



Issues Affecting the Mining Industry (First of Two Parts)

by

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Mining industry and its advantages

It is impossible for modern life to exist without metals. The most common appliances and gadgets would not exist without products coming from mines. Consider the absence of the following in our everyday lives:¹

- a. **Cars** – 2200 lbs. of iron and steel, 240 lbs. of aluminium, 50 lbs. of carbon, 42 lbs. of copper, 41 lbs. of silicon, 22 lbs. of zinc, 405 lbs. of 30 other minerals including titanium, platinum and gold;
- b. **Tricycles** – iron, copper, nickel, lead, zinc, aluminium, manganese, chromium, vanadium, tungsten, platinum, gold and silver;
- c. **Television** – circuit boards made of tin and copper, aluminium brackets and heat sinks, and gold integrated circuits;
- d. **Cellphones** – 58% made of petroleum; 16% ceramics made of silica; 2% silver, gold, palladium, and platinum; and 24% copper;
- e. **Walls** – gypsum, clay and mica; and
- f. **Electrical wiring** – copper, aluminium, and petroleum, among others.

¹ Peter Wallace, Conference on Mining's Impact on Philippine Economy and Ecology, Grand Ballroom, Intercontinental Manila, March 2, 2012.

The Philippines ranks high in the world on mineral resources reserves:

Philippine Ore Reserves

Mineral Ore	Global Rank	Estimated Reserves (tons)
Gold	3 rd	5 billion
Copper	4 th	8 billion
Nickel	5 th	0.8 billion
Chromite	6 th	40 billion

For an investment of \$15 billion from 2011 to 2017, the contribution of mining is estimated at 7 to 8% of GDP per year, employing 112,000 direct jobs. By 2018, income from mining is projected to be 3% of GDP, with total revenues amounting to \$43 billion.

In the near future, the exports of Philippine ore will experience a boom in terms of higher world prices due to the decision of the Indonesian government to impose a 25% export tax on coal and base metals this year, increasing their tax rate to 50% by 2013. The export tax shall be imposed on unprocessed copper, gold, silver, nickel, tin, bauxite and zinc. The aim is to encourage the export of higher value “processed” mineral products instead of exporting them in the form of ores.

The Indonesian decision to impose a huge tax burden on its mineral export will price out their ore exports out of the international market, a factor seen to favor the Philippines. The Indonesian policy is also an eye opener for the Philippines to do the same in order to revive manufacturing in the Philippines.

Mining and rice production

There is an apprehension that the mining industry will lessen areas for rice production thereby undermining food security in the Philippines². Fortunately, mining

areas and rice production areas do not overlap. Note the following ten largest rice producing areas in the country:

Ten major rice producing areas in the Philippines

Rice producing area	Rice harvest in tons
Nueva Ecija	1,356,161
Isabela	1,036,917
Pangasinan	1,011,115
Iloilo	823,376
Cagayan	702,561
Leyte	582,890
Camarines Sur	560,889
Tarlac	557,943
North Cotabato	449,202
Maguindanao	433,766

Mining and the tourism industry

Tourist arrivals will increase to 10 million by 2016³ from the current annual arrival of 4 million. It is a promising industry, because one domestic job is created for every tourist arrival. In terms of employment, the mining industry employs 220,000, while the tourism industry employs 3.492 million Filipinos. Furthermore, tourism is neither a depletable industry that would not last long, nor pollutes the environment.

Tourism, in order to flourish, needs pristine environment particularly if the main attraction is the natural environment. For example, Palawan, one of the main attractions of the Philippines is promoting both the underground river in Puerto Princesa and the Tubbataha Reef (South West of Palawan). In both places, clear waters and undamaged biodiversity must

The following relevant data compares agriculture as a whole with mining:

Comparable data (Agriculture vs. Mining)

Category	Agriculture	Mining
Employment	12,000,000 workers	220,000 workers
Area occupied	9,600,000 hectares	60,000 hectares
Percentage of the total land mass of the Philippines	32%	0.2%
Employment on a per hectare basis	1 person per hectare	4 persons per hectare
Average income earned	P260 per day, or P260 per hectare	P550 per day, or P2,200 per hectare

² Peter Wallace, Conference on Mining’s Impact on Philippine Economy and Ecology, Grand Ballroom, Intercontinental Hotel, Manila, March 2, 2012.

³ Philippines-considers-introducing-mining-tax, March 21, 2010, <http://www.businessspectator.com.au/bs.nsf/article>.

be preserved. Unfortunately, Palawan is also rich in mining reserves. It is therefore an expected phenomenon that a conflict would arise between the mining companies and the local residents. The national government should declare a policy settling the issue.

The DENR recently placed the following nine new areas under *conservation area status*:

- a. Balbalan-Balasang National Park in the Cordillera Region;
- b. Zambales mountains in Regions 1 and 3;
- c. Mounts Irid Angelo and Binuang in Region 4A;
- d. Polilio group of islands, also in Region 4A;
- e. Mounts Iglit, Baco National Park, in Region 4B;
- f. Nug as Lantoy in Region 7;
- g. Mount Nacolod in Region 8;
- h. Mount Hilong-hilong in Region 13; and
- i. Bongao Peak in Tawi-tawi Island.

The national government, through the DENR recommends adding nine more sites to the current list of 239 protected areas. Of the declared protected areas, 178 would be further declared as “eco-tourism zones”. Once declared as an eco-tourism zone, all extractive activities would be banned from **all extractive activities**, including small-scale mining.

In a recent study⁴, it was found out that National Integrated Protected Areas System (NIPAS) Act of 1992 allows some extractive and commercial activities even in protected areas. The NIPAS law mandates Congress to declare a particular area as protected area, which is a long and expensive process. The study also found out that the Mining Act of 1995 and the NIPAS are “in conflict” when it comes to areas that are open to mining and areas with protected status⁵.

RA 9742 (Mining Act of 1995) contains the following provisions protective of the environment:

- a. Mandatory allocation of an approximately 10% of the initial capital expenditures of the mining project for environmental-related activities;
- b. Mandatory annual allocation of 3-5% of the direct mining and milling costs to implement an Annual Environmental Protection and Enhancement Program;
- c. Mandatory establishment of Mine Rehabilitation Fund (MRF) to be composed of: (a) Monitoring

Trust Fund of P50,000 which is replenishable, and (b) Rehabilitation Cash Fund of P5 million or 10% of the PEP cost, whichever is lower. Such Funds are to be deposited as trust account in a government depository bank to be managed by MRF Committee composed of the MGB Director General, DENR Executive Director, representative from the LGU and an NGO, and the Contractor;

- d. Mandatory establishment of the Contingent Liability and Rehabilitation fund (CLRF) to be managed by a steering committee chaired by the MGB Director with members coming from concerned government agencies;
- e. Conduct Environmental Work Program (EWP) during the exploration stage and an Environmental Protection and Enhancement Program (EPEP) during the development and operations stage;
- f. Institutionalization of an incentive mechanism to mining companies utilizing engineered and well-maintained mine waste and tailings disposal system with zero-discharge of materials/effluents and/or wastewater treatment plants; and
- g. Mandatory constitution and operationalization of a Multipartite Monitoring Team composed of representatives from the MGB, DENR Regional Office, affected communities, indigenous cultural communities, and environmental NGO, and the Contractor/permit holder, to monitor mining operations; among other safety measures.

Laws, even with the best intentions, are effective only if the government, both the national and the local, would have enough political will and personnel to enforce its provisions.

It is surprising that the ratio of small scale mining to large scale mining is substantial. In 2009, the ratio is 85%; in 2010, it is 64%, and in 2011, it is 39%. Nevertheless, the good news is that the ratio is



⁴ The study was made by the DENR, Siliman University, and a German aid agency.

⁵ Kritine L. Alave, [DENR, tourism council seek more no-mining zones](#), Philippine Daily Inquirer, April 14, 2012.

