



Festivities in the Philippines are frequent. Some of them have religious significance like Christmas and town fiestas, but most of the time they are held in commemoration of life's milestones like birthdays and anniversaries. In our country, majority of the celebrations do not happen without serving meat dishes. However, holding a party is a drain to the pocket, oftentimes resulting in cost cutting. Now, comes cheap meat products.

"Botcha" as commonly understood in the Philippines means "*double dead meat*" of pigs and cows. Sometimes poultry products are also sold as "botcha". Chances are that the cows, pigs, or chicken to be slaughtered are already dead due to certain disease before they are cut up for sale. The term "botcha" is commonly understood to be of Chinese (Fookien) origin, "*bo*" (do not) and "*cha*" (to eat or something to eat).

The distinguishing characteristics of botcha are foul smell, pale color with greenish-gray or bluish hue, dark side, hair remain stuck to the meat's fat even after having been dipped in boiling water, sticky and slippery. They are usually sold frozen in boxes and are unusually cheap. Fresh meat (not botcha) has pinkish or reddish color with some traces of blood. Botcha should be avoided because they contain germs and microorganisms harmful to humans when consumed even if such meat has been cooked.

According to newspaper reports¹, smuggling occurs because the cost of production of the meat and poultry industry in the country is not competitive. The high cost of production is attributed to the following: (a) the use of the services of traders (middlemen) in order to reach the consumers, (b) high cost of animal feeds, (c) high cost of gasoline, and (d) the rising toll fees on express roads. The only market of backyard raisers are the wet markets, not the food processors. In the case of "*chicharon*" (pork rind), the leading manufacturers depend mostly on

¹ Jeannette I. Andrade, *Smuggling not only cause of pork problems – Biazon*, Philippine Daily Inquirer, May 1, 2012.

imports as the primary source of pork skin. Local hog raisers cannot meet the manufacturers' demand in terms of both quality and quantity. Unfortunately, the domestic meat processors face the same predicament.

The Bureau of Customs (BOC), as a result of the meat smuggling, started the imposition of 100% examination of all reefer vans to make sure that meat smuggling, particularly pork is averted. However, other food processors complain about the slower pace of the BOC in processing their importations. The hog traders estimate that loss to the industry is around P8.5 billion from July 2011 to February 2012.



Bear in mind that not all meat products unfit for human consumption are imported. Locally produced "botcha" may also come from illegally slaughtered animals. These toxic meat may also be in the form of processed products like "tocinos", "tapas", "longanisas" and hotdogs specially when they are sold beyond their expiration date.

Based on BOC's record of confiscation, the imported botcha usually come from China.

Legislative response

As a result of the proliferation of imported "botcha", some senators filed resolutions in order to investigate the pernicious proliferation of the products. The following Senate resolutions have been filed:

1. **PSR 760 (Senator Vicente C. Sotto III)** – *Resolution calling on the Senate Committee on Trade and Commerce and other appropriate*

committees to conduct an inquiry, in aid of legislation, on the alleged smuggling of foreign hog and poultry products which, with the continued over-importation and smuggling, adversely affects the livelihood of local meat producers, meat market industry and the consumers;

2. **PSR 671 (Senator Manuel "Lito" M. Lapid)** – *Resolution urging the Committee on Agriculture and Food, Committee on Finance and other appropriate committees to conduct an inquiry, in aid of legislation, on the reported smuggling of meat in the country with the end in view of putting an end to this illegal act and enact measures to protect our local livestock raisers;* and
3. **PSR 763 (Senator Francis N. Pangilinan)** – *Resolution directing the Committee on Agriculture and Food to look into the programs and policies on meat importation of the Department of Agriculture on the need to enact legislation to strengthen the livestock industry of the country and protect local meat raisers against smuggling.*

The World Trade Organization (WTO)

The Philippines became an original member of the WTO on January 1, 1995, when the organization came into existence. The WTO consists of several agreements affecting the importation of poultry and meat products, thus:

1. **Sanitary and Phytosanitary Measures (SPS)** – The SPD is a built in "safety net" against the protectionist barriers to trade in the guise of health and safety measures. In the same manner, the SPS may also be used to deter the importation of poultry and meat products that are below SPS standards. Because of the SPS rules, every WTO member countries must align their respective national standards with the internally recognized organizations². In fact, the WTO allows member countries like the Philippines to adopt and enforce a more stringent set of rules or requirements³.
2. **Rules of Origin⁴** – Rules of Origin (ROO) is one of the WTO agreements where the criteria to determine the national source of the product is determined. The ROO has the following uses: (a) to implement measures and instruments of commercial policy such anti-dumping duties

² The WTO recognized international organizations are: (a) the FAO/WHO Codex Alimentarius Commission (for safety food standards), (b) International Office of Epizootics (animal health standards), and (c) International Plant Protection Convention (plant health standards).

³ Governments enforcing a stricter standard must be able to demonstrate a scientifically justifiable basis for such standards. They must also show that the SPS measures to be adopted do not cause distortions in the flow of supplies from foreign sources.

⁴ Technical Information on Rules of Origin, http://www.wto.org/english/tratop_e/roi_e/roi_e.htm, 10:00 a.m.

and safeguard measures, (b) to determine whether the imported products shall receive most-favored nation (MFN) treatment or preferential treatment, (c) for the purpose of trade statistics, (c) for the application of labelling and marking requirements, and (d) for government procurement. Due to the application of the ROO, it was determined that “*botcha*” came from China, while beef contaminated by the “*mad cow disease*” came from the European countries.

3. Pre-shipment Inspection – Pre-shipment Inspection (PSI) is the practice of employing specialized private companies, or independent entities to check shipment details, especially the price, quantity, and quality of the product to be imported. The PSI agreement establishes an independent review procedure, administered jointly by the International Federation of Inspection Agencies (IFIA), representing the inspection agencies, and the International Chamber of Commerce (ICC), representing the exporters. Its purpose is to resolve disputes between an exporter and an inspection agency. The PSI is an important tool to deter “*botcha*” importation because the inspection is done in the exporting country. In spite of the PSI, “*botcha*” is still being successfully imported into the Philippines.

