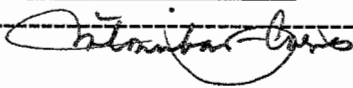


EN BANC

G.R. No. 213860 – THE PHILIPPINE STOCK EXCHANGE, INC., BANKERS ASSOCIATION OF THE PHILIPPINES, PHILIPPINE ASSOCIATION OF SECURITIES BROKERS AND DEALERS, INC., FUND MANAGERS ASSOCIATION OF THE PHILIPPINES, TRUST OFFICERS ASSOCIATION OF THE PHILIPPINES, AND MARMON HOLDINGS, INC., *Petitioners* v. SECRETARY OF FINANCE, COMMISSIONER OF INTERNAL REVENUE, AND CHAIRPERSON OF THE SECURITIES AND EXCHANGE COMMISSION, *Respondents*.

Promulgated:

July 5, 2022

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SEPARATE CONCURRING OPINION

LEONEN, J.:

Administrative regulations that directly impact the public are quasilegislative issuances, thus requiring notice and public participation before their issuance, as well as publication for their validity.

Additionally, for the processing of personal information to be exempt from the coverage of the Data Privacy Act of 2012,<sup>1</sup> the collected personal information must be necessary for the public authority to perform its constitutionally or statutorily mandated functions.

The facts of the case are not disputed.

The secretary of finance, pursuant to their authority to promulgate rules and regulations for the enforcement of the National Internal Revenue Code and upon recommendation of the commissioner of internal revenue,<sup>2</sup> issued Revenue Regulations No. 2-98 to regulate the collection of income tax at source and prescribe the tables of compensation.<sup>3</sup> This issuance was

<sup>1</sup> Republic Act No. 10173 (2012).

<sup>2</sup> National Internal Revenue Code (1997), sec. 244 provides:  
SECTION 244. Authority of Secretary of Finance to Promulgate Rules and Regulations—The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.

<sup>3</sup> Revenue Regulations No. 02-98 (1998). Implementing Republic Act No. 8424, “An Act Amending the National Internal Revenue Code, As Amended” Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.”



eventually amended by Revenue Regulations No. 10-2008.<sup>4</sup>

Revenue Regulations No. 2-98 subjected cash and property dividends received by a Filipino citizen or a resident alien individual from a domestic corporation to, among others, 6% to 10% final withholding tax. Section 2.57.1 of Revenue Regulations No. 2-98 provides:

SECTION 2.57.1. Income Payments Subject to Final Withholding Tax. — The following forms of income shall be subject to final withholding tax at the rates herein specified:

(A) Income payments to a citizen or to a resident alien individual;

....

(5) Cash and/or property dividends actually or constructively received from a domestic corporation, joint stock company, insurance or mutual fund companies or on the share of an individual partner in the distributable net income after tax of a partnership (except general professional partnership) or on the share of an individual in the net income after tax of an association, a joint account or a joint venture or consortium of which he is a member or a co-venturer.

6% - beginning January 1, 1998

8% - beginning January 1, 1999 and

10% - beginning January 1, 2000 and thereafter

The tax on cash and property dividends shall only be imposed on dividends which are declared from profits of corporations made after December 31, 1997.

On the other hand, nonresident aliens engaged in trade or business in the Philippines were subjected to a final withholding tax of 20% on passive income received from all sources, including cash and property dividends,<sup>5</sup> while nonresident aliens not engaged in trade or business were subjected to a

<sup>4</sup> Revenue Regulations No. 10-2008 (2008). Implementing Pertinent Provisions of Republic Act No. 9504, "An Act Amending Sections 22, 24, 34, 35, 51, and 79 of Republic Act No. 8424, as Amended, Otherwise Known as the National Internal Revenue Code" Relative to the Withholding of Income Tax on Compensation and Other Concerns.

<sup>5</sup> Revenue Regulations No. 02-98 (1998), sec. 2.57.1 provides:  
SECTION 2.57.1. *Income Payments Subject to Final Withholding Tax*—The following forms of income shall be subject to final withholding tax at the rates herein specified:

....  
(B) Income Payment to Non-Resident Aliens Engaged in Trade or Business in the Philippines. — The following forms of income derived from sources within the Philippines shall be subject to final withholding tax in the hands of a non-resident alien individual engaged in trade or business within the Philippines, based on the gross amount thereof and at the rates prescribed therefor:

(1) On Certain Passive Income — A tax of twenty (20%) percent is hereby imposed on certain passive income received from all sources within the Philippines.

