REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ESTATE OF MR. CHARLES MARVIN ROMIG REPRESENTED BY ITS SOLE HEIR, MRS. MARICEL NARCISO ROMIG, *Petitioner,*	**CTA CASE NO. 9626** For: Refund
	Members:
-versus-	CASTAÑEDA, JR., *Chairperson,* MINDARO-GRULLA, and BACORRO-VILLENA, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 02 2019 1:00 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on April 8, 2019, is a Petition for Review filed by petitioner Estate of Mr. Charles Marvin Romig as represented by its Sole Heir, Mrs. Maricel Narciso Romig, against respondent Commissioner of Internal Revenue on June 28, 2017 seeking that judgment be rendered for the refund of estate tax erroneously paid by petitioner in the amount of ₱4,565,349.07, including interest and penalties.

Petitioner is the Estate of Mr. Charles Marvin Romig.[1]

Respondent is the duly appointed Commissioner of Internal Revenue vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said Office, including *inter alia,* the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National

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[1] Docket, Joint Stipulation of Facts and Issues, Admitted Facts, Item 1, p. 191.

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Internal Revenue Code of 1997 ("Tax Code"), and other tax laws, rules and regulations. He may be served with summons, pleadings and other processes at his office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

The decedent Charles Marvin Romig is an American citizen[2] who died intestate in the Philippines on November 20, 2011.[3] At the time of his death, Mr. Romig was a resident of Aguada, Poblacion, Puerto Galera, Oriental Mindoro.[4]

On March 13, 2012, Maricel Narciso Romig, the decedent's sole surviving heir and petitioner's representative[5], executed an Affidavit of Self Adjudication,[6] adjudicating unto herself the properties of the decedent at the time of his death, including a dollar deposit at the Foreign Currency Deposit Unit ("FCDU") of the Hongkong and Shanghai Banking Corporation Limited HSBC Premiere – Makati Branch ("HSBC USD Savings Account").[7]

On May 18, 2012, petitioner through its representative, Ms. Romig, filed an estate tax return (BIR Form 1801)[8] and paid the estate due thereon amounting to ₱26,152.00 with the Development Bank of the Philippines – Calapan Branch under the jurisdiction of the BIR, RDO No. 63.[9]

On even date, petitioner filed with the Law and Legislative Division of the BIR National Office a letter request for confirmatory ruling dated May 17, 2012[10] that the HSBC USD Savings Account is exempt from estate tax and all other taxes in accordance with Section 6, of Republic Act ("R.A.") No. 6426[11], as amended by Presidential Decree ("P.D.") Nos. 1034[12] and 1035[13].

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[2] Docket, Joint Stipulation of Facts and Issues, Admitted Facts, Item 1, p. 191.
[3] Docket, Joint Stipulation of Facts and Issues, Admitted Facts, Item 1, p. 191.
[4] Docket, Exhibit "P-5", p. 263.
[5] Docket, Joint Stipulation of Facts and Issues, Admitted Facts, Item 3, p. 192.
[6] Docket, Exhibit "P-11", pp. 275-277.
[7] Docket, Exhibit "P-11", pp. 275-277.
[8] Docket, Exhibit "P-6", pp. 264-265.
[9] Docket, Exhibit "P-6-1", p. 266.
[10] Docket, Exhibit "P-15", pp. 281-284.
[11] An Act Instituting a Foreign Currency Deposit System in the Philippines, and for Other Purposes.
[12] Authorizing the Establishment of an Offshore Banking System in the Philippines.
[13] Expanding the Authority of Certain Depository Banks under R.A. No. 6426 and for Other Purposes.

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On June 30, 2015, petitioner filed an Amended Estate Tax Return[14] and paid additional estate tax on the HSBC USD Savings Account amounting to ₱4,565,349.07 through the Philippine National Bank – Calapan Branch under the jurisdiction of the BIR, RDO No. 63.[15]

On June 28, 2017, petitioner filed with respondent through the BIR – Revenue District Office No. 63, an administrative claim for refund of erroneously paid estate tax amounting to ₱4,565,349.07, including interests and penalties, on the HSBC USD Savings Account.[16]

In view of the two-year statute of limitation provided under Section 229, National Internal Revenue Code ("NIRC") of 1997, as amended, petitioner filed its Petition for Review[17] with the Court on June 28, 2017.

