THIRD DIVISION

G.R. No. 229338 – MANILA PENINSULA HOTEL, INC., Petitioner **v. COMMISSIONER OF INTERNAL REVENUE,** Respondent.

Promulgated:
April 17, 2024

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SEPARATE CONCURRING OPINION

SINGH, *J.*:

The present controversy arose from the denial of Manila Peninsula Hotel, Inc.'s (**Manila Peninsula**) administrative claim for refund of alleged erroneously paid or illegally collected Value-Added Tax (**VAT**) for taxable year (**TY**) 2010 amounting to PHP 3,807,771.77, consisting of the 12% VAT payments on its sale of services to Delta Air Lines, Inc. (**Delta Air**).[1] The nature of the services consisted of room accommodations, as well as food and beverage services to the former's pilots and cabin crew during flight layovers in the Philippines. The cost of said hotel services were directly charged to Delta Air and did not constitute compensable income for its crew but a business expense of the airline.[2]

Both the Court of Tax Appeals (**CTA**) Division and the CTA *En Banc* disallowed Manila Peninsula's claim for refund involving the first quarter of TY 2010 due to prescription. With respect to its claim for refund for the second, third, and fourth quarters of TY 2010, the CTA Division and *En Banc* held that Manila Peninsula's claim must fail for failure to satisfy the requisites for its transaction with Delta Air to qualify for zero-rating.[3]

Thus, the present Petition.

The *ponencia* affirms the ruling on the prescription of Manila Peninsula's claim for refund involving the first quarter of TY 2010. However, it reverses the ruling of the CTA Division and the CTA *En Banc* with respect to the claim for refund for the second, third, and fourth quarters of TY 2010. The *ponencia* holds that the hotel room accommodations, as well as the food and beverage services rendered by Manila Peninsula to Delta Air pilots and crew members during flight layovers are subject to VAT zero-rating under

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[1] *Ponencia,* p. 3.
[2] *Id.* at 2.
[3] *Id.* at 4–6, CTA *En Banc* Decision.

Section 108(B)(4) of the National Internal Revenue Code (**NIRC**), as amended. The *ponencia* also declares Item 11 of Revenue Memorandum Circular (**RMC**) No. 46-2008 and RMC No. 31-2011 as invalid, for expanding the statutory requirements in Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337.[4]

I register my concurrence with the finding that the subject services rendered to Delta Air in the second, third, and fourth quarters of TY 2010 are subject to VAT zero-rating, such that Manila Peninsula should be considered to have erroneously paid in TY 2010 the output VAT amounting to PHP 3,807,771.77.

I respectfully wish to add to the discussion regarding the effect of the amendment of Section 108(B)(4) of the NIRC by Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion law (**TRAIN Act**) to explicitly limit services subject to zero-rating to those exclusively for international or air shipping.[5] As the *ponencia* now states, the *proviso* which limits the services subject to zero-rated VAT to those exclusively attributable to the recipient's international shipping or air transport operations, is also applicable under Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337,[6] or before the TRAIN Act amendment in 2018.

Any ambiguity in the construction of Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337, must be construed strictly against the taxpayer

It is a basic rule in statutory construction that "when the law is clear and unambiguous, the court is left with no alternative but to apply the same according to its clear language."[7]

Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337, provides:

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> (A) . . . .

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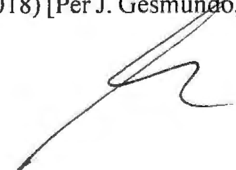
[4] *Id.* at 18.
[5] *Id.*
[6] *Id.* at 27.
[7] *H. Villaraca Pawnshop, Inc. v. Social Security Commission*, 824 Phil. 613, 628 (2018) [Per J. Gesmundo, Third Division].



> (B) *Transactions Subject to [Zero Percent] Rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to [zero percent] rate:
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> . . . .
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> 4) ***Services rendered to persons engaged in international shipping or international air transport operations, including leases of property for use thereof*; . . . .** (Emphasis supplied)

The above provision is clear and unambiguous only when applied to either of the following instances: *first*, when the recipient of the services is engaged exclusively in international shipping or air transport operations, in which case, all the services rendered are subject to zero percent VAT; and *second*, when such recipient is exclusively engaged in domestic shipping or air transport operations, in which case, none of the services rendered is subject to zero percent VAT.

