Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), Petitioner,	**G.R. Nos. 210689-90**
- versus -	
THE COMMISSIONER OF INTERNAL REVENUE AND THE HEAD REVENUE EXECUTIVE ASSISTANT, LARGE TAXPAYER SERVICE, in their official capacities as Officers of the Bureau of Internal Revenue, Respondents.	
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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. Nos. 210704 & 210725**
	Present:
- versus -	CARPIO, *J., Chairperson*, PERALTA, PERLAS-BERNABE, CAGUIOA, and REYES, JR.,* *JJ.*
PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), Respondent.	Promulgated: 22 NOV 2017
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DECISION

CAGUIOA, *J.:*

Before the Court are consolidated petitions for review under Rule 45 of the Rules of Court. The Philippine Amusement and Gaming Corporation (PAGCOR) is the petitioner in G.R. Nos. 210689-90 while the Commissioner

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* On leave.

of Internal Revenue (CIR) is the petitioner in G.R. Nos. 210704 & 210725. Both petitioners assail the Decision[1] dated July 23, 2013 and Resolution[2] dated December 18, 2013 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case Nos. 868 and 869[3]. The CTA *En Banc* dismissed the separate petitions for review filed by the CIR and PAGCOR, and affirmed the September 5, 2011 Decision[4] and January 24, 2012 Resolution[5] of the CTA First Division in C.T.A. Case No. 7976.

The Facts

PAGCOR is a duly created government instrumentality by virtue of Presidential Decree (PD) No. 1869,[6] issued on July 11, 1983.[7] Under the said decree, specifically in Section 10, Title IV thereof, PAGCOR's franchise includes the "rights, privilege and authority to operate and maintain gambling casinos, clubs, and other recreation or amusement places, sports, gaming pools, i.e. basketball, football, lotteries, etc. whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines." Likewise, it is legally empowered to "do and perform such other acts directly related to the efficient and successful operation and conduct of games of chance in accordance with existing laws and decrees."[8] It also has regulatory powers over "[a]ll persons primarily engaged in gambling, together with their allied business."[9]

Moreover, Section 13(2) of PD No. 1869 provides that "[n]o tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from [PAGCOR]; nor shall any form of tax or charge attach in any way to the earnings of [PAGCOR], except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by [PAGCOR] from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied,

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1 *Rollo* (G.R. Nos. 210689-90), pp. 41-71; *rollo* (G.R. Nos. 210704 & 210725), pp. 36-66. Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Esperanza R. Fabon-Victorino, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban concurring while Associate Justice Cielito N. Mindaro-Grulla was on leave.

2 Id. at 74-85; id. at 69-80. Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban concurring.

3 Also referred to as CTA EB Nos. 868 and 869.

4 *Rollo* (G.R. Nos. 210689-90), pp. 263-300. Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Ernesto D. Acosta and Associate Justice Erlinda P. Uy concurring.

5 Id. at 301-319.

6 CONSOLIDATING AND AMENDING PRESIDENTIAL DECREE NOS. 1067-A, 1067-B, 1067-C, 1399 AND 1632, RELATIVE TO THE FRANCHISE AND POWERS OF THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR).

7 See *rollo* (G.R. Nos. 210689-90), p. 264.

8 PD No. 1869, Sec. 11(5).

9 See *rollo* (G.R. Nos. 210689-90), p. 265; id., Sec. 8.

established or collected by any municipal, provincial, or national government authority."

Section 14(5) of PD No. 1869 also states that PAGCOR "is authorized to operate such necessary and related services, shows and entertainment;" and "[a]ny income that may be realized from these related services shall not be included as part of the income of [PAGCOR] for the purpose of applying the franchise tax, but the same shall be considered as a separate income of the [PAGCOR] and shall be subject to income tax."

On January 1, 1998, Republic Act (RA) No. 8424[10] or the National Internal Revenue Code of 1997 (1997 NIRC) took effect wherein PAGCOR, under Section 27(C) thereof, was included among the government-owned or -controlled corporations (GOCCs) exempt from the payment of income tax, to wit:

> CHAPTER IV - *Tax on Corporations*
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> SEC. 27. *Rates of Income Tax on Domestic Corporations.* —
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> x x x x
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> (C) *Government-owned or -Controlled Corporations, Agencies or Instrumentalities.* — The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, **except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Amusement and Gaming Corporation (PAGCOR)**, shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity. (Emphasis and underscoring supplied)

Subsequently, on July 1, 2005, RA No. 9337[11] amended Section 27(C) of the 1997 NIRC, by removing PAGCOR from the list of the GOCCs exempt from payment of income tax.

On June 20, 2007, RA No. 9487[12] was enacted extending PAGCOR's franchise under PD No. 1869 for another period of 25 years, renewable for another 25 years.

On July 14, 2008, PAGCOR received a letter dated July 2, 2008 from the Head of Revenue Executive Assistant (HREA) of the Large Taxpayers

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[10] AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES.

[11] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES, otherwise known as the "Value-Added Tax (VAT) Reform Act" approved on May 24, 2005.

[12] AN ACT FURTHER AMENDING PRESIDENTIAL DECREE NO. 1869, OTHERWISE KNOWN AS PAGCOR CHARTER.