Laws regarding the importation of botcha

The following laws affect “*botcha*” importation:

1. **The Tariff and Customs Code of the Philippines (TCCP)⁵** – The TCCP prohibits the importation of the following products: (a) dynamite, gunpowder, firearms, and the like, (b) printed articles containing subjects like treason rebellion, insurrection, sedition and subversion, (c) pornographic materials, (d) articles, instruments, drugs and substances inducing abortion, (e) gambling paraphernalia, (f) lottery and sweepstakes tickets unauthorized by the Philippine government, (g) precious metals that do not indicate their actual fitness of quality, (h) **any adulterated or misbranded food or any adulterated or misbranded drug in violation of the “Food and Drugs Act”**, (i) prohibited drugs, (j) opium pipes, (k) all other articles and parts thereof, the importation of which prohibited by law or rules and regulations issued by competent authority. It is interesting that the TCCP contains an obscure provision regarding the importation of “*botcha*”.

2. **RA 7394, The Consumer Act of the Philippines (April 13, 1992)** - The Consumer Act directly prohibits the importation of “*botcha*”. In its *Declaration of Basic Policy*⁶, it states the following: (a) protection against hazards to health and safety, (b) protection against deceptive, unfair and unconscionable sales acts and practices, (c) provision of information and education to facilitate sound choice and the proper exercise of rights by the consumer, (d) provision of adequate rights and means of redress, and (e) involvement of consumer representatives in the formulation of social and economic policies. The law prohibits and imposes penalties for the “*manufacture for sale, offer for sale, distribute in commerce, or import into the Philippines any consumer product which is not in conformity with an applicable consumer product quality or safety standard promulgated in this Act*”⁷. In case of unprocessed food, the provincial, municipal and city governments shall regulate the preparation and sale of meat, fresh fruits, milk, fish, vegetables and other foodstuff for public consumption, pursuant to the Local Government Code (RA 7160).
3. **RA 9296, The Meat Inspection Code of the Philippines (May 12, 2004)** - According to the law, the State shall ensure the protection of human and animal health against direct and indirect hazards and in particular the protection of:
 - a. Consumers against zoonotic diseases, **meat-borne infection**, intoxication and hazards associated with residue from treatment or exposure of the slaughter animal;
 - b. Meat handlers against occupational zoonoses;
 - c. Livestock against the spread of infections, intoxications and other diseases of socio-economic importance as detectable at meat inspection and as consistent with the relevant animal health regulations; and
 - d. Consumers and the meat processing industry against economic losses from **meat of inferior quality** or abnormal properties⁸.

The National Meat Inspection Commission renamed as the National Meat Inspection Service (NMIS) shall serve as the sole national

⁵ Section 101, Prohibited Importation, Tariff and Customs Code of the Philippines.

⁶ Article 2, RA 7394, The Consumer Act of the Philippines.

⁷ Article 18, Prohibited Acts (a), RA 7394, The Consumer Act of the Philippines.

⁸ Section 3, Principles and Objectives, RA 9296, The Meat Inspection Code of the Philippines.

controlling authority on all matters pertaining to meat and meat product inspection and hygiene⁹. The law further provides that any animal manifesting during ante-mortem inspection any disease or condition that shall warrant outright condemnation shall be marked "CONDEMED", isolated immediately and disposed of under the supervision of the inspector¹⁰.

4. **RA 7160, The Local Government Code of 1991** – The law mandates the *health officer* of every local government unit (LGU) to take charge of the health services of the particular local government. He is tasked to formulate measures and strategies to be used as the basis for the enactment of health resolutions. He is the chief adviser on matters of health to the mayor or the governor as the case may be. One of his specific functions is to "*direct the sanitary inspection of all business establishments **selling food items** or providing accommodations such as hotels, motels, lodging houses, pension houses, and the like, in accordance with the Sanitation Code*¹¹."

In the same manner, the law mandates the LGU *veterinarian* to make recommendations to the particular mayor or governor regarding veterinary matters. One of his mandated duties is to "*advise the governor or the mayor, as the case may be, on all matters pertaining to the **slaughter of animals for human consumption** and the regulation of slaughterhouses*¹²."

Administrative issuances

In addition to the laws already in place, administrative orders are also issued. Consider the following issuances:

1998 – The Department of Agriculture issued DA Administrative Order No. 4, Series of 1998¹³. It required that upon the application of the letter of credit, or other forms of payment, for the importation of agricultural products, such application must be accompanied by a *Sanitary and Phytosanitary (SPS) Certificate* from the DA and/or other concerned agencies. Further, the release of the imports shall be subject to inspection by the DA, or its authorized agencies at the port of entry to ensure compliance with SPS standards. Upon release from customs custody, such imported products shall also be subject to existing SPS inspection regulations.

2000 – DA Administrative Order No. 18, Series of 2000 was issued requiring an import permit (SPS) **prior** to the importation of live animals, plants, fishes, and their products. Prior to any importation must be accompanied by a Sanitary/Phytosanitary/Health Certificate **from the country of origin**. Importations without the required import permit are deemed **illegal** and are subject to the pertinent provisions of RA 7394 (Consumer Act of the Philippines of 1992) and to existing rules and regulations.

2007 – In January 12, 2007, the BOC issued Customs Memorandum Order 46-2007 lays down the procedures on the importation of meat products to render such importation fit for human consumption. The CMO applies to confiscated **smuggled meat and meat products** on regarding "rendering" activities", thawing processes, movement of the reefer vans going to rendering plants, loading and unloading processes in the rendering plants, disinfection of the premises of the rendering plant, and the burning of the packaging materials used in the importation.

2007 – In February 22, 2007, the BOC issued Customs Memorandum Order No. 4-2007 implementing the Memorandum of Agreement between the Department of Finance and the Department of Agriculture. The CMO covers all importations of agricultural and fishery products entered under consumption or warehousing entries, and those that are under transshipment permits, more particularly, live animals, fish, trees and plants; **fresh, chilled, and or frozen meat and meat products**, fish and other aquatic products, dairy products, plant and plant products, being regulated by the DA, its bureaus and its attached agencies.

2007 – Customs Memorandum Circular No. 271-2007 was issued by the BOC on September 27, 2007. It temporarily lifted the imposition of special safeguard (SSG) duty to allow the importation of chicken under HS Code 0207.1492. The pertinent provision of RA 8800 was temporarily suspended – "*Sec. 21. Authority to impose the Special Safeguard Measure – "The Secretary of Agriculture shall issue a department order requesting the Commissioner of Customs, through the Secretary of Finance, to impose on additional special safeguard duty on an agricultural product, consistent with the international treaty obligations, if: (a) Its cumulative import volume in a given year exceeds the trigger volume, subject to conditions stated in this Act, in Section 23 below, or but not concurrently; and (b) its actual c.i.f. import price is less than the trigger price subject to the conditions stated in this Act, in Section 24 below."*

⁹ Section 5, The National meat Inspection Service (NMIS), RA 9296, The Meat Inspection Code of the Philippines.

