REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PHILIPPINE AIRLINES, INC. (PAL),
Respondent.

CTA EB No. 565
(CTA Case No. 7840)

Present:
Acosta, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

PROMULGATED:
NOV 23 2010 [signature] 11:35 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review filed before the Court of Tax Appeals (CTA) *En Banc* assailing the Decision[1] dated August 27, 2009 and the Resolution[2] dated October 28, 2009 issued by the CTA First Division in the case entitled,

[1] Penned by Presiding Justice Ernesto D. Acosta with Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova, concurring. *Rollo,* pp. 23-39.
[2] *Id.,* pp. 40-48.

"Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue," docketed as CTA Case No. 7840.

The assailed Decision GRANTED the Petition for Review seeking the cancellation and withdrawal of Assessment No. INC-FY 05-000212 for the payment of deficiency Minimum Corporate Income Tax in the amount of P106,245,189.46 for fiscal year ending March 31, 2005.

THE FACTS

The facts of the case as found by the CTA First Division are as follows:

> Petitioner PHILIPPINE AIRLINES, INC. (PAL) is a domestic corporation organized in accordance with the laws of the Republic of the Philippines with principal office at the 8th Floor, PNB Financial Center, Diosdado Macapagal Ave., CCP Complex, Pasay City where it may be served with summons.
>
> Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), which is the government agency in-charge of the assessment and collection of all national internal revenue taxes, fees and charges, including the 2% Minimum Corporate Income Tax on Domestic Corporations (MCIT), imposed under Sec. 27 (E) of the National Internal Revenue Code, with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City where he may be served with summons.
>
> On July 15, 2005, petitioner filed its Annual Income Tax Return (BIR Form No. 1702) for the fiscal year ended March 31, 2005, showing a zero taxable income in item 20A thereof, and creditable tax withheld for the first three quarters of PHP27,639,086.50 in item 27C, and creditable tax withheld per BIR Form No. 2307 for the fourth quarter of PHP28,213,483.45 in item 27D.
>
> On December 15, 2005, petitioner filed its Amended Annual Income Tax Return (BIR Form No. 1702) for the fiscal year ended March 31, 2005, showing a zero taxable income in Item 20A thereof, and creditable tax withheld for the first three quarters of PHP27,639,086.50 in Item 27C, and creditable tax withheld per BIR Form No. 2307 for the fourth quarter of PHP29,396,991.60 in item 27D.

On May 2, 2006, petitioner received Letter of Authority LOA 200000096345, dated April 06, 2006, issued by the Large Taxpayers Service, Large Taxpayers Audit & Investigation Division I of the Bureau of Internal Revenue, signed by the OIC-Large Taxpayers Service, Merlinda L. Ordoyo, informing the petitioner that the Revenue Officers mentioned therein "are authorized to examine your books of accounts and other accounting records for all Internal Revenue Taxes for the period from FY ending March 31, 2005." Attached to the LOA is a "First Notice, List of Requirements, All Internal Revenue Tax Liabilities, Fiscal Year Ending March 31, 2005," dated April 21, 2006.

On October 03, 2006, the petitioner received a letter, signed by Gerardo R. Florendo, Chief, Large Taxpayers Audit & Inv. Div. I, dated September 14, 2006, informing the petitioner that the bearer is authorized to assist in the examination of its books of account and accounting records for all internal revenue tax liabilities for the year ending March 31, 2005, pursuant to Letter of Authority No. 00096345 dated April 6, 2006. Attached to said letter is a "Second Request for Presentation of Records."

In reply to the request for records of Gerardo R. Florendo, Chief, Large Taxpayers Audit & Inv. Div. I, the petitioner wrote the Chief on November 29, 2006 submitting photocopies of documents enumerated therein.