(a) Cash and/or property dividend from a domestic corporation or from a joint stock company, or from an insurance or mutual fund company or from a regional operating headquarter of a multinational company[.]

final withholding tax of 25%.<sup>6</sup>

The issuing corporation, as the withholding agent,<sup>7</sup> was mandated to deduct the final withholding tax for cash or property dividends at source or at the time the dividends were paid.<sup>8</sup> Revenue Regulations No. 2-98 then directed the withholding agent to submit either a manual or digital copy of its alphabetical list (alphalist) of its payees and income payments subject to creditable and final withholding taxes.<sup>9</sup> The alphalist is expected to include the following information:

- (1) Name, address and taxpayer's identification number (TIN); and
- (2) Nature of income payments, gross amount and tax withheld from each payee and such other information as may be required by the Commissioner.<sup>10</sup>

Following international best practices in trading securities, the Philippine capital market utilizes the scripless or uncertificated system for an efficient trading process. Public respondents described the trading process in the capital market as follows:

<sup>6</sup> Revenue Regulations No. 02-98 (1998), sec. 2.57.1 provides:  
SECTION 2.57.1. *Income Payments Subject to Final Withholding Tax*—The following forms of income shall be subject to final withholding tax at the rates herein specified:

.....  
(C) Income Derived from All Sources Within the Philippines by a Non-resident Alien Individual Not Engaged in Trade or Business Within the Philippines. — The following forms of income derived from all sources within the Philippines shall be subject to a final withholding tax in the hands of a non-resident alien individual not engaged in trade or business within the Philippines based on the following amounts and at the rates prescribed therefor:

(1) On the gross amount of income derived from all sources within the Philippines by a non-resident alien individual who is not engaged in trade or business in the Philippines as interest, cash and/or property dividends, rents, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual or periodic or casual gains, profits and income and capital gains — Twenty five percent (25%)

<sup>7</sup> Revenue Regulations No. 02-98 (1998), sec. 2.57 provides:  
SECTION 2.57. Withholding of tax at source.

(A) Final Withholding Tax—Under the final withholding tax system the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income. The liability for payment of the tax rests primarily on the payor as a withholding agent. Thus, in case of his failure to withhold the tax or in case of under withholding, the deficiency tax shall be collected from the payor/withholding agent. The payee is not required to file an income tax return for the particular income.

The finality of the withholding tax is limited only to the payee's income tax liability on the particular income. It does not extend to the payee's other tax liability on said income, such as when the said income is further subject to a percentage tax. For example, if a bank receives income subject to final withholding tax, the same shall be subject to a percentage tax.

<sup>8</sup> Revenue Regulations No. 02-98 (1998), sec. 2.57.4 provides:  
SECTION 2.57.4. *Time of withholding*—The obligation of the payor to deduct and withhold the tax under 2.57 of these regulations arises at the time an income is paid or payable, whichever comes first. The term "payable" refers to the date the obligation becomes due, demandable or legally enforceable.

<sup>9</sup> Revenue Regulations No. 02-98 (1998), sec. 2.83.3 provides:  
SECTION 2.83.3. Requirement for income payees list.— In lieu of the manually prepared alphabetical list of employees and list of payees and income payments subject to creditable and final withholding taxes which are required to be attached as integral part of the Annual Return (Form No. 1604), the Withholding Agent may, at its option, submit computer-processed tapes or cassettes or diskettes, provided that the said list has been encoded in accordance with the formats prescribed by Form 1604.

<sup>10</sup> Revenue Regulations No. 02-98 (1998), sec. 2.58 (C).