¹⁰ Section 18, Outright Condemnation, RA 9296, The Meat Inspection Code of the Philippines.

¹¹ Article 8, Section 478, The Health Officer, Qualifications, Powers and Duties, Title 5 – Appointive Local Officials Common to all Municipalities, Cities and Provinces.

¹² Article 19, The Veterinarian, Section 488-Qualifications, Powers and Duties, Title 5 – Appointive Local Officials Common to all Municipalities, Cities and Provinces.

¹³ The DA Administrative Order No. 4 was issued by DA Secretary Salvador Escudero III, on May 27, 1998.

Position of the Meat Importers and Traders Association, Inc.

The domestic hog and poultry raisers are concerned on the “rampant” smuggling of “botcha” (contaminated meat and poultry) as well as “flooding the local market” of such imports. As a consequence, the importers of such products suffered delays and additional costs in the form of storage, electrical and demurrage charges due to the stricter implementation of monitoring and 100% inspection by the BOC to ferret out what the hog raisers allege as technical smuggling¹⁴. The position of the Meat Importers and Traders Association¹⁵ is contained below:

1. The local hog and poultry industries are not “threatened to extinction”. On the contrary, whereas the Minimum Access Volume (MAV) started in 1996, in 2010 the hog production had grown by 46.18% or 601,690 MT while the chicken production had grown by 58.88% or 501,320 MT. In comparison, the production increase for pork is 11 times the port MAV of 54,210 MT while for chicken it is 21 times the poultry MAV of 23,490 MT. The production data for 2011 likewise show admirable growth for the sectors. If “20% of the backyard hog farmers had closed shop” that would be equivalent to a 14% drop in hog production since producers claim backyard farms account for 70% of total production.
2. The 53 million kgs of chicken choice cuts represents paltry 3.92% of the 2010 chicken production of 1,353 million kgs.
3. The 115.5 million kgs of pork represents a mere 6.08% of the 2010 pork production of 1,898 million kgs.
4. It has been established under the previous administration that the commitment of the Philippines to the WTO did not expire on June 25, 2005 but continues until the time a new round (DOHA) is concluded and agreed upon.
5. The Philippines runs on free enterprise and free trade, hence, there is no restriction on the production of pork and poultry. In the same manner, there should be no restriction on the quantity of pork or poultry to be imported, as long as the DA issues the import permit and the Bureau of Customs clears the goods to enter the country. Importers may bring in pork and poultry under the MAV system as well as outside the MAV system. Production/

importation are determined by the producer/importer’s reading of the market and their commercial decisions.

6. **The claims of over-importation are grossly exaggerated and that the pork and poultry sectors are not “under threat of extinction”. Any over-supply is most likely due to over-production and not over-importation.**
7. With regard to the alleged *misdeclaration of pork meat as offal*, meat inspection is regulated by DA Administrative Order No. 16 issued by the then Secretary Angara in 2000. Under this system, the Philippines audits the meat inspection system of the exporting country. If deemed “equivalent” by PHL, an “Equivalency” agreement is signed. This agreement in effect deputizes the meat inspectors at the export side to conduct inspection and subsequently issue the corresponding International Health Certificate (IHC). Upon arrival in the PHL, the quarantine officer of the Bureau of Animal Industry (BAI) at the port of entry scrutinizes the documents including the IHR. He also does preliminary inspection of the container together with BOC personnel. If found to be in order, the BAI reseals the container. It is then transported to the designated cold storage. The National Meat Inspection Service (NMIS) is duly informed of the pending arrival of the said container. Upon arrival at the cold store, only the NMIS officer is authorized to break the seal and open the container. Neither the importer nor the cold storage operator is allowed to open the container without the express approval of the NMIS. The NMIS officer then observes the unloading of the container and procures samples as needed. Importers pay the BAI and the NMIS the corresponding fees. **Since 2000 up to now, we have not heard of any violations that were discovered by BAI/ NMIS.** As it is, the cargo has already been inspected at the country of exportation by the designated inspection agents of the PHL DA. To doubt IHC would be to impugn the integrity of the inspection system of our trading partner. As well the importer would be extremely foolish to attempt any misdeclaration and still present his cargo for inspection. **If there is misdeclaration it is unlikely to occur through this channel.**
8. With regard to alleged undervaluation, all entries pass through the BOC. Valuation is the jurisdiction of the BOC. If the cargo is cleared

¹⁴ Rey Gamboa, *An Appeal for a Balanced View*, The Philippine Star, May 21, 2012.

¹⁵ The Senate Tax Study and Research Office (STSR) sent a letter inquiry to the Meat Importers and Traders Association, Inc. in connection with PS Res. No. 760/761 and 763. The received the letter reply on May 19, 2012. The Association sent a copy of the letter to Senators Francis Pangilinan, Lito Lapid and Vicente Sotto III.

then the presumption of regularity that proper duties have been paid.

9. Lastly, importation of pork and poultry was liberalized in 1996. As such, importers are engaged in legal and legitimate activities that unfortunately have been harassed time and again by local producers. This protracted battle against importation is big drain on the precious time and resources of everyone, including the DA and Congress. It distracts from the urgent need to address the chronic hunger that prevails in our country. At the same time, it invites retaliation from our trading partners and threatens our exports.

The Bureau of Customs¹⁶

The following are the comments of the BOC:

1. The BOC issued Memorandum Order dated may 4, 2012 requiring all importations of frozen meat, poultry, agricultural and fish products to be first subjected to x-ray scanning by the BOC X-ray Inspection project at the port of entry preparatory to the preliminary examination of the foregoing shipments in accordance with the Department of Agriculture Administrative Order No. 11 Series of 1997.
2. Afterwards, at the Designated Information Area, the COO III shall conduct examination thereon in the presence of the representatives of the BOC's Customs Intelligence and Investigation Service, Task Force REACT (Revenue Enhancements for the Attainment of Collection Targets), the Department of Agriculture through its attached agencies such as the Bureau of Animal Industry, Bureau of Fisheries and Aquatic Resources and the consignee or its authorized agent.
3. Should there be a determination of misdeclaration during course of the preliminary examination, the witnesses can forthwith make a report of such misdeclaration and recommend to the District Collector the seizure of misdeclared goods.
4. To validate the actual contents of the container, in most cases, COO III are present at the consignee's cold storage warehouse to complete the 100% examination where packages are manually counted one by one and the commodities are identified. During the conduct

of 100% examination, the National Meat Inspection inspector is also present.