Small scale mining

Just how “small” are artisanal miners? What is its impact on the country’s economy? Consider the following data:

Mining statistics⁶

	2009	2010	2011
GROSS PRODUCTION VALUE IN MINING (MGB)			
Large Scale Metallic Mining	P42.8 Billion	P68.2 Billion	P 88.0 Billion
Small Scale Gold Mining	36.8 Billion	42.9 Billion	34.1 Billion
Non-metallic mining	28.5 Billion	33.3 Billion	Nya
TOTAL	P 106.1 Billion	P144.4 Billion	P122.1 Billion
GROSS VALUE ADDED IN MINING AT CURRENT PRICES (NSCB)	P 65.8 Billion	P 88.2 Billion	P 56.1 Billion
Mining Contribution to GDP	0.0%	1.0%	1.2%
TOTAL EXPORTS OF MINERALS & MINERAL PRODUCTS (BSP)	\$1,470 Million	\$1,870 Million	\$2,043 Million
Mining Contribution to Total Exports	3.9%	3.7%	5.6%
TOTAL EXPORTS OF NON-MET MINERAL MANUFACTURES (BSP)	\$150 Million	\$102 Million	\$130 Million
Mining Contribution to Total Exports	0.4%	0.3%	0.4%
EMPLOYMENT IN MINING AND QUARRYING (DOLE)	169,000	197,000	205,000
Mining Contribution to Total Employment	0.5%	0.5%	0.6%
TAXES, FEES AND ROYALTIES FROM MINING			
Fees, Charges & Royalties Collected by DENR-MGB/LGUs	P 396.2 Million	P 800.6 Million	P 556.6 Million
Excise Tax Collected by BIR	718.8 Million	1,229.7 Million	nya
Taxes Collected by Nat'l. Gov't. Agencies	10,272.5 Million	10,612.4 Million	nya
Taxes and Fees Collected by LGUs	992.8 Million	1,113.0 Million	23.0 Million
TOTAL	P12,380.3 Million	P13,825.7 Million	P 581.6 Million

“Minahang Bayan” to be exploited exclusively by small scale miners.

The method used by small scale miners is detrimental to the environment. They use poisonous mercury to amalgamate and concentrate gold. The ore is washed with water and later burnt with blowtorch in order to obtain the desired gold purity. Another poisonous chemical, cyanide is also used especially if mercury is in short supply.

The addition of cyanide to mercury adds to the toxicity and mobility to the tailings. In turn, the toxic substance is disposed in rivers adversely affecting not only

declining through time. Small scale mining is a difficult sector in the economy to administer, much less to be subject of government control.

On April 21, 2011, there was landslide in Pantukan, Campostela Valley in Mindanao, burying alive a still undetermined number of people, recovering at least 30 buried small scale miners. As a result, the provincial board banned any form of habitation near the mining areas. Because of widespread poverty in the area, people engage in dangerous small scale mining. Regular jobs in the low land agricultural areas fetch at an average of P150 per day, as contrasted with the daily income of small miners of P500 per day. If a miner has a sharp eye, he may strike a gold vein, increasing his income to P4,000 to P10,000 in five hours, if he is that lucky.

The government identified risky areas with the intention to relocate the small miners. The small miners do not trust the government’s relocation effort, because they believe that it is only a ploy to clear them out of the mining area in order to allow the entry of large scale miners. The small scale miners, identified the large scale mining operators as the Nationwide Development Corporation and the Napnapan Mineral Resources Incorporated. The governor of the province declared 80 hectares as

marine life but also the adjoining land mass. It is surprising that such crude technology, originating from the Philippines, is exported to Indonesia’s small scale miners. The Indonesians learned the trade from Philippine small scale miners, possibly from the Mindanao mining areas.

Conflicting laws on small scale mining

While small scale mine operators are allowed in Campostela Valley, in the nearby Zamboanga del Sur, illegal mining operations are banned. The provincial government (Zamboanga del Sur) requested the regional office of the Mines and Geosciences Bureau (MGB) to stop all illegal mining operations in the said province. The reason of the petitioning barangay officials is corruption, that some elected officials are involved in small scale mining⁹.

Why is it possible for local government units (LGUs) to have the option to allow, or to totally ban small scale mining? Considering that there are laws covering small scale mining operation, it is expected that there should be only one and unified policy on the matter.

⁶ Department of Environment and Natural Resources, Mines and Geosciences Bureau (www.MGB.gov.ph).

⁷ Panukan miners defiant amid danger, Philippine Daily Inquirer, March 25, 2012 (Sunday Edition).

⁸ Augustine Doronilla, In the throes of gold fever, Will mining kill children of Lombok?, Philippine Daily Inquirer (Talk of the Town), Sunday issue, March 18, 2012.

⁹ MGB urged to stop Zambo illegal mining, The Philippine Star (Business), March 23, 2012.

On January 23, 1984, President Ferdinand Marcos issued **PD 1899** “*establishing small-scale mining as a new dimension in mineral development*”. The law defines¹⁰ small scale mining as “*artisanal*”, meaning it does not make use of sophisticated mining equipment, involves minimal investment in infrastructure and processing plants, relies heavily on manual labor, and is owned managed, or controlled by an individual or entity qualified under existing mining laws, rules and regulations. **Under this law¹¹, it is the LGUs who have the authority to issue small scale mining permits.**

On June 27, 1991, President Corazon Aquino signed into law **RA 7076**, also known as the People’s *Small Scale Mining Act of 1991*. RA 7076 redefines small scale mining as an extractive industry “*relying heavily on manual labor... and does not use explosives or heavy mining equipment.*” Furthermore, under the law, small scale miners must form a cooperative before their activity is accredited by the Department of the Environment and Natural resources (DENR). In effect, the **licensing power is transferred from the LGUs to the DENR**. There are 2,000 to 3,000 small scale miners in the Philippines.

Consider the following observations¹²:

- a. Under existing mining laws, only two kinds of mining activities are allowed: small scale, or large scale. There is no law regarding advanced small scale mining, or mechanized small scale mining, or whatever name that may be attached to the activity;
 - b. The tendency of any business activity starting small is to grow. In the case of small scale mining, there must be big jump from small time activity to large scale mining in order to be covered by existing laws. Successful small scale miners are therefore forced to illegal status;
 - c. Current laws on small scale mining is restrictive that drives the miners “*underground*”. In order to avoid paper trail, small scale miners neither apply for permits nor pay taxes on their activities in order to avoid criminal prosecution;
 - d. The illegal activities of small scale miners include: (a) use of explosives and chemicals, (b) illegal gold trading, smuggling, employment of child labor, (c) non payment of the right taxes, and (d) encroachment on the mining areas of legitimate miners, among others; and
- e. Some large scale mining companies mining companies seek small scale mining permits from the LGUs. This allows them to jumpstart mining projects and start earning cash, while waiting for final approval from mining and environmental regulators from the national government.

The Clarificatory Guidelines In the Implementation of Small Scale Mining Laws¹³, issued by the Mines and Geosciences Bureau (MGB), states that *PD No. 1899 and RA 7076 “shall continue to govern small scale mining operation”*. Furthermore, **the DOJ issued a ruling that it is RA 7076 that should prevail over the older PD 1899¹⁴**. According to a representative of large scale miners¹⁵, the LGUs still issue permits to small scale miners, still using PD 1899. For example, in Cagayan de Oro, Mayor Vicente Emanó allowed small-scale mining operations near the Iponan River as it issued “special permits” without the approval of the MGB of the DENR¹⁶.

Large scale mining

RA 7942, the Philippine Mining Act of 1995, and its Implementing Rules and Regulations provide that local government units (LGUs) have the following participation:

- a. In consonance with the Local Government Code of 1992 (LGC), the LGUs have a share of 40% of the gross collection derived by the National Government from mining taxes, royalties and other such taxes, fees or charges from mining operations in addition to the occupational; fees (30% to the Province and 70% to the municipalities concerned);
- b. In consonance with the LGC and the People’s Small Scale Mining Act (RA 7076), the LGUs shall be responsible for the issuance of permits for small scale mining and quarrying operations, through the Provincial/Mining Regulatory Boards (PMRBs/CMRBs);
- c. To actively participate in the process by which communities shall reach an informed decision on the social acceptability of a mining project as a requirement for securing an Environmental Compliance Certificate (ECC);
- d. To ensure that relevant laws on public notices, consultations, and public participation are complied with;

¹⁰ <http://www.rappler.com/newsbreak/2860-on-shaky-ground>.

¹¹ PD 1899, per se, does not mention that it is the responsibility of the LGUs to issue small mining permits. Such provision is contained in the Implementing Rules and Regulations.

¹² Carmen Fonbuena, <http://www.rappler.com/newsbreak/2860-on-shaky-ground>,

¹³ http://www.mgb10.com/news/clarificatory_guidelines_ssm.html.

¹⁴ <http://www.abs-cbnnews.com/business/01/05/12/repeal-of-marcos-decree-on-small-scale-mining-urged>.