In the current market set-up in the country, an owner of certificates of stocks of listed companies who wishes to participate in the trade market delivers [their] stock certificated to a broker who enters the details of transfer into the system. The shares are electronically recorded (lodgement) into the broker's account under the name "PCD Nominee." Thereby, the scrip is forwarded to the Registry (transfer agent) where the certificate is cancelled and issued under "PCD Nominee." The deposit of shares is then confirmed in the book of entry of Philippine Depository & Trust Corporation (PTDC) and may now be traded in the market. Considering that shares may be traded (buy and sell) several times in a given day, the Philippine Stock Exchange (PSE) matches the trade such that at the end of a given trade day, a broker may either be a net selling broker or a net buying broker. Once the trade is matched, shares are delivered from the account of the net selling broker to the account of the net buying broker. Thereby, shares are electronically transferred to the buying broker's account at the PDTC. The buying client can then uplift the shares and register it under [their] name in the shares registry. Payment can now be made by net buyers and net sellers can now receive payments.<sup>11</sup>

Due to the current model of our capital market structure, there is no direct connection between the listed companies and the individual investor, not only for the efficiency of transactions but also for the protection of the individual investor or the beneficial owner.

Accordingly, the PCD<sup>12</sup> Nominee Corporation acts as the intermediary between the listed companies and the individual investors. Given this role, it is considered the registered shareholder and is written down in the alphalist as the payee of the dividend payments issued by listed companies. It then forwards the net dividend payments to the broker dealers, who then distribute them among the beneficial owners of the dividends, the individual investor clients. This has been the system followed by listed companies for many years when remitting withholding taxes on their issued dividend payments.

However, the secretary of finance amended Revenue Regulations No. 10-2008 through the issuance of Revenue Regulations No. 1-2014:

SEC. 2. AMENDATORY PROVISIONS. – The pertinent provisions of Section 2.83.3 of Revenue Regulations No. 10-2008 is hereby further amended and shall be read as follows:

....

Section 2.83.3 Requirement for list of payees – All withholding agents shall, regardless of the number of employees and payees, whether the employees/payees are exempt or not, submit an alphabetical list of employees and list of payees on income payments subject to creditable and final withholding taxes which are required to be attached as integral part of

<sup>11</sup> *Rollo*, p. 487.

<sup>12</sup> This stands for Philippine Central Depository, Inc.

the Annual Information Returns (BIR Form No. 1604CF/1604E) and Monthly Remittance Returns (BIR Form No. 1601C, etc.), under the following modes:

- (1) As attachment in the Electronic Filing and Payment System (eFPS);
- (2) Through Electronic Submission using the BIR's website address at [esubmission@bir.gov.ph](mailto:esubmission@bir.gov.ph); and
- (3) Through Electronic Mail (email) at dedicated BIR addresses using the prescribed CSV data file format, the details of which shall be issued in a separate revenue issuance.

In cases where any withholding agent does not have its own internet facility or unavailability or commercial establishments with internet connection within the location of the withholding agent, the alphalist prescribed herein may be electronically mailed (e-mail) thru the e-lounge facility of the nearest revenue district office or revenue region of the BIR.

*The submission of the herein prescribed alphalist where the income payments and taxes withheld are lumped into one single amount (e.g. "Various employees", "Various payees", "PCD nominees", "Others", etc.) shall not be allowed. The submission thereof, including any alphalist that does not conform with the prescribed format thereby resulting to the unsuccessful uploading into the BIR system shall be deemed not as received and shall not qualify as a deductible expense for income tax purposes.*

Accordingly, the manual submission of the alphabetical lists containing less than ten (10) employees/payees by withholding agents under Annual Information Returns BIR Form No. 1604CF and BIR No. 1604E shall be immediately discontinued beginning January 31, 2014 and March 1, 2014, respectively, and every year thereafter. (Emphasis supplied)

As a result, listed companies as withholding agents could no longer list down PCD Nominee Corporation as payee of their issued dividends.

The *ponencia* struck down the questioned issuances for unconstitutionality.

I concur with the *ponencia's* conclusion.

The questioned issuances cannot be considered mere internal regulations, as they do not regulate "only the personnel of the administrative agency."<sup>13</sup> They directly impact the public, more specifically the main players in our capital market. They are legislative issuances that require public participation before their issuance and publication<sup>14</sup> for their validity.

<sup>13</sup> *Tañada v. Tuvera*, 230 Phil 528, 535 (1986) [Per J. Cruz, En Banc].