However, when the person to whom the services are rendered is engaged in both domestic and international shipping or air transport operations, the aforequoted provision is ambiguous and may be subject to conflicting interpretations. On the one hand, it may be argued that all services rendered to such person are automatically subject to zero percent VAT by the mere fact that the said person has international shipping or air transport operations, and there is no limitation on the type of services rendered. This is the interpretation being advanced by Manila Peninsula.

On the other hand, the above provision may be interpreted as only applying to services attributable to the recipient's international shipping or air transport operations. Hence, when services rendered are attributable to the aforementioned person's domestic shipping or air transport operations, the same are not subject to zero percent VAT.

I submit that the VAT zero-rating under Section 108(B)(4) of the NIRC is a form of tax exemption and must, therefore, be interpreted strictly against the taxpayer. Taxpayers with zero-rated sales may claim a refund or tax credit for the VAT previously charged by the suppliers (i.e., the input tax).[8] In relation with this, the Court has consistently ruled that "a claim for tax refund or credit is similar to a tax exemption and should be strictly construed against

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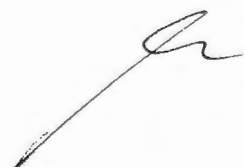
[8] *Commissioner of Internal Revenue v. Filminera Resources Corporation*, 885 Phil. 515, 536 (2020) [Per J. Lopez, First Division].



the taxpayer. The burden of proof to show that he is ultimately entitled to the grant of such tax refund or credit rests on the taxpayer."[9]

In this case, the interpretation which limits the application of the VAT zero-rating privilege under Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337, is more in line with the above rule.

Applying Manila Peninsula's interpretation of Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337, will lead to absurd situations and runs counter to other provisions of the NIRC

In *Philippine American Life and General Insurance Company v. Secretary of Finance*,[10] the Court held that "laws should be given a reasonable interpretation which does not defeat the very purpose for which they were passed. Courts should not follow the letter of a statute when to do so would depart from the true intent of the legislature or would otherwise yield conclusions inconsistent with the purpose of the act. *This Court has, in many cases involving the construction of statutes, cautioned against narrowly interpreting a statute as to defeat the purpose of the legislator, and rejected the literal interpretation of statutes if to do so would lead to unjust or absurd results*."[11]

In this case, extending the VAT zero-rating privilege to services rendered to a person's domestic shipping or air transport operations, so long as such person has international operations, will lead to absurd situations that are clearly inconsistent with the nature of the VAT system. To illustrate, services rendered to a person whose international operations only account for five percent of such person's total operations will automatically be subject to zero percent VAT, even if the services are related to such person's domestic operations. This is contrary to the general principle behind the country's VAT system. The Philippine VAT system adheres to the *Cross Border Doctrine*, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority.[12] Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be subject to VAT. To be sure, the

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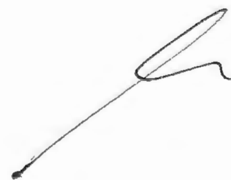
[9] *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*, 787 Phil. 57, 67 (2016) [Per J. Bersamin, First Division].

[10] 747 Phil. 811 (2014) [Per J. Velasco, Jr., Third Division].

[11] *Id.* at 824. (Emphasis supplied)

[12] *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.) Inc.*, 503 Phil. 823, 823-845 (2005) [Per J. Chico-Nazario, Second Division].



treatment of a transaction between a service provider and its client or customer, as zero-rated, is anchored on the Cross Border Doctrine.[13]

Moreover, in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,[14] the Court ruled that "[i]t is a cardinal rule in statutory construction that *no word, clause, sentence, provision or part of a statute shall be considered surplusage or superfluous, meaningless, void and insignificant.* To this end, *a construction which renders every word operative is preferred over that which makes some words idle and nugatory.* This principle is expressed in the maxim *Ut magisvaleat quam pereat*, that is, we choose the interpretation which gives effect to the whole of the statute – its every word."[15]

The same rule was expounded by the Court in *Commissioner of Internal Revenue v. TMX Sales, Inc.*,[16] as follows:

