

Thriving at Thirty? Assessing Real Property Taxation on the Thirtieth Year of the Local Government Code of 1991

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I. INTRODUCTION

Real property tax is a peculiar branch of the Philippine taxation framework. Though it draws from the State's inherent power of taxation, the emergence

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of Republic Act No. 7160¹ or the Local Government Code of 1991 has created a distinct niche for the power of local government units to levy and administer real property taxes.

Under Presidential Decree No. 464,² the governing law on real property tax prior to the enactment of the Local Government Code, it is the national government which directly exercises the power of taxation by exercising the power to levy real property taxes and leaving only the collection of the taxes already levied to the local government units (LGUs).³ The Local Government Code, however, granted LGUs the delegated power to levy real property taxes.⁴

On top of this, the Local Government Code strengthened the principle of payment under protest,⁵ by requiring that “[n]o protest shall be entertained unless the taxpayer first pays the tax”⁶ — a rule that did not previously exist for real property tax and still does not exist for other taxes levied by the national government.

Certainly, in 1991, these provisions appeared to be justified due to concerns over the inadequacy of funds raised by and available to the LGUs as well as the need to promote local fiscal autonomy.⁷ However, it has been 30 years since these changes were introduced by the Local Government Code. In those 30 years, despite the significant number of provisions devoted by the Local Government Code to real property tax, taxpayers, and local tax authorities alike have had to rely on case law to fill in the gaps, including gaps as fundamental as properties deemed to be real properties for purposes of imposition of real property tax.

At this juncture, it is high time to conduct an assessment of the real property tax law. This Article aims to put forward a comprehensive evaluation

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1. An Act Providing for a Local Government Code of 1991 [LOCAL GOV'T CODE], Republic Act No. 7160 (1991).
 2. Enacting a Real Property Tax Code [THE REAL PROPERTY TAX CODE], Presidential Decree No. 464 (1974) (repealed in 1991).
 3. *Benguet Corporation v. Central Board of Assessment Appeals*, G.R. No. 100959, 210 SCRA 579, 585 (1992) (citing THE REAL PROPERTY TAX CODE, § 38).
 4. LOCAL GOV'T CODE, § 232.
 5. *Id.* § 252 (a).
 6. *Id.*
 7. AQUILINO Q. PIMENTEL, JR., THE LOCAL GOVERNMENT CODE REVISITED ix (2007).

of the current regime of real property taxation with a recommendation to revisit, if not amend, the law.

II. REAL PROPERTY

A. Definition of Real Property

Prior to discussing real property tax, it is prudent to first unravel the meaning of real property, on which the real property tax is imposed.

Real property tax is primarily governed by Title II of the Local Government Code which provides for “the administration, appraisal, assessment, levy[,] and collection of real property tax.”⁸ Although Title II provides for a list of defined terms in Section 199,⁹ the term “real property” is not defined.¹⁰ Instead, a brief enumeration of what constitutes real property is included under Section 232 of the same Local Government Code¹¹ — “SECTION 232. Power to Levy Real Property Tax. — A province or city or a municipality within the Metropolitan Manila Area may levy an annual ad valorem tax on real property *such as land, building, machinery, and other improvement not hereinafter specifically exempted.*”¹²

The enumerated terms “land” and “building” are not defined in the Local Government Code.¹³ “Machinery” and “improvements,” on the other hand, are defined as follows —

(m) ‘Improvement’ is a *valuable addition made to a property* or an amelioration in its condition, amounting to more than a mere repair or replacement of parts involving capital expenditures and labor, which is intended to enhance its value, beauty[,] or utility or to adapt it for new or further purposes; [and]

...

(o) ‘Machinery’ embraces machines, equipment, mechanical contrivances, instruments, appliances[,] or apparatus which *may or may not be attached, permanently or temporarily, to the real property*. It includes the physical facilities for production, the installations and appurtenant service facilities, those which are mobile, self-powered or self-propelled, and those not permanently attached to the real property which are actually, directly, and exclusively used

8. LOCAL GOV’T CODE, § 197.

9. *Id.* § 199.

10. *See id.*

11. *Id.* § 232.

12. *Id.* (emphasis supplied).

13. *See id.* § 199.

to meet the needs of the particular industry, business[,] or activity and which by their very nature and purpose are designed for, or necessary to its manufacturing, mining, logging, commercial, industrial[,] or agricultural purposes[.]¹⁴

Based on the definitions, improvements and machineries do not appear to be themselves real properties, but are instead placed, attached, or related to the real properties. However, for purposes of real property taxation, machineries and improvements are real properties subject to real property tax.

Prior to the enactment of the Local Government Code, there was the Real Property Tax Code.¹⁵ The Real Property Tax Code also failed to define what real properties are, but provided a broader enumeration — “Section 38. Incidence of Real Property Tax. — There shall be levied, assessed[,] and collected in all provinces, cities[,] and municipalities an annual ad valorem tax on real property, such as land, buildings, machinery[,] and other improvements affixed or attached to real property not hereinafter specifically exempted.”¹⁶

The Real Property Tax Code has since been superseded by the Local Government Code.¹⁷ Still, many provisions of the Local Government Code on real property tax were culled from the provisions of the Real Property Tax Code.

A precursor of the Real Property Code was Commonwealth Act No. 470,¹⁸ or, simply, the Assessment Law.¹⁹ The Assessment Law took effect on 1 January 1940²⁰ and was repealed by the Real Property Tax Code.²¹ Likewise, the Assessment Law did not define real property. Instead, it only provided an enumeration on what is included as taxable — “Section 2. Incidence of Real Property Tax. — Except in chartered cities, there shall be levied, assessed, and collected, an annual ad valorem tax on real property, *including land, buildings, machinery, and other improvements* not hereinafter specifically exempted.”²²

14. LOCAL GOV'T CODE, § 199 (m) & (o) (emphases supplied).

15. THE REAL PROPERTY TAX CODE.

16. *Id.* § 38.

17. LOCAL GOV'T CODE, § 534 (c).

18. Assessment Law, Commonwealth Act No. 470 (1940) (repealed in 1974).

19. *Id.* § 1.

20. *Id.* art. IX, § 63.

21. THE REAL PROPERTY TAX CODE, § 111.

22. Assessment Law, § 2 (emphasis supplied).

The Assessment Law did not even provide for a separate section for definitions.²³ Machinery is defined almost as an afterthought, included in the provision on properties exempt from real property tax — “Section 3. Property Exempt from Tax. — The exemptions shall be as follows: ... (f) Machinery, which term shall embrace machines, mechanical contrivances, instruments, appliances, and apparatus attached to the real estate, used for industrial, agricultural[,] or manufacturing purposes, during the first five years of the operation of the machinery.”²⁴

Given the dearth of guidance under the Local Government Code on what real property means, the Supreme Court has turned to the Civil Code of the Philippines²⁵ to define what constitutes real properties. This was even categorically stated. The Supreme Court, as early as 1964 in *Board of Assessment Appeals v. Manila Electric Company*,²⁶ stated that “[t]he tax law does not provide for a definition of real property; but Article 415 of the Civil Code does[.]”²⁷

Article 415 of the Civil Code provides —

Article 415. The following are immovable property:

- (1) Land, buildings, roads[,] and constructions of all kinds adhered to the soil;
- (2) Trees, plants, and growing fruits, while they are attached to the land or form an integral part of an immovable;
- (3) Everything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object;
- (4) Statues, reliefs, paintings[,] or other objects for use or ornamentation, placed in buildings or on lands by the owner of the immovable in such a manner that it reveals the intention to attach them permanently to the tenements;
- (5) Machinery, receptacles, instruments[,] or implements intended by the owner of the tenement for an industry or works which may be carried

23. *See generally id.*

24. Assessment Law, § 3 (f).

25. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386 (1949).

26. *Board of Assessment Appeals v. Manila Electric Company*, G.R. No. L-15334, 10 SCRA 68 (1964).

27. *Id.* at 73.

on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works;

- (6) Animal houses, pigeon-houses, beehives, fish ponds[,] or breeding places of similar nature, in case their owner has placed them or preserves them with the intention to have them permanently attached to the land, and forming a permanent part of it; the animals in these places are included;
- (7) Fertilizer actually used on a piece of land;
- (8) Mines, quarries, and slag dumps, while the matter thereof forms part of the bed, and waters either running or stagnant;
- (9) Docks and structures which, though floating, are intended by their nature and object to remain at a fixed place on a river, lake, or coast;
- (10) Contracts for public works, and servitudes and other real rights over immovable property.²⁸

Notably, three years later, the Supreme Court stated that —

*Article 415 does not define real property but enumerates what are considered as such, among them being machinery, receptacles, instruments[,] or replacements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and shall tend directly to meet the needs of the said industry or works.*²⁹

Still, the Supreme Court has continued to rely on Article 415 of the Civil Code³⁰ on what constitutes real properties for purposes of real property taxation even to this day.³¹

In addition to the enumeration under Article 415 of the Civil Code³² and Section 232 of the Local Government Code,³³ the Supreme Court has also expanded the enumeration of what properties are subject to real property tax.

28. CIVIL CODE, § 415.

29. *People's Bank and Trust Co. v. Dahican Lumber Company*, G.R. No. L-17500, 20 SCRA 84, 93-94 (1967) (emphasis supplied).

30. CIVIL CODE, § 415.

31. *See Meralco Securities Industrial Corporation v. Central Board of Assessment Appeals*, G.R. No. L-46245, 114 SCRA 260, 266 (1982); *Benguet Corp. v. Central Board of Assessment Appeals*, G.R. No. 106041, 218 SCRA 271, 276-77 (1993); & *Capitol Wireless, Inc. v. Provincial Treasurer of Batangas*, G.R. No. 180110, 791 SCRA 272, 287 (2016).

32. CIVIL CODE, § 415.

33. LOCAL GOV'T CODE, § 232.

It is a settled rule in property law that in applying Article 415 of the Civil Code,³⁴

machinery[,] which is movable in nature[,] only becomes immobilized when placed in a plant by the owner of the property or plant, but not when so placed by a tenant, a usufructuary, or any person having only a temporary right, unless such person acted as the agent of the owner.³⁵

However, in *Manila Electric Company v. Central Board of Assessment Appeals*,³⁶ tanks used to store oil in power plants placed by the lessee on leased land and are not embedded in the land were nevertheless considered as improvements on the land which have been installed with some degree of permanence as receptacles for considerable quantities of oil needed in the operations and thus subject to real property tax.³⁷

In *Caltex (Philippines) Inc. v. Central Board of Assessment Appeals and City Assessor of Pasay*,³⁸ which was decided on the same day as the case of *Manila Electric Company*, machinery and equipment loaned by Caltex to gas station operators under an appropriate lease agreement or receipt were held taxable as real property.³⁹ The Court distinguished this case from *Davao Saw Mill Co. Inc.*, wherein the question of immovability of the machinery was for the purpose of execution of a judgment against the lessee.⁴⁰ In *Caltex*, the question is for the purpose of subjecting the machinery to real property tax. The Court said, “[i]mprovements on land are commonly taxed as realty even though for some purposes they might be considered personal[property]. It is a familiar phenomenon to see things classed as real property for purposes of taxation which on general principle might be considered personal property.”⁴¹

34. CIVIL CODE, § 415.

35. See *Davao Saw Mill Co. v. Castillo*, 61 Phil. 709, 712 (1935) & Burgos, Sr. v. Chief of Staff, AFP, G.R. No. L-64261, 133 SCRA 800, 812 (1984).

36. *Manila Electric Co. v. Central Board of Assessment Appeals*, G.R. No. L-47943, 114 SCRA 273 (1982).

37. *Manila Electric Co.*, 114 SCRA at 276-77.

38. *Caltex (Phil.) Inc. v. Central Board of Assessment Appeals*, G.R. No. L-50466, 114 SCRA 296 (1982).

39. *Id.* at 301-02.

40. *Davao Saw Mill*, 61 Phil. at 712-14.

41. *Caltex (Phil.) Inc.*, 114 SCRA at 301-02 (citing 84 C.J.S. 181-82, nn. 40-41 & *Standard Oil Co. of New York v. Jaramillo*, G.R. No. 20329, 44 Phil. 630, 633 (1923)).

Thus, the Supreme Court has carved out an exception to the previously settled doctrine on requirements for immovability of machineries placed on leased land.

But what about machineries and equipment placed *under* land or water?

This was precisely the issue tackled by the Supreme Court in the 2016 case of *Capitol Wireless, Inc.* The Court held that submarine or undersea communications cables are akin to electric transmission lines which have been ruled as properties that may qualify as “machinery” subject to real property tax under the Local Government Code.⁴² The Court further elucidated —

To the extent that the equipment’s location is determinable to be within the taxing authority’s jurisdiction, the Court sees no reason to distinguish between *submarine cables used for communications and aerial or underground wires or lines used for electric transmission*, so that both pieces of property do not merit a different treatment in the aspect of real property taxation.

Both electric lines and communications cables, in the strictest sense, are not directly adhered to the soil but pass through posts, relays[,] or landing stations, but both may be classified under the term ‘machinery’ as real property under Article 415 (5) of the Civil Code for the simple reason that such pieces of equipment serve the owner’s business or tend to meet the needs of his industry or works that are on real estate. Even objects in or on a body of water may be classified as such, as ‘waters’ is classified as an immovable under Article 415 (8) of the Code. A classic example is a boathouse which, by its nature, is a vessel and, therefore, personal property but, if it is tied to the shore and used as a residence, and since it floats on waters which is immovable, is considered real property. Besides, the Court has already held that ‘it is a familiar phenomenon to see things classed as real property for purposes of taxation which on general principle might be considered personal property.’⁴³

The last sentence of the quoted provision was also cited in *Caltex (Philippines) Inc.* as discussed above.⁴⁴

In 2015, the Supreme Court had occasion to revisit the 1964 case of *Meralco*⁴⁵ through another case involving the same company. In *Manila Electric*

42. *Capitol Wireless, Inc.*, 791 SCRA at 284.

43. *Capitol Wireless, Inc.*, 791 SCRA at 286-88 (emphases supplied) (citing CIVIL CODE, art. 415 (5); *Manila Electric Co.*, 114 SCRA at 276-77; CIVIL CODE, art. 415 (8); EDGARDO L. PARAS, CIVIL CODE OF THE PHILIPPINES ANNOTATED, VOL. II 28-29 (16th ed. 2008); *Standard Oil Co. of New York*, 44 Phil. at 633; & *Caltex (Phil.) Inc.*, 114 SCRA at 302).

44. *Caltex (Phil.) Inc.*, 114 SCRA at 302.

45. Board of Assessment Appeals v. Manila Electric Company, G.R. No. L-15334, 10 SCRA 68 (1964).

Company v. City Assessor and City Treasurer of Lucena City,⁴⁶ the Supreme Court said that reference to the Civil Code definition of real property in the 1964 Meralco case was only an alternative argument.⁴⁷ The Supreme Court distinguished machineries in the Civil Code and in the Local Government Code, as follows —

While the Local Government Code still does not provide for a specific definition of ‘real property,’ Sections 199 (o) and 232 of the said Code, respectively, gives an extensive definition of what constitutes ‘machinery’ and unequivocally subjects such machinery to real property tax. The Court reiterates that the machinery subject to real property tax under the Local Government Code ‘may or may not be attached, permanently or temporarily to the real property;’ and the physical facilities for production, installations, and appurtenant service facilities, those which are mobile, self-powered or self-propelled, or are not permanently attached must (a) be actually, directly, and exclusively used to meet the needs of the particular industry, business, or activity; and (2) by their very nature and purpose, be designed for, or necessary for manufacturing, mining, logging, commercial, industrial, or agricultural purposes.

Article 415, paragraph (1) of the Civil Code declares as immovables or real properties ‘[l]and, buildings, roads[,] and constructions of all kinds adhered to the soil.’ The land, buildings, and roads are immovables by nature ‘which cannot be moved from place to place,’ whereas the constructions adhered to the soil are immovables by incorporation ‘which are essentially movables, but are attached to an immovable in such manner as to be an integral part thereof.’ *Article 415, paragraph (3) of the Civil Code, referring to [e]verything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object, are likewise immovables by incorporation. In contrast, the Local Government Code considers as real property machinery which ‘may or may not be attached, permanently or temporarily to the real property,’ and even those which are ‘mobile.’*

Article 415, paragraph (5) of the Civil Code considers as immovables or real properties ‘[m]achinery, receptacles, instruments[,] or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works.’ The Civil Code, however, does not define ‘machinery.’

The properties under Article 415, paragraph (5) of the Civil Code are immovables by destination, or ‘those which are essentially movables, but by

46. *Manila Electric Company v. The City Assessor*, G.R. No. 166102, 765 SCRA 52 (2015).

47. *Id.* at 91.

the purpose for which they have been placed in an immovable, partake of the nature of the latter because of the added utility derived therefrom.’ *These properties, including machinery, become immobilized if the following requisites concur: (a) they are placed in the tenement by the owner of such tenement; (b) they are destined for use in the industry or work in the tenement; and (c) they tend to directly meet the needs of said industry or works. The first two requisites are not found anywhere in the Local Government Code.*⁴⁸

The Supreme Court ultimately held that the definition and requirements under the Local Government Code are controlling in determining whether machinery is real property subject to real property tax.⁴⁹

Nevertheless, considering that the Supreme Court only focused its decision on the taxability of machineries, the other real properties covered by Article 415 of the Civil Code,⁵⁰ but are not covered by the brief enumeration under the Local Government Code,⁵¹ shall still continue to be considered real properties subject to tax.

B. Special Classes of Real Property

Real properties are taxed on the basis of their assessment levels depending on the kind or class of real property.⁵² Special classes of real property are subject to a lower assessment level which results in a lower rate of real property tax.⁵³ The term “special classes of real property” is defined by the Local Government Code as —

SECTION 216. *Special Classes of Real Property.* — All lands, buildings, and other improvements thereon actually, directly[,] and exclusively used for hospitals, cultural, or scientific purposes, and those owned and used by local water districts, and government-owned or []controlled corporations rendering essential public services in the supply and distribution of water and/or generation and transmission of electric power shall be classified as special.⁵⁴

48. *Manila Electric Company*, 765 SCRA at 92–94 (citing II ARTURO M. TOLENTINO, CIVIL CODE OF THE PHILIPPINES 18–20 (1992)) (emphasis supplied).

49. *Manila Electric Company*, 765 SCRA at 94.

50. CIVIL CODE, § 415.

51. LOCAL GOV’T CODE.

52. *See id.* § 218.

53. *Id.*

54. *Id.* § 216.

In order to successfully claim for differential treatment or a lower assessment level, the claimant must prove that the subject lands, buildings, and other improvements are: (1) “actually, directly, and exclusively used for hospitals, cultural[,] or scientific purposes[; or (2)] owned and used by local water districts and government-owned and controlled corporations [(GOCC)] rendering essential public services in the supply and distribution of water and/or generation and transmission of electric power[.]”⁵⁵

The Supreme Court emphasized in *National Power Corporation v. Province of Pangasinan*⁵⁶ that the GOCC claiming entitlement to the privilege granted under Section 216 of the Local Government Code “must be the entity actually, directly, and exclusively using the real properties, and the use must be devoted to the generation and transmission of electric power.”⁵⁷ In the case, although the subject machinery and equipment are devoted to generation of electricity, the Court found “the ownership, use, operation, and maintenance thereof pertain to Mirant [Sual Corporation,]”⁵⁸ the private corporation contracted by the National Power Corporation (NPC) for the “construction, operation, and maintenance of the Sual Coal-Fired Thermal Power Plant ... [under a] Build-Operate-Transfer [arrangement.]”⁵⁹

The Court also denied the claim that

it is NPC, not Mirant [Sual Corporation], which utilizes the generated electricity for transmission or distribution to the customers. *The clear wordings of Section 216 state that it is the machinery and equipment which are exempted from the payment of real property tax, not the water or electricity that such facilities generate for distribution.*⁶⁰

The limited definitions provided in the Local Government Code pose a problem in the imposition of real property tax. A more comprehensive enumeration and definition may be necessary to properly guide taxpayers and LGUs.

55. *City Assessor of Cebu City vs. Association of Benevola de Cebu, Inc.*, G.R. No. 152904, 524 SCRA 128, 144 (2007) (citing LOCAL GOV'T CODE, § 216).

56. *National Power Corporation v. Province of Pangasinan*, G.R. No. 210191, 894 SCRA 508 (2019).

57. *Id.* at 525.

58. *Id.*

59. *Id.* at 512.

60. *Id.* at 525 (emphasis supplied).

III. REAL PROPERTY TAX

Real property tax is an *ad valorem* tax, or a tax based on the assessed value of the property.⁶¹ Real property is “appraised at its current and fair market value[.]”⁶² Real properties are also uniformly classified within an LGU and “on the basis of [] actual use.”⁶³

The term “actual use” is defined in the Local Government Code as “the purpose for which the property is principally or predominantly utilized by the person in possession thereof[.]”⁶⁴ The Local Government Code also uses actual use of real property as basis for assessment, “regardless of where located, whoever owns it, and whoever uses it.”⁶⁵

A. Authority to Impose Real Property Tax

“[T]he [LGU] of a province, city[,] or municipality within the Metropolitan Manila Area” is given the power to levy an annual real property tax on the land, building, machinery[,] and other improvements.⁶⁶ These LGUs can fix a uniform rate of basis real property tax applicable to their respective localities, as follows:

- (a) In the case of a province, at the rate not exceeding one percent (1%) of the assessed value of real property; and
- (b) In the case of a city or a municipality within the Metropolitan Manila Area, at the rate not exceeding two percent (2%) of the assessed value of real property.⁶⁷

B. Territorial Jurisdiction

An LGU is only allowed to assess and levy real property tax on real properties located within its territorial jurisdiction.⁶⁸ The Local Government Code clearly states that “[a]ll real property, whether taxable or exempt, shall be

61. LOCAL GOV'T CODE, § 199 (c).

62. *Id.* §§ 198 (a) & 201.

63. *Id.* § 198 (b)-(c).

64. *Id.* § 199 (b).

65. *Id.* § 217.

66. *Digital Telecommunications Phil., Inc. v. Province of Pangasinan*, G.R. No. 152534, 516 SCRA 541, 543-44 (2007) (citing LOCAL GOV'T CODE, § 232).

67. LOCAL GOV'T CODE, § 233.

68. *Id.* § 201.

appraised at the current and fair market value prevailing *in the locality where the property is situated*.”⁶⁹

The Supreme Court put it succinctly in *Tagaytay-Taal Tourist Development Corporation v. Court of Appeals*⁷⁰ when it ruled that “respondent City could not have validly collected real taxes over properties that are outside its territorial jurisdiction.”⁷¹ The Court cited Sections 5 and 39 of the Real Property Tax Code⁷² which have been reenacted substantially as Sections 201 and 233, respectively, of the Local Government Code.⁷³

Sections 201 and 233 were further cited by the Supreme Court in *Sta. Lucia Realty & Development, Inc. v. City of Pasig*.⁷⁴ The Court said, “[t]he only import of these provisions is that, while [an LGU] is authorized under several laws to collect real estate tax on properties falling under its territorial jurisdiction, it is imperative to first show that these properties are unquestionably within its geographical boundaries.”⁷⁵

Accentuating on the importance of delineating territorial boundaries, this Court, in *Mariano, Jr. v. Commission on Elections*⁷⁶ said —

The importance of drawing with precise strokes the territorial boundaries of a local unit of government cannot be overemphasized. The boundaries must be clear for they define the limits of the territorial jurisdiction of a local government unit. *It can legitimately exercise powers of government only within the limits of its territorial jurisdiction. Beyond these limits, its acts are ultra vires.* Needless to state, any uncertainty in the boundaries of local government units will sow costly conflicts in the exercise of governmental powers which ultimately will prejudice the people’s welfare. This is the evil sought to be avoided by the Local Government Code in requiring that the land area of a local

69. *Id.* (emphasis supplied).

70. *Tagaytay-Taal Tourist Development Corp. v. Court of Appeals*, G.R. No. 106812, 273 SCRA 182, 196 (1997).

71. *Id.*

72. THE REAL PROPERTY TAX CODE, §§ 5 & 39.

73. LOCAL GOV’T CODE, §§ 201 & 233.

74. *Sta. Lucia Realty & Development, Inc. v. City of Pasig*, G.R. No. 166838, 652 SCRA 44, 54 (2011).

75. *Id.* (emphasis omitted).

76. *Mariano, Jr. v. Commission on Elections*, G.R. No. 118577, 242 SCRA 211 (1995).

government unit must be spelled out in metes and bounds, with technical descriptions.⁷⁷

Notably, this territorial jurisdiction has been extended to the surrounding sea.

In *Capitol Wireless, Inc. v. Provincial Treasurer of Batangas*,⁷⁸ Capitol Wireless, Inc. (Capwire), a Philippine corporation engaged in the business of providing international telecommunications services, was assessed real property taxes by the Province of Batangas on the portion of the submarine cable system described in Capwire's Sworn Statement of True Value of Real Properties, which it submitted to the Provincial Treasurer of Batangas City for loan restructuring purposes.⁷⁹

In contesting the assessment, Capwire alleged that "it is [a] co-owner only of the so-called 'Wet Segment' of the [Asia Pacific Cable Network System (APCN)], while the landing stations or terminals and Segment E of APCN located in Nasugbu, Batangas are allegedly owned by ... PLDT[]."⁸⁰ It also "allege[d] that the Wet Segment is laid in international, and not Philippine[] waters."⁸¹

The Court held that Capwire is liable for real property taxes for the submarine cable system, including the undersea cables within the territorial sea.⁸² The Court explained —

As the Court takes judicial notice that Nasugbu is a coastal town and the surrounding sea falls within what the United Nations Convention on the Law of the Sea (UNCLOS) would define as the country's territorial sea (to the extent of 12 nautical miles outward from the nearest baseline, under Part II, Sections 1 and 2) over which the country has sovereignty, including the seabed and subsoil, it follows that indeed a portion of the submarine cable system lies within Philippine territory and thus falls within the jurisdiction of the said local taxing authorities. It easily belies Capwire's contention that the cable system is entirely in international waters. And even if such portion does not lie in the 12-nautical-mile vicinity of the territorial sea but further inward, in *Magallona v. Ermita, et al.* this Court held that 'whether referred

77. *Id.* at 217 (emphasis supplied).

78. *Capitol Wireless, Inc. v. Provincial Treasurer Assessor of Batangas*, G.R. No. 180110, 791 SCRA 272 (2016).

79. *Id.* at 278.

80. *Id.* (emphasis omitted).

81. *Id.*

82. *Id.* at 292.

to as Philippine ‘internal waters’ under Article I of the Constitution or as ‘archipelagic waters’ under UNCLOS Part III, Article 49 (1, 2, 4), the Philippines exercises sovereignty over the body of water lying landward of [its] baselines, including the air space over it and the submarine areas underneath.’ Further, under Part VI, Article 79 of the UNCLOS, the Philippines clearly has jurisdiction with respect to cables laid in its territory that are utilized in support of other installations and structures under its jurisdiction.

And as far as local government units are concerned, the areas described above are to be considered subsumed under the term ‘municipal waters’ which, under the Local Government Code, includes ‘not only streams, lakes, and tidal waters within the municipality, not being the subject of private ownership and not comprised within the national parks, public forest, timber lands, forest reserves[,] or fishery reserves, but also marine waters included between two lines drawn perpendicularly to the general coastline from points where the boundary lines of the municipality or city touch the sea at low tide and a third line parallel with the general coastline and fifteen (15) kilometers from it.’ Although the term ‘municipal waters’ appears in the Code in the context of the grant of quarrying and fisheries privileges for a fee by local governments, its inclusion in the Code’s Book II which covers local taxation means that it may also apply as guide in determining the territorial extent of the local authorities’ power to levy real property taxation.

Thus, the jurisdiction or authority over such part of the subject submarine cable system lying within Philippine jurisdiction includes the authority to tax the same, for taxation is one of the three basic and necessary attributes of sovereignty, and such authority has been delegated by the national legislature to the local governments with respect to real property taxation.⁸³

Accordingly, the authority of LGUs for purposes of real property taxation was effectively upheld to extend over the Philippine territorial sea.⁸⁴

83. *Capitol Wireless, Inc.*, 791 SCRA at 288–92 (citing United Nations Convention on the Law of the Sea, arts. 2–3, 49, & 79 (4), *opened for signature* Dec. 10, 1982, 1833 U.N.T.S. 3 [hereinafter UNCLOS] (entered into force Nov. 16, 1994); PHIL. CONST. art. I.; LOCAL GOV’T CODE, tit. II & §§ 131 (f), 138, & 149 (a); *Magallona v. Ermita*, G.R. No. 187167, 655 SCRA 476, 498 (2011); *Compagnie Financiere Sucres et Denrees v. Commissioner of Internal Revenue*, G.R. No. 133834, 499 SCRA 664, 667 (2006); *Commissioner of Internal Revenue v. Solidbank Corp.*, G.R. No. 148191, 416 SCRA 436, 457 (2003); & *The City Government of Quezon City v. Bayan Telecommunications, Inc.*, G.R. No. 162015, 484 SCRA 169, 184 (2006)).

84. *Id.*

Whether this authority to tax also includes the responsibility to police and develop the territorial sea within the jurisdiction of the LGU was not directly addressed by the Supreme Court.

Based on the case, however, the authority to tax is mentioned as only “one of the three basic and necessary attributes of sovereignty[] and [that it] has been delegated [to the local governments] by the national legislature[.]”⁸⁵ Contained in the Local Government Code is also the directive from the national legislature for LGUs to exercise such other powers and discharge such other functions and responsibilities as are “*necessary, appropriate, or incidental to efficient and effective provision of the basic services and facilities ...*”⁸⁶ Protection and development of the territorial sea may be deemed as “necessary, appropriate, or incidental to efficient and effective provision of the basic services and facilities” as development of the territorial sea, seabed, and subsoil will inure to the benefit of the LGU and its constituents.

Given the pronouncements of the Supreme Court in *Capitol Wireless, Inc.*, as discussed above, real property tax has proven to be an integral legal concept that allows LGUs to delve not only into fiscal and territorial matters, but also into public international law.

IV. LIABILITY FOR REAL PROPERTY TAX

As a general rule, real property taxes are levied upon the person “owning or administering the property[.]”⁸⁷ Under the Local Government Code, “the duty to declare the [] value of the real property for taxation purposes is imposed upon the owner, or administrator, or their duly authorized representatives [who] are thus considered the taxpayers.”⁸⁸

By way of exemption, if the real property is owned by the Republic of the Philippines or any of its political subdivisions, which are exempt entities, the liability for the real property tax shall be borne by the beneficial user of

85. *Id.* at 292 (citing *Compagnie Financiere Sucres et Denrees*, 499 SCRA at 667; *Solidbank Corp.*, 416 SCRA at 457; LOCAL GOV'T CODE, tit. II; & *The City Government of Quezon City*, 484 SCRA at 184).

86. LOCAL GOV'T CODE, § 17 (emphasis supplied).

87. *Cenido v. Apacionado*, G.R. No. 132474, 318 SCRA 688, 710 (1999) (citing ROMAN M. UMALI, REVIEWER IN TAXATION 662-63 (1985); THE REAL PROPERTY TAX CODE, §§ 6 & 22; & LOCAL GOV'T CODE, § 202).

88. *Camp John Hay Development Corp. v. Central Board of Assessment Appeals*, G.R. No. 169234, 706 SCRA 547, 567-68 (2013). *See also* LOCAL GOV'T CODE, § 202.

the real property.⁸⁹ This is incorporated in the Local Government Code under the exemptions from real property tax —

SECTION 234. *Exemptions from Real Property Tax.* — The following are exempted from payment of the real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions *except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person[.]*⁹⁰

In *NPC v. Province of Quezon*,⁹¹ the Court held —

The liability for taxes generally rests on the owner of the real property at the time the tax accrues. This is a necessary consequence that proceeds from the fact of ownership. However, personal liability for realty taxes may also expressly rest on the entity with the beneficial use of the real property, such as the tax on property owned by the government but leased to private persons or entities, or when the tax assessment is made on the basis of the actual use of the property. In either case, the unpaid realty tax attaches to the property but is directly chargeable against the taxable person who has actual and beneficial use and possession of the property regardless of whether or not that person is the owner.⁹²

This ruling on the transfer of liability for real property taxes from the owner to the beneficial user of the property has been upheld by the Supreme Court in a number of cases.⁹³

89. LOCAL GOV'T CODE, § 234 (a).

90. *Id.* (emphasis supplied).

91. *National Power Corporation v. Province of Quezon*, G.R. No. 171586, 593 SCRA 47 (2009).

92. *Id.* at 58-59 (emphasis omitted) (citing *Baguio v. Busuego*, G.R. No. 29772, 100 SCRA 116 (1980); *MERALCO v. Barlis*, G.R. No. 114231, 433 SCRA 11 (2004); *Republic v. Kidapawan*, G.R. No. 166651, 477 SCRA 324; *VITUG AND ACOSTA, TAX LAW AND JURISPRUDENCE* 490 (2000); LOCAL GOV'T CODE, § 257; & *Testate of Concordia Lim v. Manila*, G.R. No. 90639, 182 SCRA 482 (1990)).

93. *See, e.g.*, *National Power Corporation v. Central Board of Assessment Appeals*, G.R. No. 171470, 577 SCRA 418 (2009); *Government Service Insurance System v. City Treasurer and City Assessor of the City of Manila*, G.R. No. 186242, 609 SCRA 330 (2009); *Philippine Fisheries Development Authority v. Central Board of Assessment Appeals*, G.R. No. 178030, 638 SCRA 644 (2010); *Republic v. City of Paranaque*, G.R. No. 191109, 677 SCRA 246 (2012); & *National Power Corporation v. Province of Pangasinan*, 894 SCRA.

In particular, in *Lung Center of the Philippines v. Quezon City*,⁹⁴ the Court held that while the portions of the land occupied by the hospital and used for its patients are exempt from real property taxes, “portions of the land [owned by the hospital] but leased to private entities as well as those parts of the hospital leased to private individuals are not exempt from such taxes.”⁹⁵

However, real property leased by the Government to private entities may also be exempt from real property taxes, if the private entities having beneficial use are themselves exempt from taxes.⁹⁶ This was the ruling in the case of *City of Lapu-Lapu v. Philippines Economic Zone Authority (PEZA)*⁹⁷ where the City Government of Lapu-Lapu and Provincial Government of Bataan imposed real property taxes on PEZA for its properties in the economic zones in Mactan and in Bataan.⁹⁸ The Court held that PEZA is a government instrumentality, hence, exempt from taxes.⁹⁹ In addition, the Court also ruled that the lands and buildings whose beneficial use have been granted to other persons may not be taxed with real property taxes.¹⁰⁰ This is because PEZA “may only lease its lands and buildings to PEZA-registered economic zone enterprises and entities ... which ... are not subject to real property taxes[.]”¹⁰¹

94. *Lung Center of the Philippines v. Quezon City*, G.R. No. 144104, 433 SCRA 119 (2004).

95. *Id.* at 138.

96. *See City of Lapu-Lapu v. Philippine Economic Zone Authority*, G.R. No. 187583, 742 SCRA 524, 624 (2014) (citing Rules and Regulations Implementing The Special Economic Zone Act of 1995, Republic Act No. 7916, rule V, § 1 (1995) & An Act Providing for the Legal Framework and Mechanisms for the Creation, Operation, Administration, and Coordination of Special Economic Zones in the Philippines, Creating for This Purpose, The Philippine Economic Zone Authority (PEZA), and for Other Purposes [The Special Economic Zone Act of 1995], Republic Act No. 7916, § 24 (1995)).

97. *City of Lapu-Lapu v. Philippine Economic Zone Authority*, G.R. No. 187583, 742 SCRA 524 (2014).

98. *Id.*

99. *Id.* at 597.

100. *Id.* at 624.

101. *Id.* (citing Rules and Regulations Implementing the Special Economic Zone Act of 1995, rule V, § 1).

as provided in Republic Act No. 7916 or the Special Economic Zone Act of 1995.¹⁰²

To clarify, the liability for real property tax only passes to the beneficial user of the property when the property is owned by the Republic of the Philippines or any of its political subdivisions, as provided in Section 234 of the Local Government Code.¹⁰³

In *Herarc Realty Corporation v. Provincial Treasurer of Batangas*,¹⁰⁴ the petitioner acquired through execution sale 13 parcels of land in Batangas which were registered in its name since the year 2006.¹⁰⁵ However, actual possession of the property during the years 2006 to 2009 were with other private individuals.¹⁰⁶ The Provincial Treasurer assessed the Petitioner's unpaid real property taxes for the years 2007, 2008, and 2009, which the petitioner contested on the ground that it did not have actual or beneficial use of the parcels of land.¹⁰⁷

According to the Court, “[t]he personal liability for the tax delinquency is generally on whoever is the owner of the real property at the time the tax accrues[,]” with the exception of properties owned by the government but the beneficial use is granted to a private entity.¹⁰⁸ However, the Court ruled that since the petitioner is “an entity that is not tax exempt under the law, ... it is personally liable for the real property tax at the time it accrued” as the registered owner of the property.¹⁰⁹

Based on the foregoing, it may be concluded that if the situation contemplated by Section 234 (a) of the Local Government Code is reversed,¹¹⁰ as when the owner of the property is a private entity, but the beneficial use is

102. *City of Lapu-Lapu*, 742 SCRA at 624 (citing Rules and Regulations Implementing the Special Economic Zone Act of 1995, rule V, § 1 & The Special Economic Zone Act of 1995, § 24).

103. LOCAL GOV'T CODE, § 234.

104. *Herarc Realty Corporation v. Provincial Treasurer of Batangas*, G.R. No. 210736, 879 SCRA 317 (2018).

105. *Id.* at 320.

106. *Id.*

107. *Id.* at 322.

108. *Id.* at 325-26 (citing *National Power Corporation*, 593 SCRA at 58-59 & Republic v. City of Kidapawan, G.R. No. 166651, 477 SCRA 324, 336 (2005)).

109. *Herarc Realty Corporation*, 879 SCRA at 328.

110. LOCAL GOV'T CODE, § 234 (a).

granted to the government, the private owner for the property is still liable for the real property tax.

To further elucidate the liability for real property tax, it is important to clearly determine the properties and entities exempt therefrom.

V. EXEMPTIONS FROM REAL PROPERTY TAX

A. Property Owned by the Government

The Local Government Code clearly provides for the properties exempt from real property tax —

SECTION 234. *Exemptions from Real Property Tax.* — The following are exempted from payment of the real property tax:

- (a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;
- (b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, non-profit or religious cemeteries[,] and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable[,] or educational purposes;
- (c) All machineries and equipment that are actually, directly[,] and exclusively used by local water districts and government-owned or -controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;
- (d) All real property owned by duly registered cooperatives as provided for under [Republic Act] No. 6938; and
- (e) Machinery and equipment used for pollution control and environmental protection.

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or -controlled corporations are hereby withdrawn upon the effectivity of this Code.¹¹¹

111. *Id.* § 234.

Most of the properties listed as exempt from real property tax under Section 234 cited above are clear and unequivocal, with the exception of the first two items which will be discussed in more detail below.

As touched upon in the preceding part of this Article, under Section 234 (a) of the Local Government Code,¹¹² “[r]eal property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person[,]” are exempt from real property tax.¹¹³

The Supreme Court interpreted the phrase “property owned by the Republic of the Philippines” as property owned by the Government and by its agencies which do not have separate and distinct personalities.¹¹⁴ As such, once it is established that a property is owned by the Government, the property is exempt from real property tax regardless of whether the property is used for sovereign or proprietary purposes.¹¹⁵ This tax exemption, however, does not extend to improvements. In *National Development Company (NDC) v. Cebu City*,¹¹⁶ the Court held that the warehouse owned by NDC, a GOCC, built on the public land owned by the Government is subject to real property tax, even if the land is itself exempt from tax.¹¹⁷

It is a settled rule that properties owned by a GOCC are subject to real property taxes. A GOCC is defined in Section 2 (13) of Executive Order No. 297 or the Administrative Code of 1987 as —

Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: *Provided*, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their

112. *Id.* § 234 (a).

113. *Id.*

114. *National Development Company v. Cebu City*, G.R. No. 51593, 215 SCRA 382, 390 (1992).

115. *Id.* at 391.

116. *Id.* at 390.

117. *Id.* at 398.

respective powers, functions[,] and responsibilities with respect to such corporations.¹¹⁸

On the other hand, real properties of a *government instrumentality* are exempt from taxes.¹¹⁹ The Local Government Code clearly 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:*

...

(o) Taxes, fees[,] or charges of any kind on the National Government, its agencies and *instrumentalities*, and local government units.¹²⁰

An instrumentality is defined in Section 2 (10) of the Administrative Code of 1987 as —

(10) *Instrumentality* — refers to any agency of the National Government, not integrated within the department framework vested within special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions[,] and government-owned or controlled corporations.¹²¹

Although the term “instrumentality” includes GOCCs in the above definition under the Administrative Code, the Supreme Court has made a clear distinction between the two.

In *Manila International Airport Authority v. Court of Appeals*,¹²² the Court explained that a GOCC “must be organized as a stock or non-stock corporation.”¹²³ The Court found that the Manila International Airport Authority (MIAA) is not organized as a stock corporation considering that it does not have stockholders or voting shares and is not organized as a non-stock corporation considering that it does not have members.¹²⁴ Thus, MIAA

118. Instituting the “Administrative Code of 1987” [ADMIN. CODE], Executive Order No. 292, § 2 (13) (1987).

119. LOCAL GOV'T CODE, § 133 (o).

120. *Id.* (emphases supplied).

121. ADMIN. CODE, § 2 (10).

122. *Manila International Airport Authority v. Court of Appeals*, G.R. No. 155650, 495 SCRA 591 (2006).

123. *Id.* at 615 (emphasis omitted) (citing ADMIN. CODE, § 2 (13)).

124. *Id.* at 670.

does not qualify as a GOCC.¹²⁵ Instead, the Court declared that MIAA is a government instrumentality vested with corporate powers to perform its governmental functions efficiently.¹²⁶ The Court explained —

When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers. Thus, MIAA exercises the governmental powers of eminent domain, police authority[,] and the levying of fees and charges. At the same time, MIAA exercises ‘all the powers of a corporation under the Corporation Law, insofar as these powers are not inconsistent with the provisions of this Executive Order.’

Likewise, when the law makes a government instrumentality operationally autonomous, the instrumentality remains part of the National Government machinery although not integrated with the department framework. The MIAA Charter expressly states that transforming MIAA into a ‘separate and autonomous body’ will make its operation more ‘financially viable.’

*Many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a government-owned or controlled corporation. Examples are the Mactan International Airport Authority, the Philippine Ports Authority, the University of the Philippines[,] and Bangko Sentral ng Pilipinas. All these government instrumentalities exercise corporate powers but they are not organized as stock or non-stock corporations as required by Section 2 (13) of the Introductory Provisions of the Administrative Code. These government instrumentalities are sometimes loosely called government corporate entities. However, they are not government-owned or controlled corporations in the strict sense as understood under the Administrative Code, which is the governing law defining the legal relationship and status of government entities.*¹²⁷

It is worthy to note that based on *Manila International Airport Authority*, the rule that a tax exemption is strictly construed against the taxpayer claiming the

125. *Id.*

126. *Id.* at 643.

127. *Id.* at 618–19 (citing Providing for a Revision of Executive Order No. 778 Creating the Manila International Airport Authority, Transferring Existing Assets of the Manila International Airport to the Authority, and Vesting the Authority With Power to Administer and Operate the Manila International Airport [Revised Charter of the Manila International Airport Authority], Executive Order No. 903, §§ 5 (j), (k), (o); 6; & whereas cl. para. 3 (1983)) (emphasis supplied).

exemption is reversed when the taxpayer is the National Government, such that the exemption is construed liberally in favor of the National Government instrumentality.¹²⁸ The Court said —

When local governments invoke the power to tax on national government instrumentalities, such power is construed strictly against local governments. The rule is that a tax is never presumed and there must be clear language in the law imposing the tax. Any doubt whether a person, article[,] or activity is taxable is resolved against taxation.¹²⁹

Properties owned by the government remain as such regardless of fees charged to the public use these properties.¹³⁰ In the same *MIAA* Case, the Court held that the airport lands and buildings of MIAA are “devoted to public use because they are used by the public for international and domestic travel and transportation,” and the “[collection of] terminal fees and other charges from the public does not remove the character as properties for public use.”¹³¹ The Court expounded, thus —

The charging of fees to the public does not determine the character of the property whether it is of public dominion or not. Article 420 of the Civil Code defines property of public dominion as one ‘intended for public use.’ Even if the government collects toll fees, the road is still ‘intended for public use’ if anyone can use the road under the same terms and conditions as the rest of the public. The charging of fees, the limitation on the kind of vehicles that can use the road, the speed restrictions[,] and other conditions for the use of the road do not affect the public character of the road.¹³²

The exemption from real property tax is specifically granted to the national government and cannot be transferred or extended to a private entity.¹³³ In several cases involving the NPC, the Court has consistently held “that the tax exemptions and privileges claimed by NPC cannot be recognized since it is not the actual, direct, and exclusive use of the facilities, machinery, and equipment subject of the cases.”¹³⁴

128. *Manila International Airport Authority*, 495 SCRA at 619.

129. *Id.*

130. *Id.* at 622.

131. *Id.* (emphasis omitted).

132. *Id.*

133. *Id.* at 629 (citing LOCAL GOV'T CODE, § 234 (a)).

134. *National Power Corporation v. Province of Pangasinan*, 894 SCRA at 519 (citing *FELS Energy, Inc. v. Province of Batangas*, G.R. Nos. 168557, 516 SCRA 186 (2007);

B. Properties of Charitable Institutions

Section 234 (b) of the Local Government Code¹³⁵ exempts properties owned by “[c]haritable institutions, churches, parsonages or convents appurtenant thereto, mosques, non-profit or religious cemeteries[,] and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable[,] or educational purposes[]” from real property taxes.¹³⁶

To be deemed a charitable institution exempt from real property taxes, it must meet the substantive test of charitable character in *Lung Center of the Philippines v. Quezon City*.¹³⁷ In that case, the Court explained —

To determine whether an enterprise is a charitable institution/entity or not, the elements which should be considered include the statute creating the enterprise, its corporate purposes, its constitution and by-laws, the methods of administration, the nature of the actual work performed, the character of the services rendered, the indefiniteness of the beneficiaries, and the use and occupation of the properties.

In the legal sense, a charity may be fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds and hearts under the influence of education or religion, [or] by assisting them to establish themselves in life or otherwise lessening the burden of government. It may be applied to almost anything that tend to promote the well-doing and well-being of social man. It embraces the improvement and promotion of the happiness of man. The word ‘charitable’ is not restricted to relief of the poor or sick. The test of a charity and a charitable organization are in law the same. *The test whether an enterprise is charitable or not is whether it exists to carry out a purpose reorganized in law as charitable or whether it is maintained for gain, profit, or private advantage.*¹³⁸

National Power Corporation v. Central Board of Assessment Appeals, 577 SCRA at 418; & *National Power Corporation v. Province of Quezon*, 611 SCRA).

135. LOCAL GOV'T CODE, § 234 (b).

136. *Id.*

137. *Lung Center of the Philippines v. Quezon City*, G.R. No. 144104, 433 SCRA 119 (2004).

138. *Id.* at 128–29 (emphasis supplied) (citing *Workmen’s Circle Educational Center of Springfield v. Board of Assessors of City of Springfield, Mass.* 616, 51 N.E.2d 313 (Westlaw, U.S.); *Congregational Sunday School & Publishing Society v. Board of Review*, 290 Ill. 108, 125 N.E. 7 (Westlaw, U.S.) (citing *Jackson v. Philipps*, 14 Allen 539, 96 Mass. 539; *Bader Realty & Investment Co. v. St. Louis Housing Authority*, 358 Mo. 747, 217 S.W.2d 489 (1949)); & *Board of Assessors of Boston v. Garland School of Homemaking*, 296 Mass 378, 6 N.E.2d 379 (1937)).

...

As a general principle, a charitable institution does not lose its character as such and its exemption from taxes simply because it derives income from paying patients, whether out-patient, or confined in the hospital, or receives subsidies from the government, so long as the money received is devoted or used altogether to the charitable object which it is intended to achieve; and no money inures to the private benefit of the persons managing or operating the institution.¹³⁹

In this case, it was established that the institution spent its income “for its patients and for the operation of the hospital.”¹⁴⁰ As such, it retained the character of a charitable institution, despite the fact that it derives income from paying patients.¹⁴¹ However, the Court noted that the portion of the real properties leased to private entities shall not be covered by the exemption.¹⁴² The Court clarified —

What is meant by actual, direct[,] and exclusive use of the property for charitable purposes is the *direct and immediate and actual application of the property itself* to the purposes for which the charitable institution is organized. It is *not the use of the income from the real property* that is determinative of whether the property is used for tax-exempt purposes.¹⁴³

Thus, the provision of the Local Government Code on exemption only covers all lands, buildings, and improvements *actually, directly, and exclusively used* for religious, charitable, or educational purposes.¹⁴⁴

C. Removal of Exemptions

It is a settled rule that tax exemptions are construed strictly against the party claiming it. In *FELS Energy, Inc. v. Province of Batangas*,¹⁴⁵ the Court stated, thus —

139. *Id.* at 131-32 (citing *Sisters of Third Order of St. Frances v. Board of Review of Peoria County*, 397 F. Supp. 2d 1032 (Westlaw, U.S.) & *Christian Business College v. Kalamanzoo*, 131 N.W. 553).

140. *Id.* at 133.

141. *Id.*

142. *Id.*

143. *Lung Center of the Philippines*, 433 SCRA at 137-38 (emphasis supplied) (citing *Christian Business College*, 131 N.W. 553).

144. *Id.* at 136 (citing LOCAL GOV'T CODE, § 234 (b) (emphasis supplied)).

145. *FELS Energy, Inc. v. Province of Batangas*, G.R. No. 168557, 516 SCRA 186 (2007).

Time and again, the Supreme Court has stated that taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and the entity that would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.¹⁴⁶

The Local Government Code plainly and categorically removed tax exemptions granted to entities under laws and other charters, as provided in Sections 193 and 234, viz. —

SECTION 193. *Withdrawal of Tax Exemption Privileges.* — Unless otherwise provided in this [C]ode, tax exemptions or incentives granted to or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under [Republic Act No.] 6938, non-stock and non-profit hospitals[,] and educational institutions, are hereby withdrawn upon effectivity of this Code.¹⁴⁷

...

SECTION 234. *Exemptions from Real Property Tax.* — The following are exempted from payment of the real property tax:

...

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or -controlled corporations are hereby withdrawn upon the effectivity of this Code.¹⁴⁸

Due to the removal of these exemptions, entities enjoying tax exemptions through various charters and laws prior to the enactment of the Local Government Code became subject to real property tax. However, entities may still be exempt from payment of real properties if their charters, which were enacted or reenacted after the effectivity of the Local Government Code, exempt them payment of real property taxes.¹⁴⁹

146. *FELS Energy, Inc.*, 516 SCRA at 207 (citing Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company, G.R. No. 140230, 478 SCRA 61, 74 (2005) & Republic v. City of Kidapawan, G.R. No. 166651, 477 SCRA 324, 335 (2005)).

147. LOCAL GOV'T CODE, § 193.

148. *Id.* § 234.

149. *City of Lapu-Lapu*, 742 SCRA at 524.

In *Government Service Insurance System v. City Treasurer of the City of Manila*,¹⁵⁰ the Court held that Presidential Decree No. 1146,¹⁵¹ or the GSIS Charter, was further amended and expanded by Republic Act No. 8291,¹⁵² or the Government Service Insurance System (GSIS) Act of 1997 which took effect on 24 June 1997.¹⁵³ Under the GSIS Act of 1997, full tax exemption of the GSIS was restored. The Court noted —

Given the foregoing perspectives, the following may be assumed: (1) Pursuant to [Section] 33 of [Presidential Decree No.] 1146, GSIS enjoyed tax exemption from real estate taxes, among other tax burdens, until [1 January] 1992 when the [Local Government Code] took effect and withdrew exemptions from payment of real estate taxes privileges granted under [Presidential Decree No.] 1146; (2) [Republic Act No.] 8291 restored in 1997 the tax exempt status of GSIS by reenacting under its Sec. 39 what was once [Section] 33 of [Presidential Decree No.] 1146; and (3) If any real estate tax is due to the City of Manila, it is, following City of Davao, only for the interim period, or from 1992 to 1996, to be precise.¹⁵⁴

Nevertheless, the real properties of GSIS are upheld as exempt from real property taxes, except for those properties leased to a private entity, considering that the Court found that it is a government instrumentality.

The foregoing discussion shows that exemption from real property tax is a complex and nuanced matter which requires jurisprudence to interpret. This must be accounted for when underscoring the paramount need to properly apply and impose real property tax liabilities, considering the repercussions of failure to pay these taxes.

150. *Government Service Insurance System v. City Treasurer of the City of Manila*, G.R. No. 186242, 609 SCRA 330 (2009).

151. Amending, Expanding, Increasing and Integrating the Social Security and Insurance Benefits of Government Employees and Facilitating the Payment Thereof Under Commonwealth Act No. 186, as Amended, and for Other Purposes [Revised Government Service Insurance Act of 1977], Presidential Decree No. 1146 (1977).

152. An Act Amending Presidential Decree No. 1146, as Amended, Expanding and Increasing the Coverage and Benefits of the Government Service Insurance System, Instituting Reforms Therein and for Other Purposes [The Government Service Insurance Service System Act of 1997], Republic Act No. 8291 (1997).

153. *Government Service Insurance System*, 609 SCRA at 342-43.

154. *Id.* at 344-45 (emphasis omitted).

VI. CONSEQUENCES OF NON-PAYMENT OF REAL PROPERTY TAXES

Real property tax is assessed annually and accrues on the first of January of each year.¹⁵⁵ It may be paid without interest in four installments on or before the end of each calendar quarter.¹⁵⁶

Section 270 of the Local Government Code provides the prescriptive period for the collection of real property taxes —

SECTION 270. *Periods Within Which to Collect Real Property Taxes.* — The basic real property tax and any other tax levied under this Title shall be collected within five (5) years from the date they become due. No action for the collection of the tax, whether administrative or judicial, shall be instituted after the expiration of such period. In case of fraud or intent to evade payment of the tax, such action may be instituted for the collection of the same within ten (10) years from the discovery of such fraud or intent to evade payment.

The period of prescription within which to collect shall be suspended for the time during which:

- (1) The local treasurer is legally prevented from collecting the tax;
- (2) The owner of the property or the person having legal interest therein requests for reinvestigation and executes a waiver in writing before the expiration of the period within which to collect; and
- (3) The owner of the property or the person having legal interest therein is out of the country or otherwise cannot be located.¹⁵⁷

Unpaid real property taxes are subject to an interest of two percent per month until the tax is fully paid, provided that the interest shall not exceed 36 months.¹⁵⁸ Despite this 36-month limit on interest, the LGU has a strong remedy to collect the tax — the power to levy on the real property.¹⁵⁹

The power to levy the real property is available to the LGU upon the expiration of the time to pay the basic real property tax.¹⁶⁰ The LGU can levy the said property “through the issuance of a warrant on or before, or simultaneously with, the institution of the civil action for the collection of the

155. LOCAL GOV'T CODE, § 246.

156. *Id.* § 250.

157. *Id.* § 270.

158. *Id.* § 255.

159. *See id.*

160. *Id.* § 258.

delinquent tax.”¹⁶¹ Hence, the power to levy the real property is not mutually exclusive with the power to file a civil case for collection of the tax due on such real property.

The Local Government Code also imposes an ultimatum on the “local treasurer or his deputy ... to issue or execute the warrant of levy within one [] year from the time the tax becomes delinquent or execute the warrant within []30[] days from the date of the issuance thereof[.]”¹⁶² Failure to do so may subject the erring local treasurer or his deputy to criminal prosecution under the Revised Penal Code or to dismissal from service.¹⁶³ As such, delinquent properties are generally subject to levy within one year from the time they become delinquent.¹⁶⁴

When real property taxes become delinquent, the Local Government Code authorizes “the provincial, city[,] or municipal treasurer to immediately post a notice of the delinquency at the main entrance of the provincial capitol, or city or municipal hall and in a publicly accessible and conspicuous place in each [b]arangay of the [LGU] concerned.”¹⁶⁵ “The notice of delinquency shall also be published once a week for two [] consecutive weeks, in a newspaper of general circulation in the province, city[,] or municipality.”¹⁶⁶ The notice shall state that “unless the tax, surcharges[,] and penalties are paid before the expiration of the year for which the tax is due[,] ... the delinquent property will be sold at public auction,” subject to the right of redemption of the owner or interested party within one year from the date of sale.¹⁶⁷

The notice and warrant of levy must be sent to the correct address of the owner or person having interest in the real property, otherwise the levy and delinquency sale are void for lack of due process.¹⁶⁸ As held in the case of *Cruz v. City of Makati*¹⁶⁹ —

161. LOCAL GOV'T CODE, § 258.

162. *Id.* § 259.

163. *Id.*

164. *Id.*

165. *Id.* § 254.

166. *Id.* § 254 (b).

167. LOCAL GOV'T CODE, § 254 (b).

168. *See* Genato Investments, Inc. v. Barrientos, G.R. No. 207443, 731 SCRA 35, 38 (2014).

169. *Cruz v. City of Makati*, G.R. No. 210894, 880 SCRA 131, 151-52 (2018) (emphasis supplied).

The Court must protect private property owners from undue application of the law authorizing the levy and sale of their properties for non-payment of the real property tax. *This power of local government units is prone to great abuse, in that owners of valuable real property are liable to lose them on account of irregularities committed by these local government units or officials, done intentionally with the collusion of third parties and with the deliberate unscrupulous intent to appropriate these valuable properties for themselves and profit therefrom.* These unscrupulous parties can commit a simple, seemingly irrelevant technicality such as deliberately sending billing statements, notices of delinquency and levy to wrong addresses under the guise of typographical lapses, as what happened here and in the *Genato Investments* case, and then proceed with the levy and auction sale of these valuable properties without the knowledge and consent of the owners. *Before the owners realize it, their precious properties have already been confiscated and sold by the local government units or officials to so-called ‘innocent third parties’ who are in fact their cohorts in the unscrupulous scheme. This is barefaced robbery that the Court cannot sanction.*¹⁷⁰

“Within []30[] days after service of the warrant of levy, the local treasurer shall ... advertise [] the sale or auction the property or a usable portion thereof as may be necessary to satisfy the tax delinquency and expenses of sale.”¹⁷¹ If the owner of the real property or person having legal interest therein fails to pay the delinquent tax, interest due, and the expenses of sale, the sale shall proceed. The sale shall be held either at the main entrance of the provincial, city, or municipal hall, on the property to be sold, or at any other place as specified in the notice of the sale.¹⁷² Proceeds of the sale in excess of the delinquent tax, interest due, and the expenses of sale shall be remitted to the owner of the real property or person having legal interest therein.¹⁷³

The Local Government Code also states that —

In case there is no bidder for the real property ... or if the highest bid is for an amount insufficient to pay the real property tax, ... interest[,] and costs of sale[,] the local treasurer conducting the sale shall purchase the property in behalf of the local government unit¹⁷⁴

The owner or person having legal interest over the property may, within one year from the date of sale, redeem the property by paying to the

170. *Id.*

171. LOCAL GOV'T CODE, § 260.

172. *Id.*

173. *Id.*

174. *Id.* § 263.

local treasurer the amount of the delinquent tax, ... interest[,] ... and the expenses of sale from the date of delinquency to the date of sale, plus interest of not more than two percent [] per month on the purchase price from the date of sale to the date of redemption.¹⁷⁵

“In case the owner or person having legal interest [therein] fails to redeem the delinquent property ... , the local treasurer shall execute a deed [of sale over the property with the purchaser through the sale or auction].”¹⁷⁶

This remedy of levying the real properties only applies when the owner of the real property is a private entity. In the case of *Philippine Heart Center v. Local Government of Quezon City*,¹⁷⁷ the Court ruled that although there are real properties in which beneficial use is granted to private entities, the real properties cannot be levied since it is the taxable person with beneficial use who shall be responsible for payment of real property taxes, and the collection should be directed against the taxable person, the same being an action *in personam*.¹⁷⁸ The Court expounded, thus —

In another vein, the Republic and its instrumentalities including the PHC retain their exempt status despite leasing out their properties to private individuals. The fact that PHC was short of alienating its properties to private parties in relation to the establishment, operation, maintenance[,] and viability of a fully functional specialized hospital, does not divest them of their exemption from levy; *the properties only lost the exemption from being taxed, but they did not lose their exemption from the means to collect such taxes.*

Otherwise stated, *local government units are precluded from availing of the remedy of levy against properties owned by government instrumentalities*, whether or not vested with corporate powers, such as the PHC. Indeed, it would be the height of absurdity to levy the PHC’s properties to answer for taxes the PHC does not owe. This leaves the Quezon City Government with only one recourse — judicial action for collection of real property taxes against private individuals with beneficial use of the PHC’s properties.

A final word. *Local government units must exercise restraint in levying on government properties. The ‘power to destroy’ ought not be used against the very entity that wields it.* Despite its corporate status, the PHC remains an instrumentality of the

175. *Id.* § 261.

176. *Id.* § 262.

177. *Philippine Heart Center v. Local Government of Quezon City*, G.R. No. 225409, Mar. 11, 2020, available at <https://sc.judiciary.gov.ph/13889> (last accessed May 11, 2021).

178. *Id.* at 22.

government from which the power to tax of local units originates. Thus, it, too, must be spared from a local unit's power of confiscation.¹⁷⁹

Instead, the remedy of the LGU is to enforce the collection of the real property tax by civil action in any court of competent jurisdiction, as provided in Section 262 of the Local Government Code,¹⁸⁰ against the taxable person.

VII. PAYMENT UNDER PROTEST

It is an oft-quoted saying that “*taxes are the lifeblood of the government*,”¹⁸¹ almost to the point of cliché. The Bureau of Internal Revenue (BIR) and the courts have more often than not taken the opportunity to quote this statement whenever a claim for unpaid or deficient tax is at issue. The national government, however, has not seen the need to ensure the availability of this lifeblood by requiring taxpayers to pay *first* even if there is an issue on the assessment of taxes. The National Internal Revenue Code, as amended,¹⁸² does not have this requirement. Taxpayers of national taxes are allowed to challenge the assessment with the BIR,¹⁸³ appeal with the Court of Tax Appeals,¹⁸⁴ and finally with the Supreme Court without need to first pay the assessed taxes, even if the challenge takes years to resolve.

There was no requirement to pay an assessment for all taxes, including real property taxes, before a claim or challenge against said assessment is given due course by the tax authorities and the courts. That was until the national government enacted a law for local governments.

The Local Government Code introduced the concept of payment under protest *before protest* in the Philippine taxation system.¹⁸⁵ Section 252 of the Local Government Code provides —

SECTION 252. *Payment Under Protest.* — (a) *No protest shall be entertained unless the taxpayer first pays the tax.* There shall be annotated on the tax receipts the words ‘paid under protest.’ The protest in writing must be filed within [

179. *Id.* (emphases supplied).

180. LOCAL GOV'T CODE, § 262.

181. *North Camarines Lumber Co., Inc. v. Collector of Internal Revenue*, 109 Phil. 511, 514 (1960) (citing *Bull v. United States*, 295 U.S. 247, 250 (1935)).

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

183. *See id.* § 228.

184. *See id.*

185. LOCAL GOV'T CODE, § 252.

]30[] days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within []60[] days from receipt.

(b) The tax or a portion thereof paid under protest shall be held in trust by the treasurer concerned.

(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.

(d) In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of this Code.¹⁸⁶

While the Assessment Law and the Real Property Tax Code both have a provision on payment under protest, neither required that the payment be made for a protest to be entertained by the tax authority. The Assessment Law provides —

SECTION 25. *Payment Under Protest.* — When a taxpayer desires for any reason to pay his tax under protest, such protest shall be annotated on the tax receipt by writing thereon the words ‘paid under protest.’ Verbal protest shall be confirmed in writing, with a statement of the ground or grounds therefor, within thirty days. The tax may be paid under protest, and in such case it shall be the duty of the municipal treasurer to annotate the ground or grounds therefor for on the receipt.¹⁸⁷

The Real Property Tax Code provides —

SECTION 62. *Payment Under Protest.* — (a) When a taxpayer desires for any reason to pay his tax under protest, he shall indicate the amount or portion thereof he is contesting and such protest shall be annotated on the tax receipts by writing thereon the words ‘paid under protest’. Verbal protests shall be confirmed in writing, with a statement of the ground, therefor, within thirty days. The tax may be paid under protest, and in such case it shall be the duty of the Provincial, City or Municipal Treasurers to annotate the ground or grounds therefor on the receipt.

(b) In case of payments made under protest, the amount or portion of the tax contested shall be held in trust by the treasurer and the difference shall be treated as revenue.

(c) In the event that the protest is finally decided in favor of the government, the amount or portion of the tax held in trust by the treasurer shall accrue to the revenue account, but if the protest shall be decided finally in favor of the

186. *Id.* (emphasis supplied).

187. Assessment Law, § 25.

protestant, the amount or portion of the tax protested against may either be refunded to the protestant or applied as tax credit to any other existing or future tax liability of the said protestant.¹⁸⁸

The two laws previously governing real property tax provide for voluntary payment under protest, giving the taxpayer the choice whether to annotate the protest on the tax receipt. In the Assessment Law, payment under protest can even be made verbally, and the taxpayer has 30 days to provide written confirmation of such protest.¹⁸⁹ Nowhere in these two laws is it provided that a protest cannot be entertained if there is no payment under protest.

The Supreme Court later succinctly explained the rationale for the requirement of payment under protest in *Camp John Hay Development Corp. v. Central Board of Assessment Appeals*¹⁹⁰ —

To reiterate, the restriction upon the power of courts to impeach tax assessment without a prior payment, under protest, of the taxes assessed is consistent with the doctrine that taxes are the lifeblood of the nation and as such their collection cannot be curtailed by injunction or any like action; otherwise, the state or, in this case, the local government unit, shall be crippled in dispensing the needed services to the people, and its machinery gravely disabled. The right of local government units to collect taxes due must always be upheld to avoid severe erosion. This consideration is consistent with the State policy to guarantee the autonomy of local governments and the objective of [Republic Act] No. 7160 or the [Local Government Code] of 1991 that they enjoy genuine and meaningful local autonomy to empower them to achieve their fullest development as self-reliant communities and make them effective partners in the attainment of national goals.¹⁹¹

In the Foreword to *The Local Government Code Revisited*, a book by the late Senator Aquilino Q. Pimentel, Jr., principal author of the Local Government Code, Senator Franklin M. Drilon shared his insights on the need for local governments' power to levy taxes, thus —

The single biggest problem for the local government has been inadequacy of funds. Article X of the 1987 Constitution grants each LGU the power to create its own sources of revenue and to levy taxes, but this power is 'subject to such guidelines and limitations as the Congress may provide.' In practice, taxes were very hard to collect. Most local government funding came from

188. THE REAL PROPERTY TAX CODE, § 62.

189. Assessment Law, § 25.

190. *Camp John Hay Development Corp. v. Central Board of Assessment Appeals*, G.R. No. 169234, 706 SCRA 547 (2013).

191. *Id.* at 570-71.

Malacañang. While the Constitution mandates that the [S]tate ‘shall ensure the autonomy of local governments,’ it however states that the President ‘shall exercise general supervision over local governments.’ To help change this culture of dependence and centralized paternalism, we formulated a policy that, in the implementation of the Local Government Code, all doubts shall be interpreted in favor of local autonomy.¹⁹²

The requirement of payment under protest is further bolstered by the provision that no appeals shall suspend the collection of real property taxes, as provided in Section 231 of the Local Government Code —

SECTION 231. *Effect of Appeal on the Payment of Real Property Tax.* — Appeal on assessments of real property made under the provisions of this Code shall, in no case, suspend the collection of the corresponding realty taxes on the property involved as assessed by the provincial or city assessor, without prejudice to subsequent adjustment depending upon the final outcome of the appeal.¹⁹³

Senator Aquilino Q. Pimentel, Jr. explained the rationale on the non-suspension of collection —

Appeals made on the assessments issued by the local assessors do not result in the suspension of the collection and payment of realty taxes on the property involved. *The reason is that the presumption is in favor of the validity of the assessment. Moreover, the collections based thereon are usually included in the budgetary estimates of LGUs. It would distort local government budgetary projections if the collection and payment of taxes are suspended simply because an appeal is made by a dissatisfied property owner.*¹⁹⁴

It is for the promotion of local autonomy that the payment under protest was created and required for payment of realty taxes. This same reason, it seems, is not available to the National Government, which has other sources of revenue.

With the enactment of the Local Government Code, it is now required that in the event of an assessment of real property tax, the taxpayer must first pay under protest before the assessment may be contested.¹⁹⁵ This requirement is jurisdictional, and the Supreme Court has consistently held that payment under protest is required when the taxpayer or owner is questioning the

192. PIMENTEL, JR., *supra* note 7, at ix.

193. LOCAL GOV'T CODE, § 232.

194. PIMENTEL, JR., *supra* note 7, at 441-42 .

195. LOCAL GOV'T CODE, § 252.

excessiveness or reasonableness of the assessment.¹⁹⁶ In *Olivares v. Marquez*,¹⁹⁷ the Supreme Court held —

In the present case, the authority of the assessor is not being questioned. Despite petitioners' protestations, the petition filed before the court *a quo* primarily involves the correctness of the assessments, which are questions of fact, that are not allowed in a petition for *certiorari*, prohibition[,] and *mandamus*. The court *a quo* is therefore precluded from entertaining the petition, and it appropriately dismissed the petition.

WHEREFORE, the petition is DENIED for lack of merit.¹⁹⁸

This was even more clearly stated in the case of *National Power Corp. v. Province of Quezon, et al.*,¹⁹⁹ where the Supreme Court said —

The protest contemplated under Section 252 is required where there is a question as to the reasonableness or correctness of the amount assessed. Hence, if a taxpayer disputes the reasonableness of an increase in a real property tax assessment, he is required to 'first pay the tax' under protest. Otherwise, the city or municipal treasurer will not act on his protest.²⁰⁰

Notably, not all protests involving real property taxes require payment under protest.²⁰¹ In the case of *Ty v. Trampe*,²⁰² the Supreme Court cited controversies involving purely questions of law as exception to the exhaustion of administrative remedies.²⁰³ The Supreme Court said —

Although as a rule, administrative remedies must first be exhausted before resort to judicial action can prosper, there is a well-settled exception in cases where the controversy does not involve questions of fact but only of law. In the present case, the parties, even during the proceedings in the lower court on 11 April 1994, already agreed 'that the issues in the petition are legal', and thus, no evidence was presented in said court.

196. See *National Power Corporation v. Province of Quezon*, 611 SCRA; *Camp John Hay Development Corp.*, 706 SCRA; & *Manila Electric Company*, 765 SCRA.

197. *Olivares v. Marquez*, G.R. No. 155591, 438 SCRA 679 (2004).

198. *Id.* at 687.

199. *National Power Corporation v. Province of Quezon*, G.R. No. 171586, 611 SCRA 71, 93 (2010).

200. *Id.*

201. *Jardine Davies Insurance Brokers, Inc. v. Aliposa*, G.R. No. 118900, 398 SCRA 176, 183 (2003).

202. *Ty v. Trampe*, G.R. No. 117577, 250 SCRA 500 (1995).

203. *Id.* at 518.

In laying down the powers of the Local Board of Assessment Appeals, [Republic Act No.] 7160 provides in [Section] 229 (b) that ‘[t]he proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts’ It follows that appeals to this Board may be fruitful only where questions of fact are involved. Again, the protest contemplated under [Section] 252 of [Republic Act No.] 7160 is needed where there is a question as to the reasonableness of the amount assessed. Hence, if a taxpayer disputes the reasonableness of an increase in a real estate tax assessment, he is required to ‘first pay the tax’ under protest. Otherwise, the city or municipal treasurer will not act on his protest. In the case at bench[,] however, the petitioners are questioning the very authority and power of the assessor, acting solely and independently, to impose the assessment and of the treasurer to collect the tax. These are not questions merely of amounts of the increase in the tax but attacks on the very validity of any increase.²⁰⁴

A clear exception to this exception is a claim for exemption from payment of real property tax. In the case of *National Power Corp. v. Provincial Treasurer of Benguet*,²⁰⁵ the Supreme Court held that NPC should have paid the real property taxes under protest prior to protesting the assessment on the basis of its claim for exemption.²⁰⁶ The Court said —

As settled in jurisprudence, a claim for exemption from the payment of real property taxes does not actually question the assessor’s authority to assess and collect such taxes, but pertains to the reasonableness or correctness of the assessment by the local assessor, a question of fact which should be resolved, at the very first instance, by the LBAA.

...

The burden of proving exemption from local taxation is upon whom the subject real property is declared. By providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, the above quoted provision implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim. Thus, if the property being taxed has not been dropped from the assessment roll, taxes must be paid under protest if the exemption from taxation is insisted upon.²⁰⁷

204. *Id.* at 518-19.

205. *National Power Corporation v. Provincial Treasurer of Benguet*, G.R. No. 209303, 808 SCRA 595 (2016).

206. *Id.* at 607.

207. *Id.* at 604-05 (citing *National Power Corporation v. Province of Quezon*, 611 SCRA at 92) (emphasis omitted).

This strict requirement is consistent with the principle that tax exemptions are construed *strictissimi juris* against the taxpayer claiming the exemption.

A slight reprieve for taxpayers required to pay under protest is the allowance of payment of taxes through a surety bond. The Supreme Court, in the case of *Manila Electric Co. v. City Assessor*,²⁰⁸ upheld the posting of a surety bond as substantial compliance with the requirement to pay under protest —

By posting the surety bond, MERALCO may be considered to have substantially complied with Section 252 of the Local Government Code for the said bond already guarantees the payment to the Office of the City Treasurer of Lucena of the total amount of real property taxes and penalties due on Tax Declaration Nos. 019-6500 and 019-7394. This is not the first time that the Court allowed a surety bond as an alternative to cash payment of the real property tax before protest/appeal as required by Section 252 of the Local Government Code. In *Camp John Hay Development Corporation v. Central Board of Assessment Appeals*, the Court affirmed the ruling of the CBAA and the Court of Tax Appeals *en banc* applying the ‘payment under protest’ requirement in Section 252 of the Local Government Code and remanding the case to the [Local Board of Assessment Appeals] for ‘further proceedings subject to a full and up-to-date payment, either in cash or surety, of realty tax on the subject properties ...’²⁰⁹

By allowing taxpayers to post a surety bond, taxpayers are able to defer full payment of the real property tax assessment until the protest is resolved with finality against the taxpayer.²¹⁰

However, even in the event of a favorable ruling, the taxpayer is still at the losing end, as the taxpayer had already spent for the premium required for the surety bond, on top of the resources required in litigating the protest. This brings to the fore issues on the requirement to pay under protest.

The cases discussed in this Article involve real properties owned and/or used by juridical entities. This is to be expected, considering that litigating up to the Supreme Court level entails significant resources and expenses. But it cannot be overlooked that real property taxes are imposed not only on the land and buildings owned by corporations, but also on land and buildings owned by ordinary citizens. More often than not, the only real property owned by an individual is their home. In the 2015 Census of the Population

208. *Manila Electric Company v. The City Assessor*, G.R. No. 166102, 765 SCRA 52 (2015).

209. *Id.* at 77 (citing *Camp John Hay Development Corp.*, 706 SCRA at 570) (emphasis omitted).

210. *Id.*

released by the Philippine Statistics Authority in March 2018, there are 24.22 million housing units in the Philippines.²¹¹ It is on this backdrop that we discuss the repercussions of payment under protest vis-à-vis consequences of non-payment of real property tax.

As noted in Part VI, failure to pay the real property tax within the required periods will result in the issuance of a warrant of levy on the real property, which may result in the public sale of the real property. This creates the very real possibility that a family home may be auctioned by the LGU for failure to pay real property taxes thereon. The power to levy would have been tempered if there had been no requirement of payment under protest.

The Supreme Court has already noted that the power of levy and sale of properties for non-payment of real property tax is “prone to great abuse, in that owners of valuable real property are liable to lose them on account of irregularities committed by these local government units or officials, done intentionally with the collusion of third parties and with the deliberate unscrupulous intent to appropriate these valuable properties[.]”²¹²

In case of an assessment of real property taxes, the taxpayer must first pay under protest before his or her protest may be entertained by the treasurer who imposed the tax. Thus, even if there is a jeopardy assessment or an irregularity, the taxpayer must still pay the tax before he or she can contest the imposition. Otherwise, the protest will not be given due course, and the real property subject of the assessment, such as a family home, may be sold at public auction. An ordinary taxpayer, then, has no other recourse but to pay the real property taxes — which he or she could not afford to pay in the first place — in order to be afforded the right to be heard by the local taxing authorities.

It may be noted that the Local Government Code allows LGUs to condone or reduce real property taxes and interest in case of a general failure of crops or substantial decrease in the price of agricultural or agri-based products, or calamity.²¹³ The President is also given the power to condone or reduce the real property tax and interest for any year in any province or city or a municipality within the Metropolitan Manila Area when public interest

211. Philippine Statistics Authority, Housing Characteristics in the Philippines (Results of the 2015 Census of the Population), *available at* <https://psa.gov.ph/content/housing-characteristics-philippines-results-2015-census-population> (last accessed May 11, 2021) [<https://perma.cc/J7HW-E5ZT>].

212. *Cruz*, 880 SCRA at 151.

213. LOCAL GOV'T CODE, § 276.

so requires.²¹⁴ However, while these provisions allow for leeway in implementation of real property tax amnesty, these are insufficient to properly protect the interests of an ordinary taxpayer. Notably, Presidents have only exercised the power to condone real property taxes imposed on power generation facilities of independent power producers but have not yet extended the same privilege to other taxpayers.²¹⁵

VIII. RECOMMENDATIONS

It has been 30 years since the passage of Local Government Code. In that time, there have been several landmark cases which sought not only to apply the provisions of the law but also to interpret and adjust. This is mainly due to the insufficiency of the provisions of the law. The Courts have had to clarify matters as basic as what are considered real properties subject to tax, as well as

214. *Id.* § 277.

215. See Office of the President, Reduction and Condonation of Real Property Taxes and Interest/Penalties Assessed on the Power Generation Facilities of Independent Power Producers Under Build-Operate-Transfer Contracts with Government-Owned or Controlled Corporations in the Province of Quezon, Executive Order No. 27, Series of 2011 [E.O. No. 27, s. 2011] (Feb. 28, 2011); Office of the President, Reduction and Condonation of Real Property Taxes and Interest/Penalties Assessed on the Power Generation Facilities of Independent Power Producers Under Build-Operate-Transfer Contracts with Government-Owned and/or -Controlled Corporations, Executive Order No. 173, Series of 2014 [E.O. No. 173, s. 2014] (Oct. 31, 2014); Office of the President, Reduction and Condonation of Real Property Taxes and Interests/Penalties Assessed on the Power Generation Facilities of Independent Power Producers Under Build-Operate Transfer Contracts with Government-Owned or -Controlled Corporations, Executive Order No. 19, Series of 2017 [E.O. No. 19, s. 2017] (Apr. 27, 2017); Office of the President, Reduction and Condonation of Real Property Taxes and Interest/Penalties Assessed on the Power Generation Facilities of Independent Power Under Build-Operate-Transfer Contracts with Government-Owned or -Controlled Corporations, Executive Order No. 60, Series of 2018 [E.O. No. 60, s. 2018] (Jul. 25, 2018); Office of the President, Reduction and Condonation of Real Property Taxes and Interest/Penalties Assessed on the Power Generation Facilities of Independent Power Producers Under Build-Operate-Transfer Contracts with Government-Owned or-Controlled Corporations, Executive Order No. 88, Series of 2019 [E.O. No. 88, s. 2019] (Aug. 13, 2019); & Office of the President, Reduction and Condonation of Real Property Taxes and Interest/Penalties Assessed on the Power Generation Facilities of Independent Power Producers Under Build-Operate-Transfer Contracts with Government-Owned or -Controlled Corporations, Executive Order No. 117, Series of 2020 [E.O. No. 117, s. 2020] (Jul. 24, 2020).

issues as complicated as distinguishing between a GOCC and an instrumentality in order to apply the provisions of the Local Government Code.

While the Local Government Code is indeed a significant improvement from its predecessors, The Real Property Tax Code and Assessment Law, three decades have been more than enough to show where the areas for improvement are.

Necessarily, an amendment of Title II of the Local Government Code on Real Property Taxation must be undertaken in order to address the following recommendations. It may even be prudent to create a new Real Property Tax Code.

A. Define Real Property Subject to Real Property Tax

There is a pressing need to codify the definition of real properties subject to taxation. The real properties subject to taxation are embodied not in the Local Government Code, but in the Civil Code and in various decisions of the Supreme Court. While most of the items subject to real property taxes have become doctrinal, a later decision can still overturn and create confusion not only among the bar, but also among the tax authorities and, fundamentally, among the taxpayers.

In Part I, it was shown that the Supreme Court in the 1964 case of *Meralco*²¹⁶ said that Article 415 of the Civil Code²¹⁷ provides for the definition of real property, only for the same Court to say, three years later, that Article 415 does not define real property but merely enumerates what are considered as such.²¹⁸

Adding to the confusion is the fact that the Supreme Court has held that there are properties considered as real properties subject to real property taxes, such as machineries placed on leased land by lessees, which have not been considered real properties for purposes of execution of a judgment against a lessee.²¹⁹

Properties subject to advances in technology, such as submarine cables and aerial telecommunications cables, which, at the time of the enactment of the Local Government Code 30 years ago, had not yet been envisioned by the

216. *Board of Assessment Appeals*, 10 SCRA.

217. CIVIL CODE, § 415.

218. *People's Bank and Trust Co.*, 20 SCRA at 93-94.

219. *See Caltex (Phil.) Inc.*, 114 SCRA.

authors of the law, may also be included in the coverage of what constitutes real property.

B. Provide for Clear Exemptions in the Law

Another key contention, based on jurisprudence on real property taxation, are the taxpayers and properties exempt from real property tax. This Author appreciates and agrees with the rulings of the Supreme Court on these matters, particularly those cases discussed in Part V of this Article. However, like the definitions embodied in various Supreme Court decisions, the exemptions and non-exemptions must likewise be embodied in the provisions of the real property tax law.

While the doctrine on the real property tax exemption of government instrumentalities has been settled, it must be emphasized that it took 10 years for the doctrine in *Mactan-Cebu International Airport Authority v. Marcos*,²²⁰ which held that GOCCs and instrumentalities are subject to real property taxes,²²¹ to be overturned by the case of *MIAA*.

In the 2019 case of *National Power Corporation v. Province of Pangasinan* discussed above, the Supreme Court noted that the case brought by NPC is “not of first impression.”²²² The Court continued —

In NPC’s previous cases with this Court, i.e., *FELS Energy, Inc. v. The Province of Batangas* [(2007)], *National Power Corporation v. Central Board of Assessment Appeals* [(2009),] and *National Power Corporation v. Province of Quezon* [(2010)], the implications of a contract and/or a BOT agreement between a government-owned and controlled corporation that [enjoys] tax exemption, and a private corporation with regard to real property tax liabilities, have already been exhaustively explained and discussed by this Court.²²³

Yet, there was NPC again, bringing the same issue before the Supreme Court and requesting that the machineries operated by private corporations under the Build-Operate-Transfer agreement with NPC be exempt from real property taxes.²²⁴

220. *Mactan-Cebu International Airport Authority v. Marcos*, G.R. No. 120082, 261 SCRA 667 (1996).

221. *Id.* at 687.

222. *National Power Corporation v. Province of Pangasinan*, 894 SCRA at 519.

223. *Id.*

224. *Id.* at 512 & 514.

This is because it is also an established rule that it only takes a new Supreme Court *En Banc* decision to overturn established doctrines.²²⁵

To prevent this, and also to settle what entities and properties are subject to and are exempt from real property taxes, the provisions on exemptions from real property tax must be amended and updated.

C. Revisit Payment Under Protest

Section 198 of the Local Government Code provides — “SECTION 198. *Fundamental Principles*. — The appraisal, assessment, levy[,] and collection of real property tax shall be guided by the following fundamental principles: ... (e) The appraisal and assessment of real property shall be equitable.”²²⁶

While the fundamental principles cover the “appraisal, assessment, levy[,] and collection of real property tax,” paragraph (e) of Section 198 of the Local Government Code only says that the appraisal and assessment shall be equitable.²²⁷ This Author does not believe that the *levy and collection* of real property tax are not intended to be equitable by the honorable framers of the Local Government Code.

Related to the levy and collection of real property tax is the requirement to pay under protest. It is a clear deterrent from challenging real property tax assessments. It seems that the taxpayer has already been judged even before the protest is initiated. Certainly, the budgetary concerns of local government units cannot take precedence over the due process right to be heard, especially considering that local government units were given a share in the national internal revenue taxes, provided for in Title III of the Local Government Code,²²⁸ the very next Title after Title II on Real Property Taxation. In any event, the local government unit cannot use the taxes paid under protest since these are required under the Local Government Code to be held in trust by the treasurer.²²⁹ Hence, there is no need for the taxpayer to be required to pay under protest prior to any action on the protest.

It must be emphasized that even the National Government does not have the power to require payment of tax assessments prior to filing a claim or

225. See PHIL. CONST. art. VII, § 4 (3).

226. LOCAL GOV'T CODE, § 198 (e).

227. *Id.*

228. *Id.* § 284.

229. *Id.* § 252 (b).

protest against such assessment. It is thus strongly recommended that the jurisdictional requirement of payment under protest be removed.

The power to tax is an inherent power of the State. Another inherent power is the power of eminent domain, exercised through expropriation. This power is tempered by the requirement of payment of just compensation, including the payment of legal interest counted from the taking of the possession of the property.²³⁰ In stark contrast, payment under protest is not subject to any interest, such that only the amount of tax protested shall be refunded or applied as tax credit in case of a final decision in favor of the taxpayer.²³¹

Thus, in lieu of removal of the requirement, legal interest may also be imposed on the payment under protest and given to the taxpayer in the event of a favorable ruling.

The Supreme Court is correct in saying that the “power to tax is the most potent instrument to raise the needed revenues to finance and support myriad activities of the local government units for the delivery of basic services essential to the promotion of the general welfare and the enhancement of peace, progress, and prosperity of the people.”²³² Nevertheless, this power to tax must be tempered to promote the welfare of the very people to whom the local government units seek to deliver the basic services financed by these taxes.

Codifying the definitions and clarifications will prevent what may be considered in some instances as judicial legislation, as the Courts will no longer need to step in to fill gaps. An amendment of the real property tax provisions in the Local Government Code will guide not only the bench and the bar, but also the millions of homeowners in the country.

IX. CONCLUSION

The proponents of the Local Government Code had the best intentions in promoting the fiscal autonomy of local government units. Time has proven, however, that the provisions on real property taxation are insufficient to cover the complexities stemming from real property tax. It is certainly time to update the current real property tax regime.

230. 1997 RULES OF CIVIL PROCEDURE, rule 67, § 10.

231. LOCAL GOV'T CODE, § 252 (c).

232. *FELS Energy, Inc.*, 516 SCRA at 208 (citing *Mactan Cebu International Airport*, 261 SCRA at 690).

Through the taxes drawn from the citizens, funds are allowed to flow to the government and pumped into government agencies to keep the body of the State operational for the benefit of its constituents. Understandably, ensuring the collection and flow of this lifeblood of the State without unnecessary hindrance is of paramount importance. Yet, in evolving our system of taxation, we are also guided by the constitutional mandate requiring that taxation be equitable.²³³

With this assessment, the hope is that legislation can be pushed towards a real property tax regime that is clear in its definitions and exceptions, for the ultimate goal of being more equitable throughout the entire process of appraisal, assessment, levy, and collection.

233. PHIL. CONST. art. VI, § 28 (1).