On July 27, 2007, petitioner received a Preliminary Assessment Notice from OIC, Assistant Commissioner, Large Taxpayers Service, Nestor S. Valeroso, without any date, informing petitioner that after investigation there has been found allegedly due from petitioner Minimum Corporate Income Tax for the Fiscal Year ending March 31, 2005, the details of the computation of which are as follows:

"MINIMUM CORPORATE INCOME TAX"

Sales/Revenue per F/S		54,940,678,437.29
Less: Non-Taxable Income	526,521,884.00	
Financing & Administrative Expenses	47,849,491,170.12 -	48,376,013,054.12
Taxable Gross Income		P6,564,665,383.17
MCIT Due		131,293,307.66
Less: Tax Paid/Due per Return		60,069,073.93
Deficiency MCIT		P 71,224,233.73
Interest from July 15, 2005 to July 9, 2007		27,585,145.72
TOTAL DEFICIENCY MCIT		P **98,809,379.45**

On August 08, 2007, petitioner filed a written protest, dated August 2, 2007, of the above-mentioned Minimum Corporate Income Tax (MCIT) assessment, stating that under Section 13 of its franchise, PD No. 1590, petitioner is liable only for the basic corporate income tax based on the annual net taxable income, or the 2% franchise tax based on gross revenue, whichever is lower, in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, attaching thereto a copy of:

a. Petitioner's franchise, Presidential Decree No. 1590

b. Court of Tax Appeals' Decision in CTA Case No. 7020

c. Court of Tax Appeals' Decision in CTA Case No. 7010

d. Supreme Court Decision in SC G.R. No. 160528

On February 15, 2008, petitioner received a Formal Letter of Demand from the respondent, dated December 3, 2007, demanding the payment of the total amount of PHP 106,245,189.46, the details of which as shown in said letter are quoted hereunder as follows:

"MINIMUM CORPORATE INCOME TAX"

Sales/Revenue per F/S		54,940,678,437.29
Less: Non-Taxable Income	526,521,884.00	
Financing & Administrative Expenses	47,849,491,170.12	- 48,376,013,054.12
Taxable Gross Income		P6,564,665,383.17
MCIT Due		131,293,307.66
Less: Tax Paid/Due per Return		60,069,073.93
Deficiency MCIT		P 71,224,233.73
Interest from July 15, 2005 to July 9, 2007 (49.17%)		35,020,955.73
TOTAL DEFICIENCY MCIT		P**106,245,189.46**

On March 13, 2008, petitioner filed a formal protest, dated March 6, 2008 against the above-mentioned MCIT assessment, covered by the December 3, 2007 Formal Letter of Demand, reiterating its arguments contained in its written protest to the Preliminary Assessment Notice, attaching thereto a copy of:

a. Petitioner's franchise, Presidential Decree No. 1590

b. Court of Tax Appeals' Decision in CTA Case No. 7020

c. Court of Tax Appeals' Decision in CTA Case No. 7010

d. Supreme Court Decision in SC G.R. No. 160528

Without any action by the respondent on petitioner's formal protest, petitioner filed this instant petition for review on October 9, 2008 praying that judgment be rendered declaring petitioner to be not subject to the deficiency 2% Minimum Corporate Income Tax for the fiscal year ending March 31, 2005 and ordering the cancellation and withdrawal of the subject assessment against petitioner in the total amount of P106,245,189.46.

On January 9, 2009, respondent filed a Motion to Admit Attached Answer which was granted in the Resolution of this Court on January 19, 2009.

In his Answer, respondent raised the following special and affirmative defenses:

> 5. Previously, petitioner was not covered by the normal income tax rate. However, with the advent of the National Internal Revenue Code (NIRC) of 1997, petitioner is now subject to the normal income tax rate for corporations, same with all franchise grantees. This matter has been clarified in Revenue Memorandum Circular No. 66-2003 dated 14 October 2003. Section I thereof states:
>
> > "In consideration of the franchise and rights granted by the Government to Philippine Airline (PAL) pursuant to Presidential Decree No. 1590, Section 13 thereof provides that "the grantee shall pay the Philippine Government during the life of this franchise whichever of subsections (a) or (b) hereunder will result in a lower tax: (a) The basic corporate income tax based on the grantee's annual net taxable income, computed in accordance with the provisions of the National Internal Revenue Code; or (b) A franchise tax of two percent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport corporations; provided that with respect to international air transport services, only the gross passengers, mail and freight revenues from its outgoing flights shall be subject to this tax."
>
> Hence, under RMC No. 66-2003, it was elucidated that "the legislative charter of PAL clearly provides two options for the payment of income tax, namely, the normal corporate income tax imposed on domestic corporations under Section 27 (A) of the Tax Code of 1997 (Code) or the 2% franchise tax mentioned in item (b) of the aforementioned provision, whichever is lower. Given that PAL has been operating at a loss for many years, it is evident that in applying the provisions of Section 13 of said Charter, for the computation of its income tax liability, it chose to use the normal