> *Section 292 (now Section 230) of the National Internal Revenue Code should be interpreted in relation to the other provisions of the Tax Code in order to give effect to legislative intent and to avoid an application of the law which may lead to inconvenience and absurdity. In the case of People vs. Rivera, this Court stated that statutes should receive a sensible construction, such as will give effect to the legislative intention and so as to avoid an unjust or an absurd conclusion. INTERPRETATIO TALIS IN AMBIGUIS SEMPER FRIENDA EST, UT EVITATUR INCONVENIENS ET ABSURDUM.* Where there is ambiguity, such interpretation as will avoid inconvenience and absurdity is to be adopted. Furthermore, ***courts must give effect to the general legislative intent that can be discovered from or is unraveled by the four corners of the statute, and in order to discover said intent, the whole statute, and not only a particular provision thereof, should be considered. Every section, provision or clause of the statute must be expounded by reference to each other in order to arrive at the effect contemplated by the legislature. The intention of the legislator must be ascertained from the whole text of the law and every part of the act is to be taken into view.***
>
> Thus, in resolving the instant case, it is necessary that we consider not only Section 292 (now Section 230) of the National Internal Revenue Code but also the other provisions of the Tax Code, particularly Sections 84, 85 (now both incorporated as Section 68), Section 86 (now Section 70) and Section 87 (now Section 69) on Quarterly Corporate Income Tax Payment and Section 321 (now Section 232) on keeping of books of accounts. All these provisions of the Tax Code should be harmonized with each other.[17] (Emphasis supplied; citations omitted)

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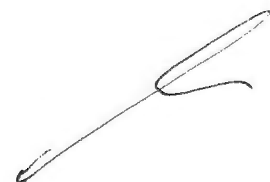
[13] *Allegro Microsystems Philippines, Inc. v. CCT-Toyo Consortium*, G.R. No. 229537, February 10, 2020 [Notice, First Division].

[14] 808 Phil. 528 (2017) [Per J. Reyes, Third Division].

[15] *Id.* at 552. (Emphasis supplied)

[16] 282 Phil. 119 (1992) [Per J. Gutierrez, Jr., *En Banc*].

[17] *Id.*



Manila Peninsula's interpretation of Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337, runs counter to the other provisions of the same statute.

First, under Section 106(A)(i)(2)(a)(6), the sale of goods, supplies, equipment, and fuel to persons engaged in international shipping or international air transport operations, are subject to zero percent VAT because such transaction is considered an "export sale." Notably, Section 106(A)(i)(2)(a)(6) and Section 108(B)(4) have very similar construction. In fact, the wordings as to the recipient of the goods or services is identical. As such, the interpretation as to the applicability of the zero rating under Section 108(B)(4) will necessarily be used in applying for VAT zero rating under Section 106(A)(i)(2)(a)(6). In connection with this, extending the zero rating to sales to a person to be used in his or her domestic shipping or air transport operations contradicts the rationale behind the VAT zero rating under Section 106(A)(i)(2)(a)(6). In *Commissioner of Internal Revenue v. Filminera Resources Corporation*,[18] the Court declared that the VAT zero rating of export sales is applicable only to the actual export of goods and services from the Philippines to a foreign country, pursuant to the Cross Border Doctrine and Destination Principle of the Philippine VAT system, thus:

> SEC. 106. Value-added Tax on Sale of Goods or Properties. - (A) Rate and Base of Tax. – . . . .
>
> . . . .
>
> (2) The following sales by VAT-registered persons shall be subject to [zero percent] rate:
>
> (a) Export Sales. - The term 'export sales' means: . . . .
>
> . . . .
>
> *The tax treatment of export sales is based on the Cross Border Doctrine and Destination Principle of the Philippine VAT system. Under the Destination Principle, goods and services are taxed only in the country where these are consumed. In this regard, the Cross Border Doctrine mandates that no VAT shall be imposed to form part of the cost of goods destined for consumption outside the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with VAT. Plainly, sales of export products to another producer or to an export trader are subject to zero percent rate provided the export products are actually exported and consumed in a foreign country.*[19] (Emphasis supplied and citations omitted)

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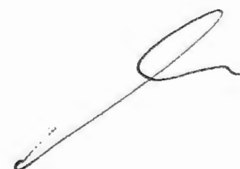
[18] 885 Phil. 515 (2020) [Per J. Lopez, First Division].

[19] *Id.* at 530–531. (Emphasis supplied)



Second, several other provisions under the NIRC, as amended by Republic Act No. 9337, show that with respect to the shipping and air transport industry, the regular VAT rate should be applied with respect to domestic shipping and air transport operations. Under Section 108(A)(ii) the phrase "sale or exchange of services," which shall be subject to 10% VAT, includes "common carriers by air and sea relative to their transport of passengers, goods, or cargoes from one place in the Philippines to another place in the Philippines." Also, under Section 108(B)(6), only "[t]ransport of passengers and cargo by air or sea vessels from the Philippines to a foreign country" is subject to zero percent VAT.

Based on the foregoing discussion, if the services rendered by Manila Peninsula to Delta Air do not directly form part of the cost components of Delta Air's flights or services outside the territorial border of the Philippines, the same does not fall under the ambit of exported goods or services that must be free of VAT.

The legislative intent behind the amendments to Section 108(B)(4) of the NIRC

It is, likewise, a fundamental principle in statutory construction that when the law is ambiguous or of doubtful meaning, the Court may interpret or construe its true intent.[20] In this case, the legislative deliberations in relation to the enactment of Republic Act No. 9337, as well as the TRAIN Act, reveals the legislative intent to limit the application of the zero percent VAT under Section 108(B)(4) of the NIRC, as amended by Republic Act No. 9337, to services which are attributable to the recipient's international shipping or international air transport operations.

When the NIRC was enacted in 1997, Section 108(B)(4) thereof only applied to "[s]ervices rendered to vessels engaged exclusively in international shipping." However, the qualifier exclusively was deleted under Republic Act No. 9337. I submit that this was intended to broaden the scope of zero-rating eligibility. However, such broadening did not, and was not intended by Congress to, amount to encompassing all services rendered, without imposing limitations or conditions on the nature of the services provided.

Prior to the enactment of Republic Act No. 9337, it was clear that the zero-rating under Section 108(B)(4) of the NIRC only applied to "[s]ervices rendered to vessels engaged exclusively in international shipping[.]" Under this provision, when a vessel is engaged in both domestic and international operations, services rendered to it are automatically not subject to zero percent

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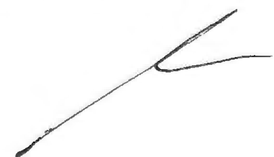
[20] *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, 826 Phil. 329, 344 (2018) [Per J. Peralta, Second Division].



VAT. This interpretation is supported by the deliberations in the Senate relative to the enactment of Republic Act No. 9337, when Senator Ralph G. Recto proposed to maintain the inclusion of the term "exclusively" in Section 106(A)(2)(a)(6) of the NIRC, which had a similar construction to the proposed Section 108(B)(4):

> *In regard to lines 1 to 3, page 6, (sale of goods, supplies and fuel to persons engaged exclusively in international shipping or international air transport), Senator Osmeña expressed concern that this provision, along with two other existing provisions in the law, would extend VAT exemption [sic] suppliers of raw materials or intermediate goods and all finished products as well as exporters of goods or services. He stated that if Petron and Shell would sell fuel to Cebu Pacific, Northwest or Philippine Airlines, these would be zero-rated.*
>
> *Senator Recto clarified that if the fuel is sold to PAL or Cebu Pacific, the sale would not be zero-rated because they are not exclusively in international air transport. He added that the transaction would be covered by a different provision so that the BIR would not have difficulty in administering the tax.*
>
> To the suggestion to simply delete the provision and just limit the zero-rating to the actual exporters themselves and not the suppliers, Senator Recto agreed to the suggestion. However, he reasoned that it would be better not to touch the provision now and just wait for the conference committee.[21] (Emphasis supplied)

On the other hand, the congressional deliberations in enacting Republic Act No. 9337 are clear that in situations wherein the recipient of the services is engaged in both international and domestic operations, the zero-rating under the amended Section 108(B)(4) is limited only to those services attributable to the recipient's international operations.

During the meeting of the Bicameral Conference Committee on the Disagreeing Provisions of House Bill Nos. 3705 and 3555 and Senate Bill No. 1950 re: Value-Added Tax Bills,[22] Representative Luis R. Villafuerte raised his objection with respect to the use of the qualifier "exclusively" in case of international air transport operations, thus:

> REP. VILLAFUERTE. Mr. Chairman, I just want to point out an unfairness in the language of the Senate version when it uses that it [sic] zero-VAT if... for aircraft and vessels engaged and then you used the word "exclusively" in international transport. I just want to...
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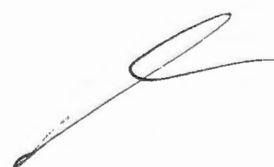
> . . . .

[21] Journal, Senate, 13th Congress, 1st Session (April 12, 2005).

[22] Republic Act No. 9337 (May 24, 2005).



REP. VILLAFUERTE. ... because the word "exclusive" ... let me give you an example. For example, a Philippine Airline flies to Cebu in the course of the day and later on it goes to Hong Kong. So, that plane is not exclusively used for international transport and, therefore, what happens now? If we interpret the word "exclusively"...

CHAIRMAN RECTO. *If I can explain Congressman Villafuerte, how this will operate, as far as Senate is concerned, is this: Total gross sales of an airline company, if 80% of the gross sales was used for international, then the 80% is immediately refundable. If 20% of his gross sales, which is domestic, by way of cargo or passengers, then the 20% is subject now to creditable VAT on a quarterly basis. So, it's ratably. Now, it's easier for the BIR as well to collect. For example, in this case, as far as the zero-rating for exclusively an international transport, let's say, those service providers of Lufthansa, Cathay Pacific, I think who provide service with them, let's say, Macro Asia, maliwanag ngayon under the Senate version that these people are zero-rate. Maliwanag ngayon because right now, hindi maliwanag iyan under the Tax Code.*

REP. VILLAFUERTE. What happens to the Philippine Airlines plane that flies to domestic and then...

CHAIRMAN RECTO. Again, let me reiterate, Congressman Villafuerte, the entire gross sales for that month or for that quarter of Philippine Airlines is 80% is attributable to international passenger and international cargo, then its 80% of his VAT input is refundable, is zero-rated.

REP. VILLAFUERTE. Yeah, but you are not really applying exclusively then.

CHAIRMAN RECTO. Now, for domestic because we are VAT[-]ing domestic passengers and domestic cargo.

REP. VILLAFUERTE. No, no, no. It says here "exclusively"...

CHAIRMAN RECTO. Yes, but there is another provision Congressman Villafuerte that says here that transport of passengers and cargo by air or sea to foreign countries is zero-rated. There is another provision that will apply to that.

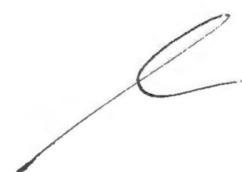
REP. VILLAFUERTE. Zero-rate. But what I'm trying to say is that you are not applying the word "exclusively" to a particular vessel or airplane, you know. It is the used [sic] that you are saying, but can be done both ways, domestic and foreign or international, even if that plane is used for both.

CHAIRMAN RECTO. That's right. That's ratably.

REP. VILLAFUERTE. *So, in other words, that particular airplane will not forgo the zero VAT even if it is used domestically.*

CHAIRMAN RECTO. *If you uses [sic] it domestically...*

REP. VILLAFUERTE. *And also internationally.*



> CHAIRMAN RECTO. *...then you cannot get a refund. The portion, again, let me reiterate...*
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> REP. VILLAFUERTE. *The portion on foreign only.*
>
> CHAIRMAN RECTO. *Yes, that's right.*
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> REP. VILLAFUERTE. That's why, I'm saying (Inaudible/Did not use the microphone)...
>
> CHAIRMAN RECTO. We'd be willing to work with you but at the moment, at the moment, that's how the Senate interprets the different sections in relation to international and sea, overseas travel. But we'd be willing to work with the House and the Chairman on the House panel on the appropriate languages.[23] (Emphasis supplied)

Based on the above deliberations, it was clarified that the when services are provided to persons engaged in both domestic and international shipping or air transport operations, the application of the zero percent VAT must be pro-rated between the recipient's international and domestic operations. Only those services attributable to international operations are subject to zero percent VAT.

Additionally, the non-imposition of zero percent VAT to domestic shipping or air transport operations was confirmed by Senator Ralph G. Recto during Senator Sergio R. Osmeña III's interpellation on the Republic Act No. 9337 Bicameral Conference Committee Report:

> Senator Osmeña. *At the top of page 9, lines 1 to 3, the provision reads as follows: "Services rendered to PERSONS engaged in international shipping OR INTERNATIONAL AIR TRANSPORT OPERATIONS, INCLUDING LEASES OF PROPERTY FOR USE THEREOF;". Now, Mr. President, may I just have to clarify this because I could be engaged in international business but some of my sales might be domestic. Does this include domestic sales?*
>
> Senator Recto. *No. Mr. President. Section 1112 [sic] identifies that the ones that are exported or consumed externally or the transport of passengers and cargo from the Philippines outside the Philippines are zero-rated.*
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> Senator Osmeña. *So it is allocated ratably between zero-rated and nonzero-rated?*
>
> Senator Recto. *Yes, ratably, between zero-rated and nonzero-rated. That is correct.*

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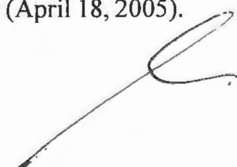
[23] BICAMERAL CONFERENCE COMMITTEE ON THE DISAGREEING PROVISIONS OF H.B. NOS. 3705 AND 3555 AND SB NO. 1950 RE: VALUE-ADDED TAX BILLS, HOUSE COMMITTEE ON WAYS AND MEANS, SENATE COMMITTEE ON WAYS AND MEANS, 18TH CONGRESS, 1ST SESSION, PP. 71-74 (April 18, 2005).



> Senator Osmeña. Thank you for this clarification.[24] (Emphasis supplied)

Based on the foregoing, the legislative intent behind Section 108(B)(4), even before the enactment of the TRAIN Act, is clear. When a shipping or air transport company is engaged in both international and domestic operations, the VAT zero-rating only applies to services rendered to it which are related to its international operations.

This legislative intent was even strengthened by the implementing rules of Section 108(B)(4) of the NIRC under Section 4.108-5 of RR No. 16-2005, which confirmed the interpretation that the VAT zero-rating privilege only extends to services rendered to international shipping or air transport operators in relation to their international operations, and not their domestic operations.

Section 4.108-5 of RR No. 16-2005 provides that:

> Sec. 4.108-5. Zero-Rated Sale of Services. –
>
> . . . .
>
> (b) Transactions Subject to [Zero Percent] VAT Rate. – The following services performed in the Philippines by a VAT-registered person shall be subject to [zero percent] VAT rate:
>
> . . . .
>
> (4) Services rendered to persons engaged in international shipping or air transport operations, including leases of property for use thereof; **Provided, however, that the services referred to herein shall not pertain to those made to common carriers by air and sea relative to their transport of passengers, goods or[,] cargoes from one place in the Philippines to another place in the Philippines, the same being subject to [12%] VAT under Sec. 108 of the Tax Code starting Feb. 1, 2006**. (Emphasis supplied)

It bears stressing that interpretations of administrative agencies in charge of enforcing a law are entitled to great weight and consideration by the courts, unless such interpretations are in a sharp conflict with the governing statute or the Constitution and other laws.[25]

Notably, under the TRAIN Act, Section 108(B)(4) was amended, and now reads as follows:

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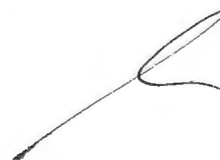
[24] II Record, Senate, 13th Congress, 1st Session (May 10, 2005).

[25] *Nestle Philippines, Inc. v. Court of Appeals* 280 Phil. 548 (1991) [Per J. Feliciano, First Division].



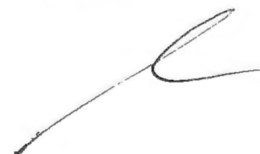
> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> (A) . . . .
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to [zero percent] rate:
>
> . . . .
>
> 4) Services rendered to persons engaged in international shipping or international air transport operations, including leases of property for use thereof: *Provided, That these services shall be exclusively for international shipping or air transport operations*; . . . . (Emphasis supplied)

However, the Congressional deliberations in relation to the enactment of the TRAIN Act show that in adding the *proviso* in Section 108(B)(4) of the NIRC, the legislature never intended to give a new interpretation to the said provision, but only sought to emphasize that the previous provision under Section 108(B)(4) was being abused, as well as to clarify its application in order to avoid said abuse in the future.

In order to fully understand the rationale for the insertion of the *proviso*, there is a need to look into its legislative history.

The *proviso* was originally proposed by Representative Dakila Carlo E. Cua (**Representative Cua**), the Chairperson of the Ad Hoc Subcommittee on Tax Reform for Acceleration and Inclusion, Committee on Ways and Means, in House Bill No. 4774. However, Congressional deliberations on the TRAIN Act reveal that it was the Department of Finance (**DOF**) which actually proposed the insertion of the *proviso* in Section 108(B)(4) of the NIRC:

> THE CHAIRPERSON [REPRESENTATIVE CUA]. . . . . So number four, *may typo lang dun sa* line 37 engaged for international shipping. Okay. *So let me just try to clarify 'no, ang ginagawa kasi ng DOF dito, services rendered to persons engaged in international shipping or international air transport operations, including lease of property for use thereof provided that these services shall be exclusively for international shipping or air transport operations.* ***So parang naninigurado na hindi puwede doon sa domestic or non-international shipping or transport operations.*** So *may... sinimplipay* (simplify) *ko lang, tinanggal ko 'yung proviso ginawa ko lang* services rendered to persons engaged for international... *hindi tinanggal ko pala 'yung* to persons engaged... "services rendered for international shipping or international air transport operations, including leases of property for use thereof". ***Kasi iyon lang naman talaga***

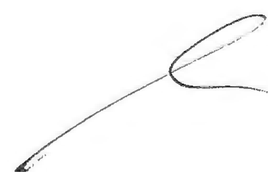


> ***exempted. Tama ba? Iyon lang naman talaga.*** *So tinanggal lang 'yung* "to persons engaged in" *at nilagay ko* "services rendered for international shipping". It's the same idea. *Pero kasi parang weird lang kasi nung proviso.*
>
> . . . .
>
> THE CHAIRPERSON. *Pagka-ire-retain natin... totoo naman. Pag ni-retain lang kasi natin, lalagyan nila ng proviso. Ang prino-propose nila, provided that these services shall be exclusively for international shipping or air transport operation. So, ang sinasabi nila, kung ikaw 'yung person, you have both activities that are international shipping, you may also have non-international shipping or air transport operations, 'yun lang doon sa international shipping and air transport mo ang zero rate or zero percent VAT. Ibig sabihin, huwag mo gamitin 'yung privilege mo for your activities not related to the international shipping operations. Halimbawa, meron ka ring domestic, hindi ka zero doon sa domestic, zero ka sa international.* So, that's why I proposed to word it "Services rendered for international shipping or international air transport operations including lease of property for use thereof." *Tanggalin mo yung* person, it just defines *'yung* transaction and, services for those activities. Okay. Do you agree with it? (Emphasis supplied)

Responding to the queries of Representative Antonio L. Tinio, Mr. Karl Kendrick T. Chua (**Chua**), the Undersecretary of the Department of Finance, shed light on the reason why the *proviso* was sought to be inserted by the DOF, which is to make the application of Section 108(B)(4) of the NIRC *clear* in order to avoid potential leakage, and to *add more teeth to the law*:

> REP. TINIO. That's why I'm clarifying the existing law, paano ba 'yan ina-apply and why it's the language... why does it refer to persons?
>
> MR. CHUA. Mr. Chair, I think, Congressman Tinio, *yung* persons actually it's I think it's a legal term, so I cannot comment on that. But *si* Chairman explained it quite well. I'll just use a clear example. *A Philippine Airlines may both [sic] domestic and international flights. So, Philippine Airlines is engaged in international shipping or transport, but this cannot be used for Manila-Cebu routes, it should be used for Manila-Hong Kong.* <u>*We just want to make it clear, because that is a potential leakage.*</u> ***Kasi hindi natin alam what the company really does. It's just to add more teeth to the law.*** (Emphasis supplied)

Additionally, when asked by Representative Cua for her opinion on how Section 108(B)(4) of the NIRC should be phrased, Ms. Marissa O. Cabreros (**Cabreros**), Director III, Assistant Commissioner, Legal Service, of the Bureau of Internal Revenue, made it clear that the *proviso* is intended to emphasize the limitation of the application of Section 108(B)(4) to international operations only, because of the abuse in the implementation of the zero rating under this provision prior to the enactment of the TRAIN Act:



> THE CHAIRPERSON. So, let's just decide, are we fine with the... Okay *lang naman sa akin* if you want the longer way of writing it. *'Yung may* persons *pero may* provision or do we go with the shortcut, services rendered for international shipping. It really doesn't *ano naman*, styling *lang 'yan*. Which *(sic)* the same objective, it's a different way of saying it. Ma'am, you're the expert, what do you think?
>
> MS. CABREROS. Sir, yeah, it's the same objective. *However, with due respect, sana po 'yung dating provision with the proviso just to emphasize na dati na-abused yung provision na 'yun, that's why we're limiting it with the proviso na limited only on international operation. Kung baga 'yung dating wordings kasi ng tax code is, services rendered to persons engaged in international shipping or international air transport operation including leases of property for use thereof. Para ma-emphasize na what is new is the proviso* ***to emphasize na we are limiting it kasi na-abused dati yung implementation nung zero rating***. (Emphasis supplied)

Nothing in these deliberations show that prior to the enactment of the TRAIN Act, Section 108(B)(4) of the NIRC applied to all services rendered to a person engaged in international shipping or air transport operation, without qualification as to service. What is clear from the said deliberations is that the lawmakers recognized that the previous provision was abused by taxpayers. This recognition supports the position that the legislature did not intend, in the first place, to make VAT zero-rating applicable to domestic shipping or air transport operations. In adding the *proviso* in the current version, the legislature only sought to codify what was already the position of the BIR even prior to the enactment of the TRAIN Act, i.e., that the VAT zero-rating privilege only extends to services rendered to international shipping or air transport operators in relation to their international operations, and not their domestic operations. In other words, there was no intention to change the coverage and application of Section 108(B)(4) of the NIRC. Instead, the legislature only intended to clarify the wording of the same, to abate future abuse of the provision.

Under the *principle of legislative approval of administrative interpretation by reenactment*, the re-enactment of a statute, substantially unchanged, is persuasive indication of the adoption by Congress of a prior executive construction.[26] The amendment in Section 108(B)(4) of the NIRC specifically limiting the services subject to zero-rating to those exclusively for international or air shipping, affirms the interpretation of the BIR under Section 4.108-5 of RR No. 16-2005, i.e., that the VAT zero-rating privilege extends only to services rendered to international shipping or air transport operators in relation to their international operations, and not their domestic operations, and confirms that such regulation carries out the legislative intent.

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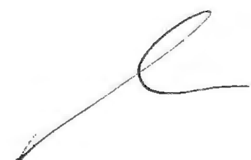
[26] *Dumaguete Cathedral Credit Cooperative v. Commissioner of Internal Revenue*, 624 Phil. 650 (2010) [Per J. Del Castillo, Second Division].



Violation of the equal protection clause

I further submit that extending the VAT zero-rating privilege to sales of services in relation to the domestic operations of international air or shipping transport operators may be violative of the equal protection clause.[27] In effect, it gives such operators a privilege not enjoyed by their domestic counterparts *for the same local operations* just because they are separately engaged in international air or shipping transport.

The principle of equal protection ensures that all persons under like circumstances or conditions are given the same privileges and required to follow the same obligations.[28] However, equal protection permits reasonable classification. The Court has ruled that one class may be treated differently from another when classification is germane to the purpose of the law, concerns all members of the class, and applies equally to present and future conditions.[29]

Certainly, granting a VAT zero-rating privilege to international transport operators in relation to their international operations, rests on real and valid distinctions. They engage in operations and render services that domestic carriers do not provide.

However, when such international transport operators also engage in domestic operations, it is my respectful view that the privilege provided due specifically to their international operations should not apply to their domestic operations. In such case, the substantial distinction that separates them from purely domestic carriers–and which justifies the preferential treatment–no longer exists. Extending the VAT zero-rating privilege to their local operations gives rise to undue discrimination against their domestic counterparts engaged in the very same local operations. Both types of operators now engage in the same activity, i.e., transporting goods or passengers within the Philippines.

Finally, granting this privilege exclusively to international operators puts purely domestic operators at a disadvantage. It distorts the level playing field in the industry by favoring one group over another, based on the international or domestic nature of their overall operations.

ACCORDINGLY, I concur with the Decision to **PARTLY GRANT** the Petition. The Decision, dated July 12, 2016, and the Resolution, dated

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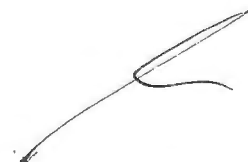
[27] CONST., art. III, sec. 1.

[28] *Conrado L. Tiu, at al., v. Court of Appeals*, 361 Phil. 229 (1999) [Per J. Panganiban, *En Banc*].

[29] *Zomer Development Company, Inc. v. Court of Appeals*, 868 Phil. 93, 108 (2020) [Per J. Leonen, *En Banc*].



January 17, 2017, of the Court of Tax Appeals *En Banc* in CTA EB No. 1408, should be **REVERSED**.

The case should be **REMANDED** to the Court of Tax Appeals Third Division for the proper determination of the refundable or creditable amount due to petitioner Manila Peninsula Hotel, Inc.

MARIA FILOMENA D. SINGH
Associate Justice