On July 17, 2017, this Court issued summons against respondent who was ordered to submit an Answer to the said petition.[18] On July 26, 2017, respondent filed a Motion for Extension of Time to File Answer[19], which the Court granted.[20] On August 25, 2017, respondent filed a Motion for Additional Time to File Answer[21], which the Court granted.[22]

On September 25, 2017, respondent filed an Urgent Motion for Additional Time to File Answer[23], which the Court granted in a Resolution dated October 3, 2017.[24] Respondent filed his Answer (Re: Petition for Review dated 28 June 2017)[25] on October 9, 2017, interposing the following affirmative defenses:

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[14] Docket, Exhibit "P-7", p. 267.
[15] Docket, Exhibit "P-7-1", p. 268.
[16] Docket, Joint Stipulation of Facts and Issues, Admitted Facts, Item 4, p. 192.
[17] Docket, pp. 12-60.
[18] Docket, p. 63.
[19] Docket, pp. 64-67.
[20] Docket, p 68.
[21] Docket, pp. 70-73.
[22] Docket, Resolution dated September 14, 2017, pp. 77.
[23] Docket, pp. 78-82.
[24] Docket, p. 35.
[25] Docket, pp. 86-94.

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AFFIRMATIVE DEFENSES

5. Respondent submits that the petition should be dismissed for failure on the part of petitioner to exhaust administrative proceedings.

5.1 As alleged by petitioner, it filed its claim for refund with respondent on 28 June 2017 and on the same day, the instant petition was filed with the Honorable Court.

5.2 In the case of *Smart Communications vs. Aldecoa,* the Honorable Supreme Court ruled:

> "The Court in a long line of cases has led that before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail himself of all administrative processes afforded him. Hence, if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought. The premature resort to the court is fatal to one's cause of action. Accordingly, absent any finding of waiver or estoppel, the case may be dismissed for lack of cause of action.
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> The doctrine of exhaustion of administrative remedies is not without its practical and legal reasons. Indeed, resort to administrative remedies entails lesser expenses and provides for speedier disposition of controversies. Our courts of justice for reason of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency every opportunity to correct its error and to dispose of the case.

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The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with administrative body of special competence.

We have held that while the administration grapples with the complex and multifarious problems caused by unbridled exploitation of our resources, the judiciary will stand clear. **A long line of cases establishes the basic rule that the court will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies.**

In fact, a party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention. The underlying principle on the rule of exhaustion of administrative remedies rests on the presumption that when the administrative body, or grievance machinery, is afforded a chance to pass upon the matter, it will decide the same correctly." (Emphasis supplied)

5.3 Section 1, Rule 16 of the Revised Rules of Court provides:

RULE 16

Motion to Dismiss

Section 1. *Grounds.* – Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

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(b) That the court has no jurisdiction over the subject matter of the claim;

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(j) That a condition precedent for filing the claim has not been complied with.

5.4 Based on the foregoing, the instant petition should be dismissed."

On October 11, 2017, this Court set the pre-trial conference of the instant case and ordered both parties to submit their respective pre-trial brief.[26] Respondent filed its pre-trial brief[27] on January 31, 2018 while petitioner submitted its pre-trial brief[28] on February 1, 2018.

On February 8, 2018, this Court ordered[29] the parties to file a joint stipulation of facts and issues which they submitted on February 28, 2018.[30] Hence, the Pre-Trial Order was issued on May 7, 2018.[31]

To prove its case, petitioner presented its lone witness, Maricel Narciso Romig[32], petitioner's representative.

On May 30, 2018, petitioner filed a Motion for Additional Time to File Formal Offer of Evidence[33], which the Court granted in the interest of justice.[34]

On June 8, 2018, petitioner filed its Formal Offer of Evidence (With Motion to Recall Witness).[35] In a Resolution dated August 6, 2018, the Court granted petitioner's Motion to Recall.[36] Thus, on

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[26] Docket, Notice of Pre-Trial Conference, pp. 97-98.
[27] Docket, pp. 104-109.
[28] Docket, pp. 110-126.
[29] Docket, Order dated February 8, 2018, pp. 188-189.
[30] Docket, pp. 191-201.
[31] Docket, pp. 219-225.
[32] Docket, Order dated May 10, 2018, pp. 214-215.
[33] Docket, pp. 226-228.
[34] Docket, pp. 232-233.
[35] Docket, pp. 295-299
[36] Docket, pp. 304-305.