corporate income taxation under Section 27(A) of the Code as basis thereof in order to exempt itself from tax liability. This is without, however, considering the adjunct provision introduced by RA 8424 on the imposition of minimum corporate income tax (MCIT)."

6. As implemented under Revenue Regulations No. 9-98, Section 27(E) of the NIRC of 1997 provides that Minimum Corporate Income Tax (MCIT) of two percent (2%) of the gross income as of the end of the taxable year (whether calendar or fiscal year, depending on the accounting period employed) is imposed upon any domestic corporation beginning the 4th taxable year immediately following the taxable year in which such corporation commenced its business operations. The MCIT shall be imposed whenever such corporation has zero or negative taxable income or whenever the amount of MCIT is greater than the normal income tax due from such corporation. In case of operating loss, petitioner may either opt to subject itself to minimum corporate income tax or to the 2% franchise tax, whichever is lower. On the other hand, if petitioner is operating at a profit, the income tax liability shall be the lower amount between normal income tax or MCIT whichever is higher; and the two percent (2%) franchise tax. Thus, beginning 01 January 1998 domestic corporations subject to normal income tax as well as those which choose to be subject thereto, such as PAL, are bound to pay income tax regardless of whether they are operating at a profit or loss.

7. The previous preferential tax enjoyed by petitioner must give way to the provisions of the NIRC of 1997 and pertinent regulations thereto. The source of such previous preferential tax rate is a franchise granted by the State to deserving citizens, subject to modifications and even reversal in the hands of the legislature and the government agencies with the power to do so.

8. Prescinding from the foregoing, petitioner was assessed deficiency MCIT in the aggregate amount of P98,809,379.45 for Fiscal Year ending 31 March 2005, broken down as follows:

Sales/Revenue per F/S		54,940,678,437.29
Less: Non-Taxable Income	526,521,884.00	
Financing & Administrative Expenses	47,849,491,170.12	- 48,376,013,054.12

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Taxable Gross Income		P6,564,665,383.17
MCIT Due		131,293,307.66
Less: Tax Paid/Due per Return		-60,069,073.93
Deficiency MCIT	P	71,224,233.73
Interest from July 15, 2005 to July 9, 2007 (49.17%)		27,585,145.72
TOTAL DEFICIENCY MCIT	P	**98,809,379.45**

9. In the Details of Discrepancies of the Preliminary Assessment Notice, it was intimated to petitioner that RMC No. 66-2003 clarified the taxability of petitioner for income tax purposes, particularly the computation of MCIT. Based on the MCIT computation, it was disclosed that the amount computed was higher than the regular income tax. Under RMC No. 66-2033, MCIT should be the basis in comparing the franchise tax of 2%. This procedure resulted in a deficiency MCIT amounting to P 98,809,379.45.

Acting on the petition, the CTA First Division rendered a Decision on August 27, 2009, which granted the petition. The dispositive portion of the decision reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby GRANTED. Accordingly, Assessment No. INC-FY 05-000212 for the payment of deficiency Minimum Corporate Income Tax in the amount of P106,245,189.46 for the fiscal year ending March 31, 2005 is hereby **CANCELLED** and **WITHDRAWN**.[3]
>
> **SO ORDERED.**

The Commissioner of Internal Revenue (CIR) filed on September 23, 2009 a Motion for Reconsideration (Re: Decision promulgated 27 August 2009) while Philippine Airlines, Inc. (PAL) filed on October 13, 2009 its comment on the Motion for Reconsideration. Acting on the Motion for Reconsideration, the CTA First Division issued a resolution dated October 28, 2009 denying the same for lack of merit. The dispositive portion of the resolution reads:

[3] *Rollo*, p. 39.

WHEREFORE, premises considered, respondent's Motion for Reconsideration is hereby DENIED for lack of merit.

SO ORDERED.

Hence, this Petition for Review *En Banc*.

THE ISSUES

The issues are as follows:

I.

PRESIDENTIAL DECREE NO. 1590 WAS ENACTED DURING THE TIME WHEN PAL WAS THE FLAG CARRIER OF THE REPUBLIC OF THE PHILIPPINES, A CONSIDERATION FOR TAX PRIVILIGES THAT DO NOT EXIST IN THIS DAY AND AGE.

II.

THE NIRC OF 1997 AS AMENDED CLEARLY SUBJECTS RESPONDENT TO NORMAL INCOME TAX *SANS* TAX PRIVILEGES AVAILABLE UNDER PD NO. 1590.

III.

RESPONDENT IS LIABLE FOR DEFICIENCY MCIT UNDER SECTION 27(E) OF THE NIRC OF 1997 IN THE AMOUNT OF P106,245,189.46 FOR TAXABLE YEAR ENDING 31 MARCH 2005.

The issues in this case can be summarized as to whether or not PAL, by virtue of its franchise PD 1590 is exempted from the Minimum Corporate Income Tax (MCIT) of 2% of the gross income as provided for under Section 27(E) of the NIRC for the fiscal year ending March 31, 2005.

THE COURT'S RULING

The petition is devoid of merit. A careful and judicious review of the records of the case shows no reversible error in the questioned decision and resolution promulgated by CTA First Division. In fact, there is nothing novel in this issue as it has already been passed upon and settled in petitioner's earlier cases.[4] Nonetheless, We shall emphasize the bases of PAL's exemption from MCIT.

The Supreme Court has categorically ruled that PAL is NOT subject to MCIT.

In the recent case of *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.,*[5] the Supreme Court considered MCIT as one of "all other taxes" from which PAL is exempt under the explicit provisions of Presidential Decree (PD) No. 1590, PAL's charter. The High Court distinguished the "basic corporate income tax" under Section 27 (A), for which PAL is liable under Section 13 (a) of PD No. 1590, from that of MCIT under Section 27(E) of the same NIRC of 1997. One of the significant distinctions cited was the **tax base** which is the **net taxable income** for "basic corporate income tax" and **gross income** for MCIT. It was also emphasized that the two terms have their

[4] *Commissioner of Internal Revenue vs. Philippine Airlines, Inc. (PAL),* CTA EB No. 605 (CTA Case No. 7669), September 13, 2010, *Commissioner of Internal Revenue vs. Philippine Airlines, Inc. (PAL,* CTA EB No. 271 (CTA Case No. 7029), July 19, 2007, *Commissioner of Internal Revenue vs. Philippine Airlines, Inc. (PAL,* CTA EB No. 246 (CTA Case No. 7010), August 9, 2007, *Philippine Airlines, Inc. (PAL)vs. Commissioner of Internal Revenue,* CTA Case No. 6819, January 5, 2010.
[5] G. R. No. 180066, July 7, 2009, 592 SCRA 237.

respective technical meanings, and cannot be used interchangeably. The Supreme Court elucidated:

> After a conscientious study of Section 13 of Presidential Decree No. 1590, in relation to Sections 27(A) and 27(E) of the NIRC of 1997, the Court, like the CTA en banc and Second Division, concludes that PAL cannot be subjected to MCIT for FY 2000-2001.
>
> First, Section 13 (a) of Presidential Decree No. 1590 refers to "basic corporate income tax." In Commissioner of Internal Revenue v. Philippine Airlines, Inc., the Court already settled that the "basic corporate income tax", under Section 13(a) of Presidential Decree No. 1590, relates to the general rate of 35% (reduced to 32% by the year 2000) as stipulated in Section 27 (A) of the NIRC of 1997.
>
> Section 13(a) of Presidential Decree No. 1590 requires that the basic corporate income tax be computed in accordance with the NIRC. This means that PAL shall compute its basic corporate income tax using the rate and basis prescribed by the NIRC of 1997 for the said tax. There is nothing in Section 13 (a) of Presidential Decree No. 1590 to support the contention of the CIR that PAL is subject to the entire Title II of the NIRC of 1997, entitled "Tax on Income".
>
> Second, Section 13(a) of Presidential Decree No. 1590 further provides that the basic corporate income tax of PAL shall be based on its annual net taxable income. This is consistent with Section 27 (A) of the NIRC of 1997, which provides that the rate of basic corporate income tax, which is 32% beginning 1 January 2000, shall be imposed on the taxable income of the domestic corporation.
>
> Taxable income is defined under Section 31 of the NIRC of 1997 as the pertinent items of gross income specified in the said Code, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by the same Code or other special laws. The gross income, referred to in Section 31, is described in Section 32 of the NIRC of 1997 as income from whatever source, including compensation for services; the conduct of trade or business or the exercise of profession; dealings in property; interests; rents; royalties; dividends; annuities; prizes and winnings; pensions; and a partner's distributive share in the net income of a general professional partnership.

Pursuant to the NIRC of 1997, the taxable income of a domestic corporation may be arrived at by subtracting from gross income deductions authorized, not just by the NIRC of 1997, but also by special laws. Presidential Decree No. 1590 may be considered as one of such special laws authorizing PAL, in computing its annual net taxable income, on which its basic corporate income tax shall be based, to deduct from its gross income the following: (1) depreciation of assets at twice the normal rate; and (2) net loss carry-over up to five years following the year of such loss.

In comparison, the 2% MCIT under Section 27 (E) of the NIRC of 1997 shall be based on the gross income of the domestic corporation. The Court notes that gross income, as the basis for MCIT, is given a special definition under Section 27 (E) (4) of the NIRC of 1997, different from the general one under Section 34 of the same Code.

According to the last paragraph of Section 27 (E) (4) of the NIRC of 1997, gross income of a domestic corporation engaged in the sale of service means gross receipts, less sales returns, allowances, discounts and cost of services. "Cost of services" refers to all direct costs and expenses necessarily incurred to provide the services required by the customers and clients including (a) salaries and employee benefits of personnel, consultants, and specialists directly rendering the service; and (b) cost of facilities directly utilized in providing the service, such as depreciation or rental of equipment used and cost of supplies. Noticeably, inclusions in and exclusions/deductions from gross income for MCIT purposes are limited to those directly arising from the conduct of the taxpayer's business. It is, thus, more limited than the gross income used in the computation of basic corporate income tax.

In light of the foregoing, there is an apparent distinction under the NIRC of 1997 between taxable income, which is the basis for basic corporate income tax under Section 27(A); and gross income, which is the basis for the MCIT under Section 27(E). The two terms have their respective technical meanings, and cannot be used interchangeably. The same reasons prevent this Court from declaring that the basic corporate income tax, for which PAL is liable under Section 13 (a) of Presidential Decree No. 1590, also covers MCIT under Section 27 (E) of the NIRC of 1997, since the basis for the first is the annual net taxable income, while the basis for the second is gross income.

Third, even if the basic corporate income tax and the MCIT are both income taxes under Section 27 of the NIRC of 1997, and *gc*

> one is paid in place of the other, the two are distinct and separate taxes.
>
> The Court again cites Commissioner of Internal Revenue v. Philippine Airlines, Inc., wherein it held that income tax on the passive income of a domestic corporation, under Section 27(D) of the NIRC of 1997, is different from the basic corporate income tax on the taxable income of a domestic corporation, imposed by Section 27 (A), also of the NIRC of 1997. Section 13 of Presidential Decree No. 1590 gives PAL the option to pay basic corporate income tax or franchise tax, whichever is lower; and the tax so paid shall be in lieu of all other taxes, except real property tax. The income tax on the passive income of PAL falls within the category of "all other taxes" from which PAL is exempted, and which, if already collected, should be refunded to PAL.
>
> The Court herein treats MCIT in much the same way. Although both are income taxes, the MCIT is different from the basic corporate income tax, not just in the rates, but also in the bases for their computation. Not being covered by Section 13(a) of Presidential Decree No. 1590, which makes PAL liable only for basic corporate income tax, then MCIT is included in "all other taxes" from which PAL is exempted.
>
> That, under general circumstances, the MCIT is paid in place of the basic corporate income tax, when the former is higher than the latter, does not mean that these two income taxes are one and the same. The said taxes are merely paid in the alternative, giving the Government the opportunity to collect the higher amount between the two. The situation is not much different from Section 13 of Presidential Decree No. 1590, which reversely allows PAL to pay, whichever is lower of the basic corporate income tax or the franchise tax. It does not make the basic corporate income tax indistinguishable from the franchise tax.
>
> Given the fundamental differences between the basic corporate income tax and the MCIT, presented in the preceding discussion, it is not baseless for this Court to rule that, pursuant to the franchise of PAL, said corporation is subject to the first tax, yet exempted from the second.

Petitioner CIR argues that one of the purposes for enacting PD No. 1590 was PAL being the national flag carrier of the Philippines, a purpose which no longer holds true today. Petitioner further insists that the previous tax privilege accorded to petitioner must give way to the provisions of NIRC of 1997, hence, PAL should now be subject to the normal income tax rate for corporations just like the other franchise grantees.

We are not persuaded.

The Supreme Court, in the same case of *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.,* [6] explicitly clarified the matter in this wise:

> Fourth, the evident intent of Section 13 of Presidential Decree No. 1520 is to extend to PAL tax concessions not ordinarily available to other domestic corporations. Section 13 of Presidential Decree No. 1520 permits PAL to pay whichever is lower of the basic corporate income tax or the franchise tax; and the tax so paid shall be in lieu of all other taxes, except only real property tax. Hence, under its franchise, PAL is to pay the least amount of tax possible.
>
> Section 13 of Presidential Decree No. 1520 is not unusual. A public utility is granted special tax treatment (including tax exceptions/exemptions) under its franchise, as an inducement for the acceptance of the franchise and the rendition of public service by the said public utility. In this case, in addition to being a public utility providing air-transport service, PAL is also the official flag carrier of the country.
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> xxx xxx xxx
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> xxx xxx xxx
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> **That the Legislature chose not to amend or repeal Presidential Decree No. 1590, even after PAL was privatized, reveals the intent of the Legislature to let PAL continue enjoying, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter.** (emphasis ours) xxx xxx

It is clear from the foregoing that the High Court had already settled the issue. We see no reason why We should depart from the previous pronouncement as it is on all fours with the present case. Moreover, it should

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[6] *Supra*, note 5.

be noted that by tradition and in our system of judicial administration, the Supreme Court has the last word on what the law is; it is the final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take bearings.[7]

PAL's charter, Presidential Decree (PD) No. 1590, was not repealed or amended by NIRC of 1997.

The governing law for the taxation of PAL during the lifetime of its franchise, until and unless repealed or amended, remains to be PD 1590 which clearly provides for the two fundamental rules (1) PAL shall pay the Government either basic corporate income tax or franchise tax, whichever is lower; and (2) the tax paid by PAL, under either of these alternatives, shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges, except only real property tax. [8] The issue on the alleged repeal or amendment of PD 1590 has already been put to rest when the Supreme Court declared:[9]

> **Neither can it be said that the NIRC of 1997 repealed or amended Presidential Decree No. 1590.**
>
> While Section 16 of Presidential Decree No. 1590 provides that the franchise is granted to PAL with the understanding that it shall be subject to amendment, alteration, or repeal by competent authority when the public interest so requires, **Section 24 of the same Decree also states that the franchise or any portion thereof may only be modified, amended, or repealed expressly by a special law or decree that shall specifically**

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[7] *Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003, 406 SCRA 178 citing the case of *GSIS vs. Court of Appeals*, 334 Phils. 163, 175.
[8] *Supra*, note 5.
[9] *Id.*

modify, amend, or repeal said franchise or any portion thereof. No such special law or decree exists herein.

The CIR cannot rely on Section 7 (B) of Republic Act No. 8424, which amended the NIRC in 1997 and reads as follows:

"Section 7. *Repealing Clauses.* —

xxxx

(B) The provisions of the National Internal Revenue Code, as amended, and all other laws, including charters of government-owned or controlled corporations, decrees, orders, or regulations or parts thereof, that are inconsistent with this Act are hereby repealed or amended accordingly. (emphasis ours)

Meanwhile, petitioner asserts the application to the present case of Revenue Regulations (RR) No. 9-98 [10] and Revenue Memorandum Circular (RMC) No. 66-2003.[11] According to petitioner, RMC No. 66-2003 clarified the taxability of PAL for income tax purposes particularly the computation of MCIT.

We do not agree.

If the provision of NIRC of 1997 [Section 27(E)] which pertains to the MCIT does not find application to the present case, then it is with more reason that these administrative issuances which are merely designed to implement the primary legislation and to provide guidelines to the law [12] cannot be given effect. We also agree with the CTA First Division in its questioned decision

[10] Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" relative to the imposition of the Minimum Corporate Income Tax (MCIT) on Domestic Corporations and Residents Foreign Corporations.
[11] Clarifying the Taxability of Philippine Airlines (PAL) for Income Tax Purposes As Well as Other Franchise Grantees Similarly Situated.
[12] *Commissioner of Internal Revenue vs. Court of Appeals,* G.R. No. 119761, August 29, 1996, 261 SCRA 236.

when it ruled that RR No. 9-98 and RMC No. 66-2003 cannot amend the franchise of PAL since these are merely administrative issuances.[13]

In addition, the Supreme Court has this to say on RMC No. 66-2003:[14]

> Moreover, despite the claims of the CIR that RMC No. 66-2003 is just a clarificatory and internal issuance, the Court observes that RMC No. 66-2003 does more than just clarify a previous regulation and goes beyond mere internal administration. It effectively increases the tax burden of PAL and other taxpayers who are similarly situated, making them liable for a tax for which they were not liable before.
>
> xxx xxx xxx
>
> Even conceding that the construction of a statute by the CIR is to be given great weight, the courts, which include the CTA, are not bound thereby if such construction is erroneous or is clearly shown to be in conflict with the governing statute or the Constitution or other laws. "It is the role of the Judiciary to refine and, when necessary, correct constitutional (and/or statutory) interpretation, in the context of the interactions of the three branches of the government." xxx

Once again, We reiterate the last portion of the Supreme Court's ruling which states:[15]

> The MCIT was a new tax introduced by Republic Act No. 8424. Under the doctrine of strict interpretation, the burden is upon the CIR to primarily prove that the new MCIT provisions of the NIRC of 1997, clearly, expressly, and unambiguously extend and apply to PAL, despite the latter' s existing tax exemption. To do this, the CIR must convince the Court that the MCIT is a basic corporate income tax, and is not covered by the "in lieu of all other taxes" clause of Presidential Decree No. 1590. Since the CIR failed in this regard, the Court is left with no choice but to consider the **MCIT as one of "all other taxes," from which PAL is exempt under the explicit provisions of its charter**. (emphasis ours)

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[13] *Rollo*, p. 37.
[14] *Supra,* note 5.
[15] *Id.*

WHEREFORE, on the basis of the foregoing considerations, the Petition for Review *En Banc* is **DISMISSED** for lack of merit. Accordingly, the Decision dated August 27, 2009 and the Resolution dated October 28, 2009 issued by CTA First Division are **AFFIRMED**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice