § 43 (d).

80. See Bureau of Local Government Finance, BLGF Opinion, Series of 2001 (in reply to a letter dated March 23, 2000, from Messrs. C.P. Noel and E.P. Guevara of SGV & Co.) (Jan. 17, 2001).

In an opinion dated 17 January 2001, the BLGF recognized that it was the first time the City Treasurer of Makati assessed LBT on a holding company pursuant to Section 143 (f) of the LGC.⁸¹ Section 143 (f) of the LGC imposes LBT on banks and other financial institutions with regard to gross receipts from interest, dividends, and profit from exchange or sale of property, among others.⁸² The BLGF opined that engaging in Section 143 (f) activities neither renders a taxpayer taxable as a “bank and other financial institution” nor precludes taxpayers other than “banks and other financial institutions” from engaging in Section 143 (f) activities.⁸³ Hence, it is essential that the taxpayer is actually a “bank and other financial institution” for Section 143 (f) of the LGC to apply.

In the same opinion dated 17 January 2001, the BLGF also discussed Section 3A.02 (p) of the Revised Makati Revenue Code, which expressly imposes LBT on a holding company’s gross receipts.⁸⁴ Makati enacted Section 3A.02 (p) through Section 143 (h) of the LGC, which provides that an LGU’s local legislative body (*Sanggunian*) may impose LBT on any business “not otherwise specified in the preceding paragraphs,” that the *Sanggunian* deems proper to tax.⁸⁵ The BLGF clarified that a taxpayer legally engaged in Section 143 (f) activities, other than a “bank and other financial institution,” can no longer be taxed through Section 143 (h) because the latter is not a “catch-all” provision.⁸⁶ The BLGF emphasized that an LGU may only impose a tax pursuant to Section 143 (h) of the LGC on any business “not otherwise specified in the preceding paragraphs.”⁸⁷ Since dividend income is already part of Section 143 (f) activities, the *Sanggunian* cannot enact an ordinance subjecting Section 143 (f) activities to LBT.⁸⁸

81. *Id.*

82. LOCAL GOV'T CODE, § 143 (f). (collectively referred to as “Section 143 (f) activities”).

83. Bureau of Local Government Finance, BLGF Opinion, s. 2001.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

In a BLGF opinion dated 23 September 2009, the BLGF reiterated its position that a holding company's dividend income is not subject to LBT.⁸⁹ The BLGF explained that the laws must be “harmonized with other laws on the same subject matter (*pari materia*) to form a complete, coherent, and intelligible system of [laws].”⁹⁰ According to the BLGF, it is clear that any tax imposed on dividends assumes the nature of income tax unless it is imposed on banks and other financial institutions.⁹¹ To recall, Section 133 (a) of the LGC prohibits LGUs from levying income tax, unless it is levied on banks and other financial institutions.⁹² The BLGF explained that LGUs are permitted to impose LBT on the dividend income of banks and other financial institutions because their gross receipts from dividends are derived in the ordinary course of their business, and the same cannot be said for non-banks and non-financial institutions.⁹³

While the BLGF ultimately concluded that a holding company's dividend income is not subject to LBT,⁹⁴ it must be noted that holding companies receive dividends in the ordinary course of business too — just like banks and other financial institutions — since a holding company's operations are premised on holding shares and earning from the same.⁹⁵ Hence, holding companies and banks or financial institutions are similar with regard to receiving dividends as their primary source of income.

In a BLGF opinion dated 5 July 2013,⁹⁶ contrary to the opinion dated 1 January 2001 and other previous opinions, the BLGF did not prohibit the City Treasurer from imposing LBT on a holding company's dividend income.⁹⁷ The BLGF recognized that Section 3A.02 (p) of the Revised Makati Revenue Code subjects a holding company's dividend income to LBT.⁹⁸ The BLGF

89. Bureau of Local Government Finance, BLGF Opinion, Series of 2009 (addressed to Alsons Consolidated Resources, Inc.), at 2-3 (Sept. 23, 2009).

90. *Id.* at 3.

91. *Id.* at 3-4.

92. LOCAL GOV'T CODE, § 133 (a).

93. BLGF Opinion, s. 2009.

94. *Id.*

95. See BIR RR No. 2-2001, § 7, para. 2.

96. Bureau of Local Government Finance, BLGF Opinion, Series of 2013 (addressed to Atty. Garth F. Castañeda) (July 5, 2013).

97. *Id.*

98. *Id.*

went further to explain that the Makati City Treasurer is bound to impose LBT on holding companies to avoid prosecution for remission and/or dereliction of duty for failure to implement the Revised Makati Revenue Code.⁹⁹ According to the BLGF, unless Section 3A.02 (p) of the Revised Makati Revenue Code is declared void or unconstitutional, the present issue will persist.¹⁰⁰ The BLGF explained that holding companies are constrained to either agree to pay the assessment or file a protest pursuant to Section 195 of the LGC.¹⁰¹ Hence, the BLGF opinion dated 5 July 2013 is inconsistent with its earlier opinions that opined against levying taxes on a holding company's dividend income.

In 2017, around the time the CTA was deciding cases regarding the taxability of holding companies' dividend income, the BLGF issued a memorandum circular addressed to LGU Treasurers, among others, to remind them that passive income such as dividends is not subject to LBT.¹⁰² The same provision was still present in the BLGF's reminder to LGU treasurers for 2020.¹⁰³

In sum, the BLGF permitted the Makati City Treasurer to assess LBT on a holding company's dividend income in its opinion dated 5 July 2013, but was firm in taking the position that the dividends are not subject to tax in other issuances. The contradicting issuances show a clear gap in the law on the subject of this Note.

While the issuance of opinions and technical assistance are within the BLGF's functions,¹⁰⁴ the findings of the BLGF are given little weight by the courts.¹⁰⁵ Hence, the decisions of the judiciary will be examined after the next Chapter.

99. *Id.*

100. *Id.*

101. *Id.*

102. Bureau of Local Government Finance, Reminders in the Assessment of the Local Business Tax (LBT), Registration and Renewal of Business Permits and Licenses and Payment of Community Tax, Memorandum Circular No. 01-001-2017 [BLGF Memo. Circ. No. 01-001-2017], at 1-2 (Jan. 5, 2017).

103. BLGF Memo. Circ. No. 001-2020, at 1.

104. Reorganization Act of the Ministry of Finance, § 43.

105. *Smart Communications v. City of Davao*, G.R. No. 155491, 565 SCRA 237, 253 (2008).

IV. FINANCIAL INSTITUTIONS AS DEFINED BY THE BANGKO SENTRAL NG
PILIPINAS

The BSP is the agency vested with the authority to supervise and regulate financial institutions.¹⁰⁶ The BSP's monetary board is vested with the power to determine whether or not an entity is a financial institution.¹⁰⁷ In fact, the Securities and Exchange Commission (SEC) will not approve the Articles of Incorporation (AOI) of a financial institution without a favorable recommendation from the BSP.¹⁰⁸ Hence, the BSP is the appropriate agency to determine if an entity is a financial institution.¹⁰⁹

LGUs tax the dividend income of holding companies by classifying them as financial institutions pursuant to Section 143 (f) of the LGC.¹¹⁰ Since the LGC does not define financial institutions, reference will be made to BSP issuances for a definition. According to the BSP Manual of Regulations for Non-Bank Financial Institutions (BSP Manual), a financial institution or intermediary is defined, thus —

Section 4101Q.1 Financial intermediaries

Financial intermediaries *shall mean persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them either for their own account or for the account of others.*

...

To be considered a financial intermediary, a person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis:

- (a) Receive funds from one (1) group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities;
- (b) Use principally the funds received for acquiring various types of debt or equity securities;
- (c) Borrow against, or lend on, or buy or sell debt or equity securities;

106. The New Central Bank Act, Republic Act No. 7653, § 3 (1993).

107. The General Banking Law of 2000, § 4.

108. See REV. CORP. CODE, § 16.

109. *Id.* § 183, para. 2.

110. LOCAL GOV'T CODE, § 143 (f).

- (d) Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers; [and]
- (e) Realize regular income in the nature of, but need not be limited to, interest, discounts, capital gains, underwriting fees, guarantees, fees, commissions, and service fees, principally from transactions in debt or equity securities or by being an intermediary between suppliers and users of funds[.]

Non-banking financial intermediaries shall include the following:

- (a) *A person or entity licensed and/or registered with any government regulatory body as a non-bank financial intermediary, such as investment house [], investment company, financing company, securities dealer/broker, lending investor [], pawnshop, money broker, fund manager, cooperative, insurance company, nonstock savings and loan association, and building and loan association.*
- (b) *A person or entity which holds itself out as a non-banking financial intermediary, such as by the use of a business name, which includes the term financing, finance, investment, lending[,] and/or any word/phrase of similar import which connotes financial intermediation, or an entity which advertises itself as a financial intermediary and is engaged in the function(s) where financial intermediation is implied.*
- (c) *A person or entity performing any of the functions enumerated in Items 'a' to 'e' of this Subsection.¹¹¹*

Looking at the definition above, a person can easily confuse a holding company with a financial institution because both perform essentially the same functions. In fact, the enumeration of activities above is broad enough to cover activities naturally undertaken by holding companies. To illustrate, Sections 4101Q.1 (a) to 4101Q.1 (d) above provide that financial institutions perform the functions of acquiring equity securities, holding on to them, and earning from them.¹¹² The same is true for holding companies since holding companies essentially acquire, hold, and earn from equity securities.¹¹³ Further, Section 4101Q.1 (e) above states that financial institutions realize

111. Manual of Regulations for Non-Bank Financial Institutions: Volume 1, § 4101Q.1 (emphases supplied).

112. *Id.* § 4101Q.1 (a)-(d).

113. See BIR RR No. 2-2001, § 7, para. 2.

regular income in the nature of capital gains.¹¹⁴ Holding companies likewise earn capital gains since they primarily hold shares.¹¹⁵

As for the difference between a financial institution and a holding company, the former is licensed or registered with the government as a financial institution and holds itself out as such,¹¹⁶ while the latter is not licensed or registered and does not hold itself out as a financial institution.¹¹⁷

The broad definition of financial institutions under the BSP Manual allows LGUs to classify holding companies as financial institutions.

V. COURT OF TAX APPEALS: CASE LAW ANALYSIS

Congress created the CTA on 16 June 1954 pursuant to Republic Act No. 1125.¹¹⁸ Congress granted the CTA exclusive appellate jurisdiction over the decisions of the: (a) Collector of Internal Revenue, (b) Commissioner of Customs, and (c) Provincial or City Boards of Assessment Appeals.¹¹⁹ The CTA's limited jurisdiction was expanded in 2004 upon the passage of Republic Act No. 9282¹²⁰ (R.A. No. 9282) by including local tax cases.¹²¹ R.A. No. 9282 granted the CTA exclusive appellate jurisdiction over Regional Trial Court decisions on local tax cases, including appeals regarding LBT assessments issued against the dividend income of holding companies¹²²

114. Manual of Regulations for Non-Bank Financial Institutions: Volume 1, § 4101Q.1 (e).

115. See BIR RR No. 2-2001, § 7, para. 2.

116. Manual of Regulations for Non-Bank Financial Institutions: Volume 1, § 4101Q.1 (1)-(2).

117. See Black's Law Dictionary, *supra* note 11.

118. An Act Creating the Court of Tax Appeals, Republic Act No. 1125 (1954).

119. *Id.* § 7 (1)-(3).

120. An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, Republic Act No. 9282, § 7 (2004).

121. *Id.* § 7.

122. *Id.* § 7 (a) (3).

The CTA, despite being an expert in the field of taxation and exclusively devoted to the study of tax problems,¹²³ issued conflicting decisions on the taxability of a holding company's dividend income.¹²⁴ The conflicting decisions showed that there was confusion with regard to the taxability of a holding company's dividend income. A survey of the cases by division will show that the first and third divisions have consistently ruled that the dividend income of holdings companies is not taxable, while the second division consistently ruled that the same dividend income is taxable, as follows —

Table 1.3 CTA Cases by Division

<i>Division</i>	<i>Entity</i>	<i>Docket No.</i>	<i>Amount</i> ¹²⁵	<i>Ruling</i>
First	CEMCO Holdings, Inc.	CTA AC No. 166	₱19,100,000	Not Taxable
First	First Meridian Development, Inc.	CTA AC No. 132	₱900,000	Not Taxable
First	Randy Allied Ventures, Inc.	CTA AC No. 160	₱500,000	Not Taxable
First	San Miguel Officers Corps, Inc.	CTA AC No. 161	₱1,100,000	Not Taxable
First	Toda Holdings, Inc.	CTA AC No. 138	₱3,100,000	Not Taxable
<i>Second</i>	<i>AP Holdings</i>	<i>CTA AC No. 156</i>	<i>₱700,000</i>	<i>Taxable</i>
<i>Second</i>	<i>ASC Investors, Inc.</i>	<i>CTA AC No. 134</i>	<i>₱5,000,000</i>	<i>Taxable</i>
<i>Second</i>	<i>Fernandez Holdings, Inc.</i>	<i>CTA AC No. 133</i>	<i>₱800,000</i>	<i>Taxable</i>
<i>Second</i>	<i>First Meridian Development, Inc.</i>	<i>CTA AC No. 159</i>	<i>₱500,000</i>	<i>Taxable</i>
<i>Second</i>	<i>Michigan Holdings, Inc.</i>	<i>CTA AC No. 99</i>	<i>₱700,000</i>	<i>Taxable</i>

123. *Commissioner of Internal Revenue*, 303 SCRA at 615.

124. See Table 1.2. of this Note.

125. The amount has been rounded off to the nearest hundred-thousands.

<i>Division</i>	<i>Entity</i>	<i>Docket No.</i>	<i>Amount</i> ¹²⁵	<i>Ruling</i>
<i>Second</i>	<i>Rock Steel Resources, Inc.</i>	<i>CTA AC No. 139</i>	<i>₱2,400,000</i>	<i>Taxable</i>
<i>Second</i>	<i>Soriano Share, Inc.</i>	<i>CTA AC No. 141</i>	<i>₱1,200,000</i>	<i>Taxable</i>
<i>Second</i>	<i>Te Deum Resources, Inc.</i>	<i>CTA AC No. 150</i>	<i>₱1,200,000</i>	<i>Taxable</i>
<i>Second</i>	<i>Valhalla Properties Ltd, Inc.</i>	<i>CTA AC No. 154</i>	<i>₱700,000</i>	<i>Taxable</i>
<i>Third</i>	<i>AP Holdings</i>	<i>CTA AC No. 129</i>	<i>₱1,400,000</i>	<i>Not Taxable</i>
<i>Third</i>	<i>ASC Investors, Inc.</i>	<i>CTA AC No. 157</i>	<i>₱3,500,000</i>	<i>Not Taxable</i>
<i>Third</i>	<i>Fernandez Holdings, Inc.</i>	<i>CTA AC No. 162</i>	<i>₱400,000</i>	<i>Not Taxable</i>
<i>Third</i>	<i>Metro Pacific Investments Corporation</i>	<i>CTA AC No. 143</i>	<i>₱4,500,000</i>	<i>Not Taxable</i>
<i>Third</i>	<i>Metro Pacific Resources, Inc.</i>	<i>CTA AC No. 174</i>	<i>₱6,900,000</i>	<i>Not Taxable</i>
<i>Third</i>	<i>Randy Allied Ventures, Inc.</i>	<i>CTA AC No. 131</i>	<i>₱1,000,000</i>	<i>Not Taxable</i>
<i>Third</i>	<i>Rock Steel Resources, Inc.</i>	<i>CTA AC No. 158</i>	<i>₱1,200,000</i>	<i>Not Taxable</i>
<i>Third</i>	<i>San Miguel Officers Corps, Inc.</i>	<i>CTA AC No. 136</i>	<i>₱2,200,000</i>	<i>Not Taxable</i>
<i>Third</i>	<i>Soriano Share, Inc.</i>	<i>CTA AC No. 151</i>	<i>₱600,000</i>	<i>Not Taxable</i>
<i>Third</i>	<i>Te Deum Resources, Inc.</i>	<i>CTA AC No. 142</i>	<i>₱2,400,000</i>	<i>Not Taxable</i>
<i>Third</i>	<i>Toda Holdings, Inc.</i>	<i>CTA AC No. 152</i>	<i>₱1,600,000</i>	<i>Not Taxable</i>

<i>Division</i>	<i>Entity</i>	<i>Docket No.</i>	<i>Amount</i> ¹²⁵	<i>Ruling</i>
Third	Valhalla Properties Ltd, Inc.	CTA AC No. 137	₱1,300,000.	Not Taxable

While the first and third divisions ultimately ruled that the dividend income of holding companies is not taxable, the two divisions used different legal bases in arriving at their conclusions. Hence, the legal bases of each division will be examined in this Note.

A. First Division

The CTA-First Division has consistently ruled in favor of holding companies.¹²⁶ In the CTA-First Division's case involving Makati City's LBT assessment against CEMCO Holdings, Inc.,¹²⁷ the CTA laid the premise that LGUs cannot levy income tax, except when levied on banks and other financial institutions.¹²⁸ The CTA referred to BIR Revenue Regulations No. 12-2003 to define non-bank financial institutions as "entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others."¹²⁹ The court said that a financial institution performs the aforementioned functions "on a regular and recurring basis, and not on an isolated basis."¹³⁰ The court then examined the taxpayer's AOI to determine whether the taxpayer may perform functions akin to a financial institution on

126. See Table 1.3 of this Note.

127. *The City of Makati and the City Treasurer of Makati v. CEMCO Holdings, Inc.*, CTA AC No. 166, Jan. 6, 2017, available at <http://cta.judiciary.gov.ph/home/download/782d99d6ab1beab2f321ccc62dd61c8c> (last accessed May 11, 2021).

128. *Id.* at 8.

129. *Id.* at 6 (citing Bureau of Internal Revenue, Amending Certain Provisions of Revenue Regulation No. 18-99 Implementing Section 5 of Republic Act No. 8424, Otherwise Known as the Tax Reform Act of 1997, and Other Pertinent Provisions of the National Internal Revenue Code of 1997 Imposing VAT on Services of Banks, Non-Bank Financial Intermediaries and Finance Companies, Beginning January 1, 2003 Pursuant to Section 1 of Republic Act No. 9010, Revenue Regulations No. 12-2003 [BIR RR No. 12-2003], at 2 (Jan. 2, 2003)).

130. *CEMCO Holdings, Inc.*, CTA AC No. 166, at 6.

a regular and recurring basis.¹³¹ Prior to making its determination, the court stressed that the primary purpose stated in the AOI only shows what the taxpayers are authorized to do, but it does not prove what business the taxpayer is actually engaged in.¹³² After examining the taxpayer's AOI, the court concluded that the taxpayer's AOI is broad enough to allow for the acquisition of shares of stock and "to receive, collect, and dispose of the interest, dividends, and income arising from such property[.]"¹³³ According to the court, engaging in business as a financial institution is not the taxpayer's primary purpose according to its AOI, and receiving dividend income is only incidental to its purpose.¹³⁴ The court ruled that the taxpayer's identity is more in line with the definition of a holding company under an SEC opinion, as follows —

A holding company has been defined by the Commission in several opinions. A holding company has been aptly defined as 'a corporation organized to hold the stock of another or other corporations. Its essential feature is that it holds stock.[.]' The term 'holding company' is equivalent to a parent corporation, having such an interest in another corporation, or power of control, that it may elect its directors and influence its management. A parent or holding company is one that controls another as a subsidiary or affiliate by the power to elect its management. Affiliates are those concerns that are subject to common control and operated as part of a system.¹³⁵

The CTA-First Division also referred to the CTA *en banc's* ruling in *Michigan Holdings, Inc. v. The City Treasurer of Makati (Michigan)*.¹³⁶ The *Michigan* case was the first CTA *en banc* case that resolved the issue on the taxability of a holding company's dividend income.¹³⁷ In that case, the CTA *en banc* explained that if a holding company were a bank or financial institution, the Revised Makati Revenue Code would have simply taxed

131. *Id.* at 7.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.* at 7–8 (citing Securities and Exchange Commission, Applicability of Foreign Ownership Restriction; Holding Companies, Opinion No. 11-15 [SEC-OGC Opinion No. 11-15], at 2 (Feb. 10, 2011) (emphasis supplied)).

136. *Michigan Holdings, Inc. v. The City Treasurer of Makati*, Neila A. Barlis, CTA EB No. 1093, June 17, 2015, available at <http://cta.judiciary.gov.ph/home/download/91c1fc4d2c8469e60614a28ff21c2f5d> (last accessed May 11, 2021).

137. *Id.* at 21.

holding companies under Section 3A.02 (h), the provision taxing owners or operators of banks and other financial institutions — instead of placing holding companies all by themselves in Section 3A.02 (p), the provision taxing holding companies.¹³⁸ The fact that holding companies were exclusively placed in Section 3A.02 (p) shows that holding companies are distinct from financial institutions as defined by Section 131 (e) of the LGC.¹³⁹ In the *Michigan* case, the CTA *en banc* also said that Section 3A.02 (p) in relation to Section 3A.02 (h) is an *ultra vires* exercise of power, and violates the principle that an ordinance cannot amend a statute because: (1) Section 131 (e) of the LGC grants LGUs the power to levy income tax only on banks and financial institutions; and (2) Section 27 (D) of the NIRC exempts intercorporate dividends from tax.¹⁴⁰

As regards Davao's LBT assessment on a holding company's dividend income,¹⁴¹ the CTA-First Division likewise ruled that the dividends are not taxable by using a combination of the following reasons: (1) an LGU cannot levy income tax, unless imposed on banks and financial institutions; (2) any doubt in an LGU's power to tax must resolved in favor of the taxpayer; (3) a holding company is not among the businesses considered as a financial institution under Section 131 (e) of the LGC; (4) the primary purpose in a holding company's AOI is broad enough to catch all descriptive functions of a financial institution as provided in the BSP Manual; (5) a holding company is not a financial institution; and (6) the CTA *en banc* already ruled upon the non-taxability of dividend income in the *Michigan* case.¹⁴²

138. *Id.*

139. *Id.*

140. *Id.* at 22.

141. See *First Meridian Development, Inc.*, CTA AC No. 132, at 8; *Randy Allied Ventures, Inc. v. City of Davao*, CTA AC No. 160, Aug. 9, 2016, at 15-16, available at <http://cta.judiciary.gov.ph/home/download/aae8e06b23b7fdb692b5c87ee477df6> (last accessed May 11, 2021); *San Miguel Officers Corps., Inc. v. City of Davao*, CTA AC No. 161, Oct. 3, 2016, at 9, available at <http://cta.judiciary.gov.ph/home/download/79161631483c1c568c884706b8885a8f> (last accessed May 11, 2021); & *Toda Holdings, Inc. v. City of Davao*, CTA AC No. 138, Feb. 9, 2017, at 16, available at <http://cta.judiciary.gov.ph/home/download/f63b7cb8f6f4f2dd23f188d99c9b2216> (last accessed May 11, 2021).

142. *Id.*

Hence, the CTA-First Division consistently ruled that a holding company's dividend income is not subject to tax.

B. Second Division

The CTA-Second Division consistently ruled against holding companies and declared their dividend income subject to LBT.¹⁴³

The CTA-Second Division decided nine different cases on the taxability of a holding company's dividend income, including the *Michigan* case prior to its elevation to the *en banc* level.¹⁴⁴ The CTA-Second Division promulgated the *Michigan* case decision in 2013.¹⁴⁵ The court dismissed the *Michigan* case due to lack of jurisdiction.¹⁴⁶ According to the court, the taxpayer should have filed its appeal with the Secretary of Justice pursuant to Section 187 of the LGC.¹⁴⁷ As mentioned in the preceding sub-chapter, the *Michigan* case was elevated to the CTA *en banc*, and the CTA *en banc* ultimately cancelled the assessment for being *ultra vires* in violation of the LGC and NIRC.¹⁴⁸

The CTA *en banc* promulgated its decision on the *Michigan* case in 2015.¹⁴⁹ The other eight cases decided by the CTA-Second Division came after the CTA *en banc* had already reversed the CTA-Second Division's decision in the *Michigan* case. Notably, none of the other eight decisions made reference to the *Michigan* case decided by the CTA *en banc*.

In the other eight cases decided upon by the CTA-Second Division, the court used a uniform approach in validating the LBT assessments.¹⁵⁰ In the

143. See Table 1.3 of this Note.

144. *Michigan Holdings, Inc. v. City Treasurer of Makati City*, CTA AC No. 99, Sept. 19, 2013, available at <http://cta.judiciary.gov.ph/home/download/e9focdd296188fa8e276214359781830> (last accessed May 11, 2021).

145. *Id.* at 1.

146. *Id.* at 8.

147. *Id.*

148. *Michigan Holdings, Inc.*, CTA EB No. 1093, at 29.

149. *Id.* at 1.

150. See *AP Holdings, Inc. v. City of Davao*, CTA AC No. 156, Jan. 30, 2017, available at <http://cta.judiciary.gov.ph/home/download/b5a66031d3bb7018d24794a9ae3of668> (last accessed May 11, 2021); *ASC Investors, Inc.*, CTA AC No. 134; *Fernandez Holdings, Inc. v. City of Davao*, CTA AC No. 133, July 21, 2016; *First Meridian Development, Inc.*, CTA AC No. 159; *Rock Steel Resources, Inc.*, CTA

said cases, the court began its analysis with the definition of “banks and other financial institutions” since they are subject to income tax.¹⁵¹ The definition of “banks and other financial institutions” under the LCG is quoted below for reference —

Section 131. *Definition of Terms.* — When used in this Title, the term:

...

- (e) ‘Banks and other financial institutions’ include non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stockbrokers[,] and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder[.]¹⁵²

Since the above definition makes reference to other “applicable laws, or rules and regulations”, the court referred to the definition of financial institutions under the BSP Manual, to wit —

§ 4101Q.1 *Financial intermediaries.* — *Financial intermediaries* shall mean persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them either for their own account or for the account of others.

Principal shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant[,] or preponderant, as distinguished from secondary or incidental.

Functions shall mean actions, activities[,] or operations of a person or entity by which his [or] its business or purpose is fulfilled or carried out. The business or purpose of a person or entity may be determined from the purpose clause in its articles of incorporation/partnership, and from the nature of the business indicated in his [or] its application for registration of business filed with the appropriate government agency.¹⁵³

Since the above definition suggests that an entity’s business may be determined from the purpose clause of its AOI, the court proceeded to determine if the taxpayers’ primary purpose includes the principal function of

AC No. 139; *Soriano Share, Inc.*, CTA AC No. 141; *Te Deum Resources, Inc.*, CTA AC No. 150; & *Valhalla Properties Ltd, Inc.*, CTA AC No. 154.

151. See LOCAL GOV’T CODE, § 143 (f).

152. LOCAL GOV’T CODE, § 131 (e) (emphases supplied).

153. Manual of Regulations for Non-Bank Financial Institutions: Volume 1, § 4101Q.1.

a financial intermediary by reference to its AOI.¹⁵⁴ The primary purpose in all the taxpayers' AOIs, in the cases docketed with the CTA-Second Division permitted them to own and hold shares of stock, and receive and collect dividends.¹⁵⁵ All the AOIs, however, contained a self-imposed prohibition to "not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation."¹⁵⁶ In all the cases, the court ruled that the taxpayers' primary purpose is extensive or broad enough to cover the principal function of a financial institution.¹⁵⁷ The court also addressed the taxpayers' self-imposed prohibition to not act as an investment company, securities broker, or securities dealer by saying that the prohibition cannot guarantee that the taxpayer will not engage in any of the said activities.¹⁵⁸ Further, the court observed that the taxpayers are indeed holding on to shares and earning from the same.¹⁵⁹ Thus, the court said that the self-imposed prohibition cannot prevail over the real nature of the taxpayers' business, which is to hold stocks and reinvest income from the same.¹⁶⁰

Hence, the CTA-Second Division upheld the LBT assessments issued to the holding companies.

154. *AP Holdings, Inc.*, CTA AC No. 156, at 8-9; *ASC Investors, Inc.*, CTA AC No. 134, at 2; *Fernandez Holdings, Inc. v. City of Davao*, CTA AC No. 133, Sept. 27, 2016, at 4, available at <http://cta.judiciary.gov.ph/home/download/c317a198e7569f534fc2408417d7eb9e> (last accessed May 11, 2021); *First Meridian Development, Inc.*, CTA AC No. 159, at 9; *Rock Steel Resources, Inc.*, CTA AC No. 139, at 14; *Soriano Share, Inc.*, CTA AC No. 141, at 17; *Te Deum Resources, Inc.*, CTA AC No. 150, at 2; & *Valhalla Properties Ltd, Inc.*, CTA AC No. 154, at 2.

155. *Id.*

156. *Id.*

157. *Id.*

158. *AP Holdings, Inc.*, CTA AC No. 156, at 9; *Fernandez Holdings, Inc.*, CTA AC No. 133, at 4; *First Meridian Development, Inc.*, CTA AC No. 159, at 9; & *Rock Steel Resources, Inc.*, CTA AC No. 139, at 14.

159. *Id.*

160. *ASC Investors, Inc.*, CTA AC No. 134, at 6; *Soriano Share, Inc.*, CTA AC No. 141, at 19; *Te Deum Resources, Inc.*, CTA AC No. 150, at 6; & *Valhalla Properties Ltd, Inc.*, CTA AC No. 154, at 17.

C. Third Division

The CTA-Third Division consistently ruled in favor of holding companies in declaring their dividend income tax-exempt, similar to how the CTA-First Division decided.

The CTA-Third Division took the position that the taxpayers' primary purpose according to their AOI alone is not enough to prove that the taxpayers are financial institutions.¹⁶¹ The CTA-Third Division's method in determining the taxability of dividends is contrary to the CTA-Second Division's method since the latter relied on the taxpayers' AOI pursuant to Section 4101Q.1. of the BSP Manual, which suggests that the taxpayers' business may be determined from the purpose clause of their AOI. The CTA-Third Division also considered the fact that the taxpayers were not authorized by the BSP to perform quasi-banking activities in declaring that the taxpayers are not financial institutions.¹⁶² Since the power to determine whether or not an entity is a financial institution rests with the BSP, the lack of BSP authorization was fatal in classifying the taxpayers as financial institutions.¹⁶³

In the two cases involving Makati assessments, the CTA-Third Division adopted the CTA *en banc's* ruling in the *Michigan* case that the Revised Makati Revenue Code's provisions imposing tax on holding companies are *ultra vires* for violating the LGC and NIRC.¹⁶⁴

161. *ASC Investors, Inc.*, CTA AC No. 134, at 6; *Rock Steel Resources, Inc.*, CTA AC No. 158, at 15; *San Miguel Officers Corps, Inc. v. City of Davao*, CTA AC No. 136, Nov. 22, 2016, at 19, available at <http://cta.judiciary.gov.ph/home/download/b3bfdce333492e834f36d4a631250096> (last accessed May 11, 2021); *Soriano Shares, Inc. v. City of Davao*, CTA AC No. 151, Mar. 13, 2017, at 14, available at <http://cta.judiciary.gov.ph/home/download/7f4f2a35b29a753af160a47823f34323> (last accessed May 11, 2021); & *Toda Holdings, Inc. v. City of Davao*, CTA AC No. 152, Mar. 14, 2017, at 13, available at <http://cta.judiciary.gov.ph/home/download/02943757642f9bfobb81f74a472b8387> (last accessed May 11, 2021).

162. *Id.*

163. The General Banking Law of 2000, § 4.

164. *City of Makati v. Metro Pacific Investments Corp.*, CTA AC No. 143, July 20, 2016, at 21, available at <http://cta.judiciary.gov.ph/home/download/73ead6eb23146378d13c20f1db8cc4f2> (last accessed May 11, 2021) & *Metro Pacific Resources, Inc. v. Makati City*, CTA AC No. 174, Nov. 21, 2017, at 23, available at <http://cta.judiciary.gov.ph/home/download/fdc3e597ad2799300d92fb1e2dab970d> (last accessed May 11, 2021).

Hence, the CTA-First Division has consistently ruled that a holding company's dividend income is not subject to tax.

D. En Banc

This Sub-Chapter will no longer discuss the *Michigan* case since it was already discussed in the previous Sub-Chapters. This Sub-Chapter will instead focus on how the CTA *en banc* reversed the rulings of the CTA-Second Division. For further brevity, this Sub-Chapter will also not discuss the CTA *en banc* decisions originating from the CTA-First Division and the CTA-Third Division since they were merely upheld.

Note that the CTA *en banc* cases that reversed the CTA-Second Division rulings are as follows:

Table 5.2. CTA-Second Division Cases Elevated to the CTA *En Banc*

<i>Entity</i>	<i>CTA-Second Division</i>		<i>CTA en banc</i>	
	<i>Docket No.</i>	<i>Ruling</i>	<i>Docket No.</i>	<i>Ruling</i>
AP Holdings	AC No. 156	Taxable	EB No. 1640	Not taxable
ASC Investors, Inc.	AC No. 134	Taxable	EB No. 1568	Not taxable
Fernandez Holdings, Inc.	AC No. 133	Taxable	EB No. 1531	Not taxable
First Meridian Development, Inc.	AC No. 159	Taxable	EB No. 1607	Not taxable
Michigan Holdings, Inc.	AC No. 99	Taxable	EB No. 1093	Not taxable
Rock Steel Resources, Inc.	AC No. 139	Taxable	EB No. 1567	Not taxable
Soriano Share, Inc.	AC No. 141	Taxable	EB No. 1556	Not taxable
Te Deum Resources, Inc.	AC No. 150	Taxable	EB No. 1636	Not taxable
Valhalla Properties Ltd, Inc.	AC No. 154	Taxable	EB No. 1639	Not taxable

The CTA *en banc*, in *Fernandez Holdings, Inc. v. City of Davao*¹⁶⁵ (*Fernandez*), used the following factors to determine whether or not a holding company is a financial institution, to wit:

- (1) Whether or not the taxpayer was “authorized by the ... BSP to perform quasi-banking activities [as a non-bank financial intermediary;]”¹⁶⁶
- (2) Whether or not there is an indication showing that the taxpayer is a financial intermediary or is actually engaged in the activities enumerated in the General Banking Act and/or BSP Manual,¹⁶⁷
- (3) Whether or not the taxpayer’s primary purpose in its AOI shows that the taxpayer performs any of the activities enumerated in the BSP Manual, and such activities are performed principally and on a regular or recurring basis;¹⁶⁸
- (4) Whether or not the taxpayer’s primary purpose in its AOI shows that the taxpayer fits the definition of a holding company under SEC–Office of the General Counsel Opinion No. 11–15,¹⁶⁹ as follows —

A holding company has been defined by the Commission in several opinions. *A holding company has been aptly defined as ‘a corporation organized to hold the stock of another or other corporations.’* Its essential feature is that it holds stock. The term ‘holding company’ is equivalent to a parent corporation, having such an interest in another corporation, or power of control, that it may elect its directors and influence management. *A parent or holding company is one that controls another as a subsidiary or affiliate by the power to elect its management.* Affiliates are those concerns that are subject to common control and operated as part of a system.¹⁷⁰

165. *Fernandez Holdings, Inc. v. City of Davao*, CTA EB No. 1531, Dec. 5, 2017, available at <http://cta.judiciary.gov.ph/home/download/e45030c1927718af236c011627c1893a> (last accessed May 11, 2021).

166. *Id.* at 10.

167. *Id.*

168. *Id.*

169. *Id.* at 11–13.

170. *Id.* at 12–13 (citing Securities and Exchange Commission–Office of the General Counsel, Opinion No. 15–15 [SEC–OSG Opinion No. 15–15], at 1 (Nov. 3, 2015) & SEC–OGC Opinion No. 11–15, at 2).

Once the CTA *en banc* determined that the taxpayer is not a financial institution, based on the factors above, the court proceeded to cancel the assessment, order the refund of the amount paid, or order the issuance of a tax credit certificate.¹⁷¹ The court *en banc*, in some cases however, did not use all four factors enumerated in the *Fernandez* case to determine whether the taxpayer is a financial institution or not. The other cases used three of the four factors only. Nevertheless, the CTA *en banc* gave clarity to the gray area between the broad definitions of holding companies and financial institutions.¹⁷² The remaining question at this point is whether or not the Supreme Court will uphold the CTA *en banc*'s conclusion and methodology.

VI. SUPREME COURT DECISIONS

The Supreme Court, in *City of Davao v. Randy Allied Ventures, Inc. (RAVT)*,¹⁷³ ruled upon the taxability of a holding company's dividend income.¹⁷⁴

171. See AP Holdings, Inc. v. City of Davao, CTA EB No. 1640, Aug. 20, 2018, at 18–19, available at <http://cta.judiciary.gov.ph/home/download/9835eb48e75cd372729d28aa5e8ad17e> (last accessed May 11, 2021); ASC Investors, Inc. v. City of Davao, CTA EB No. 1568, May 17, 2018, at 21, available at <http://cta.judiciary.gov.ph/home/download/55db09f417ce89cdb5c1401189d6f482> (last accessed May 11, 2021); *Fernandez Holdings, Inc.*, CTA EB No. 1531, at 18; First Meridian Development, Inc. v. City of Davao, CTA EB No. 1607, June 20, 2018, at 18, available at <http://cta.judiciary.gov.ph/home/download/7fe2d917f388b2984bf6c6deda7b282c> (last accessed May 11, 2021); *Michigan Holdings, Inc.*, CTA EB Case No. 1093, at 33; Rock Steel Resources, Inc. v. City of Davao, CTA EB No. 1567, Nov. 19, 2018, at 6, available at <http://cta.judiciary.gov.ph/home/download/2c004a9d90cc1b1b0769977ede8792fe> (last accessed May 11, 2021); Soriano Shares, Inc. v. City of Davao, CTA EB No. 1556, Apr. 18, 2018, at 19, available at <http://cta.judiciary.gov.ph/home/download/41d914cb1ff9ba354dode619489ad59> (last accessed May 11, 2021); Te Deum Resources, Inc. v. City of Davao, CTA EB No. 1692, May 8, 2018, at 20, available at <http://cta.judiciary.gov.ph/home/download/d8bc341a3fe809365a885c7d7dad9aa8> (last accessed May 11, 2021); & Valhalla Properties Limited, Inc. v. City of Davao, CTA EB No. 1706, May 20, 2019, at 23, available at <http://cta.judiciary.gov.ph/home/download/90197c464c5300f12c80f3d3ed6ae5fc> (last accessed May 11, 2021).

172. *Id.*

173. *City of Davao v. Randy Allied Ventures, Inc.*, G.R. No. 241697, July 29, 2019, available at <https://sc.judiciary.gov.ph/7201> (last accessed May 11, 2021).

174. *Id.* at 6.

According to the Supreme Court, the following requisites must concur for a taxpayer to be considered a financial institution:

- (a) The person or entity is authorized by the BSP to perform quasi-banking functions;
- (b) The principal functions of said person or entity include the lending, investing or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others; and
- (c) The person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis, to wit:
 - (1) Receive funds from one [] group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities;
 - (2) Use principally the funds received for acquiring various types of debt or equity securities; [and]
 - (3) Borrow against, or lend on, or buy or sell debt or equity securities.¹⁷⁵

Based on the court's findings, RAVI is not a financial institution.¹⁷⁶ The Supreme Court then differentiated holding companies from financial institutions further, as follows —

Indeed, there is a stark distinction between a holding company and a financial intermediary as contemplated under the LGC, in relation to other laws. A 'holding company' is 'organized' and is basically conducting its business by investing substantially in the equity securities of another company for the purpose of controlling their policies (as opposed to directly engaging in operating activities) and 'holding' them in a conglomerate or umbrella structure along with other subsidiaries.' While holding companies may partake in investment activities, this does not per se qualify them as financial intermediaries that are actively dealing in the same. Financial intermediaries are regulated by the BSP because they deal with public funds when they offer quasi-banking functions. On the other hand, a holding company is not

175. *Id.* at 4-5 (citing LOCAL GOV'T CODE, § 131 (e); Tax Reform Act of 1997, § 22 (W); BIR RR No. 9-2004, § 2.3; & Manual of Regulations for Non-Bank Financial Institutions: Volume 1, § 4101Q.1).

176. *Randy Allied Ventures, Inc.*, G.R. No. 241697, at 6.

similarly regulated because any investment activities it conducts are mere incidental operations, since its main purpose is to hold shares for policy-controlling purposes.¹⁷⁷

The Supreme Court also ruled that RAVI's act of placing the dividend earnings in an interest-bearing account did not make RAVI a financial institution since it was not done regularly with the view of earning profit.¹⁷⁸

It is worth mentioning that RAVI managed shares owned by the national government, and taxes of any kind on the national government are not subject to tax pursuant to Section 133 (o) of the LGC.¹⁷⁹ The Court ruled that RAVI cannot be said to be doing business as a financial institution since it was managing assets owned by the national government.¹⁸⁰ Regardless of whether RAVI was managing assets owned by the national government or not, the *RAVI* case clearly differentiated holding companies from financial institutions.¹⁸¹ Hence, the doctrinal pronouncements in the *RAVI* case will still be considered *stare decisis* in other similar cases even if the taxpayers involved in future cases do not manage assets of the national government.

The Supreme Court also addressed the issue on the primary purpose of holding companies as stated in their AOI.¹⁸² The court said that the primary purpose of a holding company, which may encompass the functions of a financial institution, does not make it a financial institution.¹⁸³ Otherwise, there will no longer be any distinction between holding companies and financial institutions.¹⁸⁴ Since the Supreme Court clearly considered RAVI a holding company, not a financial institution, the Court held the RAVI's dividend income is not subject to LBT.¹⁸⁵

In *City of Davao v. AP Holdings, Inc. (AHI)*,¹⁸⁶ a later case decided by the Supreme Court upheld the doctrinal pronouncements in the *RAVI* case. The

177. *Id.* at 5-6 (emphasis omitted).

178. *Id.* at 6.

179. *Id.* at 5.

180. *Id.* at 6.

181. *Id.* at 5-6.

182. *Randy Allied Ventures, Inc.*, G.R. No. 241697, at 6.

183. *Id.*

184. *Id.*

185. *Id.*

186. *City of Davao v. AP Holdings, Inc.*, G.R. No. 245887, Jan. 22, 2020, available at <https://sc.judiciary.gov.ph/11745> (last accessed May 11, 2021).

Supreme Court quoted the requisites for classifying a taxpayer as a financial institution from the *RAVI* case, and used those factors to determine whether or not AHI is a financial institution.¹⁸⁷ Consistent with the *RAVI* case, the Supreme Court ruled that AHI's dividend income is not subject to LBT.¹⁸⁸

VII. CONCLUSION

The LGC does not define “banks and other financial institutions.”¹⁸⁹ It merely enumerates the types of businesses falling within such term.¹⁹⁰ The LGC likewise does not define holding companies. The lack of definition for “banks and other financial institutions” and “holding companies” in the LGC necessitated looking elsewhere for a definition. The definitions in other laws, however, are broad and have caused both terms to be confused for each other.

There should be a precise guideline to differentiate “banks and other financial institutions” from “holding companies” because misclassifying a taxpayer as one or the other will have consequential effects. It should be noted that the tax assessments involved are material.¹⁹¹ Misclassifying the taxpayer as a financial institution will severely damage the taxpayer's business. LGUs, on the other hand, will lose substantial revenue if a taxpayer is misclassified as a holding company.

The gap in the law manifested when the BLGF issued opinions that contradicted each other, and when the CTA promulgated decisions that likewise contradicted each other. Both agencies eventually reconciled their respective conflicting opinions and decisions.

The BLGF issued a memorandum circular in 2017 reminding LGU Treasurers that passive income such as dividend income is not subject to LBT.¹⁹² The BLGF issued a similar reminder in 2020.¹⁹³ While the memorandum circulars serve as reminders that passive income is not subject

187. *Id.* at 7 (citing *Randy Allied Ventures, Inc.*, G.R. No. 241697, at 5-6).

188. *AP Holdings, Inc.*, G.R. No. 245887, at 8.

189. *ASC Investors, Inc.*, CTA AC No. 134, at 4; *First Meridian Development, Inc.*, CTA AC No. 159, at 6; *Rock Steel Resources, Inc.*, CTA AC No. 139, at 12; *Soriano Shares, Inc.*, CTA AC No. 141, at 14; *Te Deum Resources, Inc.*, CTA AC No. 150, at 12; & *Valhalla Properties Ltd. Inc.*, CTA AC No. 154, at 12.

190. *Id.*

191. See Table 1.1 of this Note.

192. BLGF Memo. Circ. No. 01-001-2017, at 1-2.

193. BLGF Memo. Circ. No. 001-2020, at 1.

to LBT, they do not address the overlapping definitions of financial institutions and holding companies. Financial institutions are a class in themselves, and may be taxed for their gross receipts arising from dividends.¹⁹⁴ Hence, there is a need to distinguish financial institutions from holding companies.

The unjust levy of taxes will continue if the broad definition of financial institutions is not addressed at the administrative level. While it is true that an erroneous assessment or payment may be cancelled or refunded, as the case may be, at the judicial level, it is better to avoid the problem at the onset for practical reasons. When an LGU issues an LBT assessment, the taxpayer will be forced to either: (1) pay the assessment and engage in a lengthy court battle to refund its payment; or (2) protest the assessment without paying the assessment at the risk of not being issued a business permit.¹⁹⁵ If the taxpayer chooses the second option, it will open itself up to the risk of being closed by the LGU for not possessing a business permit to operate.¹⁹⁶ Thus, it is necessary to address the problem at the administrative level.

It is within the BLGF's purpose and function to provide consultation and technical assistance to the LGUs on local tax matters.¹⁹⁷ Thus, it is suggested for the BLGF to issue a circular addressing the overlapping definitions of financial institutions and holding companies.

At the judicial level, the CTA was able to reconcile its early conflicting decisions at the *en banc* level. The CTA *en banc* reversed the decisions which ruled in favor of treating holding companies as financial institutions for purposes of taxation. The CTA *en banc* even provided factors to consider when determining whether a taxpayer is a financial institution or not.

Two of the CTA cases were elevated to the Supreme Court, and the Supreme Court likewise provided a guideline for determining whether a taxpayer is a financial institution or not. The development in the judiciary does not guarantee that the local treasurers will follow the Court's guidelines. While any erroneous assessment or payment will be remedied if the taxpayer elevates the matter to the courts, there will already be injustice at that point. Hence, it is necessary to address the issue at the administrative level.

194. LOCAL GOV'T CODE, § 143 (f).

195. BLGF Memo. Circ. No. 001-2020, at 1.

196. *See id.*

197. Reorganization Act of the Ministry of Finance, § 43 (a).

Since the BLGF is the agency vested with the power to supervise the operations of LGUs,¹⁹⁸ it is suggested for the BLGF to release an issuance specifically addressing the broad definition of financial institutions.

VIII. RECOMMENDATION

It is suggested for the BLGF, in the exercise of its functions,¹⁹⁹ to issue the memorandum circular below —

BLGF MEMORANDUM CIRCULAR NO. _____

(Date)

TO : All Bureau Officials and Personnel, Regional Directors, Provincial, City, and Municipal Treasurers, and Others Concerned

Subject : Non-taxability of a Holding Company's Dividend Income

This Memorandum Circular is being issued in view of various impositions, assessments, levies, and/or collections of local business tax (LBT) on a holding company's dividend income.

Please be reminded of the following:

- (1) Section 143 (f) of the Local Government Code (LGC) declares that the LBT may only be imposed on “banks and other financial institutions.” Section 131 (e) of the LGC defines “banks and other financial institutions,” as follows —

‘Banks and other financial institutions’ include non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder[.]

- (2) The enumeration of businesses considered as “banks and other financial institutions” under Section 131 (e) of the LGC does not include “holding companies.”

198. *Id.* § 43 (b).

199. *See id.* § 43.

- (3) The Bangko Sentral ng Pilipinas (BSP) is solely vested with the power to determine which persons or entities are considered “banks and other financial institutions.”
- (4) Absent any authority from the BSP for a person or entity to engage in activities of “banks and other financial institutions” and proof that such person or entity is principally, on a regular and recurring basis, engaged in the performance of “banks and other financial institutions” activities, it shall be presumed that the said person or entity is not part of “banks and other financial institutions.”
- (5) Therefore, holding companies shall not be considered “banks and other financial institutions” for purposes of subjecting their dividend income to LBT in the absence of the authority or proof described in the preceding paragraph.

It is emphasized that all concerned local treasurers are advised to discontinue and refrain from imposing, assessing, levying, and collecting LBT on a holding company’s dividend income.

For strict compliance.