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September 6, 2018, petitioner's witness, Maricel Narciso Romig, was recalled to the witness stand.[37]

On September 11, 2018, petitioner filed its Supplemental Formal Offer of Evidence.[38]

In an Order dated September 25, 2018[39], the case was transferred to the Second Division, pursuant to CTA Administrative Circular No. 02-2018, "Reorganizing the Three Divisions of the Court", dated September 18, 2018.

In a Resolution[40] dated November 21, 2018, the Court admitted petitioner's exhibits, to wit:

Exhibit:	Description:
P-1	Certification of Birth File No. 1877460-49 issued by the Department of Health Vital Records of the Commonwealth of Pennsylvania
P-2	Certificate of Death with Registry No. 2011-19 issued by the National Statistics Office
P-3	Certificate of Marriage with Registry No. 2009-132 issued by the National Statistics Office
P-4	Petitioner's Bureau of Internal Revenue (BIR) Registration Form (BIR Form No. 1904) with Taxpayer Identification No. 422-197-856-000
P-5	Certificate of Residency issued by Barangay Aguada, Poblacion, Puerto Galera, Oriental Mindoro on January 31, 2018
P-6	Petitioner's Original Estate Tax Return (BIR Form No. 1801) filed on May 18, 2012
P-6-1	BIR Tax Payment Deposit Slip issued by the Development Bank of the Philippines Calapan Branch on May 18, 2012
P-7	Petitioner's Amended Estate Tax Return (BIR Form No. 1801) filed on June 30, 2015
P-7-1	BTR-BIT Payment Slip issued by the Philippine National Bank Calapan Branch on June 30, 2015
P-8	Condominium Certificate of Title No. O-84 issued on November 27, 1998 for the Condominium Unit at "The Moorings", Balatero, Puerto Galera, Oriental Mindoro
P-9	Certification dated February 8, 2012 issued by the Hongkong and Shanghai Banking Corporation

[37] Docket, Order dated September 6, 2018, pp. 315-316.
[38] Docket, pp. 307-311.
[39] Docket, p. 317.
[40] Docket, pp. 319-320.

	over Mr. Chales Marvin Romig's HSBC USD Savings Account No. 031-025273-195
P-10	Stock Certificate No. 009 issued by Century Properties Management Inc. on August 7, 1999 in favor of Mr. Charles Marvin Romig
P-11	Affidavit of Self-Adjudication executed by Ms. Maricel Narciso Romig on March 13, 2012
P-12	Affidavit of Publication issued by "Balita" on July 6, 2012
P-13	Certificate Authorizing Registration (CAR) No. C-2015-063-002688-M (BIR Form No. 2313-R) for the real property
P-14	CAR No. C-2015-063-002835-M (BIR Form No. 2313-P) for the personal properties
P-15	Letter dated May 17, 2012 and filed by petitioner with the Law and Legislative Division [then Law Division] of the respondent on May 18, 2012 requesting a confirmatory ruling that the HSBC USD SA is exempt from estate tax and all other taxes in accordance with Section 6, Foreign Currency Deposit Act (FCDA)
P-16	Petitioner's administrative claim for refund dated June 27, 2017 filed with the BIR Revenue District Office (RDO) No. 63 on June 28, 2017
P-17	Sworn Statement of Mrs. Maricel Narciso Romig
P-17-a	Signature of Mrs. Maricel Narciso Romig in her Sworn Statement
P-18	Supplemental Sworn Statement of Mrs. Maricel Narciso Romig
P-18-a	Signature of Mrs. Maricel Narciso Romig in her Supplemental Sworn Statement

Respondent's counsel manifested that there is no report of investigation on the claim for refund of petitioner. Thus, the Court granted the parties 30 days from notice within which to file their Memoranda.[41]

The case was submitted for decision on April 8, 2019[42] considering the filing of respondent's Memorandum on February 21, 2019[43] and of petitioner's Memorandum through registered mail on March 22, 2019.[44]

[41] Docket, Order dated January 21, 2019, p. 322.
[42] Docket, Resolution dated April 8, 2019, p. 354.
[43] Docket, pp. 327-335.
[44] Docket, pp. 336-352.

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Petitioner's Arguments[45]

Petitioner avers that the Court has jurisdiction over the Petition for Review considering that petitioner timely filed its administrative and judicial claims for refund. Petitioner also maintains that on the basis of Section 6 of R.A. No. 6426, as amended, and BIR rulings, it is exempt from estate tax. Consequently, there was no basis for respondent to assess or collect estate tax on petitioner's HSBC USD Savings Account, and petitioner is entitled to the refund of the amount of ₱4,565,349.07, representing erroneously paid estate tax, interest, and penalties on the HSBC USD Savings Account.

Respondent's Counter-Arguments[46]

Respondent, on the other hand, argues that notwithstanding the existence of Section 6 of the Foreign Currency Deposit Act ("FCDA"), petitioner is not entitled to a refund of the alleged payment of estate for the transfer of the foreign currency deposits to the heirs of Mr. Romig because the decedent, although an American citizen, is a resident of the Philippines. Thus, according to respondent, all his properties wherever situated is subject to estate tax.

Further, respondent argues that a foreign currency deposit of a resident decedent is not among the allowable deductions from the value of the gross estate of the resident citizen under Section 86(A) of the NIRC of 1997 nor is among the acquisitions and transmissions which are not subject to estate tax as provided under Section 87 of the NIRC of 1997. Respondent also contends that petitioner cannot interpose the alleged exemption under Section 6 of the FCDA in light of Section 84 of the NIRC of 1997, which provides that there shall be levied, assessed, collected and paid upon the transfer of the net estate as determined in accordance with Sections 85 and 86 of every decedent, whether resident or nonresident of the Philippines. Respondent avers that petitioner cannot interpose the alleged existence of BIR rulings as the same were not issued in its favor.

Finally, respondent contends that the petition should be dismissed for failure on the part of petitioner to exhaust administrative proceedings.

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[45] Docket, pp. 343-349.
[46] Docket, pp. 328-333.

ISSUE

The lone issue submitted by the parties for resolution of this Court is:[47]

> WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OF OR ISSUANCE OF TCC FOR THE AMOUNT OF PHP4,565,439.07 REPRESENTING PETITIONER'S ERRONEOUSLY PAID ESTATE TAX, INCLUDING INTEREST AND PENALTIES.

The Court shall determine first whether it has jurisdiction over the petition.

Sections 204 and 229 of the NIRC of 1997, as amended, provide:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may – xxx xxx xxx
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> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
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> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal

[47] Docket, Joint Stipulation of Facts and Issues, Issue, Item 5, p. 192.

> revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

Pursuant to the foregoing provision, to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be complied with:

> 1. The tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected; and
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> 2. The claim for refund or credit has been filed within two (2) years from the date of payment of tax, or penalty, regardless of any supervening cause that may arise after payment. The Court shall determine first whether petitioner's claim for refund was timely filed.

In the case of *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.*[48], the Supreme Court held that Section 229 of the Tax Code states that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with the CIR.

Thus, the settled rule is that both the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be

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[48] G.R. No. 216130, August 3, 2016.

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filed within the two-year period from the date of payment of the tax.[49]

In this case, petitioner paid on June 30, 2015 the amount of ₱4,565,349.07, representing additional estate tax on the HSBC Savings Account that was declared in the Amended Estate Tax Return filed by petitioner on even date. Thus, the reckoning period to be considered from which the two-year prescriptive period for claiming a refund shall be counted is June 30, 2015.

On the basis of the evidence submitted, the administrative claim for refund[50] was filed on June 28, 2017 at 8:00 a.m. with the BIR RDO 63 – Calapan City while the instant petition[51] was filed on even date at 4:47 p.m. with the Court. Both the administrative and judicial claims for refund clearly fall within the two-year period provided by the aforequoted Section 229 of the Tax Code.

Notably, Section 229 of the Tax Code, as worded, only requires that an administrative claim should first be filed.[52] In this case, although petitioner's administrative and judicial claims were both filed on June 28, 2017 petitioner's administrative claim was filed first in the morning before its judicial claim, which was filed later in the day.

It bears stressing that petitioner could not be faulted for resorting to court action, considering that the prescriptive period stated therein was about to expire. Had petitioner awaited the action of respondent knowing fully well that the prescriptive period was about to lapse, it would have resultantly forfeited its right to seek a judicial review of its claim, thereby suffering irreparable damage.[53]

Hence, the Court has jurisdiction over the present case.

The Court shall now determine whether petitioner is entitled to tax refund or issuance of tax credit certificate in the amount of

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[49] *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc. and The Court of Tax Appeals*, G.R. No. L-24108, January 3, 1968.
[50] Docket, Exhibit "P-16", pp. 285-293.
[51] Docket (Vol. I), Petition for Review, pp. 10-85.
[52] *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.*, G.R. No. 216130, August 3, 2016.
[53] *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.*, G.R. No. 216130, August 3, 2016.

₱4,565,349.07, representing the claimed erroneously paid estate tax on the HSBC USD Savings Account.

The petition is impressed with merit.

It is a basic principle in statutory construction that a later law, general in terms and not expressly repealing or amending a prior special law, will not ordinarily affect the special provisions of the earlier statute.[54]

A reading of the pertinent provisions of R.A. 6426, as amended, and R.A. No. 8424 or the NIRC of 1997, shows that there was no express repeal of the grant of exemption of foreign currency deposits including interest and all other income or earnings of such deposits from estate and all other taxes whatsoever as long as the deposits are eligible or allowed under R.A. No. 6426, as amended:

Republic Act No. 6426

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> SECTION 6. *Tax Exemptions.* — All foreign currency deposits made under this Act, as amended by Presidential Decree No. 1035, as well as foreign currency deposits authorized under Presidential Decree No. 1034, including interest and all other income or earnings of such deposits, are hereby exempted from any and all taxes whatsoever irrespective of whether or not these deposits are made by residents or non-residents so long as the deposits are eligible or allowed under aforementioned laws and, in the case of non-residents, irrespective of whether or not they are engaged in trade or business in the Philippines.

Republic Act No. 8424

> SEC. 84. **Rates of Estate Tax.** — There shall be levied, assessed, collected, and paid upon the transfer of the net estate as determined in accordance with Sections

[54] *Republic of the Philippines, rep. by the Commissioner of Customs vs. Philippine Airlines, Inc. (PAL),* G.R. Nos. 209353-54 and 211733-34, July 6, 2015.

85 and 86 of every decedent, whether resident or nonresident of the Philippines, a tax based on the value of such net estate, xxx xxx xxx

SEC. 85. **Gross Estate.** — The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated: xxx xxx xxx

SEC. 87. **Exemption of Certain Acquisitions and Transmissions.** - The following shall not be taxed:

(A) The merger of usufruct in the owner of the naked title;

(B) The transmission or delivery of the inheritance or legacy by the fiduciary heir or legatee to the fideicommissary;

(C) The transmission from the first heir, legatee or donee in favor of another beneficiary, in accordance with the desire of the predecessor; and

(D) All bequests, devises, legacies or transfers to social welfare, cultural and charitable institutions, no part of the net income of which insures to the benefit of any individual: Provided, however, That not more than thirty percent (30%) of the said bequests, devises, legacies or transfers shall be used by such institutions for administration purposes.

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SEC. 291. **In General.** – All laws, decrees, executive orders, rules and regulations or parts thereof which are contrary to or inconsistent with this Code are hereby repealed, amended or modified accordingly.

Indeed, as things stand, R.A. No. 6426 has not been revoked by the NIRC of 1997. Or to be more precise, the tax exemption of

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foreign currency deposits provided in Sec. 6 of R.A. No. 6426, as amended, has not been revoked by Sec. 291 of the NIRC of 1997.

Noteworthy is the fact that R.A. No. 6426 is a special law, which governs the foreign currency deposit system in the Philippines. Between the provisions under RA No. 6426, as amended, which took effect in 1972 as against the provisions under the NIRC of 1997, which is the general law on national internal revenue taxes, that took effect on December 11, 1997, the former necessarily prevails. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted to only to supply deficiencies in the former.[55]

The rule is that where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, the special law must prevail since it evinces the legislative intent more clearly than that of a general statute and must not be taken as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all.[56]

Moreover, the circumstance that the special law is passed before or after the general act does not change the principle. Where the special law is later, it will be regarded as an exception to, or a qualification of, the prior general act; and where the general act is later, the special statute will be construed as remaining an exception to its terms, unless repealed expressly or by necessary implication.[57]

In other words, R.A. No. 6426 remains the governing law on the exemption from estate tax of foreign currency deposits.

In this case, the decedent is an American citizen but a resident of the Philippines who left properties in the country, including the subject foreign currency deposit account with HSBC. Consequently, petitioner may now claim exemption from estate tax of its foreign currency deposit with HSBC as long as the deposit is eligible or allowed under R.A. No. 6426, as amended.[58]

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[55] *Commissioner of Internal Revenue, et al. vs. Philippine Airlines, Inc.*, G.R. No. 215705, February 22, 2017.
[56] *Liwayway Vinzons-Chato vs. Fortune Tobaco Corporation,* G.R. No. 141309, June 19, 2007.
[57] *Liwayway Vinzons-Chato vs. Fortune Tobaco Corporation,* G.R. No. 141309, June 19, 2007.
[58] Sec. 6, R.A. No. 6426.

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In its Memorandum, petitioner cites the link <http://www.bsp.gov.ph/banking/fcdu.pdf>, which refers to the Bangko Sentral ng Pilipinas ("BSP") list of banks with Foreign Currency Deposit Unit/Expanded Foreign Currency Deposit Unit ("FCDU/EFCDU") Authority as of March 31, 2019, in support of HSBC's authority to operate an FCDU. The said list includes HSBC as one of the universal/commercial banks authorized by the BSP to operate an EFCDU.

Section 70 of the Manual of Regulations on Foreign Exchange Transactions[59] defines an FCDU and EFCDU as follows:

> **Section 70. Definition of Terms.** As used in this Chapter, the following terms shall have the meaning indicated unless the context clearly indicates otherwise:
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> 1. "Foreign Currency Deposit Unit" (FCDU) and "Expanded Foreign Currency Deposit Unit" (EFCDU) shall refer to a unit of a local bank or of a local branch of a foreign bank authorized by the BSP to engage in foreign currency-denominated transactions, pursuant to the provisions of Republic Act No. 6426, as amended.
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Taking judicial notice of acts of the BSP is well within the ambit of the law. Section 1 of Rule 129 of the Revised Rules on Evidence provides:

> SECTION 1 . Judicial notice, when mandatory. - A court shall take judicial notice, without the introduction of evidence, of xxx xxx xxx **the official acts of** legislative, **executive** and judicial departments of the Philippines, xxx xxx xxx. (*Emphasis supplied*)

To say that a court will take judicial notice of a fact is merely another way of saying that the usual form of evidence will be dispensed with if knowledge of the fact can be otherwise acquired.[60]

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59 <http://www.bsp.gov.ph/downloads/Regulations/MORFXT/MORFXT.pdf>. Last accessed on May 24, 2019.

In this regard, the Supreme Court in *Armita B. Rufino, et al. vs. Baltazar N. Endriga, et al.*[61] has ruled that every government office, entity, or agency must fall under the Executive, Legislative, or Judicial branches, or must belong to one of the independent constitutional bodies, or must be a quasi-judicial body or local government unit. Otherwise, such government office, entity, or agency has no legal and constitutional basis for its existence.[62]

The BSP, a government-owned and controlled corporation created under R.A. No. 7653[63], does not fall under the Legislative or Judicial branches of government. The BSP is also not one of the independent constitutional bodies. Neither is the BSP a quasi-judicial body nor a local government unit. Thus, the BSP must fall under the Executive branch. Under the Revised Administrative Code of 1987, any agency "not placed by law or order creating them under any specific department" falls "under the Office of the President."[64]

Thus, the BSP list of banks with FCDU/EFCDU Authority as of 31 March 2019, an official act of the executive department, may be taken judicial notice of.

Considering that HSBC was granted by the BSP with EFCDU Authority, petitioner's USD deposit with HSBC is eligible or allowed under R.A. No. 6426, as amended. Thus, petitioner's foreign currency deposit with HSBC is exempt from estate tax.

Tax refunds, being in the nature of tax exemptions, are construed *in strictissimi juris* against the taxpayer and liberally in favor of the government.[65] The burden of claiming tax refund rests upon the taxpayer. In this case, petitioner was able to prove its entitlement to the claim for refund of erroneously or illegally paid estate tax, including interest and penalties, in the amount of ₱4,565,349.07.

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[60] *Spouses Omar and Moshiera Latip vs. Rosalie Palaña Chua, G.R. No. 177809, October 16, 2009.*
[61] G.R. No. 139565, July 21, 2006.
[62] *Armita B. Rufino, et al. vs. Baltazar N. Endriga, et al.*, G.R. No. 139565, July 21, 2006.
[63] The New Central Bank Act.
[64] Section 23, Chapter 8, Title II, Book III, Executive Order No. 292, s. 1987.
[65] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

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WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is ordered to **REFUND** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱4,565,349.07, representing erroneously paid estate tax, including interest and penalties, on petitioner's foreign currency deposit with HSBC.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice