High-Rise and High-Stakes: Taxability of Condominium Corporations

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I. INTRODUCTION

Oliver Wendell Holmes, Jr., former Justice of the United States Supreme Court, once said that "[t]axes are what we[, as citizens,] pay for a civilized

society[.]"[1] Unquestionably, without the payment and subsequent collection of taxes, the government would be "paralyzed for lack of the motive power to activate and operate it."[2] Yet, while we "concede the inevitability and indispensability of taxation,"[3] democracy requires that the same be "exercised reasonably and in accordance with the prescribed procedure."[4]

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1. Compania General de Tabacos v. Collector, 275 U.S. 87, 100 (1927) (J. Holmes, dissenting opinion).
2. Commissioner of Internal Revenue v. Algue, Inc., G.R. No. L-28896, 158 SCRA 9, 16 (1988).
3. *Id*. at 17.
4. *Id*.

To elucidate, taxation is considered as an inherent power of a State.[5] Without such power, no government would be able to effectively and efficiently function and fulfill its mandate to serve its people.[6] Indeed, "[t]he power of taxation is an essential and inherent attribute of sovereignty, belonging as a matter of right to every independent government, without being expressly conferred by the people."[7] Hence, "[t]axes are the lifeblood of the government and so should be collected without unnecessary hindrance."[8]

Notwithstanding,

> [t]he power of taxation is sometimes[ ] called also the power to destroy. Therefore[,] it should be exercised with caution to minimize the injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally[,] and uniformly, lest the tax collector kill the 'hen that lays the golden egg[.]' And, in order to maintain the general public's trust and confidence in the Government[,] this power must be used justly and not treacherously.[9]

The government must undoubtedly exercise great caution in wielding this power of taxation as it comes with the power to create and the power to destroy[10] — a power that ultimately affects both the wealthiest corporations and most impoverished families.

Notably, prior to 2012, with respect to condominium corporations, the prevailing rule was that association dues, membership fees, and other assessments/charges (Condominium Assessments) collected from their members and tenants were not subject to income tax, value-added tax (VAT), and withholding tax.[11] However, in 2012, under the same existing law,

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5. National Power Corporation v. Province of Lanao del Sur, G.R. No. 96700, 264 SCRA 271, 304 (1996) (citing ISAGANI A. CRUZ, CONSTITUTIONAL LAW 84 (1991)).

6. *See Algue*, 158 SCRA at 11.

7. Pepsi-Cola Bottling Co. of the Philippines, Inc. v. Municipality of Tanauan, Leyte, G.R. No. L-31156, 69 SCRA 460, 465 (1976) (citing 1 THOMAS MCINTYRE COOLEY & CLARK A. NICHOLS, THE LAW OF TAXATION 149-50 (4th ed. 1924)).

8. *Algue*, 158 SCRA at 11.

9. Roxas v. Court of Tax Appeals, G.R. No. L-25043, 23 SCRA 276, 282 (1968).

10. *Id.*

11. *See* Bureau of Internal Revenue v. First E-Bank Tower Condominium Corporation, G.R. No. 215801, Jan. 15, 2020, at 22, *available at* https://sc.judiciary.gov.ph/11822 (last accessed Jan. 8, 2021).

Republic Act No. 8424 (R.A. No. 8424) or the "Tax Reform Act of 1997,"[12] the Commissioner of Internal Revenue (CIR) issued Revenue Memorandum Circular No. 65-2012 (RMC No. 65-2012),[13] which categorically stated that Condominium Assessments were actually taxable and subject to the aforementioned taxes.[14] Markedly, under RMC No. 65-2012, the CIR ruled that Condominium Assessments were in fact taxable since they are considered as income received by condominium corporations for the services they rendered to their members and tenants.[15]

Aggrieved, in 2012, First E-Bank Tower Condominium Corporation filed a "petition [ ] for declaratory relief seeking to declare as invalid ... RMC No. 65-2012[ ]"[16] before the Regional Trial Court (RTC).[17] Significantly, the issue of whether or not Condominium Assessments are in truth taxable was only settled through the case of *Bureau of Internal Revenue v. First E-Bank Tower Condominium Corp.*,[18] which was promulgated on 15 January 2020.[19] This essentially means that for over seven years, particularly from 2012 to 2019, RMC No. 65-2012 was the prevailing rule and by virtue of the same, condominium corporations and the lives of their members and tenants all over the Philippines were heavily burdened with the payment of taxes over these Condominium Assessments.

Importantly, in the case of *First E-Bank*, the Supreme Court declared RMC No. 65-2012 as invalid.[20] The Court held that Condominium Assessments "are not subject to income tax because they do not constitute

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

13. Bureau of Internal Revenue, Clarifying the Taxability of Association Dues, Membership Fees, and Other Assessments/Charges Collected by Condominium Corporations, Revenue Memorandum Circular No. 65-2012 [RMC No. 65-2012] (Oct. 31, 2012).

14. *Id.* ¶¶ I & II.

15. *Id.*

16. *First E-Bank*, G.R. No. 215801, at 4.

17. *Id.*

18. Bureau of Internal Revenue v. First E-Bank Tower Condominium Corporation, G.R. No. 215801, Jan. 15, 2020, *available at* https://sc.judiciary.gov.ph/11822 (last accessed Jan. 8, 2021).

19. *Id.*

20. *Id.* at 32.

profit or gain."[21] It emphasized that "they are collected purely for the benefit of the condominium owners and are the incidental consequence of a condominium corporation's responsibility to effectively oversee, maintain, or even improve the common areas of the condominium as well as its governance[,]"[22] and thus not subject to income tax or withholding tax.

Furthermore, the Court ruled that Condominium Assessments are not subject to VAT since they "do not arise from transactions involving the sale, barter, or exchange of goods or property. Nor are they generated by the performance of services[,]"[23] and since the condominium corporation can only act for the benefit of its members, "[i]t cannot be said to be engaged in trade or business, thus, the collection of association dues, membership fees, and other assessments/charges is not a result of the regular conduct or pursuit of a commercial or an economic activity, or any transactions incidental thereto."[24]

Given the years-long debate regarding the taxability of Condominium Assessments, this Article aims to truly shed light on the CIR's controversial ruling, i.e., RMC No. 65-2012, and the Court's 2020 Decision, i.e., *First E-Bank*, which invalidated RMC No. 65-2012. Verily, through the case of *First E-Bank*, the Court corrected the CIR's grievous wrong, which for the past seven years unfairly strained condominium corporations, their members, their tenants, and essentially, numerous Filipinos.

II. HISTORICAL OVERVIEW OF THE TAXABILITY OF CONDOMINIUM CORPORATIONS

A. Treatment of Condominium Dues, Fees, and Assessments Prior to Revenue Memorandum Circular No. 65-2012

In Bureau of Internal Revenue (BIR) Ruling No. 018-05,[25] the BIR clarified its administrative position on the taxability of condominium corporations:

> (1) Condominium dues and assessments are not taxable income of the Condominium Corporations;

21. *Id.* at 24.

22. *Id.* at 24-25.

23. *Id.* at 25.

24. *First E-Bank*, G.R. No. 215801, at 27.

25. Bureau of Internal Revenue, Ruling No. 018-05 [BIR Ruling No. 018-05] (Sept. 16, 2005).

> (2) Condominium Corporations are not subject to VAT when they collect association dues from unit owners pursuant to their corporate purpose as trustees of the fund ... ; [and]
>
> (3) Unless the Condominium Corporation engages in activities for profit, it is not subject to VAT[.][26]

BIR Ruling No. 018-05 concerned a request "for [ ] clarification on the validity of Regional Revenue Memorandum Circular No. 2-2002 (RRMC No. 2-2002 [ ]) issued [ ] by Regional Director Antonio I. Ortega of Revenue Region 8, Makati City."[27] RRMC No. 2-2002 imposed both income tax and VAT on Condominium Assessments.[28] According to this Circular, condominium corporations are not exempt from corporate income tax.[29] Moreover, it clarified that Condominium Assessments "are embraced by the term [']income.[']"[30] On the other hand, with respect to VAT, RRMC No. 2-2002 cited the case of *Commissioner of Internal Revenue v. Court of Appeals* (*COMASERCO*).[31]

Although the BIR struck down RRMC No. 2-2002 for being *ultra vires*, it went on to discuss the taxability of condominium corporations.[32] The BIR emphasized that condominium corporations are non-stock, non-profit entities organized for a limited purpose,[33] in accordance with Sections 2 and 10 of Republic Act No. 4726[34] (R.A. No. 4726), otherwise known as "The Condominium Act," which respectively provides —

> Section 2. A condominium is an interest in real property consisting of separate interest in a unit in a residential, industrial[,] or commercial building and an undivided interest in common, directly or indirectly, in the land on which it is located and in other common areas of the building. A condominium may include, in addition, a separate interest in other portions

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26. *Id.* at *10.

27. *Id.* at *3.

28. *Id.*

29. *Id.*

30. *Id.* at *4.

31. Commissioner of Internal Revenue v. Court of Appeals, G.R. No. 125355, 329 SCRA 237 (2000).

32. *See* BIR Ruling No. 018-05, at *8 & *9-16.

33. *Id.* at 10.

34. An Act to Define Condominium, Establish Requirements for its Creation, and Govern its Incidents [The Condominium Act], Republic Act No. 4726, §§ 2 & 10 (1966).

> of such real property. Title to the common areas, including the land, or the appurtenant interests in such areas, may be held by a corporation specially formed for the purpose (hereinafter known as the 'condominium corporation') in which the holders of separate interest shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units in the common areas.
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> ...
>
> Section 10. Whenever the common areas in a condominium project are held by a condominium corporation, such corporation shall constitute the management body of the project. The corporate purposes of such a corporation shall be limited to the holding of the common areas, either in ownership or any other interest in real property recognized by law, to the management of the project, and to such other purposes as may be necessary, incidental[,] or convenient to the accomplishment of said purposes. The articles of incorporation or by-laws of the corporation shall not contain any provision contrary to or inconsistent with the provisions of this Act, the enabling or master deed, or the declaration of restrictions of the project. Membership in a condominium corporation, regardless of whether it is a stock or non-stock corporation, shall not be transferable separately from the condominium unit of which it is an appurtenance. When a member or stockholder ceases to own a unit in the project in which the condominium corporation owns or holds the common areas, he shall automatically cease to be a member or stockholder of the condominium corporation.[35]

The BIR then pointed out that, in order to perform its limited purpose, condominium corporations collect assessments solely for the purpose of covering expenses attributable to its functions, thus —

> The assessed amount is basically an estimate of the expenses of the corporation or association to pay for common expenses like real property taxes, insurance premiums, utilities charges, and fees for the management, operation, control, possession, repair, improvement, replacement, maintenance, reconstruction, restoration, replacement, addition, improvement[,] or alteration of the project or specific areas found therein, which includes the costs and expenses for providing security guard, janitorial, landscaping, general administrative, technical, architectural, construction, pest control[,] and such other special contractual services.[36]

Subsequently, the BIR held that condominium dues and assessments "do not constitute income subject to income tax, but are funds held by them in

35. *Id.*

36. BIR Ruling No. 018-05, at *11.

trust for their unit owners or members."[37] On this point, the BIR referred to BIR Ruling No. 029-98, dated 19 March 1998, which enumerated the requisites for income to be taxable in this wise: "(1) [t]here must be gain or profit; (2) [t]he gain must be realized or received, actually or constructively; and (3) [t]he gain must not be excluded by law or treaty from taxation."[38]

According to the BIR, "[t]he above-mentioned conditions are not fulfilled by the mere act of collecting dues, fees, and assessments, as these amounts are collected solely to fund administrative, utilities, and maintenance expenses of the common areas of a building, a condominium, or a housing project."[39]

As regards VAT, the BIR ruled that neither can Condominium Assessments be subject to VAT.[40] It noted that the collection of dues, fees, or assessments by condominium corporations does not give rise to a sale of service.[41] Moreover, the BIR held that reliance on the ruling in *COMASERCO* is misplaced, due to the following reasons: (1) respondent corporation in that case was not a condominium corporation; and (2) respondent corporation was organized to perform collection, consultation, and other technical services, and its collection of assessments constitutes payment for the services it renders.[42]

BIR Ruling [DA-(C-068) 231-08)][43] contained a similar discussion. Here, Goldrich Mansion Condominium Corporation (Goldrich) requested for a confirmatory ruling on whether or not Condominium Assessments are subject to income tax and VAT.[44] The BIR confirmed that Condominium Assessments used for the maintenance of condominium buildings do not generate income.[45] Therefore, it is not subject to income tax.[46] The BIR

37. *Id.*

38. *Id.* at *12.

39. *Id.* at *13.

40. *Id.*

41. *Id.* at *15.

42. BIR Ruling No. 018-05, at *15.

43. Bureau of Internal Revenue, Ruling No. [DA-(C-068) 231-08)] [BIR Ruling [DA-(C-068) 231-08)]] (Sept. 18, 2008).

44. *Id.* at *1, para. 1.

45. *Id.* at *2, para. 1 (citing Bureau of Internal Revenue, Ruling No. [DA-(C-040) 148-2008)] [BIR Ruling [DA-(C-040) 148-2008)]] (Aug. 14, 2008)).

46. *Id.*

further held that Goldrich is not liable for VAT since Goldrich is engaged in the reimbursement of cost transactions and as such, these transactions do not involve a sale of goods or services.[47]

BIR Ruling [DA-096-08][48] presented a different explanation. Cityland Condominium 10 (Tower I and II), Inc. (Cityland) requested for a certificate of exemption from the 25% withholding tax imposed under Revenue Regulation No. 8-2005.[49] The BIR held that Cityland is exempt from income tax since it is a corporation organized "for mutual aid and association" as contemplated in Section 30 (C) of R.A. No. 8424.[50] Consequently, it is also exempt from withholding tax.[51]

Notably, in 2005, the Court, in the case of *Luz R. Yamane v. BA Lepanto Condominium Corporation*,[52] had the occasion to rule on a condominium corporation's liability for local business taxes. Here, the City Treasurer of Makati (petitioner) sent BA Lepanto Condominium Corporation (respondent) a notice of assessment for payment of business taxes.[53] After petitioner denied respondent's written protest, respondent filed an appeal before the RTC.[54]

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47. BIR Ruling No. [DA-(C-068) 231-08)], at *2, paras. 3-4.

48. Bureau of Internal Revenue, Ruling [DA-096-08] [BIR Ruling [DA-096-08]] (Feb. 14, 2008).

49. *Id.* at *1, paras. 1-2.

50. Republic Act No. 8424, § 30 (C). This provision states —

> Section 30. Exemptions from Tax on Corporations. — The following organizations shall not be taxed under this Title in respect to income received by them as such:
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> ...
>
> (C) A beneficiary society, order[,] or association, operating for the exclusive benefit of the members such as a fraternal organization operating under the lodge system, or mutual aid association[,] or a nonstock corporation organized by employees providing for the payment of life, sickness, accident, or other benefits exclusively to the members of such society, order, or association, or nonstock corporation or their dependents[.]

51. BIR Ruling [DA-096-08], at *1, para. 4.

52. Yamane v. BA Lepanto Condominium Corporation, G.R. No. 154993, 474 SCRA 258 (2005).

53. *Id.* at 263.

54. *Id.* at 264.

The RTC, however, sided with petitioner.[55] In its Decision, the RTC held that "the activities of ... [respondent] fell squarely under the definition of 'business' under Section 13 (b) of the Local Government Code, and thus subject to local business taxation."[56] The RTC further held —

> Herein appellant, to defray the improvements and beautification of the common areas, collect [sic] assessments from its members. Its end view is to get appreciate living rules for the unit owners [sic], to give an impression to outsides [sic] of the quality of service the condominium offers, so as to allow present owners to command better prices in the event of sale.[57]

Aggrieved, respondent elevated the case to the Court of Appeals (CA).[58] The CA reversed the RTC's ruling, holding that respondent was not liable for business taxes.[59] After examining the amended articles of incorporation and amended by-laws of respondent, the CA concluded that respondent was not engaged in business and was not formed to make profit.[60] The assessments that respondent collected were solely used "to defray the expenses in the maintenance of the common areas and management [of] the condominium."[61]

The Court upheld the CA's ruling.[62] In arriving at its Decision, the Court discussed four key points.

First, the Court elaborated on the meaning of *business* and the nature of business taxes, viz. —

> As stated earlier, local tax on businesses is authorized under Section 143 of the Local Government Code. The word 'business' itself is defined under Section 131 (d) of the Code as 'trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit.' This definition of 'business' takes on importance, since Section 143 allows local government units to impose local taxes on businesses other than those specified under the provision. Moreover, even those business activities specifically named in Section 143 are themselves susceptible to broad interpretation. For example, Section 143 (b) authorizes the imposition of business taxes on wholesalers,

55. *Id.*

56. *Id.* at 265.

57. *Id.*

58. *Yamane*, 474 SCRA at 265.

59. *Id.*

60. *Id.* at 265-66.

61. *Id.*

62. *Id.* at 269.

> distributors, or dealers in any article of commerce of whatever kind or nature.[63]

Second, the Court discussed the nature of condominium corporations. The Court pointed out that R.A. No. 4726 imposes limitations on the corporate purposes of condominium corporations.[64] As such, the activities performed by condominium corporations do not fall within the definition of "business,"[65] to wit —

> *It is thus imperative that in order that the Corporation may be subjected to business taxes, its activities must fall within the definition of business as provided in the Local Government Code. And to hold that they do is to ignore the very statutory nature of a condominium corporation.*
>
> The creation of the condominium corporation is sanctioned by Republic Act No. 4726, otherwise known as the Condominium Act. Under the law, a condominium is an interest in real property consisting of a separate interest in a unit in a residential, industrial[,] or commercial building and an undivided interest in common, directly or indirectly, in the land on which it is located and in other common areas of the building. To enable the orderly administration over these common areas which are jointly owned by the various unit owners, the Condominium Act permits the creation of a condominium corporation, which is specially formed for the purpose of holding title to the common area, in which the holders of separate interests shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units. The necessity of a condominium corporation has not gained widespread acceptance, and even is merely permissible under the Condominium Act. Nonetheless, the condominium corporation has been resorted to by many condominium projects, such as the Corporation in this case.
>
> In line with the authority of the condominium corporation to manage the condominium project, it may be authorized, in the deed of restrictions, 'to make reasonable assessments to meet authorized expenditures, each condominium unit to be assessed separately for its share of such expenses in proportion (unless otherwise provided) to its owner's fractional interest in any common areas.' It is the collection of these assessments from unit owners that form the basis of the City Treasurer's claim that the Corporation is doing business.

63. *Id.* at 277 (citing An Act Providing for a Local Government Code of 1991 [LOCAL GOV'T CODE], Republic Act No. 7160, § 131 (e) (1991)).

64. *Yamane*, 474 SCRA at 278.

65. *Id.* at 277-79.

> The Condominium Act imposes several limitations on the condominium corporation that prove crucial to the disposition of this case. Under Section 10 of the law, the corporate purposes of a condominium corporation are limited to the holding of the common areas, either in ownership or any other interest in real property recognized by law; to the management of the project; and to such other purposes as may be necessary, incidental[,] or convenient to the accomplishment of such purpose. Further, the same provision prohibits the articles of incorporation or by-laws of the condominium corporation from containing any provisions which are contrary to the provisions of the Condominium Act, the enabling or master deed, or the declaration of restrictions of the condominium project.
>
> *We can elicit from the Condominium Act that a condominium corporation is precluded by statute from engaging in corporate activities other than the holding of the common areas, the administration of the condominium project, and other acts necessary, incidental*[,] *or convenient to the accomplishment of such purposes. Neither the maintenance of livelihood, nor the procurement of profit, fall within the scope of permissible corporate purposes of a condominium corporation under the Condominium Act.*[66]

Third, the Court examined the articles of incorporation and by-laws of respondent.[67] It found that none of the corporate purposes of respondent "are geared towards maintaining a livelihood or the obtention of profit[,]"[68] viz. —

> The Court has examined the particular Articles of Incorporation and By-Laws of the Corporation, and these documents unmistakably hew to the limitations contained in the Condominium Act. Per the Articles of Incorporation, the Corporation's corporate purposes are limited to: (a) owning and holding title to the common and limited common areas in the Condominium Project; (b) adopting such necessary measures for the protection and safeguard of the unit owners and their property, including the power to contract for security services and for insurance coverage on the entire project; (c) making and adopting needful rules and regulations concerning the use, enjoyment[,] and occupancy of the units and common areas, including the power to fix penalties and assessments for violation of such rules; (d) to provide for the maintenance, repair, sanitation, and cleanliness of the common and limited common areas; (e) to provide and contract for public utilities and other services to the common areas; (f) to

66. *Id.* (citing The Condominium Act §§ 2; 9 (d); & 10 & 1 ALBERTO FERRER & KARL STECHER, LAW OF CONDOMINIUM: WITH FORMS, STATUTES, AND REGULATIONS 7 (1967 ed.)) (emphases supplied).

67. *Yamane*, 474 SCRA at 279.

68. *Id.* at 280.

> contract for the services of persons or firms to assist in the management and operation of the Condominium Project; (g) to discharge any lien or encumbrances upon the Condominium Project; (h) to enforce the terms contained in the Master Deed with Declaration of Restrictions of the Project; (i) to levy and collect those assessments as provided in the Master Deed, in order to defray the costs, expenses[,] and losses of the condominium; (j) to acquire, own, hold, enjoy, lease[,] operate[,] and maintain, and to convey, sell[,] transfer, mortgage[,] or otherwise dispose of real or personal property in connection with the purposes and activities of the corporation; and (k) to exercise and perform such other powers reasonably necessary, incidental[,] or convenient to accomplish the foregoing purposes.
>
> *Obviously, none of these stated corporate purposes are geared towards maintaining a livelihood or the obtention of profit. Even though the Corporation is empowered to levy assessments or dues from the unit owners, these amounts collected are not intended for the incurrence of profit by the Corporation or its members, but to shoulder the multitude of necessary expenses that arise from the maintenance of the Condominium Project*. Just as much is confirmed by Section 1, Article V of the Amended By-Laws, which enumerate the particular expenses to be defrayed by the regular assessments collected from the unit owners. These would include the salaries of the employees of the Corporation, and the cost of maintenance and ordinary repairs of the common areas.[69]

Fourth, the Court explained why petitioner's arguments are untenable.

Here, petitioner made several claims, viz.: (1) respondent collects assessments to get full appreciative living values for the condominium units, which results in profit once the units are sold at higher prices;[70] and (2) respondent is engaged in business since its articles of incorporation empowers it "to acquire, own, hold, enjoy, lease, operate, and maintain, and to convey, sell, transfer, mortgage[,] or otherwise dispose of real or personal property."[71]

The Court disagreed with petitioner. With respect to the first argument, the Court ruled that the profit obtained through the sale of units does not accrue to the condominium corporation, and even if profit is obtained, the condominium owner is already required to pay capital gains tax.[72] As such, to impose tax on the basis of getting *full appreciative living values* is arbitrary and oppressive.[73]

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69. *Id*. at 279-280 (emphasis supplied).

70. *Id*. at 280.

71. *Id*. at 281-82.

72. *Id*. at 280.

73. *Yamane*, 474 SCRA at 281 (emphasis supplied).

As regards the second argument, the Court held that corporations organized under the Corporation Code have the power and capacity "to purchase, receive, take[,] or grant, hold, convey, sell, lease, pledge, mortgage[,] and otherwise deal with such real and personal property[.]"[74] However, "[a] condominium corporation, while enjoying such powers of ownership, is prohibited by law from transacting its properties for the purpose of gainful profit."[75]

Given the foregoing, the Court concluded that "condominium corporations are generally exempt from local business taxation under the Local Government Code, irrespective of any local ordinance that seeks to declare otherwise."[76] The BIR failed to cite any statutory basis to impose business taxes on respondent.[77] The Court, however, noted an exception, to wit —

> Still, we can note a possible exception to the rule. It is not unthinkable that the unit owners of a condominium would band together to engage in activities for profit under the shelter of the condominium corporation. Such activity would be prohibited under the Condominium Act, but if the fact is established, we see no reason why the condominium corporation may be made liable by the local government unit for business taxes. Even though such activities would be considered as *ultra vires*, since they are engaged in beyond the legal capacity of the condominium corporation, the principle of estoppel would preclude the corporation or its officers and members from invoking the void nature of its undertakings for profit as a means of acquitting itself of tax liability.[78]

Thus, according to the Court, whether or not a condominium corporation can be considered exempt from business taxes ultimately depends on whether or not its activities are profit-oriented.[79] It appears, however, that the BIR has the burden of proof to show that a condominium corporation is engaged in activities for profit.[80]

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74. *Id.* at 282 (citing The Corporation Code of the Philippines [CORP. CODE], Batas Pambansa Blg. 68, § 36 (7) (1980)).

75. *Yamane*, 474 SCRA at 282.

76. *Id.*

77. *Id.* at 274.

78. *Id.* at 282-84 (citing 1 FERRER & STECHER, § 454 & Twin Towers Condominium Corp. v. Court of Appeals, 446 Phil. 280 (2003)).

79. *Id.* at 284.

80. *See id.*

B. Revenue Memorandum Circular No. 65-2012

Through the issuance of RMC No. 65-2012, the BIR drastically shifted its position on the taxability of Condominium Assessments. This Circular imposed income tax, VAT, and applicable withholding taxes on gross receipts of condominium corporations, including association dues, membership fees, and other assessments/charges.[81]

In RMC No. 65-2012, the BIR summarized its previous rulings concerning condominium corporations, viz. —

> The Bureau has issued several rulings exempting from income tax the assessments/charges collected by condominium corporations from its members, on the ground that the collection of association dues and other assessments/charges are merely held in trust to be used solely for administrative expenses in implementing its purposes i.e., to operate, manage[,] and maintain the condominium project, to defray the costs of the condominium, and from which a condominium corporation could not realize any gain or profit as a result of its receipt thereof.
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> In addition, the same rulings exempted association dues from value-added tax for the reason that a condominium corporation does not sell, barter, exchange, nor lease any goods or property and neither does it render any service for a fee, but merely implements the administration of the required services to collect the association dues from the unit owners pursuant to its corporate purpose(s) as trustee of the fund thereof.[82]

RMC No. 65-2012 clarified that "the association dues, membership fees, and other assessments/charges collected by a condominium corporation constitute income payments or compensation for beneficial services [that the corporation] provides to its members and tenants."[83] According to the Circular, "a condominium corporation furnishes its members and tenants with benefits, advantages, and privileges in return for such payments."[84] For this reason, the BIR abandoned its previous interpretation that Condominium Assessments are merely held in trust.[85]

On the other hand, with respect to VAT, RMC No. 65-2012 declared that since a condominium corporation provides a beneficial service, it should

81. RMC No. 65-2012, at ★3.

82. *Id.* at ★1.

83. *Id.* at ★2.

84. *Id.*

85. *Id.*

be held liable for VAT.[86] The Circular underscored that even non-stock, non-profit organizations or government entities are liable to pay VAT on the sale of goods and services.[87] It referred to Section 105 of R.A. No. 8424, which provides —

> Section 105. *Persons Liable.* — Any person who, in the course of trade or business, sells[,] barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
>
> The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee[,] or lessee of the goods, properties[,] or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties[,] or services at the time of the effectivity of Republic Act No. 7716.
>
> The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.
>
> The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being course of trade or business.[88]

In support of this position, the BIR also cited *COMASERCO*.[89] This case involved Commonwealth Management and Services Corporation (private respondent), an affiliate of Philippine American Life Insurance Co. (Philamlife). Private respondent was organized "to perform collection, consultative[,] and other technical services, including functioning as an internal auditor[ ] of Philamlife and its other affiliates."[90] The BIR issued an assessment to private respondent for deficiency VAT.[91] Although private respondent protested, the BIR sent a collection letter demanding the payment of deficiency VAT.[92] Consequently, private respondent filed a petition for

86. *Id.*

87. RMC No. 65-2012, at *2.

88. NAT'L INTERNAL REVENUE CODE, tit. IV, ch. I, § 105.

89. *See* RMC No. 65-2012, at *2-3.

90. *COMASERCO*, 329 SCRA at 240.

91. *Id.*

92. *Id.*

review with the Court of Tax Appeals (CTA).[93] Private respondent argued that it was not liable for deficiency VAT because it was neither profit-oriented nor engaged in business, viz. —

> COMASERCO asserted that the services it rendered to Philamlife and its affiliates, relating to collections, consultative[,] and other technical assistance, including functioning as an internal auditor, were on a 'no-profit, reimbursement-of-cost-only' basis. It averred that it was not engaged in the business of providing services to Philamlife and its affiliates. COMASERCO was established to ensure operational orderliness and administrative efficiency of Philamlife and its affiliates, and not in the sale of services. COMASERCO stressed that it was not profit-motivated, thus not engaged in business. In fact, it did not generate profit but suffered a net loss in taxable year 1988. COMASERCO averred that since[ ] it was not engaged in business, it was not liable to pay VAT.[94]

The CTA decided in favor of the CIR.[95] It affirmed the ruling of the CIR that assessed private respondent for deficiency VAT.[96]

Thereafter, private respondent brought the case before the CA.[97] After due proceedings, the CA reversed the CTA Decision.[98] The CA held that private respondent was "not engaged in [the] business of providing services to Philamlife and its affiliates."[99] Thus, it cannot be held liable to pay VAT.[100]

The CIR proceeded to file a petition for review on certiorari before the Court.[101] The CIR argued that "*to 'engage in business'* and *to 'engage in the sale of services'* are two different [concepts]."[102] According to the CIR, it is immaterial whether or not profit is realized after performing a service.[103] The value added through the performance of a service should be subject to VAT.[104]

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93. *Id.* at 241.

94. *Id.*

95. *Id.*

96. *COMASERCO*, 329 SCRA at 241.

97. *Id.*

98. *Id.* at 242.

99. *Id.*

100. *Id.*

101. *Id.*

102. *COMASERCO*, 329 SCRA at 243 (emphases supplied).

103. *Id.*

104. *Id.*

In its comment, private respondent reiterated that "the term 'in the course of trade or business' requires that the 'business' is carried on with a view to profit or livelihood."[105] "Private respondent argue[d] that profit motive is material" in determining liability for VAT, and since its activities are not profit-oriented, it should not be held liable for VAT.[106]

The Court granted the petition and reversed the CA Decision.[107] The Court held that Section 105 of R.A. No. 8424 is clear, declaring that "even a non-stock, non-profit organization or government entity[ ] is liable to pay VAT for the sale of goods and services."[108] The Court expounded —

> VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto. The term 'in the course of trade or business' requires the regular conduct or pursuit of a commercial or an economic activity, regardless of whether or not the entity is profit-oriented.
>
> The definition of the term 'in the course of trade or business' incorporated in the present law applies to all transactions even to those made prior to its enactment. Executive Order No. 273 stated that any person who, in the course of trade or business, sells, barters[,] or exchanges goods and services, was already liable to pay VAT. The present law merely stresses that even a nonstock, nonprofit organization or [government] entity is liable to pay VAT for the sale of goods and services.
>
> Section 108 of the National Internal Revenue Code of 1997 defines the phrase 'sale of services' as the 'performance of all kinds of services for others for a fee, remuneration[,] or consideration.' It includes 'the supply of technical advice, assistance[,] or services rendered in connection with technical management or administration of any scientific, industrial[,] or commercial undertaking or project.'[109]

Accordingly, the Court agreed with the CIR.[110] It held that the services private respondent provides are subject to VAT.[111] Moreover, the Court

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105. *Id.*

106. *Id.*

107. *Id.* at 247.

108. *COMASERCO*, 329 SCRA at 244 (emphasis omitted).

109. *Id.* at 244-45 (citing NAT'L INTERNAL REVENUE CODE, § 108 (A) (6) & Bureau of Internal Revenue, Revenue Regulations No. 7-95 [RR No. 7-95] § 4.102-1 (Dec. 9, 1995) (as amended)).

110. *COMASERCO*, 329 SCRA at 245.

111. *Id.*

stressed that in the absence of any showing that the CIR is plainly wrong, the CIR's opinion is entitled to great weight, to wit —

> [I]t is immaterial whether the primary purpose of a corporation indicates that it receives payments for services rendered to its affiliates on a reimbursement-on-cost basis only, without realizing profit, for purposes of determining liability for VAT on services rendered. *As long as the entity provides service for a fee, remuneration*[,] *or consideration, then the service rendered is subject to VAT.*
>
> At any rate, it is a rule that because taxes are the lifeblood of the nation, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government. Otherwise stated, any exemption from the payment of a tax must be clearly stated in the language of the law; it cannot be merely implied therefrom. In the case of VAT, Section 109, Republic Act 8424 clearly enumerates the transactions exempted from VAT. The services rendered by COMASERCO do not fall within the exemptions.
>
> Both the Commissioner of Internal Revenue and the Court of Tax Appeals correctly ruled that the services rendered by COMASERCO to Philamlife and its affiliates are subject to VAT. As pointed out by the Commissioner, the performance of all kinds of services for others for a fee, remuneration[,] or consideration is considered as sale of services subject to VAT. *As the government agency charged with the enforcement of the law, the opinion of the Commissioner of Internal Revenue, in the absence of any showing that it is plainly wrong, is entitled to great weight.* Also, it has been the long standing policy and practice of this Court to respect the conclusions of quasi-judicial agencies, such as the Court of Tax Appeals which, by the nature of its functions, is dedicated exclusively to the study and consideration of tax cases and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of its authority.[112]

C. Bureau of Internal Revenue Rulings Subsequent to Revenue Memorandum Circular No. 65-2012

After RMC No. 65-2012 took effect, the BIR began to deny requests for exemption filed by condominium corporations. Its rulings would generally rely on RMC No. 65-2012. However, there were instances where the BIR would cite other bases to justify its denial of requests for exemption.

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112. *Id.* at 245-46 (citing Davao Gulf Lumber Corporation v. Commissioner of Internal Revenue, G.R. No. 117359, 293 SCRA 76, 77 (1998); Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary, G.R. No. 108524, 238 SCRA 63, 68 (1994); & Commissioner of Internal Revenue v. Court of Appeals, G.R. No. 86785, 204 SCRA 182, 189-90 (1991)) (emphases supplied).

For example, in BIR Ruling No. 186-13,[113] the BIR denied Philippine AXA Life Centre Condominium Corporation's request for exemption from income and withholding tax.[114] The BIR ruled that although "Philippine AXA Life Centre Condominium Corporation is a non-stock, non-profit condominium corporation ... , it is not among those corporations contemplated under Section 30 of the Tax Code of 1997 ... [to be] exempt[ed] from the payment of income tax."[115]

The BIR likewise denied a request for tax exemption in BIR Ruling No. 148-14.[116] This ruling involved a request for tax exemption filed by Somerset Mansions Condominium Corporation.[117] Here, the BIR explained that "neither RMC No. 65-2012 nor [Republic Act] No. 4726, otherwise known as 'The Condominium Act', ... provide[s] for any exemption from taxation."[118] The BIR added that Somerset Mansions Condominium Corporation does not fall under any of the enumerated corporations granted an exemption under Section 30 of the Tax Code of 1997.[119]

However, in BIR Ruling No. 664-19,[120] although the BIR denied a similar request for tax exemption, it made a finding that the condominium corporation was engaged in profitable activities.[121] This ruling concerned Cityland Wack Wack Royal Mansion, Inc. (Cityland), a non-stock, non-profit condominium corporation.[122] The BIR held that Cityland is not among the exempted corporations contemplated under Section 30 of R.A. No. 8424.[123] The BIR also noted that Cityland is engaged in profitable activities since its amended articles of incorporation empowered it to lease, exchange,

113. Bureau of Internal Revenue, Ruling No. 186-13 [BIR Ruling No. 186-13] (May 20, 2013).

114. *Id.* at *3.

115. *Id.* at *1.

116. Bureau of Internal Revenue, Ruling No. 148-14 [BIR Ruling No. 148-14] (May 29, 2014).

117. *Id.* at *1.

118. *Id.*

119. *Id.*

120. Bureau of Internal Revenue, Ruling No. 664-19 [BIR Ruling No. 664-19] (Oct. 21, 2019).

121. *Id.* at *3.

122. *Id.* at *1.

123. *Id.* at *2.

sell, or transfer real and personal property.[124] According to the BIR, this would result in the imposition of taxes.[125]

D. Legislative Trends

In response to RMC No. 65-2012, several bills were filed in Congress seeking to exempt Condominium Assessments from income tax and VAT.

Senate Bill (S.B.) Nos. 717,[126] 922,[127] and 2250[128] were introduced to amend Section 109 of R.A. No. 8424.[129] These bills sought to include Condominium Assessments as part of the enumerated transactions exempted from VAT.[130] S.B. No. 2250, however, took it a step further. This bill also sought to amend Section 30 (C) of R.A. No. 8494[131] to include the phrase "or a non-profit condominium corporation or homeowner's association holding in trust association or membership dues for the benefit of the members."[132] Notably, this amendment would include condominium corporations in the list of corporations exempted from income tax.[133]

124. *Id.* at ★3.

125. BIR Ruling No. 664-19, at ★3.

126. An Act Exempting Membership Fees, and Other Assessments/Charges Collected by Condominium Corporations From Value-Added Tax, Amending for the Purpose Section 109 (1) of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes, S.B. No. 717, § 1, 16th Cong., 1st Reg. Sess. (2013).

127. An Act Exempting Membership Fees, and Other Assessment/Charges Collected by Condominium Corporations From Value-Added Tax, Amending for the Purpose Section 109 (1) of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes, S.B. No. 922, § 1, 17th Cong., 1st Reg. Sess. (2016).

128. An Act Classifying the Association Dues and Membership Fees Collected by Homeowners Association or Condominium Corporation From Their Members or Tenants as Excluded From Income Tax or Value Added Tax Amending for the Purpose Republic Act No. 8424 and for Other Purposes, S.B. No. 2250, § 3, 16th Cong., 1st Reg. Sess. (2014).

129. NAT'L INTERNAL REVENUE CODE, § 9.

130. *See* S.B. No. 717, § 1; S.B. No. 911, § 1; & S.B. No. 2250, § 3.

131. NAT'L INTERNAL REVENUE CODE, tit. II, ch. IV, § 30 (C).

132. S.B. No. 2250, § 1.

133. *Id.*

Moreover, it also sought to classify Condominium Assessments as an exclusion to gross income under Section 32 (B).[134]

Markedly, a similar bill was filed in the lower house, i.e., House Bill No. 6768.[135] This bill sought to amend Sections 30 (C), 32 (B) (7) (f), and 109 (t) of R.A. No. 8424.[136] For their part, these amendments would effectively exempt condominium corporations from both income tax and VAT.[137]

Significantly, on 19 December 2017, Republic Act No. 10963 (R.A. No. 10963) or the "Tax Reform for Acceleration and Inclusion"[138] was signed into law. R.A. No. 10963 notably amended Section 109 of R.A. No. 8424 to the extent that association dues, membership fees, and other assessments and charges collected by homeowners' associations and condominium corporations are now exempted from VAT.[139]

E. Supreme Court Clarifies the Nature of Membership Fees and Association Dues: The Case of Association of Non-Profit Clubs, Inc. v. Bureau of Internal Revenue

The Court's re-evaluation of the taxability of membership fees, association dues, and fees of similar nature began with the case of *Association of Non-Profit Clubs, Inc. v. Bureau of Internal Revenue*.[140] Here, the Court held that

134. *Id.* § 2.

135. An Act Classifying the Association Dues and Membership Fees Collected by Homeowners Associations or Condominium Corporations from Their Members or Tenants as Excluded from Income Tax and Value Added Tax, H.B. No. 6768, § 3, 15th Cong., 3d Reg. Sess. (2012).

136. *Id.* §§ 1-3.

137. *Id.*

138. An Act Amending Sections 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, And 288; Creating New Sections 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, and 265-A; and Repealing Sections 35, 62, and 89; All Under Republic Act No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, as Amended, and for Other Purposes [Tax Reform for Acceleration and Inclusion (TRAIN)], Republic Act No. 10963 (2017).

139. *Id.* § 34.

140. Association of Non-Profit Clubs, Inc. (ANPC) v. Bureau of Internal Revenue, G.R. No. 228539, June 26, 2019, *available at* https://sc.judiciary.gov.ph/5834 (last accessed Jan. 8, 2021).

membership fees, assessment dues, and fees of similar nature collected by clubs that are organized and operated exclusively for pleasure, recreation, and other non-profit purposes are not subject to income tax and VAT.[141]

The Association of Non-Profit Clubs, Inc. (ANPC) discussed the proper interpretation of Revenue Memorandum Circular No. 35-2012 (RMC No. 35-2012) entitled "Clarifying the Taxability of Clubs Organized and Operated Exclusively for Pleasure, Recreation, and Other Non-Profit Purposes."[142] ANPC (petitioner) filed a petition for declaratory relief with the RTC to challenge the validity of RMC No. 35-2012.[143] According to petitioner, the Circular is "invalid, unjust, oppressive, confiscatory, and in violation of the due process clause of the Constitution."[144] Moreover, petitioner argued that the BIR acted beyond its rule-making authority when it interpreted membership fees, association dues, and fees of similar nature to be subject to income tax and VAT.[145] On the other hand, the BIR argued that "RMC No. 35-2012 is a mere amplification of the existing law and the rules and regulations of the BIR[,]"[146] and by "removing recreational clubs from the list of tax exempt entities or corporations, Congress intended to subject them to income tax and VAT under the 1997 NIRC."[147]

The RTC agreed with the BIR, thus —

> On the procedural issue, the RTC found that there was no violation of the doctrine of exhaustion of administrative remedies, since judicial intervention was urgent in light of the impending imposition of taxes on the membership fees and assessment dues paid by the members of the exclusive clubs. *As to the substantive issue, the RTC found that given the apparent intent of Congress to subject recreational clubs to taxes, the BIR, being the administrative agency concerned with the implementation of the law, has the power to make such an interpretation through the issuance of RMC No. 35-2012.* As an interpretative rule issued well

141. *Id.* at 11-12.

142. Bureau of Internal Revenue, Clarifying the Taxability of Clubs Organized and Operated Exclusively for Pleasure, Recreation, and Other Non-Profit Purposes, Revenue Memorandum Circular No. 35-2012 [RMC No. 35-2012] (Aug. 3, 2012).

143. *Association of Non-Profit Clubs, Inc. (ANPC)*, G.R. No. 228539, at 3.

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.* at 3-4.

> within the powers of the BIR, the same need not be published and neither is a hearing required for its validity.[148]

The Court, however, set aside the RTC Decision.[149]

On the issue of income tax liability, the Court declared that membership fees, assessment dues, and fees of similar nature collected by recreational clubs do not constitute income; these constitute an infusion of capital and should not be subject to income tax,[150] to wit —

> RMC No. 35-2012 erroneously foisted a sweeping interpretation that membership fees and assessment dues are sources of income of recreational clubs from which income tax liability may accrue[.]
>
> ...
>
> As correctly argued by ANPC, membership fees, assessment dues, and other fees of similar nature *only constitute contributions to and/or replenishment of the funds for the maintenance and operations of the facilities offered by recreational clubs to their exclusive members. They represent funds 'held in trust' by these clubs to defray their operating and general costs and hence, only constitute infusion of capital.*
>
> Case law provides that in order to constitute 'income,' there must be realized 'gain.' Clearly, because of the nature of membership fees and assessment dues as funds inherently dedicated for the maintenance, preservation, and upkeep of the clubs' general operations and facilities, nothing is to be gained from their collection.
>
> ...
>
> *In fine, for as long as these membership fees, assessment dues, and the like are treated as collections by recreational clubs from their members as an inherent consequence of their membership, and are, by nature, intended for the maintenance, preservation, and upkeep of the clubs' general operations and facilities, then these fees cannot be classified as 'the income of recreational clubs from whatever source' that are 'subject to income tax.' Instead, they only form part of capital from which no income tax may be collected or imposed.*
>
> It is a well-enshrined principle in our jurisdiction that the State cannot impose a tax on capital as it constitutes an unconstitutional confiscation of property.[151]

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148. *Id.* (emphasis supplied).

149. *Association of Non-Profit Clubs, Inc. (ANPC)*, G.R. No. 228539, at 11.

150. *Id.* at 7-9.

151. *Id.* (citing Chamber of Real Estate and Builders' Associations, Inc. v. Romulo, 628 Phil. 508, 531 (2010)) (emphases supplied).

The Court further held that membership fees, assessment dues, and fees of similar nature collected by recreational clubs are not subject to VAT.[152] According to the Court, there is no sale, barter, or exchange of goods or properties, or sale of a service, which could be made subject to VAT, viz. —

> It is a basic principle that before a transaction is imposed VAT, a sale, barter or exchange of goods or properties, or sale of a service is required. This is true even if such sale is on a cost-reimbursement basis.
>
> ...
>
> As ANPC aptly pointed out, membership fees, assessment dues, and the like are not subject to VAT because in collecting such fees, the club is not selling its service to the members. Conversely, the members are not buying services from the club when dues are paid; hence, there is no economic or commercial activity to speak of as these dues are devoted for the operations/maintenance of the facilities of the organization. *As such, there could be no 'sale, barter or exchange of goods or properties, or sale of a service' to speak of, which would then be subject to VAT under the 1997 NIRC.*[153]

III. CASE SUMMARY OF BUREAU OF INTERNAL REVENUE V. FIRST E-BANK TOWER CONDOMINIUM CORP.

A. The Case

In the case of *First E-Bank*, the Court tackled the issue of whether or not Condominium Assessments should be subject to income tax, VAT, and withholding tax.[154] The Court overturned RMC No. 65-2012 by ruling that Condominium Assessments are not subject to the aforementioned taxes since they are not considered as income and are not received by condominium corporations in the course of any trade or business.[155] Moreover, these Condominium Assessments are not collected due to the performance of any service rendered by condominium corporations to its members and tenants.[156]

The issue was first raised by First E-Bank Tower Condominium Corp. (respondent) when it filed a petition "for declaratory relief seeking to declare

152. *Association of Non-Profit Clubs, Inc. (ANPC)*, G.R. No. 228539, at 11.

153. *Id.* (citing Commissioner of Internal Revenue v. Sony Philippines, Inc., 649 Phil. 519, 533 (2010) & Commissioner of Internal Revenue v. Court of Appeals, 385 Phil. 875 (2000)) (emphasis omitted).

154. *First E-Bank*, G.R. No. 215801, at 10.

155. *Id.* at 20 & 23-24.

156. *Id.* at 24.

as invalid ... RMC No. 65-2012[ ]"[157] before the RTC. Due to the issuance of RMC No. 65-2012, respondent, "a non-stock[,] non-profit condominium corporation,"[158] was required to pay income tax, VAT, and withholding tax on the Condominium Assessments it collected from its members and tenants.[159]

Respondent alleged that "RMC No. 65-2012 burdened the owners of the condominium units with income tax and VAT on their own money which they exclusively used for the maintenance and preservation of the building and its premises."[160]

In its Resolution, the RTC declared as invalid RMC No. 65-2012, to wit —

> As to the validity of the Memorandum Circular issued, it is respondent's contention that it merely clarified and was simply issued to restate and clarify the prevailing position and ruling of the BIR. It was a mere interpretation of an existing law which has already been in effect and which was not set to be amended. However, the same appears to be not true as it goes beyond its objective to clarify the existing statute. The assailed Revenue Memorandum Circular not merely interpreted or clarified the existing BIR Ruling but in fact legislated or introduced a new legislation under the mantle of its quasi-legislative authority. The BIR Commissioner, under the guise of clarifying income tax on association dues, made Revenue Memorandum Circular effective immediately. In so doing, the passage contravenes the constitutional mandate of due process of law.
>
> ...
>
> The above cited portion of the Memorandum Circular failed to show what particular law it clarified. Instead[,] it shows that it merely departed from the several rulings of the Bureau exempting from income tax the assessments/charges collected by condominium corporations from its members, on the ground that the collection of association dues and other assessments/charges are merely held in trust to be used solely for administrative expenses in implementing its purpose. The new circular in effect made its own legislation abandoning the previous rulings of the BIR which became the practice of the condominium corporations including herein petitioner. The Revenue Circular changed and departed from the long standing ruling of the BIR that association dues and other fees and

157. *Id.* at 4.

158. *Id.* at 6.

159. *Id.*

160. *First E-Bank*, G.R. No. 215801, at 6.

> charges collected from members are tax exempt. In so doing, it abruptly charges from taxpayer an imposition which was then not existing, and worse made it immediately effective which is prejudicial to the rights of the petitioner. It did not merely interpret or clarify but changed altogether the long standing rules of the Bureau of Internal revenue.[161]

On appeal, the CA dismissed the appeal on the "ground of lack of jurisdiction. It emphasized that jurisdiction over the case was exclusively vested in the Court of Tax Appeals since the trial court's impugned resolution involved a tax matter."[162]

Aggrieved, both parties sought redress from the Court to resolve the principal issue of whether or not RMC No. 65-2012 was valid and ultimately, whether or not Condominium Assessments are subject to income tax, VAT, and withholding tax.[163]

B. The Ruling

The Court affirmed the RTC Resolution and ruled that RMC No. 65-2012 was invalid.[164]

On the matter of jurisdiction, the Court recognized that there were two doctrines involved regarding whether or not the CA had jurisdiction to decide on the validity of tax rules, viz. —

> On [30 August] 2008, the Court *en banc* decreed in *British American Tobacco v. Camacho, et al.* that the Court of Tax Appeals did not have jurisdiction to pass upon the constitutionality or validity of a law or rule[.]
>
> ...
>
> On [4 February] 2014, the Court *en banc* recognized that the Court of Tax Appeals possessed all such implied, inherent, and incidental powers necessary to the full and effective exercise of its appellate jurisdiction over tax cases.
>
> ...
>
> On [16 August] 2016, in *Banco de Oro v. Republic of the Phils., et al.,* the Court *en banc* pronounced in no uncertain terms that the Court of Tax Appeals had

161. *Id.* at 7-8.

162. *Id.* at 9.

163. *Id.* at 10.

164. *Id.* at 32.

> jurisdiction to rule on the constitutionality or validity of a tax law or regulation or administrative issuance[.][165]

However, the Court ruled that, at the time the case was filed in 2012, the prevailing doctrine was that the CA had jurisdiction to pass upon tax laws and rules, not the CTA.[166]

As to the taxability of Condominium Assessments, the Court categorically stated that Condominium Assessments are not considered income, since there is no gain received by the condominium corporation.[167] These Condominium Assessments are used solely for the purpose of maintaining and managing the condominium for the benefit of its members and tenants.[168] Therefore, they cannot be subject to income tax.[169]

Similarly, Condominium Assessments cannot be subject to withholding tax.[170] Under Section 57 (A) and (B) of R.A. No. 8424 and Section 57 (B) of R.A. No. 10963, withholding tax is only paid when income is earned.[171] Furthermore, the Court held that Condominium Assessments are not subject to VAT, since they are not received by condominium corporations as payment for any service and taking into account that condominium corporations are not considered as engaged in the course of trade or business.[172]

Lastly, the Court emphasized the CIR's scope in interpreting tax laws in this wise —

> But the BIR Commissioner cannot, in the exercise of such power, issue administrative rulings or circulars inconsistent with the law to be implemented. Administrative issuances must not override, supplant, or modify the law, they must remain consistent with the law intended to carry out.
>
> ...

165. *Id.* at 15-17 (citing British American Tobacco v. Camacho, G.R. No. 163583, 562 SCRA 511 (2008) & Banco de Oro v. Republic, G.R. No. 198756, 745 SCRA 361 (2015)).

166. *First E-Bank*, G.R. No. 215801, at 18.

167. *Id.* at 24.

168. *Id.* at 21-22.

169. *Id.* at 24.

170. *Id.* at 28.

171. *Id.*

172. *First E-Bank*, G.R. No. 215801, at 20.

> In sum, the BIR Commissioner is empowered to interpret our tax laws but not expand or alter them. In the case of RMC No. 65-2012, however, the BIR Commissioner went beyond, if not, gravely abused such authority.[173]

IV. ANALYSIS OF THE BUREAU OF INTERNAL REVENUE V. FIRST E-BANK TOWER CONDOMINIUM CORP. RULING

A. Condominium Dues, Fees, and Assessments not Subject to Income Tax, Value-Added Tax, and Withholding Tax

To reiterate, in the case of *First E-Bank*, the Court invalidated RMC No. 65-2012 "for ordaining that 'gross receipts of condominium corporations including association dues, membership fees, and other assessments/charges are subject to VAT, income tax[,] and income payments made to it are subject to applicable *withholding taxes*.'"[174]

1. Income Tax

Importantly, in the case of *Chamber of Real Estate and Builders' Associations, Inc. v. Romulo*,[175] the Court pronounced that income is distinct from capital.[176] On one hand, income is regarded as "all the wealth which flows into the taxpayer other than a mere return on capital."[177] On the other hand, capital is considered as "a fund or property existing at one distinct point in time while income denotes a flow of wealth during a definite period of time."[178]

The Court explained in such case that "*income is gain derived and severed from capital*."[179] In order for there to be taxable income, the following requisites must be complied with: "(1) there must be gain; (2) the gain must be realized or received[;] and (3) the gain must not be excluded by law or

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173. *Id.* at 29-30.

174. *Id.* at 32 (emphasis supplied).

175. Chamber of Real Estate and Builders' Associations, Inc. v. Romulo, G.R. No. 160756, 614 SCRA 605 (2010).

176. *Id.* at 627 (citing Madrigal and Paterno v. Rafferty and Concepcion, 38 Phil. 414, 418-19 (1918)).

177. *Chamber of Real Estate and Builders' Associations, Inc.*, 614 SCRA at 627.

178. *Id.* (citing *Madrigal and Paterno*, 38 Phil. at 418-19).

179. *Chamber of Real Estate and Builders' Associations, Inc.*, 614 SCRA at 627 (citing Commission of Internal Revenue v. Court of Appeals, G.R. No. 108576, 301 SCRA 152, 173 (1999)) (emphasis supplied).

treaty from taxation."[180] Clearly, *what is subject to income tax is income and not capital*.[181]

Section 31 of R.A. No. 8424, the prevailing law when RMC No. 65-2012 was issued on 31 October 2012, defines taxable income as "*the pertinent items of gross income specified in this* [*Tax*] *Code, less the deductions and/or personal and additional exemptions*, if any, authorized for such types of income by this [Tax] Code or other special laws."[182]

Gross income refers to "income derived from whatever source, including compensation for services; the conduct of trade or business or the exercise of a profession; dealings in property; interests; rents; royalties; dividends; annuities; prizes and winnings; pensions; and a partner's distributive share in the net income of a general professional partnership, among others."[183]

Notably, on 19 December 2017, Section 31 of R.A. No. 8424 was amended by R.A. No. 10963. Section 8 of R.A. No. 10963 states that "[t]he term 'taxable income' means the pertinent items of gross income specified in this [Tax] Code, less deductions, if any, authorized for such types of income by this [Tax] Code or other special laws."[184]

Markedly, there appears to be no substantial distinction between the original definition of taxable income under R.A. No. 8424 and the current definition of taxable income under R.A. No. 10963.[185] In truth, the only difference that can be seen is the deletion of the phrase "and/or personal and additional exemptions" under R.A. No. 10963.[186] Notwithstanding, both R.A. No. 8424 and R.A. No. 10963 are consistent with the fact that taxable income refers to "the pertinent items of gross income specified in this [Tax] Code."[187]

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180. *Chamber of Real Estate and Builders' Associations, Inc.*, 614 SCRA at 627 (citing *Commission of Internal Revenue*, 301 SCRA at 181).

181. *Chamber of Real Estate and Builders' Associations, Inc.*, 614 SCRA at 628 (emphasis supplied).

182. NAT'L INTERNAL REVENUE CODE, tit. II, ch. V, § 31 (emphasis supplied).

183. *First E-Bank*, G.R. No. 215801, at 22 (citing Commissioner of Internal Revenue v. Philippine Airlines, G.R. No. 160528, 504 SCRA 90, 99 (2006)).

184. Tax Reform for Acceleration and Inclusion (TRAIN), § 8.

185. *First E-Bank*, G.R. No. 215801, at 23.

186. *Id.*

187. *Id.*

Section 32 (A) of R.A. No. 8424 provides —

> Section 32. *Gross Income*. —
>
> (A) *General Definition*. — Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:
>
> (a) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;
>
> (b) Gross income derived from the conduct of trade or business or the exercise of a profession;
>
> (c) Gains derived from dealings in property;
>
> (d) Interests;
>
> (e) Rents;
>
> (f) Royalties;
>
> (g) Dividends;
>
> (h) Annuities;
>
> (i) Prizes and winnings;
>
> (j) Pensions; and
>
> (k) Partner's distributive share from the net income of the general professional partnership.[188]

A perusal of Section 32 (A) of R.A. No. 8424 shows that such provision "does not include association dues, membership fees, and other assessments/charges collected by condominium corporations as sources of gross income."[189] Significantly, Section 32 (A) of R.A. No. 10963 is the same as the abovementioned provision.[190]

Undoubtedly, RMC No. 65-2012 expanded the items of gross income provided for by the law.[191] It is well-settled that *when there is a conflict between the law and the rules and regulations implementing such law, the former shall always*

188. NAT'L INTERNAL REVENUE CODE, tit. II, ch. VI, § 32.

189. *First E-Bank*, G.R. No. 215801, at 23.

190. *Id.*

191. *Id.*

prevail.[192] Hence, the Court in the case of *First E-Bank* was correct in invalidating RMC No. 65-2012.[193]

To emphasize, in the case of *Yamane*, the Court ruled that R.A. No. 4726 "permits the creation of a condominium corporation, which is specially formed for the purpose of holding title to the common area, in which the holders of separate interests shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units."[194] In connection therewith, a condominium corporation "may be authorized, in the deed of restrictions, 'to make reasonable assessments to meet authorized expenditures[.]'"[195] These assessments refer to the Condominium Assessments subject of the case of *First E-Bank*.

The Court further clarified that R.A. No. 4726 precludes a condominium corporation

> from engaging in corporate activities other than the holding of the common areas, the administration of the condominium project, and other acts necessary, incidental[,] or convenient to the accomplishment of such purposes. *Neither the maintenance of livelihood, nor the procurement of profit, fall within the scope of permissible corporate purposes of a condominium corporation under the Condominium Act*.[196]

Essentially, the Court concluded that "[e]ven though the Corporation is empowered to levy assessments or dues from the unit owners, *these amounts collected are not intended for the incurrence of profit by the Corporation or its members, but to shoulder the multitude of necessary expenses that arise from the maintenance of the Condominium Project*."[197]

Consistent with the case of *Yamane*, in the 2019 case of *ANPC*, the Court ruled that membership fees, assessment dues, and other fees collected by recreational clubs are not subject to income tax.[198] This is because "membership fees, assessment dues, and other fees of similar nature only

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192. Commissioner of Internal Revenue v. Bicolandia Drug Corporation, G.R. No. 148083, 496 SCRA 176, 187 (2006) (citing People v. Maceren, G.R. No. L-32166, 79 SCRA 450, 460 (1977)) (emphasis supplied).

193. *See First E-Bank*, G.R. No. 215801, at 32.

194. *Yamane*, 474 SCRA at 277-78 (citing The Condominium Act, § 2).

195. *Yamane*, 474 SCRA at 278.

196. *Id*. at 279 (emphasis supplied).

197. *Id*. at 280 (emphasis supplied).

198. *Association of Non-Profit Clubs, Inc. (ANPC)*, G.R. No. 228539, at 11-12.

constitute contributions to and/or replenishment of the funds for the maintenance and operations of the facilities offered by recreational clubs to their exclusive members."[199] The aforesaid "represent funds 'held in trust' by these clubs to defray their operating and general costs and hence, only constitute *infusion of capital*."[200]

The Court concluded that "for as long as these membership fees, assessment dues, and the like are treated as collections by recreational clubs from their members as an inherent consequence of their membership, and are, by nature, intended for the maintenance, preservation, and upkeep of the clubs' general operations and facilities,"[201] such fees cannot be regarded as "'the income of recreational clubs from whatever source' that are 'subject to income tax.'"[202] Verily, these fees "*only form part of capital from which no income tax may be collected or imposed*."[203]

Given the abovementioned rulings, the Court in the case of *First E-Bank* was correct in holding that Condominium Assessments are not subject to income tax for the same cannot be considered as profit or gain.[204] To emphasize, Condominium Assessments are "*collected purely for the benefit of the condominium owners and are the incidental consequence of a condominium corporation's responsibility to effectively oversee, maintain, or even improve the common areas of the condominium as well as its governance*."[205]

2. Value-Added Tax

Under Section 105 of R.A. No. 8424, the following persons are subject to VAT —

> Section 105. *Persons Liable.* — Any person who, in the course of trade or business, sells[,] barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
>
> The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee[,] or lessee of the goods, properties[,] or

199. *Id.* at 8 (emphasis omitted).

200. *Id.* at 8-9 (emphases omitted and supplied).

201. *Id.* at 9 (emphasis omitted).

202. *Id.*

203. *Id.*

204. *See First E-Bank*, G.R. No. 215801, at 24.

205. *Id.* at 24-25 (emphasis supplied).

> services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties[,] or services at the time of the effectivity of Republic Act No. 7716.
>
> The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.
>
> The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being course of trade or business.[206]

To emphasize, in order to be subject to VAT, there are two criteria which must be satisfied.[207] *First*, the person must sell, barter, exchange, or lease goods or properties, or render a service; and *second*, the person must be engaged in the course of trade or business.[208]

Section 108 of R.A. No. 8424 further defines sale or exchange of service as "[t]he phrase 'sale or exchange of services' means the performance of all kinds o[f] services in the Philippines for others for a fee, remuneration[,] or consideration[.]"[209]

In order for Condominium Assessments that are collected by condominium corporations to be subject to VAT, it must satisfy the first requirement — a performance of a service for a fee.[210] In the case of condominium corporations, however, there is no performance of any service for a fee to speak of considering that Condominium Assessments themselves are collected from its members and tenants, in order to "form part of a pool from which a condominium corporation must draw funds in order to bear the costs for maintenance, repair, improvement, reconstruction expenses[,] and other administrative expenses."[211]

Moreover, a condominium corporation is simply a corporate entity which is owned by all the unit owners in proportion to their respective interests based

206. NAT'L INTERNAL REVENUE CODE, tit. IV, ch. 1, § 105.

207. *See id*.

208. NAT'L INTERNAL REVENUE CODE , tit. IV, ch. 1, § 105.

209. *Id*. tit. IV, ch. 1, § 108 (A), para. 2.

210. *First E-Bank*, G.R. No. 215801, at 25.

211. *Id*. at 27.

on the number of units they own as well as an undivided interest in the ownership of the common areas of the condominium.[212] Through the payment of Condominium Assessments, the members are able to contribute to a fund that defrays all their joint costs and expenses to maintain their living conditions.[213] Except for the members themselves, there is no other party involved who is hired to perform any kind of service when Condominium Assessments are directly paid to condominium corporations.[214]

However, under RMC No. 65-2012, the CIR declared that Condominium Assessments collected by condominium corporations are "*income payment or compensation for beneficial services it provides to its members and tenants*."[215]

In the case of *First E-Bank*, the Court correctly and categorically ruled that Condominium Assessments are not considered as a sale of goods or properties or a sale of services and use or lease of properties subject to VAT,[216] viz. —

> Section 106 of [R.A. No.] 8424 imposes value-added tax on the sale of goods and properties. The term 'goods' or 'properties' shall mean all tangible and intangible objects which are capable of pecuniary estimation. These 'goods' or 'properties' include real property, intellectual property, equipment, and rights over motion picture films. Section 106 of [R.A.] 8424 likewise imposes value-added tax on transactions such as transfer of goods, properties, profits, or inventories.[217]
>
> Section 108 of R.A. 8424 further imposes value-added tax on sale of services and use or lease of properties. It defines 'sale or exchange of services,' as follows [—]
>
> > The phrase *'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration*[,] *or consideration*, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing[,] or repacking goods for others; proprietors, operators[,] or keepers of hotels, motels, rest-

212. *Id.* at 20. *See also* The Condominium Act, § 2.

213. *First E-Bank*, G.R. No. 215801 & G.R. No. 218924, at 21.

214. *See id.* at 21-22.

215. RMC No. 65-2012, at ★2 (emphasis supplied).

216. *First E-Bank*, G.R. No. 215801, at 25 & 27.

217. *Id.* at 25-26 (citing NAT'L INTERNAL REVENUE CODE, tit. III, ch. 1, § 106).

> houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes[,] and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire[,] and other domestic common carriers by land relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods[,] or cargoes from one place in the Philippines to another place in the Philippines; sales of electricity by generation companies; transmission, and distribution companies; services of franchise grantees of electric utilities, telephone and telegraph, radio and television broadcasting[,] and all other franchise grantees except those under Section 119 of this Code and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity[,] and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties.
>
> ...
>
> The phrase 'sale or exchange of services' shall include the use of intellectual property, use of certain types of equipment, supplying certain types of knowledge or information, lease of motion picture films, and use of transmission or air time.
>
> Both under R.A. [No.] 8424 (Section 106, 107[,] and 108) and the TRAIN Law, there, too, is no mention of association dues, membership fees, and other assessments/charges collected by condominium corporations being subject to VAT.
>
> ...
>
> *Neither can it be said that a condominium corporation is rendering services to the unit owners for a fee, remuneration*[,] *or consideration*. Association dues, membership fees, and other assessments/charges form part of a pool from which a condominium corporation must draw funds in order to bear the costs for maintenance, repair, improvement, reconstruction expenses[,] and other administrative expenses.[218]

It is worth noting that unlike the previous law, which is R.A. No. 8424, Condominium Assessments are now considered as VAT-exempt transactions

218. *Id.* at 26-27 (citing NAT'L INTERNAL REVENUE CODE, tit. III, ch. 1, § 108) (emphasis supplied).

under Section 34[219] of R.A. No. 10963, which amended Section 109 of R.A. No. 8424.

In the recent case of *ANPC*, the Court ruled similarly when it held that membership fees, assessment dues, and other similar fees collected by recreational clubs were not subject to VAT, to wit —

> As ANPC aptly pointed out, membership fees, assessment dues, and the like are not subject to VAT because *in collecting such fees, the club is not selling its service to the members. Conversely, the members are not buying services from the club when dues are paid*; hence, there is no economic or commercial activity to speak of as these dues are devoted for the operations/maintenance of the facilities of the organization. As such, there could be no 'sale, barter or exchange of goods or properties, or sale of a service' to speak of, which would then be subject to VAT under the 1997 NIRC.[220]

The Court in the case of *First E-Bank* reiterated the ruling in the case of *ANPC* and pronounced that "[t]his principle equally applies to condominium corporations which are similarly situated with recreational clubs insofar as membership fees, assessment dues, and other fees of similar nature collected from condominium owners are devoted to the operations and maintenance of the facilities of the condominium."[221]

Furthermore, in order to be liable for VAT, the second requirement must be satisfied as well — a person must be engaged in the course of trade or business.[222] However, this requirement cannot be fulfilled in this case, considering condominium corporations which collect Condominium

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219. Tax Reform for Acceleration and Inclusion (TRAIN), § 34. The amendment reads —

> Sec. 109. *Exempt Transactions*. — (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
>
> ...
>
> (Y) Association dues, membership fees, and other assessments and charges collected by homeowners associations and condominium corporations[.]

220. *Association of Non-Profit Clubs, Inc. (ANPC)*, G.R. No. 228539, at 11 (emphasis supplied).

221. *First E-Bank,* G.R. No. 215801, at 28.

222. *See id*. at 25-27.

Assessments are clearly not engaged in the course of trade or business in the first place.[223]

Section 105 of R.A. No. 8424 defines the phrase "in the course of trade or business" as

> *the regular conduct or pursuit of a commercial or an economic activity*, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.[224]

For condominium corporations, there is no "regular conduct or pursuit of a commercial or an economic activity,"[225] since its sole purpose is to hold title to the common areas of the condominium and to manage and maintain the condominium for the benefit of all the members.[226] As previously discussed, a condominium corporation has a purely non-profit purpose and is prevented by law from participating in any profit geared activities.[227]

In the case of *First E-Bank*, the Court ruled that

> [f]or when a condominium corporation manages, maintains, and preserves the common areas in the building, it does so only for the benefit of the condominium owners. It cannot be said to be engaged in trade or business, thus, the collection of association dues, membership fees, and other assessments/charges is not a result of the regular conduct or pursuit of a commercial or an economic activity, or any transactions incidental thereto.[228]

Moreover, the Court emphasized their ruling in *Commissioner of Internal Revenue v. Magsaysay Lines, Inc.*,[229] viz. —

> Yet VAT is not a singular-minded tax on every transactional level. Its assessment bears direct relevance to the taxpayer's role or link in the production chain. Hence, as affirmed by Section 99 of the Tax Code and its subsequent incarnations, the tax is levied only on the sale, barter[,] or

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223. *Id.* at 18.

224. NAT'L INTERNAL REVENUE CODE, tit. IV, ch. 1, § 105 (emphasis supplied).

225. *Id.*

226. *First E-Bank*, G.R. No. 215801, at 22.

227. *Association of Non-Profit Clubs, Inc. (ANPC)*, G.R. No. 228539, at 9.

228. *First E-Bank*, G.R. No. 215801, at 27.

229. Commissioner of Internal Revenue v. Magsaysay Lines, Inc., G.R. No. 146984, 497 SCRA 63 (2006) (citing NAT'L INTERNAL REVENUE CODE, § 105)).

> exchange of goods or services by persons who engage in such activities, in the course of trade or business. These transactions outside the course of trade or business may invariably contribute to the production chain, but they do so only as a matter of accident or incident. As the sales of goods or services do not occur within the course of trade or business, the providers of such goods or services would hardly, if at all, have the opportunity to appropriately credit any VAT liability as against their own accumulated VAT collections since the accumulation of output VAT arises in the first place only through the ordinary course of trade or business.[230]

In the case of *Magsaysay Lines, Inc.*, the Court held that the sale of vessels by the National Development Company, "made pursuant to the declared policy of Government for privatization,"[231] was considered an isolated transaction and not within its ordinary course of trade or business of "leasing personal property[,]"[232] hence, not subject to VAT.[233] The Court stressed that

> [*t*]*he conclusion that the sale was not in the course of trade or business, which the CIR does not dispute before this Court, should have definitively settled the matter. Any sale, barter*[,] *or exchange of goods or services not in the course of trade or business is not subject to VAT.*[234]

Notably, in RMC No. 65-2012, the CIR mentioned the case of *COMASERCO* to justify why non-stock and non-profit condominium corporations are still subject to VAT.[235] In such case, the Court ruled that Commonwealth Management and Services Corporation (private respondent) was liable to pay VAT for rendering services for a fee to its affiliates, notwithstanding that the fee was on a "reimbursement-on-cost basis only, without realizing profit[.]"[236] The Court emphasized that despite the lack of profit, "[a]s heretofore stated, every person who sells, barters, or exchanges goods or services, in the course of trade or business, as defined by law, is subject to VAT."[237]

Evidently, the CIR failed to make an important distinction between the cases of *COMASERCO* and *First E-Bank*.

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230. *Magsaysay Lines, Inc.*, 497 SCRA at 70.

231. *Id.* at 71.

232. *Id.* (citing *COMASERCO*, 329 SCRA at 244).

233. *Magsaysay Lines, Inc.*, 497 SCRA at 72.

234. *Id.* (emphasis supplied).

235. RMC No. 65-2012, at ★2-3.

236. *COMASERCO*, 329 SCRA at 245.

237. *Id.* at 246.

For *COMASERCO*, private respondent was in fact created to provide necessary support, such as "collection, consultative[,] and other technical services, including functioning as an internal auditor, of Philamlife and its other affiliates."[238] Even if the services rendered by private respondent were on a "reimbursement-on-cost basis only, without realizing profit,"[239] it is undeniable that services were still rendered for a fee.[240]

In addition, private respondent was undoubtedly engaged in the course of trade and business as it was "established to ensure operational orderliness and administrative efficiency of Philamlife and its affiliates."[241] Considering that Philamlife was established for such a business purpose, it appears that private respondent would be required to render regular and consistent assistance and services to Philamlife and its affiliates. Thus, private respondent cannot claim that its business purpose does not entail regular conduct or the pursuit of a commercial or an economic activity.

For the case of *First E-Bank*, it is clear that there was absolutely no service rendered for any fee. First E-Bank Tower Condominium Corp. (respondent), as a condominium corporation, received the Condominium Assessments from its members (who are the actual owners of respondent) as contributions for a shared fund used to cover the costs of maintaining and managing a condominium.[242]

Furthermore, respondent is not engaged in the course of trade or business since it was organized as a corporate entity for the sole purpose of managing the condominium and holding title over the common areas of the condominium for all the members.[243] As previously discussed, under R.A. No. 4726, condominium corporations have specific and limited purposes, such as their non-profit nature and their performance of acts only beneficial for their members.[244] Due to its limited purposes, respondent, as a condominium corporation, cannot engage in any trade or business or any act which would

238. *Id.* at 240.

239. *Id.* at 245.

240. *Id.*

241. *Id.* at 241.

242. *First E-Bank*, G.R. No. 215801, at 27.

243. *Id.*

244. *Id.* at 20–21 (citing The Condominium Act, §§ 2 & 10).

be considered as contrary to law, its Master Deed, and Declaration of Restrictions.[245]

Therefore, the CIR incorrectly used the case of *COMASERCO* to justify taxing condominium corporations, due to the fact that the main requirements to subject a party to VAT were clearly wanting.[246]

3. Withholding Tax

In the case of *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*,[247] the Court explained the withholding tax system in this wise —

> We have long recognized that the method of withholding tax at source is a procedure of collecting income tax which is sanctioned by our tax laws. The withholding tax system was devised for three primary reasons: first, to provide the taxpayer a convenient manner to meet his probable income tax liability; second, to ensure the collection of income tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns[;] and third, to improve the government's cash flow. This results in administrative savings, prompt and efficient collection of taxes, prevention of delinquencies[,] and reduction of governmental effort to collect taxes through more complicated means and remedies.[248]

The Court further explained —

> Under the existing withholding tax system, the withholding agent retains a portion of the amount received by the income earner. In turn, the said amount is credited to the total income tax payable in transactions covered by the EWT. On the other hand, in cases of income payments subject to WTC and Final Withholding Tax, the amount withheld is already the entire tax to be paid for the particular source of income. Thus, it can readily be seen that the payee is the taxpayer, the person on whom the tax is imposed, while the payor, a separate entity, acts as the government's agent for the collection of the tax in order to ensure its payment.

245. *First E-Bank*, G.R. No. 215801, at 20 (citing *Yamane*, 474 SCRA at 278).

246. *COMASERCO*, 329 SCRA at 245.

247. Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc., G.R. No. 211289, 890 SCRA 291 (2019).

248. *Id.* at 302-03 (citing Chamber of Real Estate and Builders' Associations, Inc. v. Hon. Executive Secretary Romulo, G.R. No. 160756, 614 SCRA 605, 632-33 (2010)).

> As a consequence of the withholding tax system, two distinct liabilities arise — one for the income earner/payee and another for the withholding agent.[249]

Considering that the objective of imposing withholding tax is "to facilitate the collection of income tax,"[250] it cannot be questioned that "if there is no income tax, withholding tax cannot be collected."[251]

Under Section 57 of R.A. No. 8424, "only income, be it active or passive, earned by a payor-corporation can be subject to withholding tax,"[252] to wit —

> Section 57. *Withholding of Tax at Source.* —
>
> (A) *Withholding of Final Tax on Certain Incomes.* — Subject to rules and regulations the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24 (B) (1), 24 (B) (2), 24 (C), 24 (D) (1)[,] 25 (A) (2), 25 (A) (3), 25 (B), 25 (C), 25 (D), 25 (E), 27 (D) (1), 27 (D) (2), 27 (D) (3), 27 (D) (5), 28 (A) (4), 28 (A) (5), 28 (A) (7) (a), 28 (A) (7) (b), 28 (A) (7) (c), 28 (B) (1), 28 (B) (2), 28 (B) (3), 28 (B) (4), 28 (B) (5) (a), 28 (B) (5) (b), 28 (B) (5) (c)[,] 33[,] and 282 of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code.
>
> (B) *Withholding of Creditable Tax at Source.* — The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent [ ] but not more than ... [32%] thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year.[253]

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249. *La Flor Dela Isabela, Inc.*, 890 SCRA at 303 (citing LG Electronics Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 165451, 743 SCRA 511, 539 (2014)).

250. *First E-Bank*, G.R. No. 215801, at 28.

251. *Id.*

252. *Id.* (citing NAT'L INTERNAL REVENUE CODE, tit. II, ch. IX, § 57).

253. NAT'L INTERNAL REVENUE CODE, tit. II, ch. IX, § 57 (A) & (B).

Subsequently, Section 57 (B) was amended by R.A. No. 10963 in this wise —

> SEC. 57. *Withholding of Tax at Source.* —
>
> (B) *Withholding of Creditable Tax at Source.* — The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent [ ] but not more than ... [32%] thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year: Provided, That, beginning January 1, 2019, the rate of withholding shall not be less than one percent [ ] but not more than ... [15%] of the income payment.[254]

Markedly, the amended provision "still decrees that the withholding of tax covers only the income payable to natural or juridical persons."[255]

Notably, the Court ruled in the case of *First E-Bank*, that "[*e*]*ven though the Corporation is empowered to levy assessments or dues from the unit owners, these amounts collected are not intended for the incurrence of profit by the Corporation or its members, but to shoulder the multitude of necessary expenses that arise from the maintenance of the Condominium Project.*"[256]

B. Commissioner of Internal Revenue's Right to Interpret Tax Laws but not to Expand, Modify, or Alter the Same

In the case of *First E-Bank*, the Court held that the CIR "expanded or modified the law when she declared that association dues, membership fees, and other assessments/charges are subject to income tax, value-added tax, and withholding tax"[257] in RMC No. 65-2012.

Notably, Section 4 of R.A. No. 8424 empowers the CIR to interpret tax laws and to decide tax cases, viz. —

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

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254. Tax Reform for Acceleration and Inclusion (TRAIN), § 17.

255. *First E-Bank*, G.R. No. 215801, at 29.

256. *Id.* (citing *Yamane*, 474 SCRA at 280) (emphasis supplied).

257. *First E-Bank*, G.R. No. 215801, at 30.

> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.[258]

Nevertheless, the CIR cannot, in the exercise of the abovementioned power, issue administrative rulings and circulars that are incompatible with the law they seek to apply and implement.[259] It is a well-established principle that administrative issuances "must not override, supplant, or modify the law, they must remain consistent with the law intended to carry out."[260] Indeed, only Congress has the power to repeal or amend the law.[261]

Verily, the heads of executive agencies, who are empowered to promulgate rules and regulations, "assume the roles of lawmakers."[262] In connection therewith, it is "well-settled that [administrative rules and regulations] should not conflict with the law [they seek to implement]."[263] Hence, the drafters of such rules and regulations have the duty to "study well the laws their rules will implement[.]"[264] "Administrative rules, regulations, and orders have the efficacy and force of law[, provided that the same] do not contravene any [law] or the Constitution."[265]

In truth, while laws as well as the administrative "issuances promulgated to implement them[ ] enjoy the presumption of validity[; h]owever, administrative regulations that alter or amend the [enabling law] or enlarge or

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258. NAT'L INTERNAL REVENUE CODE, tit. I, § 4.

259. *First E-Bank*, G.R. No. 215801, at 29.

260. *Id.*

261. Romulo, Mabanta, Buenaventura, Sayoc & De Los Angeles v. Home Development Mutual Fund, G.R. No. 131082, 333 SCRA 777, 786 (2000).

262. *Bicolandia Drug Corporation*, 496 SCRA at 188.

263. *Id.*

264. *Id.*

265. *Id.* (citing Cruz v. Del Rosario, G.R. No. L-17440, 9 SCRA 755, 758 (1963)).

impair its scope are [considered as null and] void[.]"[266] In fact, it is the duty of the courts to strike down as invalid such administrative issuances.[267]

Significantly, even prior to the case of *First E-Bank*, the Court has consistently and thoroughly discussed in a long line of cases the scope and limitations of the power of the CIR under Section 4 of R.A. No. 8424. These cases include the following: *Philippine Bank of Communications v. Commissioner of Internal Revenue*,[268] *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*,[269] and *Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE) v. Commissioner, Bureau of Internal Revenue*.[270]

In the case of *Philippine Bank of Communications*, Philippine Bank of Communications (petitioner) "filed its quarterly income tax returns for the first and second quarters of 1985, reported profits, and paid the total income tax of ₱5,016,954.00."[271] Later on, petitioner suffered losses.[272] Thus, upon the filing of its annual income tax returns for the year-ended 31 December 1986, it reported a net loss of ₱14,129,602.00 and in turn, declared that it was not liable to pay any tax for such year.[273]

In 1985 and 1986, however, petitioner was able to earn rental income from its properties that were being leased.[274] The lessees of such properties

266. Department of Agrarian Reform, Quezon City v. Carriedo, G.R. No. 176549, 781 SCRA 301, 330 (2016) (citing Dasmariñas Water District v. Monterey Foods Corporation, G.R. No. 175550, 565 SCRA 624, 637 (2008)).

267. *Carriedo*, 781 SCRA at 330 (citing California Assn. of Psychology Providers v. Rank, 270 Cal. Rptr. 796 (CA 1980) (U.S.)).

268. Philippine Bank of Communications v. Commissioner of Internal Revenue, G.R. No. 112024, 302 SCRA 241 (1999).

269. Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop Inc., G.R. No. 150947, 406 SCRA 178 (2003).

270. Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE) v. Commissioner, Bureau of Internal Revenue, G.R. No. 213446, July 3, 2018, *available at* http://www.central.com.ph/scanpdf/G.R.%20No.%20213446.pdf (last accessed Jan. 8, 2021).

271. *Philippine Bank of Communications*, 302 SCRA at 245.

272. *Id.*

273. *Id.*

274. *Id.*

"withheld and remitted to the BIR withholding creditable taxes of ₱282,795.50 in 1985 and ₱234,077.69 in 1986."[275]

On 7 August 1987, petitioner asked for a tax credit of ₱5,016,954.00 from CIR (respondent).[276] The amount corresponded to its overpayment of taxes for the first and second quarters of 1985.[277] Subsequently, on 25 July 1988, "petitioner filed a claim for refund of creditable taxes withheld by their lessees from property rentals in 1985 for ₱282,795.50 and in 1986 for ₱234,077.69."[278]

Meanwhile, petitioner filed a petition for review with the CTA.[279] In its Decision, the CTA denied petitioner's request for a tax refund or tax credit in the total amount of ₱5,299,749.95.[280] According to the CTA, such request was "filed beyond the two-year reglementary period provided for by law."[281] The CTA likewise denied petitioner's claim for a tax refund of ₱234,077.69 in 1986 "on the assumption that it was automatically credited by [petitioner] against its tax payment in the succeeding year."[282]

Aggrieved, petitioner filed an appeal with the CA, which denied the same.[283] Hence, petitioner filed a petition for review with the Court.[284]

The main issue before the Court was whether or not the CA "erred in denying the plea for tax refund or tax credits on the ground of prescription, despite petitioner's reliance on RMC No. 7-85, changing the prescriptive period of two years to [10] years."[285]

Markedly, in asserting that its claims for a tax refund or tax credits were not yet barred by prescription, petitioner invoked RMC No. 7-85 which was issued on 1 April 1985.[286] RMC No. 7-85 provides "that overpaid income taxes are not covered by the two-year prescriptive period under the [T]ax

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275. *Id.*

276. *Id.*

277. *Philippine Bank of Communications*, 302 SCRA at 245.

278. *Id.*

279. *Id.*

280. *Id.* at 246.

281. *Id.*

282. *Id.*

283. *Philippine Bank of Communications*, 302 SCRA at 246.

284. *Id.*

285. *Id.* at 247.

286. *Id.*

Code and that taxpayers may claim refund or tax credits for the excess quarterly income tax with the BIR within [10] years under Article 1144 of the Civil Code."[287]

The Court affirmed the CA Decision in this wise —

> [C]ontrary to the petitioner's contention, the relaxation of revenue regulations by RMC 7-85 is not warranted as it *disregards the two-year prescriptive period set by law*.
>
> ...
>
> [*C*]*laims for refund or tax credit should be exercised within the time fixed by law because the BIR being an administrative body enforced to collect taxes, its functions should not be unduly delayed or hampered by incidental matters*.
>
> Sec. 230 of the National Internal Revenue Code (NIRC) of 1977 (now Sec. 229, NIRC of 1997) provides for the prescriptive period for filing a court proceeding for the recovery of tax erroneously or illegally collected, viz. [—]
>
> > Sec. 230. *Recovery of tax erroneously or illegally collected*. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
> >
> > In any case, *no such suit or proceedings shall* [*begin*] *after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment; Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.
>
> The rule states that the taxpayer may file a claim for refund or credit with the Commissioner of Internal Revenue, within two [ ] years after payment of tax, before any suit in CTA is commenced. The two-year prescriptive period provided, should be computed from the time of filing the Adjustment Return and final payment of the tax for the year.
>
> ...

287. *Id*. (citing Bureau of Internal Revenue, Revenue Memorandum Circular No. 7-85 [BIR RMC No. 7-85], (Apr. 1, 1985)).

> *When the Acting Commissioner of Internal Revenue issued RMC 7-85, changing the prescriptive period of two years to ten years on claims of excess quarterly income tax payments, such circular created a clear inconsistency with the provision of Sec. 230 of 1977 NIRC. In so doing, the BIR did not simply interpret the law; rather it legislated guidelines contrary to the statute passed by Congress.*
>
> It bears repeating that [r]evenue memorandum-circulars are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by the Commissioner of Internal Revenue. *It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.*
>
> ...
>
> Further, fundamental is the rule that the State cannot be put in estoppel by the mistakes or errors of its officials or agents. As pointed out by the respondent courts, *the nullification of RMC No. 7-85 issued by the Acting Commissioner of Internal Revenue is an administrative interpretation which is not in harmony with* [*Section*] *230 of 1977 NIRC, for being contrary to the express provision of a statute. Hence, his interpretation could not be given weight for to do so would, in effect, amend the statute.*[288]

With respect to the case of *Michel J. Lhuillier Pawnshop, Inc.*, the CIR (petitioner) issued Revenue Memorandum Order No. 15-91 (RMO No. 15-91) which imposed a five percent lending investor's tax on pawnshops in this wise —

> A restudy of P.D. [No.] 114 shows that the principal activity of pawnshops is lending money at interest and incidentally accepting a 'pawn' of personal property delivered by the pawner to the pawnee as security for the loan. ([Section] 3 [ ]). Clearly, this makes pawnshop business akin to [a] lending investor's business activity which is broad enough to encompass the business of lending money at interest by any person whether natural or juridical. Such

288. *Philippine Bank of Communications*, 302 SCRA at 250-54 (citing People v. Hernandez, 59 Phil. 272, 276 (1933); Molina v. Rafferty, 37 Phil. 545, 555 (1918); Commissioner of Internal Revenue v. Court of Appeals, G.R. No. 108358, 240 SCRA 368, 372 (1993); Republic v. Intermediate Appellate Court, G.R. No. 69138, 209 SCRA 90, 101 (1992); Development Bank of the Philippines v. Commission on Audit, G.R. No. 107016, 231 SCRA 202, 207 (1994); Sharp International Marketing v. CA, G.R. No. 93661, 201 SCRA 299, 306 (1991); & Government Service Insurance System v. Court of Appeals, G.R. No. 103590, 218 SCRA 233, 252 (1990)) (emphases supplied).

> being the case, pawnshops shall be subject to the [five percent] lending investor's tax based on their gross income pursuant to Section 116 of the Tax Code, as amended.[289]

RMO No. 15-91 was clarified through the issuance of RMC No. 43-91, to wit —

> 1. RM[O] 15-91 dated [11 March] 1991.
>
> This Circular subjects to the [five percent] lending investor's tax the gross income of pawnshops pursuant to Section 116 of the Tax Code, and it thus revokes BIR Ruling No[ ]. 6-90, and VAT Ruling Nos. 22-90 and 67-90. In order to have a uniform cut-off date, avoid unfairness on the part of taxpayers if they are required to pay the tax on past transactions, and so as to give meaning to the express provisions of Section 246 of the Tax Code, pawnshop owners or operators shall become liable to the lending investor's tax on their gross income beginning [1 January] 1991. Since the deadline for the filing of percentage tax return (BIR Form No. 2529A-0) and the payment of the tax on lending investors covering the first calendar quarter of 1991 has already lapsed, taxpayers are given up to [30 June] 1991 within which to pay the said tax without penalty. If the tax is paid after [30 June] 1991, the corresponding penalties shall be assessed and computed from [21 April] 1991.
>
> Since pawnshops are considered as lending investors effective [1 January] 1991, they also become subject to documentary stamp taxes prescribed in Title VII of the Tax Code. BIR Ruling No. 325-88 dated [13 July] 1988 is hereby revoked.[290]

On the basis of the abovementioned issuances, the BIR issued an assessment notice against Michel J. Lhuillier Pawnshop, Inc. (respondent) demanding the payment of deficiency percentage tax.[291] Consequently, respondent filed an administrative protest with the Office of the Revenue Regional Director.[292] Respondent alleged the following —

> (1) neither the Tax Code nor the VAT Law expressly imposes [five percent] percentage tax on the gross income of pawnshops; (2) pawnshops are different from lending investors, which are subject to the [five percent]

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289. *Michel J. Lhuillier Pawnshop, Inc.*, 406 SCRA at 179 (citing Bureau of Internal Revenue, Revenue Memorandum Order No. 15-91 [RMO No. 15-91] (Mar. 11, 1991)).

290. *Michel J. Lhuillier Pawnshop, Inc.*, 406 SCRA at 179-180 (citing Bureau of Internal Revenue, Revenue Memorandum Circular No. 43-91 [RMC No. 43-91] (May 27, 1991)).

291. *Michel J. Lhuillier Pawnshop, Inc.*, 406 SCRA at 180.

292. *Id.*

> percentage tax under the specific provision of the Tax Code; (3) RMO No. 15-91 is not implementing any provision of the Internal Revenue laws but is a new and additional tax measure on pawn-shops, which only Congress could enact; (4) RMO No. 15-91 impliedly amends the Tax Code and is therefore taxation by implication, which is proscribed by law; and (5) RMO No. 15-91 is a 'class legislation' because it singles out pawnshops among other lending and financial operations.[293]

Respondent's protest, however, was not acted upon and as a result thereof, a warrant of distraint and/or levy was issued against respondent's property.[294] Respondent then raised the matter to petitioner, which likewise failed to act upon the same.[295] Hence, respondent filed a notice and memorandum on appeal with the CTA.[296]

In its Decision, the CTA declared as null and void RMO No. 15-91 and RMC No. 43-91 with respect to their classification of pawnshops as lending investors subject to five percent percentage tax.[297] Unsatisfied, petitioner appealed.[298] The CA, however, affirmed the CTA Decision.[299] Hence, petitioner filed a petition for review with the Court, to wit —

> [Petitioner] invokes then Section 116 of the Tax Code, which imposed a [five percent] percentage tax on lending investors. He argues that the legal definition of *lending investors* provided in Section 157 (u) of the Tax Code is broad enough to include pawnshop operators. Section 3 of Presidential Decree No. 114 states that the principal business activity of a pawnshop is lending money; thus, a pawnshop easily falls under the legal definition of *lending investors*. RMO No. 15-91 and RMC No. 43-91, which subject pawnshops to the [five percent] lending investor's tax based on their gross income, are valid. Being mere interpretations of the NIRC, they need not be published. Lastly, the CIR invokes the case of *Commissioner of Internal Revenue* [*v.*] *Agenda Exquisite of Bohol, Inc.*, where the Court of Appeals' Special Fourteenth Division ruled that a pawnshop is subject to the [five percent] lending investor's tax.[300]

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293. *Id.*

294. *Id.*

295. *Id.*

296. *Id.* at 180-81.

297. *Michel J. Lhuillier Pawnshop, Inc.*, 406 SCRA at 181.

298. *Id.*

299. *Id.* at 182.

300. *Id.* (emphasis supplied).

Thus, the Court was "called upon to resolve the issue of whether pawnshops are subject to the [five percent] lending investor's tax."[301] In connection therewith, the Court was further tasked to answer the following questions: (1) whether or not RMO No. 15-91 and RMC No. 43-91 are valid and binding; (2) whether or not RMO No. 15-91 and RMC No. 43-91 were issued to implement Section 116 of the National Internal Revenue Code (NIRC), as amended; (3) whether or not pawnshops are considered "lending investors" for the purpose of the imposition of the lending investor's tax; and (4) whether or not publication is necessary for the validity of RMO No. 15-91 and RMC No. 43-91.[302]

The Court affirmed the CA Decision, viz. —

> RMO No. 15-91 and RMC No. 43-91 were issued in accordance with *the power of the CIR to make rulings and opinions in connection with the implementation of internal revenue laws*, which was bestowed by then Section 245 of the NIRC of 1977, as amended by E.O. No. 273. Such power of the CIR cannot be controverted. However, *the CIR cannot, in the exercise of such power, issue administrative rulings or circulars not consistent with the law sought to be applied*. Indeed, *administrative issuances must not override, supplant*[,] *or modify the law, but must remain consistent with the law they intend to carry out. Only Congress can repeal or amend the law.*
>
> The CIR argues that both issuances are mere rules and regulations implementing then Section 116 of the NIRC, as amended, which provided [—]
>
> > SEC. 116. *Percentage tax on dealers in securities; lending investors.* — Dealers in securities and lending investors shall pay a tax equivalent to six [ ] per centum of their gross income. Lending investors shall pay a tax equivalent to five [ ] percent of their gross income.
>
> It is clear from the aforequoted provision that *pawnshops are not specifically included*. Thus, the question is *whether pawnshops are considered lending investors for the purpose of imposing percentage tax*.
>
> We rule in the *negative*.
>
> ...
>
> While it is true that pawnshops are engaged in the business of lending money, they are not considered 'lending investors' for the purpose of imposing the [five percent] percentage taxes for the following reasons:

301. *Id.* at 183.

302. *Id.*

> *First*. Under Section 192, paragraph 3, sub-paragraphs (dd) and (ff), of the NIRC of 1977, prior to its amendment by E.O. No. 273, as well as Section 161, paragraph 2, sub-paragraphs (dd) and (ff), of the NIRC of 1986, pawnshops and lending investors were subjected to different tax treatments[.]
>
> ...
>
> *Second*. Congress never intended pawnshops to be treated in the same way as lending investors. Section 116 of the NIRC of 1977, as renumbered and rearranged by E.O. No. 273, was basically lifted from Section 175 of the NIRC of 1986, which treated both tax subjects differently.
>
> ...
>
> *Third*. Section 116 of the NIRC of 1977, as amended by E.O. No. 273, subjects to percentage tax dealers in securities and lending investors only. There is no mention of pawnshops.
>
> ...
>
> *Fourth*. The BIR had ruled several times prior to the issuance of RMO No. 15-91 and RMC 43-91 that pawnshops were not subject to the [five percent] percentage tax imposed by Section 116 of the NIRC of 1977, as amended by E.O. No. 273.[303]

The case of *COURAGE* involved petitions for certiorari, prohibition, and/or mandamus

> uniformly seeking to: (a) issue a Temporary Restraining Order to enjoin the implementation of Revenue Memorandum Order (RMO) No. 23-2014 dated June 20, 2014 issued by the [ ]CIR[ ]; and (b) declare null, void[,] and unconstitutional paragraphs A, B, C, and D of Section III, and Sections IV, VI[,] and VII of RMO No. 23-2014.[304]

One of the petitioners likewise "prays for the issuance of a Writ of Mandamus to compel respondents to upgrade the ₱30,000.00 non-taxable ceiling of the 13th month pay and other benefits for the concerned officials and employees of the government."[305]

In the first petition, Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE), et al. (petitioners)

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303. *Id*. at 183-86 (citing *Commissioner of Internal Revenue*, 240 SCRA at 372 & *Romulo, Mabanta, Buenaventura, Sayoc & De los Angeles*, 333 SCRA at 786) (emphases supplied).

304. *COURAGE*, G.R. No. 213446, at 3 (emphasis omitted).

305. *Id*.

filed a petition for prohibition and mandamus.[306] They alleged that respondent CIR committed grave abuse of discretion when it issued RMO No. 23-2014.[307] Allegedly, RMO No. 23-2014 classified as taxable compensation "allowances, bonuses, and compensation for services granted to government employees which are considered by law as non-taxable fringe and *de minimis* benefits[.]"[308] In the second petition, Armando A. Yanga, President of the RTC Judges Association of Manila, and Ma. Cristina Carmela I. Japzon, President of the Philippine Association of Court Employees – Manila Chapter (petitioners), filed a petition for certiorari and prohibition on behalf of such associations.[309] They sought to nullify RMO No. 23-2014 for the following reasons: "(1) respondent CIR is bereft of any authority to issue the assailed RMO[;]"[310] and "(2) respondent CIR committed grave abuse of discretion ... in the issuance of RMO No. 23-2014 when it subjected to withholding tax benefits and allowances of court employees which are tax-exempt[.]"[311] These petitions were consolidated by the Court.[312]

The Court declared as null and void Section VI of RMO No. 23-2014.[313] With respect to Sections III, IV, and VII of RMO No. 23-2014, however, the Court upheld the validity thereof for being "in accordance with the provisions of the NIRC of 1997, as amended, and its implementing rules."[314]

In setting aside Section VI of RMO No. 23-2014, the Court held —

> As earlier stated, Section 4 of the NIRC of 1997, as amended, grants the CIR the power to issue rulings or opinions interpreting the provisions of the NIRC or other tax laws. However, *the CIR cannot, in the exercise of such power, issue administrative rulings or circulars inconsistent with the law sought to be applied*. Indeed, *administrative issuances must not override, supplant*[,] *or modify the law, but must remain consistent with the law they intend to carry out. The courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with the law they seek to apply and implement*. Thus, in *Philippine Bank of Communications v. Commissioner of Internal Revenue*, the Court upheld

306. *Id.* at 4.

307. *Id.*

308. *Id.*

309. *Id.* at 5.

310. *COURAGE*, G.R. No. 213446, at 6.

311. *Id.*

312. *Id.*

313. *Id.* at 19.

314. *Id.*

> the nullification of RMC No. 7-85 issued by the Acting Commissioner of Internal Revenue because it was contrary to the express provision of Section 230 of the NIRC of 1977.
>
> Also, in *Banco de Oro v. Republic*, the Court nullified BIR Ruling Nos. 370-2011 and DA 378-2011 because they completely disregarded the 20 or more-lender rule added by Congress in the NIRC of 1997, as amended, and created a distinction for government debt instruments as against those issued by private corporations when there was none in the law.
>
> Conversely, *if the assailed administrative rule conforms with the law sought to be implemented, the validity of said issuance must be upheld*. Thus, in *The Philippine American Life and General Insurance Co. v. Secretary of Finance*, the Court declared valid Section 7 (c.2.2) of RR No. 06-08 and RMC No. 25-11, because they merely echoed Section 100 of the NIRC that the amount by which the fair market value of the property exceeded the value of the consideration shall be deemed a gift; thus, subject to donor's tax.[315]

Verily, as to Section VI of RMO No. 23-2014, the Court ruled that respondent "overstepped the boundaries of its authority to interpret existing provisions of the NIRC of 1997, as amended,"[316] viz. —

> VI. PERSONS RESPONSIBLE FOR WITHHOLDING
>
> The following officials are duty bound to deduct, withhold[,] and remit taxes:
>
> (a) For Office of the Provincial Government-province [—] the Chief Accountant, Provincial Treasurer[,] and the Governor;
>
> (b) For Office of the City Government-cities [—] the Chief Accountant, City Treasurer[,] and the City Mayor;
>
> (c) For Office of the Municipal Government-municipalities [—] the Chief Accountant, Municipal Treasurer[,] and the Mayor;
>
> (d) Office of the Barangay [—] Barangay Treasurer and Barangay Captain[; and]
>
> (e) For NGAs, GOCCs[,] and other Government Offices, the Chief Accountant and the Head of Office or the Official holding the highest position (such as the President, Chief Executive Officer, Governor, General Manager).

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315. *Id.* at 18-19 (citing *Michel J. Lhuillier Pawnshop, Inc.*, 406 SCRA at 183-84; *Philippine Bank of Communications*, 302 SCRA at 252-53; *Banco de Oro*, 745 SCRA at 433; & Philippine American Life and General Insurance Company v. Secretary of Finance, G.R. No. 210987, 741 SCRA 578, 601 (2014)) (emphasis supplied).

316. *COURAGE*, G.R. No. 213446, at 33.

To recall, the Government of the Philippines, or any political subdivision or agency thereof, or any GOCC, as an employer, is constituted by law as the withholding agent, mandated to deduct, withhold[,] and remit the correct amount of taxes on the compensation income received by its employees. In relation thereto, Section 82 of the NIRC of 1997, as amended, states that the return of the amount deducted and withheld upon any wage paid to government employees shall be made by the officer or employee having control of the payments or by any officer or employee duly designated for such purpose. Consequently, RR No. 2-98 identifies the Provincial Treasurer in provinces, the City Treasurer in cities, the Municipal Treasurer in municipalities, Barangay Treasurer in barangays, Treasurers of government-owned or -controlled corporations (GOCCs), and the Chief Accountant or any person holding similar position and performing similar function in national government offices, as persons required to deduct and withhold the appropriate taxes on the income payments made by the government.

However, nowhere in the NIRC of 1997, as amended, or in RR No. 2-98, as amended, would one find the Provincial Governor, Mayor, Barangay Captain[,] and the Head of Government Office or the 'Official holding the highest position (such as the President, Chief Executive Officer, Governor, General Manager)' in an Agency or GOCC as one of the officials required to deduct, withhold[,] and remit the correct amount of withholding taxes. *The CIR, in imposing upon these officials the obligation not found in law nor in the implementing rules, did not merely issue an interpretative rule designed to provide guidelines to the law which it is in charge of enforcing; but instead, supplanted details thereon — a power duly vested by law only to respondent Secretary of Finance under Section 244 of the NIRC of 1997, as amended.*

Moreover, respondents' allusion to previous issuances of the Secretary of Finance designating the Governor in provinces, the City Mayor in cities, the Municipal Mayor in municipalities, the Barangay Captain in barangays, and the Head of Office (official holding the highest position) in departments, bureaus, agencies, instrumentalities, government-owned or -controlled corporations, and other government offices, as officers required to deduct and withhold, is bereft of legal basis. Since the 1977 NIRC and Executive Order No. 651, which allegedly breathed life to these issuances, have already been repealed with the enactment of the NIRC of 1997, as amended, and RR No. 2-98, these previous issuances of the Secretary of Finance have ceased to have the force and effect of law.

Accordingly, *the Court finds that the CIR gravely abused its discretion in issuing Section VI of RMO No. 23-2014 insofar as it includes the Governor, City Mayor, Municipal Mayor, Barangay Captain, and Heads of Office in agencies, GOCCs, and other government offices, as persons required to withhold and remit withholding*

taxes, as they are not among those officials designated by the 1997 *NIRC, as amended, and its implementing rules.*[317]

V. CONCLUSION

Undoubtedly, the Court's ruling in the case of *First E-Bank* is a great victory for condominium corporations and every Filipino that was heavily burdened by having to shoulder the cost of the unnecessary and unjust taxes imposed by RMC No. 65-2012. The Court struck down RMC No. 65-2012, on the ground that, through its issuance, the CIR clearly expanded or modified existing tax law.[318] Thus, the Court unequivocally declared that Condominium Assessments are not subject to income tax, VAT, and withholding tax.[319]

The Court in the case of *First E-Bank* emphasized that condominium corporations are created for a limited purpose.[320] In fact, R.A. No. 4726 itself limits the corporate purposes of a condominium corporation to "holding the common areas, either in ownership or any other interest in real property recognized by law; management of the project; and to such other purposes as may be necessary, incidental, or convenient to the accomplishment of said purposes."[321] According to the Court, Condominium Assessments are collected solely to "effectively oversee, maintain, or even improve the common areas of the condominium as well as its governance."[322]

Given the foregoing, it is clear that the collection of Condominium Assessments does not give rise to any profit or gain whatsoever.[323] In fact, these fees only form part of a condominium corporation's capital.[324] As such, it cannot be subject to income tax.[325] Moreover, it follows that no withholding tax can be imposed since withholding tax is collected merely to

317. *Id.* at 33-35 (citing RR No. 2-98, §§ 2.58 (C); 2.82; 2.83.1; 4.114 (B); 4.114 (E) (1); & 5.116 (D) (1)) (emphases omitted and supplied).

318. *First E-Bank*, G.R. No. 215801, at 30.

319. *Id.* at 32.

320. *Id.* at 20 (citing The Condominium Act, § 10).

321. *Id.*

322. *First E-Bank*, G.R. No. 215801, at 24-25.

323. *Id.* at 24.

324. *Association of Non-Profit Clubs, Inc. (ANPC)*, G.R. No. 228539, at 8-9.

325. *Id.* at 9.

facilitate the collection of income tax.[326] Neither can Condominium Assessments be subject to VAT because of the following reasons: (1) condominium corporations do not perform any service for a fee;[327] and (2) condominium corporations are not engaged in trade or business.[328]

However, it remains to be seen whether or not the case of *First E-Bank* effectively shields condominium corporations from tax liability. Notably, in the case of *Yamane*, the Court held that condominium corporations are only "generally exempt" from local business taxation.[329] According to the Court, there may be an instance where a condominium corporation chooses to engage in profit-oriented activities.[330] In this scenario, although these activities will be considered *ultra vires*, it may expose a condominium corporation to tax liability.[331] This exception, however, finds no application in the case of *First E-Bank*, since the BIR failed to establish that respondent's collection of Condominium Assessments was motivated by profit.[332] Thus, it would be interesting to see how the BIR would respond and adapt to the Court's ruling in the case of *First E-Bank*.

More importantly, the case of *First E-Bank* illustrates the importance of wielding the power to tax with utmost caution. As the primary agency tasked to assess and collect taxes, the BIR must ensure that its powers are exercised "reasonably and [under] the prescribed procedure."[333] Although the case of *First E-Bank* puts an end to the debate on taxability of Condominium Assessments, the Court's ruling does not provide a blanket refund for taxes paid over the past seven years. Pursuant to Article 8 of the Civil Code[334] and

326. *First E-Bank*, G.R. No. 215801, at 28.

327. *Id.* at 27.

328. *Id.*

329. *Yamane*, 474 SCRA at 282.

330. *Id.* at 282–84 (citing 1 FERRER & STECHER, § 454).

331. *Id.*

332. *First E-Bank*, G.R. No. 215801, at 24–25.

333. Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., G.R. No. 201398, 881 SCRA 451, 469 (2018) (citing Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, 729 SCRA 113, 136 (2014)).

334. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 8 (1949) ("Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.").

absent a categorical statement from the Court, the Court's invalidation of RMC No. 65-2012 only applies prospectively.[335] Consequently, the case of *First E-Bank* does not erase the injustice suffered by condominium corporations and ultimately, Filipino consumers, who were made to shoulder the burden of paying taxes imposed by RMC No. 65-2012.[336] Given the far-reaching effects of decisions and actions of the BIR, it is crucial for the BIR to "strictly comply with the requirements of the law [and its] own rules, [ ] with due regard to taxpayers' constitutional rights."[337] On this note, the Court's final reminder in the case of *First E-Bank* is very apt: "A law will not be construed as imposing a tax unless it does so clearly and expressly. ... Taxes, as burdens that must be endured by the taxpayer, should not be presumed to go beyond what the law expressly and clearly declares."[338] Thus, although tax collection must be swift and comprehensive, it must be done strictly within the confines of the law.

335. Vicente G. Henson, Jr. v. UCPB General Insurance Co., Inc., G.R. No. 223134, Aug. 14, 2019, at 11, *available at* https://sc.judiciary.gov.ph/8124 (last accessed Jan. 8, 2021).

336. *First E-Bank*, G.R. No. 215801, at 28.

337. *Avon Products Manufacturing, Inc.*, 881 SCRA at 469 (citing Commissioner of Internal Revenue v. Metro Star Superama, Inc., G.R. No. 185371, 637 SCRA 633, 646 (2010)).

338. *First E-Bank*, G.R. No. 215801, at 32 (citing Philacor Credit Corporation v. Commissioner of Internal Revenue, G.R. No. 169899, 690 SCRA 28, 47 (2013)).