Service, Bureau of Internal Revenue (BIR), requesting for an informal conference on the results of an investigation regarding all its internal revenue tax liabilities for the taxable years 2005 and 2006.[13]

On August 11, 2008, PAGCOR received from the CIR a Preliminary Assessment Notice dated July 29, 2008 on its alleged deficiency income tax, Value-Added Tax (VAT), Fringe Benefit Tax (FBT), and documentary stamp tax for taxable years 2005 and 2006.[14]

On February 3, 2009, PAGCOR received from the CIR a Formal Letter of Demand, with attached Assessment Notices all dated December 9, 2008, but only for deficiency income tax, VAT and FBT, inclusive of charges, interest and compromise penalties for taxable years 2005 and 2006, in the aggregate amount of ₱5,927,542,547.76, broken down as follows[15]:

Taxable Year 2005

Particulars	Basic Tax	Surcharge	Interest	Compromise	Total
Income Tax	P 98,856,851.52	P 24,714,212.88	P 53,680,624.58	P 25,000.00	P 177,276,688.98
VAT	837,606,020.73	209,401,505.18	491,548,519.56	25,000.00	1,538,581,045.48
FBT	32,297,128.28	8,074,282.07	18,953,547.61	25,000.00	59,349,957.96
Totals	**P968,760,000.53**[16]	**P242,190,000.13**[17]	**P564,182,691.75**	**P 75,000.00**	**P1,775,207,692.42**[18]

Taxable Year 2006

Particulars	Basic Tax	Surcharge	Interest	Compromise	Total
Income Tax	P 889,270,123.21	P222,317,530.80	P305,031,834.04	P 25,000.00	P1,416,644,488.06
VAT	1,665,267,061.23	416,316,765.31	644,207,422.04	25,000.00	2,725,816,248.58
FBT	6,017,119.97	1,504,279.99	2,327,718.74	25,000.00	9,874,118.70
Totals	**P2,560,554,304.41**	**P640,138,576.10**[19]	**P951,566,974.82**	**P 75,000.00**	**P4,152,334,855.34**[20]

On March 3, 2009, PAGCOR filed a letter-protest dated February 16, 2009, addressed to the CIR.[21]

On September 29, 2009, PAGCOR filed a petition for review with the CTA, alleging inaction on the part of the CIR.[22]

On December 10, 2009, the CIR filed an Answer raising the following arguments, *inter alia*: (a) that PAGCOR is subject to ordinary corporate income tax; (b) that as an ordinary corporate taxpayer, PAGCOR is liable for payment of VAT on its income from casino operations and related services pursuant to the provisions of RA No. 7716[23] or the Expanded VAT Law; (c)

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13 *Rollo* (G.R. Nos. 210689-90), pp. 265-266.
14 Id. at 266.
15 Id.
16 Stated as ₱68,760,000.53 in the Decision of the CTA First Division, id.
17 Stated as ₱42,190,000.13 in the Decision of the CTA First Division, id.
18 *Rollo* (G.R. Nos. 210689-90), p. 266.
19 Stated as ₱40,138,576.10 in the Decision of the CTA First Division, id. at 267.
20 Id. at 266-267.
21 Id. at 267.
22 Id.
23 AN ACT RESTRUCTURING THE VALUE-ADDED TAX (VAT) SYSTEM, WIDENING ITS TAX BASE AND ENHANCING ITS ADMINISTRATION, AND FOR THESE PURPOSES AMENDING AND REPEALING THE

that PAGCOR is liable for FBT under Section 33 of the 1997 NIRC in relation to Revenue Regulation (RR) No. 3-98; and, (d) that PAGCOR was duly assessed and informed of its deficiency tax liabilities for taxable years 2005 and 2006.[24]

During the pre-trial conference on April 30, 2010, the parties submitted the case for decision without presentation of evidence on agreement that there are no factual issues involved and only legal issues are left for determination of the court. In view thereof and as prayed for, the parties were granted a period of thirty (30) days from receipt of the Pre-trial Order dated July 21, 2010, within which to file their respective memoranda.[25]

On September 5, 2011, the CTA Division rendered a Decision,[26] the dispositive portion of which reads:

> **WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, the assessments representing deficiency VAT, as well as the surcharges, interests, and compromise penalties imposed thereon, in the aggregate amount of P4,264,397,294.06 for taxable years 2005 and 2006, are hereby **CANCELLED** and **SET ASIDE**.
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> However, the assessments for deficiency income tax and Fringe Benefit Tax (FBT) for taxable years 2005 and 2006 are hereby **AFFIRMED** with **MODIFICATIONS**. The compromise penalties are cancelled in the absence of mutual agreement between the parties. Accordingly, [PAGCOR] is hereby **ORDERED** to **PAY** [the CIR] the following basic deficiency income tax and FBT for taxable years 2005 and 2006, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended:

	CY 2005	CY 2006	TOTAL
INCOME TAX			
Basic	P 98,856,851.52	P 889,270,123.21	P 988,126,974.73
Surcharge	24,714,212.88	222,317,530.80	247,031,743.68
Subtotal	**P 123,571,064.40**	**P 1,111,587,654.01**	P 1,235,158,718.41
FBT			
Basic	P 32,297,128.28	P 6,017,119.97	P 38,314,248.25
Surcharge	8,074,282.07	1,504,279.99	9,578,562.06
Subtotal	**P 40,371,410.35**	**P 7,521,399.96**	P 47,892,810.31
TOTAL DEFICIENCY TAX	**P 163,942,474.75**	**P 1,119,109,053.97**	**P 1,283,051,528.72**

> In addition, [PAGCOR] shall pay deficiency interest at the rate of twenty percent (20%) *per annum* on the following basic deficiency income taxes and FBT computed from the dates indicated herein until full

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RELEVANT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES, approved on May 5, 1994.

24 *Rollo* (G.R. Nos. 210689-90), pp. 267-271.