In a news item¹⁷, the hog growers and poultry raisers alleged that the BOC is reluctant in providing inward foreign manifest (IFM) to the former. The hog raisers and poultry raisers claim that if they are furnished the IFM for every importation, they will have an effective way of checking smuggling, specially frozen meat. The BOC, on the other hand said that it is not authorized to provide IFM to hog growers because it is the Bureau of Animal Industry (BAI) is the one conducting inspections of imported agricultural products like fish, meat and poultry. Furthermore, the BAI is under the Department of Agriculture. The BOC further suggests that a copy of the IFM may be secured from the shipping company.

The Department of Agriculture¹⁸

The following are the comments of the DA:

1. First, allow us to state that the Department of Agriculture and its relevant agencies (i.e. the Bureau of Animal Industry and the National Meat Inspection Service are deeply concerned on the issue of smuggling. The DA, being the principal agency mandated to promote development if the agricultural sector, is likewise disturbed by said reports and claims and have been in constant consultation with various stakeholders such as the hog and poultry raisers, meat importers and government agencies e.g. BOC, PEZA, ITDI, etc. in our efforts to address this common concern. Several meetings and initiatives are scheduled to put in place needed institutional reforms, both in the DA and the BOC. Nonetheless, we have instituted quick changes in our respective offices.
2. The discussion between the DA and the BOC for a harmonized inspection protocol for imported meat which is seen to tighten current controls has been scheduled. Also, we have instituted adjustments on our respective operations for better monitoring and inspection of meat arrivals.

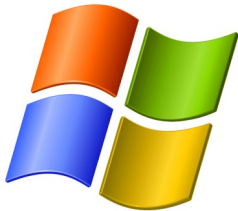
Although Christmas celebrations are over, the chances of consuming "botcha" products still persist because the lure buying of cheap meat is ever present.



¹⁶ Letter reply of the Bureau of Customs to the letter sent by the STSRO regarding "botcha" smuggling, dated June 15, 2012, from the Office of the Deputy Commissioner for Assessment and Operations Coordinating Group.

¹⁷ BOC refutes hog raisers' claim, The Philippine Star (B-2), June 13, 2012.

¹⁸ The Department of Agriculture through Secretary Proceso J. Alcala sent its comments on May 28, 2012.



**MICROSOFT PHILIPPINES, INC., Petitioner vs. COMMISSIONER OF INTERNAL REVENUE, Respondent, G.R. No. 180173, April 6, 2011 (Second Division).
Carpio, J.**

Facts:

This case involves the application of Section 108 of the National Internal Revenue Code (NIRC) of 1997 [Tax Reform Act, Republic Act (RA) No. 8424] , as amended, in particular paragraph (B)(2). This is a petition for review on certiorari questioning the October 24, 2007 ruling of the Court of Tax Appeals (CTA) which was decided *En Banc* (No. 258). The latter affirmed the August 31, 2006 pronouncement and January 8, 2007 Resolution of its Second Division in CTA Case No. 6681.

Petitioner in this case is Microsoft Philippines, Inc. (MPI), a value-added tax (VAT) taxpayer. MPI extends *marketing services* to both Microsoft Operations Pte Ltd. (MOP) and Microsoft Licensing, Inc. (MLI). MOP and MLI are non-resident foreign corporations and are affiliated. The marketing services rendered by MPI are paid for in foreign currency and qualify as zero-rated sales for VAT purposes under the NIRC, as amended.

The pertinent provision of the Tax Code states:

“SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –

(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:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported x x x;

(2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); x x x.”

In 2001 MPI had total sales of P261,901,858.99 and of said figure, P235,724,614.31 pertain to those derived from MOP and MLI. P26,177,244.31 alluded to sales to local customers. MPI paid VAT input taxes on its domestic purchases of goods and services in the amount of P11,449,814.99. On December 27, 2002, MPI filed an administrative claim for refund involving the latter amount. Subsequently, due to the Bureau of Internal Revenue’s (BIR) inaction, MPI filed a petition for review with the CTA.

The CTA 2nd Division denied the claim of MPI stating that it failed to comply with the invoicing requirements of Sections 113 and 237 of the NIRC and Section 4.108-1 of Revenue Regulations (RR) No. 7-95. The CTA 2nd Division said that MPI’s official receipts (ORs) did not contain the word “zero-rated” on its face, hence the ORs cannot be considered as evidence in proving zero-rated sales for VAT purposes. MPI’s motion for reconsideration (MR) was denied by the CTA 2nd Division. Then MPI’s petition for review with the CTA *En Banc* was also denied, affirming the 2nd Division’s Decision of August 31, 2006 and Resolution dated January 8, 2007. The case reached the Supreme Court (SC) for decision.

Issue:

Is it necessary to print the word “zero-rated” in the OR in order to be entitled to a claim for a tax credit or refund of VAT input taxes?

Held:

The SC pronounced that the petition lacks merit. The court said that “X x x, a tax credit or refund, like tax exemption, is strictly construed against the taxpayer. The taxpayer claiming the tax credit or refund has the burden of proving that he is entitled to the refund or credit, in this case VAT input tax, by submitting evidence that he has complied with the requirements laid down in the tax code and the BIR’s revenue regulations under which such privilege of credit or refund is

accorded.”

The SC cited Section 113 of the NIRC relative to *Invoicing and Accounting Requirements for VAT-Registered Persons*, Section 237 involving *Issuance of Receipts or Sales or Commercial Invoices* and, Section 4.108-1 of RR 7-95 on *Invoicing Requirements*. The concerned section of the RR states:

“Sec. 4.108-1. Invoicing Requirements. - All VAT-registered persons shall, for every sale of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of seller;
2. x x x;
3. x x x;
- X x x;
5. **the word “zero-rated” imprinted on the invoice covering zero-rated sales; and x x x.”**

The SC said that the findings of fact of the CTA should not be disturbed unless the same is not supported by substantial evidence. The SC in ruling against MPI, likewise declared:

“We have ruled in several cases that the printing of the word “zero-rated” is required to be placed on VAT invoices or receipts covering zero-rated sales in order to be entitled to claim for tax credit or refund. In Panasonic v. Commissioner of Internal Revenue, we held that the appearance of the word “zero-rated” on the face of invoices covering zero-rated sales prevents buyers from falsely claiming input VAT from their purchases when no VAT is actually paid. Absent such word, the government may be refunding taxes it did not collect.” (Underlining supplied)



COMMISSIONER OF INTERNAL REVENUE (CIR), Petitioner, vs. FILINVEST DEVELOPMENT CORPORATION (FDC), Respondent, G.R. No. 163653, July 19, 2011. And,

CIR, Petitioner, vs. FDC, Respondent, G.R. No. 167689, July 19, 2011. (En Banc). Perez, J.

Facts:

This case involves a twin petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure. The pertinent proviso of said law provides:

APPEAL BY CERTIORARI TO THE SUPREME COURT

SECTION 1. Filing of petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth. (1a, 2a)

Respondent Filinvest Development Corporation (FDC) is a holding company which owns 80% of the outstanding shares of Filinvest Alabang, Inc. (FAI) and 67.42% of the outstanding shares of Filinvest Land, Inc. (FLI). The antecedent events are the following:

“X x x. On 29 November 1996, FDC and FAI entered into a Deed of Exchange with FLI whereby the former both transferred in favor of the latter parcels of land appraised at P4,306,777,000.00. In exchange for said parcels which were intended to facilitate development of medium-rise residential and commercial buildings, 463,094,301 shares of stock of FLI were issued to FDC and FAI. As a result of the exchange, FLI's ownership structure was changed to the extent reflected in the following tabular presentation, viz.:

Stockholder	Number and Percentage of Shares Held Prior to the Exchange		Number of Additional Shares Issued	Number and Percentage of Shares Held After the Exchange	
FDC	2,537,358,000	67.42%	42,217,000	2,579,575,000	61.03%
FAI	0	0	420,877,000	420,877,000	9.96%
OTHERS	1,226,177,000	32.58%	0	1,226,177,000	29.01%
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	3,763,535,000	100%	463,094,301	4,226,629,000	(100%)”

Pursuant to the above arrangements, FLI on January 13, 1997 requested a ruling from the Bureau of Internal Revenue (BIR) declaring that no gain or loss ought to be recognized in the said transactions. In response, the BIR issued a ruling (No. S-34-046-97, February 3, 1997) declaring that the exchange is among

those found under the old NIRC (Section 34[c][2]) which states that “no gain or loss shall be recognized if property is transferred to a corporation by a person in exchange for a stock in such corporation of which as a result of such exchange said persons, alone or together with others, not exceeding four (4) persons, gains control of said corporation.”

On different dates in 1996 and 1997, FDC likewise extended advances in favor of the following affiliates: FAI, FLI, Davao Sugar Central Corporation (DSCC) and Filinvest Capital, Inc. (FCI). FDC also entered into a Shareholders' Agreement to form a Singapore-based joint venture (JV) [the “Project”] company named Filinvest Asia Corporation or FAC. FDC reported a net loss in its Annual Income Tax Return for the taxable year 1996, having paid its subscription by executing a Deed of Assignment transferring to FAC a portion of its rights in the Project worth P500.7 million.

Subsequently on January 3, 2000, FDC got a Formal Notice of Demand from the BIR, ordering it to pay deficiency income and DST's, plus interests and compromise penalties covering several Assessment Notices. The taxes were assessed on the supposed taxable gain realized by FDC on the various transactions it entered into.

Pursuant to the above arrangements, FLI on January 13, 1997 requested a ruling from the Bureau of Internal Revenue (BIR) declaring that no gain or loss ought to be recognized in the said transactions. In response, the BIR issued a ruling (No. S-34-046-97, February 3, 1997) declaring that the exchange is among those found under the old NIRC (Section 34[c][2]) which states that “no gain or loss shall be recognized if property is transferred to a corporation by a person in exchange for a stock in such corporation of which as a result of such exchange said persons, alone or together with others, not exceeding four (4) persons, gains control of said corporation.”

On different dates in 1996 and 1997, FDC likewise extended advances in favor of the following affiliates: FAI, FLI, Davao Sugar Central Corporation (DSCC) and Filinvest Capital, Inc. (FCI). FDC also entered into a Shareholders' Agreement to form a Singapore-based joint venture (JV) [the “Project”] company named Filinvest Asia Corporation or FAC. FDC reported a net loss in its Annual Income Tax Return for the taxable year 1996, having paid its subscription by executing a Deed of Assignment transferring to FAC a portion of its rights in the Project worth P500.7 million.

Subsequently on January 3, 2000, FDC got a Formal Notice of Demand from the BIR, ordering it to pay deficiency income and DST's, plus interests and compromise penalties covering several Assessment Notices. The taxes were assessed on the supposed taxable gain realized by FDC on the various transactions it entered into.

Issues:

G.R. No. 163653. - "THE COURT OF APPEALS ERRED IN REVERSING THE DECISION OF THE COURT OF TAX APPEALS AND IN HOLDING THAT THE ADVANCES EXTENDED BY RESPONDENT TO ITS AFFILIATES ARE NOT SUBJECT TO INCOME TAX."

G.R. No. 167689. - 1. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT THE EXCHANGE OF SHARES OF STOCK FOR PROPERTY AMONG FDC, FAI AND FLI MET ALL THE REQUIREMENTS FOR THE NON-RECOGNITION OF TAXABLE GAIN UNDER SECTION 34(c)(2) OF THE OLD NATIONAL INTERNAL REVENUE CODE (NIRC) [NOW SECTION 40(C)(2)(c) OF THE NIRC, AS AMENDED].

2. THE CA COMMITTED REVERSIBLE ERROR IN HOLDING THAT THE LETTERS OF INSTRUCTION OR CASH VOUCHERS EXTENDED BY FDC TO ITS AFFILIATES ARE NOT DEEMED LOAN AGREEMENTS SUBJECT TO DSTs UNDER SECTION 180 OF THE NIRC, AS AMENDED.

3. THE CA GRAVELY ERRED IN HOLDING THAT GAIN ON DILUTION AS A RESULT OF THE INCREASE IN THE VALUE OF FDC'S SHAREHOLDINGS IN FAC IS NOT TAXABLE.

Held:

G.R. No. 163653. -

The Supreme Court (SC) decided that the petition under G.R. No. 163653 is without merit. The court cited Section 179(b) of Revenue Regulation No. 2, to wit:

"Determination of the taxable net income of controlled taxpayer. - (A) DEFINITIONS. - When used in this section -

"(1) The term "organization" includes any kind, whether it be a sole proprietorship, a partnership, a trust, an estate, or a corporation or association, irrespective of the place where

organized, where operated, or where its trade or business is conducted, and regardless of whether domestic or foreign, whether exempt or taxable, or whether affiliated or not.

"(2) The terms "trade" or "business" include any trade or business activity of any kind, regardless of whether or where organized, whether owned individually or otherwise, and regardless of the place where carried on.

"(3) The term "controlled" includes any kind of control, direct or indirect, whether legally enforceable, and however exercisable or exercised. It is the reality of the control which is decisive, not its form or mode of exercise. A presumption of control arises if income or deductions have been arbitrarily shifted.

"(4) The term "controlled taxpayer" means any one of two or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interests.

"(5) The term "group" and "group of controlled taxpayers" means the organizations, trades or businesses owned or controlled by the same interests.

"(6) The term "true net income" means, in the case of a controlled taxpayer, the net income (or as the case may be, any item or element affecting net income) which would have resulted to the controlled taxpayer, had it in the conduct of its affairs (or, as the case may be, any item or element affecting net income) which would have resulted to the controlled taxpayer, had it in the conduct of its affairs (or, as the case may be, in the particular contract, transaction, arrangement or other act) dealt with the other members or members of the group at arm's length. It does not mean the income, the deductions, or the item or element of either, resulting to the controlled taxpayer by reason of the particular contract, transaction, or arrangement, the controlled taxpayer, or the interest controlling it, chose to make (even though such contract, transaction, or arrangement be legally binding upon the parties thereto).

"(B) SCOPE AND PURPOSE. - The purpose of Section 44 of the Tax Code is to place a controlled taxpayer on a tax parity with an uncontrolled taxpayer, by determining, according to the standard of an uncontrolled taxpayer, the true net income from the property and business of a controlled taxpayer. The interests controlling a group of controlled taxpayer are assumed to have complete power to

cause each controlled taxpayer so to conduct its affairs that its transactions and accounting records truly reflect the net income from the property and business of each of the controlled taxpayers. If, however, this has not been done and the taxable net income are thereby understated, the statute contemplates that the Commissioner of Internal Revenue shall intervene, and, by making such distributions, apportionments, or allocations as he may deem necessary of gross income or deductions, or of any item or element affecting net income, between or among the controlled taxpayers constituting the group, shall determine the true net income of each controlled taxpayer. The standard to be applied in every case is that of an uncontrolled taxpayer. Section 44 grants no right to a controlled taxpayer to apply its provisions at will, nor does it grant any right to compel the Commissioner of Internal Revenue to apply its provisions.

“(C) APPLICATION - Transactions between controlled taxpayer and another will be subjected to special scrutiny to ascertain whether the common control is being used to reduce, avoid or escape taxes. In determining the true net income of a controlled taxpayer, the Commissioner of Internal Revenue is not restricted to the case of improper accounting, to the case of a fraudulent, colorable, or sham transaction, or to the case of a device designed to reduce or avoid tax by shifting or distorting income or deductions. The authority to determine true net income extends to any case in which either by inadvertence or design the taxable net income in whole or in part, of a controlled taxpayer, is other than it would have been had the taxpayer in the conduct of his affairs been an uncontrolled taxpayer dealing at arm's length with another uncontrolled taxpayer.” (Underscoring provided)

The SC focused on the terms “controlled” and “controlled taxpayers” under paragraphs (3) and (4) of (A), Definitions. Said the SC:

“As may be gleaned from the definitions of the terms “controlled” and “controlled taxpayer” under paragraphs (a) (3) and (4) of the foregoing provision, it would appear that FDC and its affiliates come within the purview of Section 43 of the 1993 NIRC. Aside from owning significant portions of the shares of stock of FLI, FAI, DSCC and FCI, the fact that FDC extended substantial sums of money as cash advances to its said affiliates for the purpose of providing them financial assistance for their operational and capital expenditures seemingly indicate that the situation sought to be addressed by the

subject provision exists. From the tenor of paragraph (c) of Section 179 of Revenue Regulation No. 2, it may also be seen that the CIR's power to distribute, apportion or allocate gross income or deductions between or among controlled taxpayers may be likewise exercised whether or not fraud inheres in the transaction/s under scrutiny. For as long as the controlled taxpayer's taxable income is not reflective of that which it would have realized had it been dealing at arm's length with an uncontrolled taxpayer, the CIR can make the necessary rectifications in order to prevent evasion of taxes.

“Despite the broad parameters provided, however, we find that the CIR's powers of distribution, apportionment or allocation of gross income and deductions under Section 43 of the 1993 NIRC and Section 179 of Revenue Regulation No. 2 does not include the power to impute “theoretical interests” to the controlled taxpayer's transactions. Pursuant to Section 28 of the 1993 NIRC, after all, the term “gross income” is understood to mean all income from whatever source derived, including, but not limited to the following items: compensation for services, including fees, commissions, and similar items; gross income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; annuities; prizes and winnings; pensions; and partner's distributive share of the gross income of general professional partnership. While it has been held that the phrase “from whatever source derived” indicates a legislative policy to include all income not expressly exempted within the class of taxable income under our laws, the term “income” has been variously interpreted to mean “cash received or its equivalent”, “the amount of money coming to a person within a specific time” or “something distinct from principal or capital.” Otherwise stated, there must be proof of the actual or, at the very least, probable receipt or realization by the controlled taxpayer of the item of gross income sought to be distributed, apportioned or allocated by the CIR.

“Our circumspect perusal of the record yielded no evidence of actual or possible showing that the advances FDC extended to its affiliates had resulted to the interests subsequently assessed by the CIR. For all its harping upon the supposed fact that FDC had resorted to borrowings from commercial banks, the CIR had adduced no concrete proof that said funds were, indeed, the source of the advances the former provided its affiliates. While admitting that FDC obtained interest-bearing loans from commercial banks, Susan Macabelda - FDC's Funds Management Department Manager who

was the sole witness presented before the CTA - clarified that the subject advances were sourced from the corporation's rights offering in 1995 as well as the sale of its investment in Bonifacio Land in 1997. More significantly, said witness testified that said advances: (a) were extended to give FLI, FAI, DSCC and FCI financial assistance for their operational and capital expenditures; and, (b) were all temporarily in nature since they were repaid within the duration of one week to three months and were evidenced by mere journal entries, cash vouchers and instructional letters. (Emphasis added)

"X x x."

G.R. No. 167689. -

On the first issue, i.e., that the CA committed grave abuse of discretion in holding that the exchange of shares of stock met all the requirements for the non-recognition of taxable gain, the SC proclaimed:

"The paucity of merit in the CIR's position is, however, evident from the categorical language of Section 34 (c) (2) of the 1993 NIRC which provides that gain or loss will not be recognized in case the exchange of property for stocks results in the control of the transferee by the transferor, alone or with other transferors not exceeding four persons. Rather than isolating the same as proposed by the CIR, FDC's 2,579,575,000 shares or 61.03% control of FLI's 4,226,629,000 outstanding shares should, therefore, be appreciated in combination with the 420,877,000 new shares issued to FAI which represents 9.96% control of said transferee corporation. Together FDC's 2,579,575,000 shares (61.03%) and FAI's 420,877,000 shares (9.96%) clearly add up to 3,000,452,000 shares or 70.99% of FLI's 4,226,629,000 shares. Since the term "control" is clearly defined as "ownership of stocks in a corporation possessing at least fifty-one percent of the total voting power of classes of stocks entitled to one vote" under Section 34 (c) (6) [c] of the 1993 NIRC, the exchange of property for stocks between FDC FAI and FLI clearly qualify as a tax-free transaction under paragraph 34 (c) (2) of the same provision.

"Against the clear tenor of Section 34(c) (2) of the 1993 NIRC, the CIR cites then Supreme Court Justice Jose Vitug and CTA Justice Ernesto D. Acosta who, in their book *Tax Law and Jurisprudence*, opined that said provision could be inapplicable if control is already vested in the exchangor prior to exchange. Aside from the fact that the 10 September 2002 Decision in CTA Case No. 6182 upholding the

tax-exempt status of the exchange between FDC, FAI and FLI was penned by no less than Justice Acosta himself, FDC and FAI significantly point out that said authors have acknowledged that the position taken by the BIR is to the effect that "the law would apply even when the exchangor already has control of the corporation at the time of the exchange." X x x."

On the second issue involving DSTs, the SC citing Section 180 of the NIRC and Sections 3(b) and 6 of RR No. 9-94, ruled in favor of the CIR, hence:

"X x x, we find that the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997 qualified as loan agreements upon which documentary stamp taxes may be imposed. In keeping with the caveat attendant to every BIR Ruling to the effect that it is valid only if the facts claimed by the taxpayer are correct, we find that the CA reversibly erred in utilizing BIR Ruling No. 116-98, dated 30 July 1998 which, strictly speaking, could be invoked only by ASB Development Corporation, the taxpayer who sought the same. In said ruling, the CIR opined that documents like those evidencing the advances FDC extended to its affiliates are not subject to documentary stamp tax, to wit:

"On the matter of whether or not the inter-office memo covering the advances granted by an affiliate company is subject to documentary stamp tax, it is informed that nothing in Regulations No. 26 (Documentary Stamp Tax Regulations) and Revenue Regulations No. 9-94 states that the same is subject to documentary stamp tax. Such being the case, said inter-office memo evidencing the lendings or borrowings which is neither a form of promissory note nor a certificate of indebtedness issued by the corporation-affiliate or a certificate of obligation, which are, more or less, categorized as 'securities', is not subject to documentary stamp tax imposed under Section 180, 174 and 175 of the Tax Code of 1997, respectively. Rather, the inter-office memo is being prepared for accounting purposes only in order to avoid the co-mingling of funds of the corporate affiliates.

"In its appeal before the CA, the CIR argued that the foregoing ruling was later modified in BIR Ruling No. 108-99 dated 15 July 1999, which opined that inter-office memos evidencing lendings or borrowings extended by a corporation to its affiliates are akin to promissory notes, hence, subject to documentary stamp taxes. In brushing aside the foregoing

argument, however, the CA applied Section 246 of the 1993 NIRC from which proceeds the settled principle that rulings, circulars, rules and regulations promulgated by the BIR have no retroactive application if to so apply them would be prejudicial to the taxpayers. Admittedly, this rule does not apply: (a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or (c) where the taxpayer acted in bad faith. Not being the taxpayer who, in the first instance, sought a ruling from the CIR, however, FDC cannot invoke the foregoing principle on non-retroactivity of BIR rulings.

“Viewed in the light of the foregoing considerations, we find that both the CTA and the CA erred in invalidating the assessments issued by the CIR for the deficiency documentary stamp taxes due on the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997. In Assessment Notice No. SP-DST-96-00020-2000, the CIR correctly assessed the sum of P6,400,693.62 for documentary stamp tax, P3,999,793.44 in interests and P25,000.00 as compromise penalty, for a total of P10,425,487.06. Alongside the sum of P4,050,599.62 for documentary stamp tax, the CIR similarly assessed P1,721,099.78 in interests and P25,000.00 as compromise penalty in Assessment Notice No. SP-DST-97-00021-2000 or a total of P5,796,699.40. The imposition of deficiency interest is justified under Sec. 249 (a) and (b) of the NIRC which authorizes the assessment of the same “at the rate of twenty percent (20%), or such higher rate as may be prescribed by regulations”, from the date prescribed for the payment of the unpaid amount of tax until full payment. The imposition of the compromise penalty is, in turn, warranted under Sec. 250 of the NIRC which prescribes the imposition thereof “in case of each failure to file an information or return, statement or list, or keep any record or supply any information required” on the date prescribed therefor.” (Underscoring supplied)

On the final issue re that CA erred in holding that gain on dilution as a result of the increase in the value of FDC’s shareholdings in FAC is not taxable, the SC declared that no error can be ascribed on both the CTA and CA for invalidating the Assessment Notice issued by the CIR “x x x for the deficiency income taxes FDC is supposed to have incurred as a consequence

of the dilution of its shares in FAC.” The SC made mention of FDC’s Shareholders’ Agreement with RHPL and based on the same, it pronounced:

“Alongside the principle that tax revenues are not intended to be liberally construed, the rule is settled that the findings and conclusions of the CTA are accorded great respect and are generally upheld by this Court, unless there is a clear showing of a reversible error or an improvident exercise of authority. Absent showing of such error here, we find no strong and cogent reasons to depart from said rule with respect to the CTA’s finding that no deficiency income tax can be assessed on the gain on the supposed dilution and/or increase in the value of FDC’s shareholdings in FAC which the CIR, at any rate, failed to establish. Bearing in mind the meaning of “gross income” as above discussed, it cannot be gainsaid, even then, that a mere increase or appreciation in the value of said shares cannot be considered income for taxation purposes. Since “a mere advance in the value of the property of a person or corporation in no sense constitute the ‘income’ specified in the revenue law,” it has been held, x x x that it “constitutes and can be treated merely as an increase of capital.” Hence, the CIR has no factual and legal basis in assessing income tax on the increase in the value of FDC’s shareholdings in FAC until the same is actually sold at a profit.”

In relation to the featured case, under the present NIRC, as amended, Title VII treats of the DSTs that are imposed upon instruments and transactions. A DST is a tax on the privilege of issuing documents. However, the following documents and papers are not subject to stamp tax:

SEC. 199. Documents and Papers Not Subject to Stamp Tax. - The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:

(a) Policies of insurance or annuities made or granted by a fraternal or beneficiary society, order, association or cooperative company, operated on the lodge system or local cooperation plan and organized and conducted solely by the members thereof for the exclusive benefit of each member and not for profit.

(b) Certificates of oaths administered to any government official in his official capacity or of acknowledgment by any government official in the performance of his official duties, written

appearance in any court by any government official, in his official capacity; certificates of the administration of oaths to any person as to the authenticity of any paper required to be filed in court by any person or party thereto, whether the proceedings be civil or criminal; papers and documents filed in courts by or for the national, provincial, city or municipal governments; affidavits of poor persons for the purpose of proving poverty; statements and other compulsory information required of persons or corporations by the rules and regulations of the national, provincial, city or municipal governments exclusively for statistical purposes and which are wholly for the use of the bureau or office in which they are filed, and not at the instance or for the use or benefit of the person filing them; certified copies and other certificates placed upon documents, instruments and papers for the national, provincial, city or municipal governments, made at the instance and for the sole use of some other branch of the national, provincial, city or municipal governments; and certificates of the assessed value of lands, not exceeding Two hundred pesos (P200) in value assessed, furnished by the provincial, city or municipal Treasurer to applicants for registration of title to land.

(c) Borrowing and lending of securities executed under the Securities Borrowing and lending Program of a registered exchange, or in accordance with regulations prescribed by the appropriate regulatory authority: Provided, however, That any borrowing or lending of securities agreement as contemplated hereof shall be duly covered by a master securities borrowing and lending agreement acceptable to the appropriate regulatory authority, and which agreements is duly registered and approved by the Bureau of Internal Revenue. (BIR).

(d) Loan agreements or promissory notes, the aggregate of which does not exceed Two hundred fifty thousand pesos (P250,000), or any such amount as may be determined by the Secretary of Finance, executed by an individual for his purchase on installment for his personal use or that of his family and not for business or resale, barter or hire of a house, lot, motor vehicle, appliance or furniture: Provided, however, That the amount to be set by the Secretary of Finance shall be in accordance with a relevant price index but not to exceed ten percent (10%) of the current amount and shall remain in force at least for three (3) years.

(e) Sale, barter or exchange of shares of stock listed and traded through the local stock exchange.

(f) Assignment or transfer of any mortgage, lease or policy of insurance, or the renewal or continuance of any agreement, contract, charter, or any evidence of obligation or indebtedness, if there is no change in the maturity date or remaining period of coverage from that of the original instrument.

(g) Fixed income and other securities traded in the secondary market or through an exchange.

(h) Derivatives: Provided, That for purposes of this exemption, repurchase agreements and reverse repurchase agreements shall be treated similarly as derivatives.

(i) Interbranch or interdepartmental advances within the same legal entity.

(j) All forbearances arising from sales or service contracts including credit card and trade receivables: Provided, That the exemption be limited to those executed by the seller or service provider itself.

(k) Bank deposit accounts without a fixed term or maturity.

(l) All contracts, deeds, documents and transactions related to the conduct of business of the Bangko Sentral ng Pilipinas.

(m) Transfer of property pursuant to Section 40(c)(2) of the National Internal Revenue Code of 1997, as amended.

(n) Interbank call loans with maturity of not more than seven (7) days to cover deficiency in reserves against deposit liabilities, including those between or among banks and quasi-banks."

Section 173 of the NIRC, as amended, covers the imposition of stamp taxes upon documents, loan agreements, instruments and papers. The said section provides:

SEC. 173. Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers. - Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the

same wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and the same time such act is done or transaction had: Provided, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax.


As an added note, Republic Act (RA) No. 10022 was passed on 8 March 2010. Said law mandates that remittances of Overseas Filipino Workers (OFWs) shall be exempt from the payment of the DST, subject to certain conditions¹.

Also, in connection with the above-cited case, the NIRC, as amended, defines the term “merger” or “consolidation.” The applicable proviso states:

“(b) The term ‘merger’ or ‘consolidation,’ when used in this Section, shall be understood to mean: (i) the ordinary merger or consolida-

tion, or (ii) the acquisition by one corporation of all or substantially all the properties of another corporation solely for stock: Provided, That for a transaction to be regarded as a merger or consolidation within the purview of this Section, it must be undertaken for a bona fide business purpose and not solely for the purpose of escaping the burden of taxation: Provided, further, That in determining whether a bona fide business purpose exists, each and every step of the transaction shall be considered and the whole transaction or series of transaction shall be treated as a single unit: Provided, finally, That in determining whether the property transferred constitutes a substantial portion of the property of the transferor, the term ‘property’ shall be taken to include the cash assets of the transferor.” (Section 40(C)(6)(b))





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¹ Please refer to: Dascil, Rodelio T.: NIRC 2011 3rd Rev. Ed., pp. 337-338.