¹⁵ View of Mr. Rocky Dimaculangan, Chamber of Mines of the Philippines, Repeal of Marcos decree on small scale mining urged, <http://www.abs-cbnnews.com/business/01/05/12>.

¹⁶ <http://newsinfo.inquirer.net/142175/emano-bypasses-MGB-on-mine-permits>.

- e. To participate in the monitoring of mining activities as a member of the Multipartite Monitoring Team, as well as in the Mine Rehabilitation Fund Committee;
- f. To act as a mediator between the Indigenous Cultural Communities (ICCs) and the mining contractor as may be requested/necessary;
- g. To be the recipients of social infrastructures and community development projects for the utilization and benefit for the host and neighboring communities; and
- h. To coordinate with and assist the DENR and the MGB in the implementation of RA 7942 and its Implementing Rules and Regulation (IRR).

The LGUs have a big role to play in the administration of large scale mining covering the areas of environmental protection, mediating with the adversely affected indigenous cultural communities, coordinating with the neighboring communities and the national government, as well as receiving its share in the revenues of the large scale mines.

There seems to be contradictions between the points of view of the LGUs and the national government. For example, South Cotabato issued an ordinance in mid-2010, **banning all open pit mining contrary to the declared national policy and contrary to RA 7942**. A similar ordinance was passed last year in Zamboanga del Norte. The Chamber of Mines of the Philippines is asking for a policy direction from the national government regarding mining operations in the Philippines to avoid the erosion of investor confidence in the country¹⁷.

According to the International Solidarity Mission on Mining (ISMM)¹⁸, large mining operations suffer "rampant contractuallization, depressed wages, and worker's rights violations". For example Lepanto's miners in its operations in Mankayan suffered low wages. "Out of its 1,400 workers, 800 are contractual while the rest are illegal who only get about P200 to

P250 a day." The ISMM report also said that Filipino miners in the Cordilleras and the Caraga region, two of the highly mineralized region in the country, use old technologies that aggravate environmental problems.

The Xstrata's Sagittarius Mines Inc., sought Malacanang's help in order to commence operations of its open pit mines in South Cotabato and Sultan Kudarat. The reasons for the company's appeal to the President are as follows: (a) the provincial government banned all open pit mining, (b) the Environment and Management Bureau (EMB) does not want to issue the ECC (Environmental Clearance Certificate), (c) the operation of the mine would foment tension among the B'laan tribes people, (d) there are allegations that the mining company supplies the pro-mining B'laans with steel barricades and hand-held radios, (e) there is a possibility that the NPA would enter the picture, therefore the 27th Infantry Battalion of the military is within the vicinity of the mining area¹⁹.



¹⁷ Amy R. Remo and Tarra Quismundo, LGU mining impasse: Gov't asked to intervene, Philippine Daily Inquirer, March 16, 2012 (Friday).

¹⁸ Kristine L. Alave, Mining in Ph behind times, Daily Philippine Inquirer, may 1, 2012.

¹⁹ Judy Quiros, Aquiles Zonio and Orlando Dinoy (Inquirer Mindanao), 3 Mayors ask Palace help for mine project, Philippine Daily Inquirer, June 2, 2012.



I. PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), *Petitioner*, vs. THE BUREAU OF INTERNAL REVENUE (BIR), REPRESENTED BY HEREIN HON. JOSE MARIO BUNAG, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF INTERNAL REVENUE, PUBLIC RESPONDENT, JOHN DOE AND JANE DOE, WHO ARE PERSONS ACTING FOR, IN BEHALF, OR UNDER THE AUTHORITY OF RESPONDENT, PUBLIC AND PRIVATE *Respondents*. G.R. NO. 172087, MARCH 15, 2011, PERALTA, J.

Facts:

PAGCOR, created under Presidential Decree (PD) No. 1067-A [January 1, 1977], seeks to declare Section 1 of Republic Act (RA) No. 9337 as null and void insofar as it amends the Tax Code of 1997, in particular Section 27 (c) by excluding it from exemption from corporate income tax and for being contrary to Section 1 and 10 of the 1987 Constitution of the Philippines. Petitioner likewise prays that BIR Revenue Regulations (RR) No. 16-2005 be not implemented for allegedly being incongruous to the law.

Issue:

The crux of the matter is whether or not PAGCOR retains its exempt status from corporate income tax and VAT in the light of the enactment of RA No. 9337.

Held:

The Supreme Court (SC) “X x x, *finds the petition partly meritorious.*” Section 1 of R.A. No. 9337, excluding PAGCOR from the list of entities exempt from the corporate income tax, is valid. On the other hand, BIR RR No. 16-2005 is null and void.



For clarity, the SC quoted the following exchanges:

“REP. TEVES. Yeah. Pagcor is controlled under Section 27, that is on income tax. Now, we are talking here on value-added tax. Do you mean to say we are going to amend it from income tax to value-added tax, as far as Pagcor is concerned?”

“THE CHAIRMAN (SEN. RECTO). No. We are just amending that section with regard to the exemption from income tax of Pagcor.”

“X x x.”

“THE CHAIRMAN (SEN. RECTO). Congressman Nograles, the Senate version does not discuss a VAT on Pagcor but it just takes away their exemption from non-payment of income tax.”

The SC further mentioned:

“Taxation is the rule and exemption is the exception. The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed. X x x.”

“In this case, PAGCOR failed to prove that it is still exempt from the payment of corporate income tax, considering that Section 1 of R.A. No. 9337 amended Section 27 (c) of the National Internal Revenue Code of 1997 by omitting PAGCOR from the exemption. The legislative intent, x x x, is to require PAGCOR to pay corporate income tax; hence, the omission or removal of PAGCOR from exemption from the payment

of corporate income tax. X x x.

“PAGCOR cannot find support in the equal protection clause of the Constitution, as the legislative records x x x show that PAGCOR’s exemption from the payment of the corporate income tax, as provided in Section 27(c) of R.A. No. 8424 or the National Internal Revenue Code of 1997, was not made pursuant to a valid classification based on substantial distinctions and the other requirements of a reasonable classification by legislative bodies, so that the law may operate only on some, and not all, without violating the equal protection clause. The legislative records show that the basis of the grant of exemption to PAGCOR from corporate income tax was PAGCOR’s own request to be exempted.”

On another note, PAGCOR alludes that Section 1 (c) of RA No. 9337 is null and void at the outset because it is repugnant to the non-impairment proviso of the 1987 Constitution. The SC dismissed the claim stating that:

“The non-impairment clause is contained in Section 10, Article III of the Constitution, which provides that no law impairing the obligation of contract shall be passed. The non-impairment clause is limited in application to laws that derogate from prior acts or contracts by enlarging, abridging or in any manner changing the intention of the parties. There is impairment if a subsequent law changes the terms of a contract between the parties, imposes new conditions, dispenses with those agreed upon or withdraws remedies for the enforcement of the rights of the parties.

“As regards franchises, Section 11, Article XII of the Constitution provides that no franchise or right shall be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. X x x.

“In this case, PAGCOR was granted a franchise to operate and maintain gaming casinos, clubs and other recreation or amusement places, sports, gaming pools, i.e., basketball, football, lotteries, etc., whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines. Under Section 11, Article XII of the Constitution, PAGCOR’s franchise is subject to amendment, alteration or repeal by Congress such as the amendment under

Section 1 of R.A. No. 9337. Hence, the provision in Section 1 of R.A. No. 9337, amending Section 27(c) of R.A. No. 8424 by withdrawing the exemption of PAGCOR from corporate income tax, which may affect any benefits to PAGCOR's transactions with private parties, is not violative of the non-impairment clause of the Constitution."

Regarding the validity of RR No. 16-2005, the SC ruled that the section imposing on PAGCOR the 10% VAT is not valid as it goes against R.A. No. 9337. The latter is silent as to the imposition of VAT on PAGCOR. The SC said that R.A. No. 9337 provides under Section 7 (k):

"Sec. 7. Section 109 of the same Code, as amended, is hereby further amended to read as follows:

"Section 109. Exempt Transactions. -
 (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:

X x x x

"(k) **Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws**, except Presidential Decree No. 529.."

Furthermore, PAGCOR's exemption from VAT is validated by Section 6 of R.A. No. 9337 which retained Section 108(B)(3) of R.A. No. 8424. The SC cited the pertinent provisions, viz:

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

"SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. -

(A) **Rate and Base of Tax.** - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: x x x

X x x x

(B) **Transactions Subject to Zero Percent (0%) Rate.** - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:



(3) **Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;**

The SC finally ruled:

"Although the basis of the exemption of PAGCOR and Acesite from VAT in the case of *The Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation* was Section 102(b) of the 1977 Tax Code, as amended, which section was retained as Section 108(B)(3) in R.A. No. 8424, it is still applicable to this case, since the provision relied upon has been retained in R.A. No. 9337.

"It is settled rule that in case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails, because the said rule or regulation cannot go beyond the terms and provisions of the basic law. RR No. 16-2005, therefore, cannot go beyond the provisions of R.A. No. 9337. Since PAGCOR is exempt from VAT under R.A. No. 9337, the BIR exceeded its authority in subjecting PAGCOR to 10% VAT under RR No. 16-2005; hence, the said regulatory provision is hereby nullified."

Hence, Section 1 of R.A. No. 9337 excluding PAGCOR from the list of exempt entities from the corporate income tax is valid. BIR RR No. 16-2005 is null and void.



II. COMMISSIONER OF INTERNAL REVENUE (CIR), *Petitioner*, vs. MANILA BANKERS' CORPORATION, *Respondent*, G.R. No. 169103, March 16, 2011, Leonardo-De Castro, J.

Facts:

Respondent Manila Bankers' Life Insurance Corporation (MBLIC) is engaged in the business of life insurance and is duly organized as a domestic corporation under Philippine laws. The CIR on May 28, 1999 issued a Letter of Authority (LA) to examine the books of respondent for taxable year 1997 and unverified prior years. The CIR on December 14, 1999 issued a Preliminary Assessment Notice (PAN) against respondent for its deficiency taxes for 1997, based on the findings of the Revenue Officers pursuant to the May 28, 1999 LA. MBLIC agreed to the assessments, except to the amount of P2,351,680.90 representing its alleged deficiency documentary stamp taxes (DST) on its policy premiums and penalties.

On January 4, 2000, CIR issued a Formal Letter of Demand against respondent MBLIC with attached Assessment Notices (AN), that included the one (ST-DST2-97-0054-2000) referring to the DST on its policy premiums. The deficiency alluded to was arrived at by including the increase in life insurance coverage or the sum assured by some of MBLIC's life insurance plans.

Respondent filed its Letter of Protest on February 3, 2000 questioning the assessment for deficiency DST on its insurance policy premiums. Due to failure of the petitioner to respond, respondent on October 26, 2000 filed a Petition for Review with the Court of Tax Appeals (CTA) for the cancellation of the questioned AN. The CTA granted respondent's petition on April 4, 2002 ordering the

cancellation of the AN. On appeal, the Court of Appeals (CA) sustained the cancellation of the AN.

Issues:

The CIR went to the Supreme Court (SC) praying for the nullification of the CA Decision and Resolution and to have the assessment for deficiency DST on MBLIC's policy premiums, plus twenty-five percent (25%) surcharge for late payment and twenty percent (20%) annual interest, sustained. The same is hinged on the ensuing propositions:

1. The pertinent proviso of the Tax Code at the time the assessment for deficiency DST was issued provide that DST is collectible not only on the original policy but also upon renewal or continuance thereof.
2. The amount insured by the policy at the time of issuance necessarily included the additional sum due to the exercise of the option pursuant to the "guaranteed continuity" clause in MBLIC'S insurance contracts/policies.
3. The "guaranteed continuity" clause offers to the insured an option either to renew or continue the contract. Availment of such option and guaranteed continuity clause makes MBLIC liable for deficiency DST representing the increase in the coverage.
4. The National Internal Revenue Code (NIRC), as amended clearly states that the DST is impossible upon renewal or continuance of any policy of insurance or the renewal or continuance of any contract altering or otherwise, at the same rate as that imposed on the original instrument.

Held:

The SC granted the petition of the CIR. Said the Court:

"We cannot agree with the CTA in its holding that 'the renewal, is in effect treated as an increase in the sum assured since no new insurance policy was issued.' The renewal was not meant to restore the original terms of an old agreement, but instead it was meant to extend the life of an existing agreement, with some of the contract's terms modified. The renewal was still subject to the acceptance and to the conditions of both the insured and the

respondent. This is entirely different from a simple mutual agreement between the insurer and the insured, to increase the coverage of an existing and effective life insurance policy. It is clear that the availing of the option in the guaranteed continuity clause will effectively renew the Money Plus Plan policy, which is indisputably subject to the imposition of documentary stamp tax under Section 183 **as an insurance renewed upon the life of the insured.**"

On the subject of DST on group life insurance, the SC ruled:

"Whenever a master policy admits of another member, another life is insured and covered. This means that the respondent, by approving the addition of another member to its existing master policy is once more exercising its privilege to conduct the business of insurance, because it is yet again insuring a life. It does not matter that it did not issue another policy to effect this change, the fact remains that insurance on another life is made and the relationship of insurer and insured is created between the respondent and the additional member of that master policy. In the respondent's case, its group insurance plan is embodied in a contract which includes not only the master policy, but all documents subsequently attached to the master policy. Among these documents are the Enrollment Cards accomplished by the employees when they applied for membership in the group insurance plan. The Enrollment Card of a new employee, once registered in the Schedule of Benefits and attached to the master policy, becomes evidence of such employee's membership in the group insurance plan, and his right to receive the benefits therein. Everytime the respondent registers and attaches an Enrollment Card to an existing master policy, it exercises its privilege to conduct its business of insurance and this is patently subject to documentary stamp tax **as insurance made upon a life** under Section 183."

The SC was likewise requested by MBLIC to ignore CIR's argument that renewals of insurance policies are also subject to DST for being raised for the first time on appeal. The Court said:

"Nonetheless, it is axiomatic that the State can never be in estoppel, and this is particularly true in matters involving taxation. **The errors of certain administrative**

officers should never be allowed to jeopardize the government's financial position.

"Along with police power and eminent domain, taxation is one of the three basic and necessary attributes of sovereignty. Taxes are the lifeblood of the government and their prompt and certain availability is an imperious need. It is through taxes that government agencies are able to operate and with which the State executes its functions for the welfare of its constituents. It is for this reason that we cannot let the petitioner's oversight bar the government's rightful claim."

Finally, the SC stressed that:

"This Court would like to make it clear that the assessment for deficiency documentary stamp tax is being upheld not because the additional premium payments or an agreement to change the sum assured during the effectivity of an insurance plan are subject to documentary stamp tax, but because documentary stamp tax is levied on every document which establishes that insurance was made or renewed upon a life."

The respondent MBLIC was ordered to pay deficiency tax of P1,646,449.26 in addition to delinquency penalty of 25% surcharge on the amount and 20% annual interest beginning January 5, 2000, until fully paid.

In this connection, it has been said that "Documentary Stamp Tax is a tax on documents, instruments, loan agreements and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto¹." It is a tax on the privilege of issuing a document.

Under the NIRC², as amended, the DST is imposed on the following transactions/dealings:

1. Documents, loan agreements, instruments, and papers.
2. Original issue of shares of stock.
3. Sales, agreements to sell, memorandum of sales, deliveries or transfer of shares or certificates of stock.
4. Bonds, debentures, certificates of stock or indebtedness issued in foreign countries.
5. Certificates of profits or interest in property or accumulations.

¹ Dascil, Rodelio T.: NIRC of the Philippines, 3rd Rev. Ed., 2011, p. 320.

² Sections 172 to 198, inclusive.

6. Bank checks, drafts, certificates of deposit not bearing interest and other instruments.
7. Debt instruments.
8. Bills of exchange or drafts.
9. Acceptance of bills of exchange and others.
10. Foreign bills of exchange and letters of credit.
11. Life insurance policies.
12. Policies of Insurance upon property.
13. Fidelity bonds and other insurance policies.
14. Policies on annuities and pre-need plans.
15. Indemnity bonds.
16. Certificates.
17. Warehouse receipts.
18. Jai-alai, horse race tickets, lotto, or other authorized numbers games.
19. Bills of lading or receipts.
20. Proxies.
21. Powers of attorney.
22. Leases and other hiring agreements.
23. Mortgages, pledges, and deeds of trust.
24. Deeds of sale and conveyances of real property.
25. Charter parties and similar instruments.
26. Assignments and renewals of certain instruments.



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