25 Id. at 275.

26 Id. at 263-300.

payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

	CY 2005	CY 2006
Income Tax	P 98,856,851.52	P 889,270,123.21
Computed from	April 15, 2006	April 15, 2007
FBT	P 32,297,128.28	P 6,017,119.97
Computed from	January 25, 2006	January 25, 2007

[PAGCOR] is also liable to pay delinquency interest at the rate of twenty percent (20%) *per annum* on the accrued deficiency interest which was due for payment on December 31, 2008 and on the following total deficiency taxes, computed from December 31, 2008 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended:

	CY 2005	CY 2006	TOTAL
INCOME TAX	P 123,571,064.40	P 1,111,587,654.01	P 1,235,158,718.41
FBT	40,371,410.35	7,521,399.96	47,892,810.31
TOTAL DEFICIENCY TAX	**P 163,942,474.75**	**P 1,119,109,053.97**	**P 1,283,051,528.72**

SO ORDERED.[27]

The CTA Division held that PAGCOR is exempt from VAT pursuant to Section 7(k) of RA No. 9337 in relation to PD No. 1869, which grants PAGCOR a blanket exemption from taxes with no distinction on whether the taxes are direct or indirect.[28]

However, with respect to the assessments for deficiency income tax, the CTA Division ruled that when RA No. 9337 took effect, PAGCOR was deleted from the list and ceased to be among those GOCCs exempt from paying income tax on their taxable income.[29] In other words, RA No. 9337 effectively withdrew the income tax exemption granted to PAGCOR under its charter.[30]

As regards the assessments for deficiency withholding tax on fringe benefits, the CTA Division ruled that the government's cause of action against PAGCOR is not for the collection of income tax but for the enforcement of the withholding tax provisions of the 1997 NIRC, and the compliance imposed upon PAGCOR as the withholding agent.[31] The CTA Division found that PAGCOR admitted that it provided car plan benefits to its executives during taxable years 2005 and 2006 but it did not present any evidence to prove that said car plan benefits were required by the nature of or necessary to its business.[32] Thus, pursuant to Section 33 of the 1997 NIRC, as amended, PAGCOR, as the employer-withholding agent, has the

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27 Id. at 297-299.
28 Id. at 285-286.
29 Id. at 282.
30 Id.
31 Id. at 295.
32 Id.

obligation to withhold the fringe benefit taxes due thereon; and non-compliance with said obligation renders it personally liable for the tax arising from the breach of a legal duty.[33]

In a Resolution[34] dated January 24, 2012, the CTA Division denied the parties' respective motions for partial reconsideration for lack of merit.

PAGCOR filed an appeal to the CTA *En Banc* maintaining that its casino and other related operations are not subject to taxes. The case was docketed as CTA EB Case No. 869.[35] The CIR also filed an appeal to the CTA *En Banc* insisting on PAGCOR's liability for deficiency VAT. The case was docketed as CTA EB Case No. 868.[36]

In the consolidated Decision[37] dated July 23, 2013, the CTA *En Banc* dismissed both appeals for lack of merit and affirmed the September 5, 2011 Decision and January 24, 2012 Resolution of the CTA Division.[38]

The parties' respective Motions for Partial Reconsideration[39] of the said Decision was denied by the CTA *En Banc* in the Resolution[40] dated December 18, 2013.

Hence, the instant consolidated petitions.[41]

PAGCOR, in its petition for review, docketed as G.R. Nos. 210689-90, submits the following issues for resolution:

> x x x WHETHER THE CTA *EN BANC* SERIOUSLY ERRED IN FAILING TO CONSIDER THAT PAG[C]OR UNDER P.D. 1869, AS AMENDED BY R.A. 9487, IS LIABLE ONLY FOR THE 5% FRANCHISE TAX WHICH IS *IN LIEU* OF ALL KINDS OF TAXES, LEVIES, FEES OR ASSESSMENTS OF ANY KIND, NATURE OR DESCRIPTION, LEVIED, ESTABLISHED OR COLLECTED BY ANY MUNICIPAL, PROVINCIAL, OR NATIONAL GOVERNMENT AUTHORITY.
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> x x x WHETHER THE CTA *EN BANC* GRAVELY ERRED WHEN IT FAILED TO CONSIDER THAT PAGCOR'S EXEMPTION FROM INCOME TAX AND FBT UNDER ITS CHARTER WAS NOT AMENDED OR REPEALED BY RA 8424 AND R.A. 9337.
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> x x x ASSUMING THAT PAGCOR'S EXEMPTION FROM ALL FORMS AND KINDS OF TAXES PROVIDED UNDER SECTION 13 OF P.D. 1869, WAS AMENDED OR REPEALED BY R.A. 8424 AND

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33 See id. at 289-296.
34 Id. at 301-319.
35 Id. at 213-261.
36 *Rollo* (G.R. Nos. 210704 & 210725), pp. 347-364.
37 *Rollo* (G.R. Nos. 210689-90), pp. 41-71.
38 Id. at 69.
39 Id. at 321-339; *rollo* (G.R. Nos. 210704 & 210725), pp. 139-147.
40 Id. at 74-85.
41 Id. at 9-36; *rollo* (G.R. Nos. 210704 & 210725), pp. 9-33.

> R.A. 9337, WHETHER THE CTA *EN BANC* STILL SERIOUSLY ERRED WHEN IT FAILED TO CONSIDER THAT BY VIRTUE OF THE ENACTMENT OF R.A. 9487, PAGCOR'S AMENDED CHARTER, IT RESTORED THE RIGHTS, PRIVILEGES AND AUTHORITY GRANTED AND/OR ENJOYED BY IT UNDER P.D. 1869 BEFORE THE ENACTMENT OF R.A. 8424 AND R.A. 9337.
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> x x x WHETHER, THE CTA *EN BANC* ERRED WHEN IT DECLARED PAGCOR LIABLE FOR THE FBT AS A WITHHOLDING AGENT CONSIDERING THAT SUCH IMPOSITION OF LIABILITY VIOLATES PAGCOR'S RIGHT TO DUE PROCESS SINCE THE FBT WAS ASSESSED AGAINST IT AS A FINAL DIRECT TAX AS EMPLOYER AND NOT AS A WITHHOLDING TAX AGENT.
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> x x x WHETHER THE CTA *EN BANC* ERRED WHEN IT FAILED TO CONSIDER THAT, EVEN ASSUMING THAT PAGCOR IS NOT EXEMPT FROM FBT UNDER ITS CHARTER, THE CAR PLAN BENEFIT EXTENDED TO PAGCOR'S OFFICERS WAS NECESSARY IN THE CONDUCT OF ITS BUSINESS AND ACTUALLY INURED TO ITS BENEFIT. IN SUCH CASE, SUCH BENEFIT IS NOT COVERED BY THE FBT.
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> x x x ASSUMING THAT PAGCOR IS LIABLE FOR THE ALLEGED DEFICIENCIES IN INCOME TAX AND FBT TAX PAYMENTS, WHETHER THE CTA *EN BANC* ERRED WHEN IT FAILED TO CONSIDER THAT PAGCOR IS ONLY LIABLE FOR THE AMOUNT EQUIVALENT TO THE BASIC TAX EXCLUDING SURCHARGES, DEFICIENCY INTEREST AND DELINQUENCY INTEREST, AND OTHER SIMILAR CHARGES AND/OR PENALTIES.[42]

PAGCOR claims that, under its Charter, it is liable only for the 5% franchise tax which is in lieu of all kinds of national and local taxes, levies, fees or assessments; and said tax privilege was not amended or repealed by RA No. 9337.[43] It further argues that assuming said tax exemption was amended/repealed by RA No. 8424 and RA No. 9337, RA No. 9487, which extended PAGCOR's franchise to another 25 years, restored its rights, privileges and authority granted and/or enjoyed under PD No. 1869.[44]

PAGCOR also asserts that it is not liable for the FBT as withholding agent.[45] According to PAGCOR, the CTA allegedly failed to consider that the car plan extended to PAGCOR's officers inured to its benefit and is required or necessary in the conduct of its business.[46] PAGCOR further claims that even assuming that it is subject to deficiency FBT, it is only liable for the basic tax excluding surcharges and interests, on the ground of good faith and honest belief that it is exempt from income tax and FBT.[47]

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42 Id. at 14-16.
43 Id. at 16.
44 Id. at 22-23.
45 Id. at 25.
46 Id. at 25-26.
47 Id. at 29-30.

In its Comment,[48] the CIR, through the Office of the Solicitor General (OSG), counters that PAGCOR is no longer exempt from the payment of income taxes because its income tax exemption has been effectively withdrawn by the amendments to the 1997 NIRC introduced by RA No. 9337.[49]

On the other hand, the CIR's petition for review, docketed as G.R. Nos. 210704 and 210725, raises the sole issue of whether or not PAGCOR is exempt from the payment of VAT.[50] The CIR insists that under the 1997 NIRC, as amended, all franchise holders are liable for the payment of VAT, except those listed under Section 119[51] of the same Code. Since PAGCOR is not among the franchise holders listed as exempt from the imposition of VAT, it stands to reason that PAGCOR is liable for VAT as an ordinary corporate taxpayer.[52]

In its Comment,[53] PAGCOR reiterates that it is only liable for the 5% franchise tax, which is in lieu of all kinds of national or local taxes, levies or imposition, including VAT, based on the provisions of PD No. 1869, which were not amended, modified or repealed by RA No. 9337.[54]

The Court's Ruling

G.R. Nos. 210689-90

The Court finds PAGCOR's petition partly meritorious.

PAGCOR is liable for corporate income tax only on its income derived from other related services.

In *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue*,[55] the Court *En Banc* declared valid and constitutional

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48 Id. at 450-469.

49 Id. at 457.

50 *Rollo* (G.R. Nos. 210704 & 210725), p. 17.

51 SEC. 119. *Tax on Franchises.* —Any provision of general or special law to the contrary notwithstanding, there shall be levied, assessed and collected in respect to all franchises on radio and/or television broadcasting companies whose annual gross receipts of the preceding year do not exceed Ten million pesos (P10,000,000), subject to Section 236 of this Code, a tax of three percent (3%) and on gas and water utilities, a tax of two percent (2%) on the gross receipts derived from the business covered by the law granting the franchise: *Provided, however*, That radio and television broadcasting companies referred to in this Section shall have an option to be registered as a value-added taxpayer and pay the tax due thereon: *Provided, further*, That once the option is exercised, said option shall be irrevocable.

The grantee shall file the return with, and pay the tax due thereon to the Commissioner or his duly authorized representative, in accordance with the provisions of Section 128 of this Code, and the return shall be subject to audit by the Bureau of Internal Revenue, any provision of any existing law to the contrary notwithstanding.

52 See *rollo* (G.R. Nos. 210704 & 210725), pp. 19-24.

53 Id. at 494-516.

54 Id. at 510-511.

55 660 Phil. 636 (2011).

Section 1 of RA No. 9337, which excluded PAGCOR from the list of GOCCs exempt from corporate income tax. The Court *En Banc* looked into the records of the Bicameral Conference Meeting dated April 18, 2005, and found that the legislative intent of the omission or removal of PAGCOR from said list was to require PAGCOR to pay the corporate income tax.

PAGCOR sought clarification of the Court's Decision in the aforementioned case on account of the CIR's issuance of Revenue Memorandum Circular (RMC) No. 33-2013 which stated, among others, that PAGCOR's income from operations and licensing of gambling casinos and gaming clubs and other related operations are subject to both corporate income tax under the 1997 NIRC, as amended, and franchise tax pursuant to Section 13(2)(a) of PD No. 1869; while PAGCOR's other income that are not connected with its gaming operations are subject to corporate income tax under the 1997 NIRC, as amended.[56]

Treating PAGCOR's motion as a new petition, the Court *En Banc* rendered a Decision upholding PAGCOR's contention that its income from gaming operations is subject only to 5% franchise tax under PD No. 1869, as amended; while its income from other related services is subject to corporate income tax pursuant to PD No. 1869, as amended, in relation to RA No. 9337. The Court *En Banc* clarified that RA No. 9337 did not repeal the tax privilege granted to PAGCOR under PD No. 1869, with respect to its income from gaming operations. What RA No. 9337 withdrew was PAGCOR's exemption from corporate income tax on its income derived from other related services, previously granted under Section 27(C) of RA No. 8424. The Court *En Banc* explained:

> After a thorough study of the arguments and points raised by the parties, and in accordance with our Decision dated March 15, 2011, we sustain [PAGCOR's] contention that its income from gaming operations is subject only to five percent (5%) franchise tax under P.D. 1869, as amended, while its income from other related services is subject to corporate income tax pursuant to P.D. 1869, as amended, as well as R.A. No. 9337. This is demonstrable.
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> ***First.*** Under P.D. 1869, as amended, [PAGCOR] is subject to income tax only with respect to its operation of related services. Accordingly, the income tax exemption ordained under Section 27(c) of R.A. No. 8424 clearly pertains only to [PAGCOR's] income from operation of related services. Such income tax exemption could not have been applicable to [PAGCOR's] income from gaming operations as it is already exempt therefrom under P.D. 1869, as amended, to wit:
>
> SECTION 13. Exemptions. —
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> x x x x

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[56] See *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue*, 749 Phil. 1010 (2014).

> (2) Income and other taxes. — (a) Franchise Holder: ***No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise.*** Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.

Indeed, the grant of tax exemption or the withdrawal thereof assumes that the person or entity involved is subject to tax. This is the most sound and logical interpretation because [PAGCOR] could not have been exempted from paying taxes which it was not liable to pay in the first place. This is clear from the wordings of P.D. 1869, as amended, imposing a franchise tax of five percent (5%) on its gross revenue or earnings derived by [PAGCOR] from its operation under the Franchise *in lieu* of all taxes of any kind or form, as well as fees, charges or levies of whatever nature, which necessarily include corporate income tax.

In other words, there was no need for Congress to grant tax exemption to [PAGCOR] with respect to its income from gaming operations as the same is already exempted from all taxes of any kind or form, income or otherwise, whether national or local, under its Charter, save only for the five percent (5%) franchise tax. The exemption attached to the income from gaming operations exists independently from the enactment of R.A. No. 8424. To adopt an assumption otherwise would be downright ridiculous, if not deleterious, since [PAGCOR] would be in a worse position if the exemption was granted (then withdrawn) than when it was not granted at all in the first place.

Moreover, as may be gathered from the legislative records of the Bicameral Conference Meeting of the Committee on Ways and Means dated October 27, 1997, the exemption of [PAGCOR] from the payment of corporate income tax was due to the acquiescence of the Committee on Ways and Means to the request of [PAGCOR] that it be exempt from such tax. Based on the foregoing, it would be absurd for [PAGCOR] to seek exemption from income tax on its gaming operations when under its Charter, it is already exempted from paying the same.

Second. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.

As we see it, there is no conflict between P.D. 1869, as amended, and R.A. No. 9337. The former lays down the taxes imposable upon [PAGCOR], as follows: (1) *a five percent (5%) franchise tax* of the gross revenues or earnings derived from its operations conducted under the Franchise, which shall be due and payable *in lieu* of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial or national

government authority; (2) *income tax* for income realized from other necessary and related services, shows and entertainment of [PAGCOR]. With the enactment of R.A. No. 9337, which withdrew the income tax exemption under R.A. No. 8424, petitioner's tax liability on income from other related services was merely reinstated.

It cannot be gainsaid, therefore, that the nature of taxes imposable is well defined for each kind of activity or operation. There is no inconsistency between the statutes; and in fact, they complement each other.

Third. Even assuming that an inconsistency exists, P.D. 1869, as amended, which expressly provides the tax treatment of [PAGCOR's] income prevails over R.A. No. 9337, which is a general law. It is a canon of statutory construction that a special law prevails over a general law — regardless of their dates of passage — and the special is to be considered as remaining an exception to the general. The *rationale* is:

> Why a special law prevails over a general law has been put by the Court as follows:
>
> x x x x
>
> x x x The Legislature consider and make provision for all the circumstances of the particular case. ***The Legislature having specially considered all of the facts and circumstances in the particular case in granting a special charter, it will not be considered that the Legislature, by adopting a general law containing provisions repugnant to the provisions of the charter, and without making any mention of its intention to amend or modify the charter, intended to amend, repeal, or modify the special act.*** (*Lewis vs. Cook County*, 74 Ill. App., 151; *Philippine Railway Co. vs. Nolting*, 34 Phil., 401.)

Where a general law is enacted to regulate an industry, it is common for individual franchises subsequently granted to restate the rights and privileges already mentioned in the general law, or to amend the later law, as may be needed, to conform to the general law. However, if no provision or amendment is stated in the franchise to effect the provisions of the general law, it cannot be said that the same is the intent of the lawmakers, for repeal of laws by implication is not favored.

In this regard, we agree with [PAGCOR] that if the lawmakers had intended to withdraw [PAGCOR's] tax exemption of its gaming income, then Section 13(2)(a) of P.D. 1869 should have been amended expressly in R.A. No. 9487, or the same, at the very least, should have been mentioned in the repealing clause of R.A. No. 9337. However, the repealing clause never mentioned [PAGCOR's] Charter as one of the laws being repealed. On the other hand, the repeal of other special laws, namely, Section 13 of R.A. No. 6395 as well as Section 6, fifth paragraph of R.A. No. 9136, is categorically provided under Section 24(a) (b) of R.A. No. 9337, to wit:

> SEC. 24. *Repealing Clause*. — The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:
>
> (A) ***Section 13 of R.A. No. 6395 on the exemption from value-added tax of the National Power Corporation (NPC)***;
>
> (B) ***Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sales of generated power by generation companies***; and
>
> (C) All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly.

When [PAGCOR's] franchise was extended on June 20, 2007 without revoking or withdrawing its tax exemption, it effectively reinstated and reiterated all of [PAGCOR's] rights, privileges and authority granted under its Charter. Otherwise, Congress would have painstakingly enumerated the rights and privileges that it wants to withdraw, given that a franchise is a legislative grant of a special privilege to a person. Thus, the extension of [PAGCOR's] franchise under the same terms and conditions means a continuation of its tax exempt status with respect to its income from gaming operations. Moreover, all laws, rules and regulations, or parts thereof, which are inconsistent with the provisions of P.D. 1869, as amended, a special law, are considered repealed, amended and modified, consistent with Section 2 of R.A. No. 9487, thus:

> SECTION 2. *Repealing Clause*. — All laws, decrees, executive orders, proclamations, rules and regulations and other issuances, or parts thereof, which are inconsistent with the provisions of this Act, are hereby repealed, amended and modified.

It is settled that where a statute is susceptible of more than one interpretation, the court should adopt such reasonable and beneficial construction which will render the provision thereof operative and effective, as well as harmonious with each other.

Given that [PAGCOR's] Charter is not deemed repealed or amended by R.A. No. 9337, [PAGCOR's] income derived from gaming operations is subject only to the five percent (5%) franchise tax, in accordance with P.D. 1869, as amended. With respect to [PAGCOR's] income from operation of other related services, the same is subject to income tax only. The five percent (5%) franchise tax finds no application with respect to [PAGCOR's] income from other related services, in view of the express provision of Section 14(5) of P.D. 1869, as amended, to wit:

> Section 14. Other Conditions.

x x x x

> (5) Operation of related services. — The Corporation is authorized to operate such necessary and related services, shows and entertainment. ***Any income that may be realized from these related services shall not be included as part of the income of the Corporation for the purpose of applying the franchise tax***, but the same shall be considered as a separate income of the Corporation and shall be subject to income tax.

Thus, it would be the height of injustice to impose franchise tax upon [PAGCOR] for its income from other related services without basis therefor.

For proper guidance, the first classification of PAGCOR's income under RMC No. 33-2013 (*i.e.*, income from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gambling pools) should be interpreted in relation to Section 13(2) of P.D. 1869, which pertains to the income derived from issuing and/or granting the license to operate casinos to PAGCOR's contractees and licensees, as well as earnings derived by PAGCOR from its own operations under the Franchise. On the other hand, the second classification of PAGCOR's income under RMC No. 33-2013 (*i.e.*, income from other related operations) should be interpreted in relation to Section 14(5) of P.D. 1869, which pertains to income received by PAGCOR from its contractees and licensees in the latter's operation of casinos, as well as PAGCOR's own income from operating necessary and related services, shows and entertainment.

x x x x

In view of the foregoing disquisition, [the CIR], therefore, committed grave abuse of discretion amounting to lack of jurisdiction when it issued RMC No. 33-2013 subjecting both income from gaming operations and other related services to corporate income tax and five percent (5%) franchise tax. This unduly expands our Decision dated March 15, 2011 without due process since the imposition creates additional burden upon petitioner. Such act constitutes an overreach on the part of the respondent, which should be immediately struck down, lest grave injustice results. More, it is settled that in case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails, because the said rule or regulation cannot go beyond the terms and provisions of the basic law.

In fine, we uphold our earlier ruling that Section 1 of R.A. No. 9337, amending Section 27(c) of R.A. No. 8424, by excluding [PAGCOR] from the enumeration of GOCCs exempted from corporate income tax, is valid and constitutional. In addition, we hold that:

1. [PAGCOR's] tax privilege of paying five percent (5%) franchise tax *in lieu* of all other taxes with respect to its income from gaming operations, pursuant to P.D. 1869, as amended, is *not* repealed or amended by Section 1(c) of R.A. No. 9337;

2. [PAGCOR's] income from gaming operations is subject to the five percent (5%) franchise tax only; and

> 3. [PAGCOR's] income from other related services is subject to corporate income tax only.
>
> In view of the above-discussed findings, this Court **ORDERS** the [CIR] to cease and desist the implementation of RMC No. 33-2013 insofar as it imposes: (1) corporate income tax on [PAGCOR's] income derived from its gaming operations; and (2) franchise tax on [PAGCOR's] income from other related services.
>
> **WHEREFORE**, the Petition is hereby **GRANTED**. Accordingly, [the CIR] is **ORDERED** to cease and desist the implementation of RMC No. 33-2013 insofar as it imposes: (1) corporate income tax on [PAGCOR's] income derived from its gaming operations; and (2) franchise tax on [PAGCOR's] income from other related services.
>
> **SO ORDERED.**[57] (Underscoring supplied; citations omitted)

In this case, the assessments for deficiency income tax covers both PAGCOR's income derived from gaming operations and other related services. Considering that the Court *En Banc* has already ruled that PAGCOR, under its Charter, remains to be exempt from income tax on its gaming operations,[58] then PAGCOR should only be made liable to pay for deficiency income tax on its income derived from other related services for taxable years 2005 and 2006. The portions of the assessments insofar as they pertain to PAGCOR's income from gaming operations must therefore be cancelled and set aside.

PAGCOR is liable for payment of withholding taxes on fringe benefits.

As regards PAGCOR's liability for FBT, the same had already been settled in the case of *Commissioner of Internal Revenue v. Secretary of Justice,*[59] which involved assessments for deficiency VAT, FBT and expanded withholding tax against PAGCOR for the years 1996 to 2000. In said case, the Court ruled that FBT is not covered by the exemptions provided under PD No. 1869; and considering that PAGCOR failed to present any evidence showing that the fringe benefits granted to its officers were necessary to its business or for its convenience, the deficiency FBT assessments on PAGCOR's car benefit plan was upheld, *viz.*:

> **a. Final Withholding Tax on Fringe Benefits**
>
> The recomputed assessment for deficiency final withholding taxes related to the car plan granted to PAGCOR's employees and for its payment of membership dues and fees.
>
> Under Section 33 of the NIRC, FBT is imposed as:

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57 Id. at 1022-1029.
58 See id. at 1026.
59 G.R. No. 177387, November 9, 2016.