<sup>14</sup> *Id.*

The constitutionally guaranteed right to due process<sup>15</sup> has no “controlling and precise definition.”<sup>16</sup> It is “a standard to which governmental action should conform in order that deprivation of life, liberty[,] or property, in each appropriate case, be valid.”<sup>17</sup>

*Ermita-Malate Hotel and Motel Operators Association, Inc. v. City of Manila* explains that due process requires that “arbitrariness is ruled out and unfairness avoided.”<sup>18</sup>

What then is the standard of due process which must exist both as a procedural and as substantive requisite to free the challenged ordinance, or any government action for that matter, from the imputation of legal infirmity; sufficient to spell its doom? It is responsiveness to the supremacy of reason, obedience to the dictates of justice. Negatively put, arbitrariness is ruled out and unfairness avoided. To satisfy the due process requirement, official action, to paraphrase Cardozo, must not outrun the bounds of reasons and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness. Correctly has it been identified as freedom from arbitrariness. It is the embodiment of the sporting idea of fair play. It exacts fealty “to those strivings for justice” and judges the act of officialdom of whatever branch “in the light of reason drawn from considerations of fairness that reflect [democratic] traditions of legal and political thought.” It is not a narrow or “technical conception with fixed content unrelated to time, place and circumstances,” decisions based on such a clause requiring a “close and perceptive inquiry into fundamental principles of our society.” Questions of due process are not to be treated narrowly or pedantically in slavery to form or phrases.<sup>19</sup> (Citations omitted)

Due process encompasses both substantive due process and procedural due process. Substantive due process embodies the “sporting idea of fair play”<sup>20</sup> and “inquires whether the government has sufficient justification for depriving a person of life, liberty, or property.”<sup>21</sup> On the other hand, procedural due process concerns government processes when they intrude “into the private sphere”<sup>22</sup> and generally pertains to the requirement of notice and hearing. *Medenilla v. Civil Service Commission*<sup>23</sup> summarizes procedural due process as

the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, and property

<sup>15</sup> CONST., art. III, sec. 1 provides:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

<sup>16</sup> *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, 127 Phil. 306, 318 (1967) [Per J. Fernando, En Banc].

<sup>17</sup> Id.

<sup>18</sup> Id. at 319.

<sup>19</sup> Id. at 318–319.

<sup>20</sup> Id. at 319.

<sup>21</sup> *White Light Corporation v. City of Manila*, 596 Phil. 444, 461 (2009) [Per J. Tinga, En Banc].

<sup>22</sup> Id.

<sup>23</sup> 272 Phil. 107 (1991) [Per J. Gutierrez, Jr., En Banc].

in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of the right in the matter involved.<sup>24</sup> (Citation omitted)

I concur with the *ponencia* that the issuances are covered by the notice and hearing requirement for their validity because they are not merely internal issuances.<sup>25</sup>

When an administrative rule “substantially adds to or increases the burden of those governed,”<sup>26</sup> due process must be followed and the affected stakeholders must be given an opportunity to be heard before the resolution is given effect.

The issuances upended long-established practices by rejecting the use of a PCD nominee as the registered stockholder or dividend payee baked into the scripless trading system. They created responsibilities where none existed before, with Memorandum Circular 10-2014 directing the Philippine Depository and Trust Corporation and broker dealers to forward the alphalist of all depository account holders and individual investors, respectively, to the withholding agent listed companies:

Section 2. List of PDTC Accounts and corresponding Shareholdings.

The Philippine Depository and Trust Corporation (PDTC) shall prepare an alphalist of all depository account holders and the total shareholdings in each of the accounts and sub-accounts as of Record Date upon receiving information on a dividend declaration.

PDTC shall provide the issuer or its authorized Transfer Agent with the alphalist and all the depository account holders with their respective shareholdings as reflected in their depository accounts and sub-accounts, if any, not later than 12:00 noon of the day following such Record Date.

Section 3. List of Payees and corresponding Shareholdings.

All depository account holders which are registered broker dealers and which hold shares, for the account of their clients or for their own account, and which are payees of dividend declared by the Issuer/ Paying Company shall prepare an alphalist showing the total shareholding of each account and sub-account belonging to these payees and the dealer account as of Record Date. In determining the alphalist, the broker dealers shall take into account the Philippine Stock Exchange's (PSE) conventions on transactions effected during cum and ex-dates.

The broker dealers shall also ensure that the account balances are consistent with the respective balances as reflected in the PDTC alphalist

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<sup>24</sup> Id. at 115.

<sup>25</sup> *Ponencia*, p. 20.

<sup>26</sup> *Commissioner of Internal Revenue v. Court of Appeals*, 329 Phil 987, 1007 (1996) [Per J. Vitug, First Division].

of depository account holders and corresponding total shareholdings.

The broker dealer alphalist shall provide the following information.  
(Please refer to the attached format – Annex A):

1. Name of Client/Payee (Last Name, First Name, Middle Name for Individuals, complete name for non-individuals)
2. Tax Identification Number (TIN)
3. Address of Payee
4. Status (Residence/Nationality)
5. Total Shareholding
6. Birth date (for individuals)/ Registration Number (for non-individuals)

The broker dealers shall submit the alphalist certified true and correct by their President and the Head of the Settlement Unit in soft and hard copies to the Issuer or its authorized Transfer Agent not later than three (3) days from the Record Date.<sup>27</sup>

The issuances also saddled the listed companies with the new tasks of safeguarding the personal details of individual investors and forwarding these to the Bureau of Internal Revenue for its “taxpayer database.”<sup>28</sup> This is even if those details were entrusted by the individual investors only to their broker dealers. No concomitant safeguards were also introduced by public respondents to ensure that the personal details divulged to the listed companies would only be used for their intended purpose.

Considering the significant changes introduced by the issuances and their effect on the public, public respondents should have conducted notice and hearing and discussed the provisions of the issuances *before* they were issued. Discussing the issuances after they were issued does not amount to substantial compliance with the due process requirements, especially where the meeting conducted was merely for clarificatory purposes.

Nonetheless, even if the issuances did not require public hearing before their issuance, public participation was still necessary for transparency. Submitted comments should have been addressed and not merely acknowledged or, worse, ignored<sup>29</sup> as “[t]his is the essence of public participation enshrined in our Constitution.”<sup>30</sup>

I likewise concur with the *ponencia* that the issuances violate the Data Privacy Act.<sup>31</sup>

The Data Privacy Act protects a specific portion of the right to

<sup>27</sup> SEC Memorandum Circular No. 10 (2014).

<sup>28</sup> Revenue Regulations No. 1-2014 (2014), background.

<sup>29</sup> *Rollo*, pp. 19–20.

<sup>30</sup> J. Leonen, Separate Concurring Opinion in *Alliance for the Family Foundation, Philippines, Inc. v. Garin*, 809 Phil 897, 964 (2017) [Per J. Mendoza, Special Second Division].

<sup>31</sup> *Ponencia*, pp. 22–27.



privacy, namely data privacy. The right to privacy is part and parcel of basic human rights as seen in both the United Nations Declaration of Human Rights and International Covenant on Civil and Political Rights, which protect against the “arbitrary interference with . . . privacy.”<sup>32</sup> In particular, the United Nations Declaration of Human Rights provides:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.<sup>33</sup>

In *Morfe v. Mutuc*,<sup>34</sup> this Court recognized the fundamental right to privacy, or the “right to be let alone,”<sup>35</sup> to be independent from the right to liberty and, “in itself, . . . is fully deserving of constitutional protection.”<sup>36</sup>

There is much to be said for this view of Justice Douglas: “Liberty in the constitutional sense must mean more than freedom from unlawful governmental restraint; it must include privacy as well, if it is to be a repository of freedom. The right to be let alone is indeed the beginning of all freedom.” As a matter of fact, this right to be let alone is, to quote from Mr. Justice Brandeis “the most comprehensive of rights and the right most valued by civilized [individuals].”<sup>37</sup>

The right to privacy and its other facets<sup>38</sup> are also expressly protected in various provisions of the Bill of Rights:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Section 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

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<sup>32</sup> United Nations Declaration of Human Rights, art 12; International Covenant on Civil and Political Rights, art. 17.

<sup>33</sup> United Nations Declaration of Human Rights, art. 12.

<sup>34</sup> 130 Phil. 415 (1968) [Per J. Fernando, En Banc].

<sup>35</sup> *Ople v. Torres*, 354 Phil. 948, 970 (1998) [Per J. Puno, En Banc].

<sup>36</sup> *Morfe v. Mutuc*, 130 Phil. 415, 436 (1968) [Per J. Fernando, En Banc].

<sup>37</sup> *Id.* at 433.

<sup>38</sup> *Ople v. Torres*, 354 Phil. 948, 973 (1998) [Per J. Puno, En Banc].

Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

....

Section 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

....

Section 17. No person shall be compelled to be a witness against himself.<sup>39</sup>

As the right to privacy is a fundamental right guaranteed by the Constitution, the State has the burden of proving that its intrusion into the zones of privacy is "justified by some compelling state interest and that it is narrowly drawn."<sup>40</sup>

The relevance of the zones of privacy to the right of privacy was discussed in *In re Sabio*.<sup>41</sup>

Zones of privacy are recognized and protected in our laws. Within these zones, any form of intrusion is impermissible unless excused by law and in accordance with customary legal process. The meticulous regard we accord to these zones arises not only from our conviction that the right to privacy is a "constitutional right" and "the right most valued by civilized [individuals]," but also from our adherence to the Universal Declaration of Human Rights which mandates that, "no one shall be subjected to arbitrary interference with his privacy" and "everyone has the right to the protection of the law against such interference or attacks."

Our Bill of Rights, enshrined in Article III of the Constitution, provides at least two guarantees that explicitly create zones of privacy. It highlights a person's "right to be let alone" or the "right to determine what, how much, to whom and when information about [themselves] shall be disclosed." Section 2 guarantees "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose." Section 3 renders inviolable the "privacy of communication and correspondence" and further cautions that "any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."<sup>42</sup>

To determine if the right to privacy has been violated, courts must assess if there was a reasonable expectation of privacy and if there was a

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<sup>39</sup> CONST., art. III, secs. 1-17.

<sup>40</sup> *Ople v. Torres*, 354 Phil. 948, 975 (1998) [Per J. Puno, En Banc].

<sup>41</sup> 535 Phil. 687 (2006) [Per J. Sandoval-Gutierrez, En Banc].

<sup>42</sup> *Id.* at 714-715.

violation of this expectation.

In a two-part test, *Ople v. Torres*<sup>43</sup> provides that the reasonableness of the expectation of privacy may be ascertained if (1) “by [their] conduct, the individual has exhibited an expectation of privacy; and (2) this expectation is one that society recognizes as reasonable.”<sup>44</sup> Hence, the reasonableness on an expectation of privacy depends on “[c]ustoms, community norms[,] and practices” and on the factual circumstances peculiar to the case.<sup>45</sup>

Here, the individual investors provided their personal information to their broker dealers for the sole purpose of facilitating their transactions in the stock market. They clearly did not intend their personal information to be shared with any other entity, private or public.

Additionally, the listed companies can still withhold and remit the appropriate taxes on the issued dividends to the Bureau of Internal Revenue even without procuring the personal information and details of the individual investors. Thus, the individual investors had a reasonable expectation of privacy that their personal details will only be used for the purpose their collection was originally intended for.

Moreover, public respondents never accused the listed companies of withholding and remitting the wrong amount. The requirement of divulging the personal details of the individual investors was solely for the creation of a taxpayer database and nothing else.

The Data Privacy Act “applies to the processing of all types of personal information and to any natural and juridical person involved in personal information processing.”<sup>46</sup> It does not apply to the following:

(a) Information about any individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual, including:

- (1) The fact that the individual is or was an officer or employee of the government institution;
- (2) The title, business address and office telephone number of the individual;
- (3) The classification, salary range and responsibilities of the position held by the individual; and
- (4) The name of the individual on a document prepared by the individual in the course of employment with the government;

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<sup>43</sup> 354 Phil. 948 (1998) [Per J. Puno, En Banc].

<sup>44</sup> Id. at 980.

<sup>45</sup> *Spouses Hing v. Choachuy, Sr.*, 712 Phil 337, 350 (2013) [Per J. Del Castillo, Second Division].

<sup>46</sup> Republic Act No. 10173 (2012), sec. 4.

- (b) Information about an individual who is or was performing service under contract for a government institution that relates to the services performed, including the terms of the contract, and the name of the individual given in the course of the performance of those services;
- (c) Information relating to any discretionary benefit of a financial nature such as the granting of a license or permit given by the government to an individual, including the name of the individual and the exact nature of the benefit;
- (d) Personal information processed for journalistic, artistic, literary or research purposes;
- (e) Information necessary in order to carry out the functions of public authority which includes the processing of personal data for the performance by the independent, central monetary authority and law enforcement and regulatory agencies of their constitutionally and statutorily mandated functions. Nothing in this Act shall be construed as to have amended or repealed Republic Act No. 1405, otherwise known as the Secrecy of Bank Deposits Act; Republic Act No. 6426, otherwise known as the Foreign Currency Deposit Act; and Republic Act No. 9510, otherwise known as the Credit Information System Act (CISA);
- (f) Information necessary for banks and other financial institutions under the jurisdiction of the independent, central monetary authority or Bangko Sentral ng Pilipinas to comply with Republic Act No. 9510, and Republic Act No. 9160, as amended, otherwise known as the Anti-Money Laundering Act and other applicable laws; and
- (g) Personal information originally collected from residents of foreign jurisdictions in accordance with the laws of those foreign jurisdictions, including any applicable data privacy laws, which is being processed in the Philippines.<sup>47</sup>

The personal information sought from petitioners are not for purposes of tax administration or tax collection. Instead, they will be collected for the Bureau of Internal Revenue to create a taxpayer database to “[establish] simulation model, [formulate] analytical framework for policy analysis, and [institutionalize] appropriate enforcement activities.”<sup>48</sup>

While the creation of a taxpayer database might be part of the tasks of the Bureau as the state’s tax collector, it is a stretch to say that the personal information sought to be collected are exempt from the coverage of the Data Privacy Act for being “necessary in order to carry out the functions of public authority . . . for the performance . . . of their constitutionally and statutorily mandated functions.”<sup>49</sup>

While the power to tax “is the strongest of all the powers of

<sup>47</sup> Republic Act No. 10173 (2012), sec. 4.

<sup>48</sup> Revenue Regulations No. 1-2014 (2014), background.

<sup>49</sup> Republic Act No. 10173 (2012), sec. 4(e).

government,”<sup>50</sup> it is not unbridled. It should be balanced with the constitutional guarantee of the fundamental rights of due process, equal protection,<sup>51</sup> and privacy.<sup>52</sup>

As a rule, the Data Privacy Act prohibits the processing of sensitive personal and privileged information, except if the data subject consents to the processing of their data<sup>53</sup> and the processing is provided for by existing laws and regulations. Still, the law mandates that such exception must “guarantee the protection of the sensitive personal information and the privileged information.”<sup>54</sup>

The issuances did not even attempt to procure the permission of the individual investors for the transfer of their personal information from their broker dealers to the listed companies. They did not also provide a mechanism to safeguard the personal information of the individual investors.

It is not enough, as public respondents posit, that the listed companies as withholding agents are considered as government agents, thereby subjecting them to the confidentiality rules under the applicable laws.<sup>55</sup> The Data Privacy Act requires a “guarantee” that laws and regulations that aim to process personal information will protect the information obtained. The issuances contain no such guarantee or reflect any attempt to protect the personal information sought to be obtained.

Considering the above, the issuances amount to an arbitrary interference to the fundamental right to privacy and must be struck down.

It is true that as “taxes are the lifeblood of the government,”<sup>56</sup> the power to tax “is the strongest of all the powers of government.”<sup>57</sup> However, more than financing public infrastructure and providing basic services, the real purpose of taxation is the promotion of common good.<sup>58</sup>

It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute [their] share in the running of the government. The government for its part, is expected to respond in the

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<sup>50</sup> *Sarasola v. Trinidad*, 40 Phil 252, 262 (1919) [Per J. Malcolm, First Division].

<sup>51</sup> CONST., art. III, sec. 1 provides:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

<sup>52</sup> *Ople v. Torres*, 354 Phil 948 (1998) [Per J. Puno, En Banc].

<sup>53</sup> Republic Act No. 10173 (2012), sec. 13(a).

<sup>54</sup> Republic Act No. 10173 (2012), sec. 13(b).

<sup>55</sup> *Rollo*, pp. 502–503.

<sup>56</sup> *Reyes v. Almanzor*, 273 Phil. 558, 566 (1991) [Per J. Paras, En Banc].

<sup>57</sup> *Id.* at 564.

<sup>58</sup> *Commissioner of Internal Revenue v. Algue*, 241 Phil. 829, 830 (1988) ([Per J. Cruz, First Division].

form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.<sup>59</sup>

*Commissioner of Internal Revenue v. Central Luzon Drug Corporation*<sup>60</sup> describes the power to tax as the “most effective tool to realize social justice, public welfare, and the equitable distribution of wealth.”<sup>61</sup> This leaning toward social justice and redistribution of wealth finds its mooring in the Constitution. The fundamental law emphasizes “the requirements of social justice and the necessity for a redistribution of the national wealth and economic opportunity”<sup>62</sup> with the goal of a national economy that has an “equitable distribution of opportunities, income, and wealth.”<sup>63</sup> This thrust toward social justice is further highlighted in Article XIII:

Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

The power to tax vis-à-vis social justice is seen in acts of Congress that accord preferential treatment to specific groups that contribute to the economic development of marginalized sectors of society, thereby bringing a positive effect to the real economy.<sup>64</sup> In direct contrast, the financial sector, with its primary focus on internal trading, is of little benefit to anyone except for the bankers themselves.

The banking industry used to occupy a pivotal role in the development of society by providing useful financial services, such as facilitating payment system, matching borrowers and lenders, supervising savings, and controlling risk associated with everyday economic activity.<sup>65</sup> However, it has since shifted its focus to internal trading or trading securities, effectively isolating itself from society at large.<sup>66</sup> This inward focus with its overarching goal of creating money instead of providing services has birthed

<sup>59</sup> Id. at 836.

<sup>60</sup> 496 Phil. 307 (2005) [Per J. Panganiban, Third Division].

<sup>61</sup> Id. at 336.

<sup>62</sup> *Marine Radio Communications Association of the Philippines v. Reyes*, 269 Phil. 210, 217 (1990) [Per J. Sarmiento, En Banc].

<sup>63</sup> CONST., art. XII, sec. 1.

<sup>64</sup> *Estoconing v. People*, G.R. No. 231298, October 7, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67230>> [Per J. Leonen, Third Division].

<sup>65</sup> JOHN KAY. OTHER PEOPLE’S MONEY: MASTERS OF THE UNIVERSE OR SERVANTS OF THE PEOPLE? (2015). See Introduction Chapter.

<sup>66</sup> Id. See Chapter 4.

a complex and precarious system based on convoluted chains of value, leading to the instability of the entire financial industry.

Thus, the rapid growth in speculative investments has led to the phenomenon of financialization or the “increasing role of financial motives, financial markets, financial actors[,] and financial institutions in the operation of the domestic and international economies.”<sup>67</sup> While financialization has led to a huge surplus of cash, with wealth begetting wealth through speculating or investing in various financial instruments and securities, its actual effect on the economy has not been commensurate with its growth. Instead, investing in speculative investments, such as securities, has had no noticeable impact on the economy, with the benefits remaining primarily within the financial sector and rarely reinvested back into the local economy.

In this light, income earned from financial products rightly do not deserve preferential treatment from taxation.

In any case, the power to tax is not plenary and must still accede to the fundamental rights of due process and the right to privacy.

**ACCORDINGLY**, I vote to **GRANT** the petition.



MARVIC M.V. F. LEONEN  
Associate Justice

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<sup>67</sup> Sahil Jai Dutta *Financialisation: A Primer*, TRANSNATIONAL INSTITUTE WEBSITE, October 2018, <<https://www.tni.org/files/publication-downloads/financialisation-primer-sept2018-web.pdf>> (last accessed on November 13, 2021], citing Gerald A. Epstein, *Introduction: Financialization and the World Economy*, in GERALD A. EPSTEIN, FINANCIALIZATION AND THE WORLD ECONOMY (2005).