> A final tax of thirty-four percent (34%) effective January 1, 1998; thirty-three percent (33%) effective January 1, 1999; and thirty-two percent (32%) effective January 1, 2000 and thereafter, is hereby imposed on the grossed-up monetary value of fringe benefit furnished or granted to the employee (except rank and file employees as defined herein) by the employer, whether an individual or a corporation (unless the fringe benefit is required by the nature of, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer). The tax herein imposed is payable by the employer which tax shall be paid in the same manner as provided for under Section 57 (A) of this Code.
>
> **FBT is treated as a final income tax on the employee that shall be withheld and paid by the employer on a calendar quarterly basis. As such, PAGCOR is a mere withholding agent inasmuch as the FBT is imposed on PAGCOR's employees who receive the fringe benefit. PAGCOR's liability as a withholding agent is not covered by the tax exemptions under its Charter.**
>
> The car plan extended by PAGCOR to its qualified officers is evidently considered a fringe benefit as defined under Section 33 of the NIRC. To avoid the imposition of the FBT on the benefit received by the employee, and, consequently, to avoid the withholding of the payment thereof by the employer, PAGCOR must sufficiently establish that the fringe benefit is required by the nature of, or is necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer.
>
> PAGCOR asserted that the car plan was granted "not only because it was necessary to the nature of the trade of PAGCOR but it was also granted for its convenience." The records are lacking in proof as to whether such benefit granted to PAGCOR's officers were, in fact, necessary for PAGCOR's business or for its convenience and advantage. Accordingly, PAGCOR should have withheld the FBT from the officers who have availed themselves of the benefits of the car plan and remitted the same to the BIR.[60] (Emphasis and underscoring supplied; citations omitted)

In the same vein, PAGCOR, in this case, did not adduce any proof, other than bare allegations, that the car plan granted to its officers was ultimately for the benefit of its business or for its convenience or advantage. Basic is the rule that mere allegations are not evidence and are not equivalent to proof.[61] The CTA *En Banc* therefore did not err in upholding PAGCOR's deficiency FBT liability for taxable years 2005 and 2006.

As regards PAGCOR's claim that it should not be held liable for surcharges and interests because it relied in good faith on the tax exemptions granted under its Charter and on the opinions of different government

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60 Id. at 17-19.

61 *Real v. Belo*, 542 Phil. 109, 122 (2007).

agencies affirming its liability for franchise tax only, this cannot be given consideration.

In several cases,[62] this Court deleted the imposition of surcharges and interests on the ground that the taxpayer's good faith and honest belief on previous interpretations of the BIR, the government agency tasked to interpret and implement the tax laws, constitute sufficient justification therefor. In these cases, the taxpayers pointed to a specific ruling issued by the BIR declaring that they are exempt from the payment of the assessed deficiency tax.

Here, PAGCOR fails to point to any particular BIR issuance or ruling which categorically declared that it is not subject to income tax and/or FBT. Instead, PAGCOR relies on the opinions of the Office of the Government Corporate Counsel,[63] and the OSG[64] and the Resolutions[65] issued by the Department of Justice - government offices bereft of any authority to implement or interpret tax laws. Thus, the interests and surcharges which under the law are mandated to be imposed, should be upheld.

G.R. Nos. 210704 & 210725

On the other hand, the CIR's petition for review is bereft of merit.

PAGCOR is exempt from payment of VAT.

The issue on whether PAGCOR is exempt from VAT is also not novel. In *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue*,[66] the Court, citing the case of *The Commissioner of Internal Revenue v. Acesite (Phils.) Hotel Corporation*,[67] (*Acesite*) affirmed PAGCOR's position that the tax exemption granted under its Charter includes the payment of indirect taxes, such as VAT. The Court explained that:

> Petitioner is exempt from the payment of VAT, because PAGCOR's charter, P.D. No. 1869, is a special law that grants petitioner exemption from taxes.
>
> Moreover, the exemption of PAGCOR from VAT is supported by Section 6 of R.A. No. 9337, which retained Section 108 (B) (3) of R.A. No. 8424, thus:

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62 *Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.*, 695 Phil. 867 (2012); *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, 533 Phil. 101 (2006); *Tuason, Jr. v. Lingad*, 157 Phil. 159 (1974).

63 *Rollo* (G.R. Nos. 210689-90), pp. 340-348.

64 Id. at 349-355.

65 Id. at 198-212, 361-380.

66 Supra note 55.

67 545 Phil. 1 (2007).

[R.A. No. 9337], SEC. 6. Section 108 of the same Code (R.A. No. 8424), as amended, is hereby further amended to read as follows:

> SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —
>
> (A) *Rate and Base of Tax.* — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: x x x
>
> x x x x
>
> **(B) *Transactions Subject to Zero Percent (0%) Rate.*** — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate;
>
> x x x x
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory effectively **subjects the supply of such services to zero percent (0%) rate**;
>
> x x x x

As pointed out by petitioner, although R.A. No. 9337 introduced amendments to Section 108 of R.A. No. 8424 by imposing VAT on other services not previously covered, it did not amend the portion of Section 108 (B) (3) that subjects to zero percent rate services performed by VAT-registered persons to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to 0% rate.

Petitioner's exemption from VAT under Section 108 (B) (3) of R.A. No. 8424 has been thoroughly and extensively discussed in *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation.* Acesite was the owner and operator of the Holiday Inn Manila Pavilion Hotel. It leased a portion of the hotel's premises to PAGCOR. It incurred VAT amounting to ₱30,152,892.02 from its rental income and sale of food and beverages to PAGCOR from January 1996 to April 1997. Acesite tried to shift the said taxes to PAGCOR by incorporating it in the amount assessed to PAGCOR. However, PAGCOR refused to pay the taxes because of its tax-exempt status. PAGCOR paid only the amount due to Acesite minus VAT in the sum of ₱30,152,892.02. Acesite paid VAT in the amount of ₱30,152,892.02 to the Commissioner of Internal Revenue, fearing the legal consequences of its non-payment. In May 1998, Acesite sought the refund of the amount it paid as VAT on the ground that its transaction with PAGCOR was subject to zero rate as it was rendered to a tax-exempt entity. The Court ruled that PAGCOR and Acesite were both exempt from paying VAT, thus:

> x x x x

PAGCOR is exempt from payment of indirect taxes

It is undisputed that P.D. 1869, the charter creating PAGCOR, grants the latter an exemption from the payment of taxes. Section 13 of P.D. 1869 pertinently provides:

> Sec. 13. *Exemptions.* —
>
> x x x x
>
> (2) *Income and other taxes.* — (a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.
>
> (b) *Others*: The exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.

Petitioner contends that the above tax exemption refers only to PAGCOR's direct tax liability and not to indirect taxes, like the VAT.

We disagree.

A close scrutiny of the above provisos clearly gives PAGCOR a blanket exemption to taxes with no distinction on whether the taxes are direct or

indirect. We are one with the CA ruling that PAGCOR is also exempt from indirect taxes, like VAT, as follows:

> Under the above provision [Section 13 (2) (b) of P.D. 1869], the term "Corporation" or operator refers to PAGCOR. Although the law does not specifically mention PAGCOR's exemption from indirect taxes, **PAGCOR is undoubtedly exempt from such taxes because the law exempts from taxes persons or entities contracting with PAGCOR in casino operations.** Although, differently worded, the provision clearly exempts PAGCOR from indirect taxes. **In fact, it goes one step further by granting tax exempt status to persons dealing with PAGCOR in casino operations.** The unmistakable conclusion is that PAGCOR is not liable for the ₱30,152,892.02 VAT and neither is Acesite as the latter is effectively subject to zero percent rate under Sec. 108 B (3), R.A. 8424. (Emphasis supplied.)

Indeed, by extending the exemption to entities or individuals dealing with PAGCOR, the legislature clearly granted exemption also from indirect taxes. It must be noted that the indirect tax of VAT, as in the instant case, can be shifted or passed to the buyer, transferee, or lessee of the goods, properties, or services subject to VAT. **Thus, by extending the tax exemption to entities or individuals dealing with PAGCOR in casino operations, it is exempting PAGCOR from being liable to indirect taxes.**

The manner of charging VAT does not make PAGCOR liable to said tax.

It is true that VAT can either be incorporated in the value of the goods, properties, or services sold or leased, in which case it is computed as 1/11 of such value, or charged as an additional 10% to the value. Verily, the seller or lessor has the option to follow either way in charging its clients and customer. In the instant case, Acesite followed the latter method, that is, charging an additional 10% of the gross sales and rentals. Be that as it may, the use of either method, and in particular, the first method, does not denigrate the fact that PAGCOR is exempt from an indirect tax, like VAT.

VAT exemption extends to Acesite

Thus, while it was proper for PAGCOR not to pay the 10% VAT charged by Acesite, the latter is not liable for the payment of it as it is exempt in this particular transaction by operation of law to pay the indirect tax. Such exemption falls within the former Section 102 (b) (3) of the

1977 Tax Code, as amended (**now Sec. 108 [b] [3] of R.A. 8424**), which provides:

> Section 102. *Value-added tax on sale of services.* — (a) Rate and base of tax — There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived by any person engaged in the sale of services x x x; Provided, that the following services performed in the Philippines by VAT-registered persons shall be subject to 0%.
>
> x x x x
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero (0%) rate (emphasis supplied).

The rationale for the exemption from indirect taxes provided for in P.D. 1869 and the extension of such exemption to entities or individuals dealing with PAGCOR in casino operations are best elucidated from the 1987 case of *Commissioner of Internal Revenue v. John Gotamco & Sons, Inc.*, where the absolute tax exemption of the World Health Organization (WHO) upon an international agreement was upheld. We held in said case that the exemption of contractee WHO should be implemented to mean that the entity or person exempt is the contractor itself who constructed the building owned by contractee WHO, and such does not violate the rule that tax exemptions are personal because the **manifest intention of the agreement is to exempt the contractor so that no contractor's tax may be shifted to the contractee WHO. Thus, the proviso in P.D. 1869, extending the exemption to entities or individuals dealing with PAGCOR in casino operations, is clearly to proscribe any indirect tax, like VAT, that may be shifted to PAGCOR.** [68] (Additional emphasis supplied; citations omitted)

The CIR, however, argues that the Court's ruling in *Acesite* does not apply to this case because *Acesite* was based on the old Tax Code (1977 NIRC); while the assessments being made in the present case is in accordance with the 1997 NIRC, as amended by RA No. 9337.

The CIR's contention is untenable.

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[68] Id. at 658-662.

In the same PAGCOR case, the Court explained that while the basis of PAGCOR's exemption in *Acesite* was Section 102(b) of the 1977 NIRC, said provision was retained in the 1997 NIRC, as amended by RA No. 9337. Hence, the legislative intent is for PAGCOR to remain exempt from VAT even with the enactment of RA No. 9337. The CTA therefore was correct in cancelling the deficiency VAT assessments issued against PAGCOR for lack of legal basis.

WHEREFORE, in light of the foregoing considerations, the petition filed by the Commissioner of Internal Revenue in G.R. Nos. 210704 & 210725 is hereby **DENIED**; while the petition filed by the Philippine Amusement and Gaming Corporation in G.R. Nos. 210689-90 is **PARTLY GRANTED**. The Decision dated July 23, 2013 and the Resolution dated December 18, 2013 of the CTA *En Banc* in CTA EB Case Nos. 868 and 869 are hereby **AFFIRMED** with **MODIFICATION** that the assessments representing deficiency income tax in so far as it assessed the Philippine Amusement and Gaming Corporation for deficiency income tax, including surcharges and interest, on its income derived from gaming operations for taxable years 2005 and 2006, are hereby **CANCELLED** and **SET ASIDE**. The Philippine Amusement and Gaming Corporation is only liable to pay the deficiency income tax, including surcharges and interests, on its income derived from other related activities for taxable years 2005 and 2006, and the assessed deficiency fringe benefit taxes, including surcharges and interests, for the same taxable years.

Let this case be **REMANDED** to the Court of Tax Appeals for the determination of the final amount to be paid by the Philippine Amusement and Gaming Corporation.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

(On leave)
ANDRES B. REYES, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice