REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ESTATE OF MR. CHARLES MARVIN ROMIG REPRESENTED BY ITS SOLE HEIR MRS. MARICEL NARCISO ROMIG,
Respondent.

CTA EB No. 2214
(CTA Case No. 9626)

Present:

DEL ROSARIO, *P.J.,*
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, *JJ.*

Promulgated:
JUL 19 2022 4:00 pm

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RESOLUTION

REYES-FAJARDO, *J.:*

For resolution is petitioner's Motion for Reconsideration (Decision dated October 28, 2021)[1] filed on November 22, 2021, with respondent's Comment (Re: Motion for Reconsideration dated November 22, 2021)[2] filed on February 28, 2022.

Petitioner seeks reconsideration of the Decision of the Court *En Banc* promulgated on October 28, 2021[3] ("Assailed Decision"),

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1 *Rollo*, pp. 111-130.
2 *Id.*, (unpaged).
3 *Id.*, pp. 85-110.

affirming the judgment of the Second Division ("Court in Division") of this Court, the dispositive portion of which reads:

> **WHEREFORE**, considering that the required affirmative votes of five (5) members of the Court *En Banc* was not obtained in the instant case, pursuant to Section 2 of RA No. 1125, as amended by RA No. 9503 in relation to Section 3 of Rule 2 of the RRCTA, the Petition for Review filed by the CIR is **DENIED** and the Decision of the Court in Division promulgated on September 2, 2019 and the Resolution dated December 27, 2019 are deemed **AFFIRMED**.
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> Accordingly, respondent's claim for refund in the amount of ₱4,565,349.07 representing erroneously paid estate taxes of the estate of Charles Marvin Romig is **GRANTED.**
>
> **SO ORDERED.**

Dissatisfied with the Decision of the Court *En Banc*, petitioner filed a Motion for Reconsideration raising the following issues, to wit:

I. The Honorable Court erred in ruling that the Court in Division correctly took cognizance of the original petition; and

II. The Honorable Court erred in ruling that petitioner is entitled to the tax refund in the amount of ₱4,565,349.07 representing erroneously paid estate taxes of the estate of Charles Marvin Romig.

In the first alleged error, petitioner asserts that the Court in Division should have dismissed the Petition for Review for respondent's failure to exhaust administrative remedies. According to petitioner, the filing of respondent's administrative claim for refund with the Bureau of Internal Revenue ("BIR") at 8:00 a.m. and judicial claim with the Court of Tax Appeals (CTA) at 4:47 p.m. both on June 28, 2017, deprived the BIR with the opportunity to act on the administrative claim for refund.

Respondent counters that Sections 204(c) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, only require that an administrative claim be priorly filed within the two-year period. Respondent explains that there is nothing in said provisions that imply that the taxpayer must await the final resolution of the administrative claim for refund, when doing so would be tantamount to the forfeiture of its right to seek judicial recourse.

We agree with respondent.

The Court has jurisdiction over the case. Both of respondent's administrative and judicial claims for refund were filed within the two-year prescriptive period provided by Section 204(C), in relation to Section 229 of the NIRC of 1997, to wit:

> SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. — The Commissioner may —
>
> ...
>
> (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.
>
> 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 revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully 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.

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The reckoning date of the two-year prescriptive period to claim for refund is June 30, 2015. Respondent paid Four Million Five Hundred Sixty-Five Thousand Three Hundred Forty-Nine and 7/100 Pesos (₱4,565,349.07), representing additional estate tax on the resident decedent's United States dollar deposit at the Foreign Currency Deposit Unit of the Hongkong and Shanghai Banking Corporation Limited HSBC Premiere-Makati Branch ("HSBC USD Savings Account") that was declared in respondent's Amended Estate Tax Return on June 30, 2015. The two-year period for filing a claim for refund, both administrative and judicial, would end on **June 30, 2017**.

Respondent satisfied the requirements to recover erroneously paid or illegally collected estate tax within two (2) years from the payment of the tax under Sections 204 and 229 of the NIRC of 1997, as amended, when: (1) its administrative claim for refund was first filed with the BIR on June 28, 2017, at 8:00 a.m.; and (2) its judicial claim was filed with the Court in Division later in the day at 4:47 p.m. without waiting for the commissioner's decision. The law does not, specify the interval between the two types of claims. The law only requires that an administrative claim be priorly filed.[4]

In a similar case, *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*,[5] petitioner CIR argued that the judicial claim for refund, which was filed barely 10 days from the filing of the administrative claim for refund, was premature and violative of the doctrine of exhaustion of administrative remedies. Rejecting petitioner's claim, the Supreme Court held that the short interval between the filing of the administrative claim and judicial claims was inconsequential; the law merely requires that both claims were filed within the two-year prescriptive period. The Supreme Court *En Banc* explained:

> . . .
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> In these cases, the written claim for refund was duly filed at the administrative level, but the claim had not been acted upon by the Commissioner (then Collector) of Internal Revenue. Since the two-year

[4] *Commissioner of Internal Revenue, v. Univation Motor Philippines, Inc. (Formerly Nissan Motor Philippines, Inc.)*, G.R. No. 231581, April 10, 2019.

[5] G.R. No. 226592. July 27, 2021.

period was about to lapse, the taxpayer was held justified in filing its judicial claim, without waiting for the Commissioner's decision, to protect its interest. Otherwise, should the Commissioner render an adverse decision after the two-year period, the taxpayer would be barred, to its prejudice, from pursuing its appeal to the Court of Tax Appeals.

These cases show that the lack of a specific period fixed by the law within which the Commissioner must decide the claim has led to delays, to the taxpayer's prejudice. **On the other hand, there were instances when the Commissioner was deprived of the opportunity to act on the matter within their jurisdiction because of the short interval between the filing of the administrative claim and the filing of the judicial claim. This is so because the law merely provides two years for a taxpayer to file the administrative claim and judicial claim, with the former required to be filed first.**

Nonetheless, the silence or insufficiency in the law on the reasonable period for the Commissioner's action is one that can be addressed not by judicial pronouncement, but by appropriate legislation.[6]

In the second alleged error, petitioner reiterates that the HSBC USD Savings Account of the resident decedent, Charles Marvin Romig is subject to estate tax because the HSBC USD Savings Account is not an allowable deduction under Section 86(A) of the NIRC of 1997, as amended, nor is it among the acquisitions and transmissions which are not subject to estate tax under Section 87 of the same Code. Petitioner argues that the tax exemption of Foreign Currency Deposit Units under Section 6 of Republic Act (R.A.) No. 6426, otherwise known as the "Foreign Currency Deposit Act of the Philippines," was revoked upon the enactment of the NIRC of 1997, as amended.

Respondent counters that R.A. No. 6426, otherwise known as the "Foreign Currency Deposit Act of the Philippines," being a special law could not have been impliedly repealed by the general repealing clause in Section 291 of the NIRC of 1997, as amended, which is a general law. There is nothing in NIRC of 1997, as amended, which explicitly states that the exemption of Foreign Currency Deposit Units from all other taxes under R.A. No. 6426 is revoked.

We agree with respondent.

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6 Boldfacing supplied.

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As a rule, estate tax shall be levied, assessed, collected, and paid upon the transfer of the net estate of every decedent, whether resident or nonresident of the Philippines, based on the value of such net estate,[7] by including the value at the time of the decedent's death of all property, real or personal, tangible or intangible, wherever situated.[8]

A bank deposit constitutes property that should be included in the decedent's gross estate under Section 85 of the NIRC of 1997, as amended. True, 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, as amended[9] nor is among the acquisitions and transmissions which are not subject to estate tax as provided under Section 87 of the same Code.[10] Yet, it is equally true that by express provision of Section 6 of R.A. 6426, all foreign currency deposits authorized under Presidential Decree No. 1034, are exempted from any and all taxes, thus:

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7 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 85 and 86 of every decedent, whether resident or nonresident of the Philippines, a tax based on the value of such net estate, as computed in accordance with the following schedule: ...

8 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: Provided, however, that in the case of a nonresident decedent who at the time of his death was not a citizen of the Philippines, only that part of the entire gross estate which is situated in the Philippines shall be included in his taxable estate.

9 SEC. 86. Computation of Net Estate. - For the purpose of the tax imposed in this Chapter, the value of the net estate shall be determined:
(A) Deductions Allowed to the Estate of Citizen or a Resident. - In the case of a citizen or resident of the Philippines, by deducting from the value of the gross estate -
(1) Expenses, Losses, Indebtedness, and taxes. ...
(2) Property Previously Taxed. ...
(3) Transfers for Public Use. ...
(4) The Family Home. ...
(5) Standard Deduction. ...
(6) Medical Expenses. ...
(7) Amount Received by Heirs Under Republic Act No. 4917. ...

10 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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> Section 6. Tax exemption. - All foreign currency deposits made under this Act, as amended by PD No. 1035, as well as foreign currency deposits authorized under PD 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 nonresidents so long as the deposits are eligible or allowed under aforementioned laws and, in the case of nonresidents, irrespective of whether or not they are engaged in trade or business in the Philippines.**[11]

R.A. No. 6426, remains the governing law on the exemption from estate tax of foreign currency deposits. We agree with the Court in Division that the provisions of the NIRC of 1997, as amended, which is the general law on national internal revenue taxes, cannot impliedly repeal R.A. No. 6426, a special law, which governs the foreign currency deposit system in the Philippines. A special law cannot be repealed or modified by a subsequently enacted general law in the absence of any express provision in the latter law to that effect. A special law must be interpreted to constitute an exception to the general law in the absence of special circumstances warranting a contrary conclusion.[12] Additionally, we find no such intent to expressly repeal R.A. No. 6426 in the provisions of the NIRC of 1997, as amended. The repealing clause, Sec. 291 of the NIRC of 1997,[13] as amended does not mention the express repeal of R.A. No. 6426.

In fact, in the recent case of *Department of Finance (DOF), represented by its Secretary and the Bureau of Internal Revenue (BIR) represented by its Commissioner v. Asia United Bank, et al.,*[14] the Supreme Court reminds the CIR that R.A. No. 6426 was enacted to address the country's foreign currencies deficit and that R.A. No. 6426 provided tax exemptions and incentives to encourage foreign currency deposits. The Supreme Court declared void Revenue Regulations (RR) No. 4-2011[15] that provided that any cost or expense related with or incurred for the operations of a bank's Foreign Currency Deposit Units (FCDUs), Expanded Foreign Currency Deposit Units (EFCDU), or Offshore Banking Units (OBUs) are not allowed as deduction from the Regular Banking Unit's taxable income. Thus:

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11 Boldfacing required.

12 *Commissioner of Internal Revenue v. Bases Conversion and Development Authority,* G.R. No. 217898, January 15, 2020

13 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.

14 G.R. Nos. 240163 & 240168-69, December 1, 2021.

15 Proper Allocation of Costs and Expenses Amongst Income Earnings of Banks and Other Financial Institutions for Income Tax Reporting Purposes.

> Moreover, it bears noting that prior to the passage of RA 6426, one of the main economic challenges of the country was its unstable financial condition which was greatly caused by, among other factors, heavy dollar spending. This, in turn, caused a dollar deficit in our country. Dollars were necessary to finance foreign currency liabilities and dollar-denominated transactions. Foreign currencies were also considered to be part of the country's internal reserves. To address this deficit and increase reserves, the government encouraged foreign currency deposits in duly authorized banks in order that these may be put into the stream of the banking system. **Towards this end, RA 6426 provided tax exemptions and incentives to FCDU deposits, as well as banks and financial institutions having FCDU license. Thus, to give life and meaning to the intention of legislature in the enactment of RA 6426, We agree that common expenses should be deducted from RBU income, instead of allocating a portion to be deducted from FCDU/EFCDU or OBU income.**[16]

Respondent's HSBC USD Savings Account is exempt from any and all taxes, including estate tax. Thus, the Court *En Banc* stands by its ruling that respondent has the right to recover the amount of ₱4,565,349.07 representing estate tax, including interest and penalties on respondent's HSBC USD Savings Account that it erroneously paid to the government.

In sum, petitioner failed to raise any compelling reason to warrant the reversal of this Court's findings in the Assailed Decision affirming the Court in Division's Decision dated September 2, 2019, and its Resolution dated December 27, 2019.

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

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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16 Boldfacing supplied.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

With due respect, I join the Dissenting Opinion of Justice Maria Rowena Modesto-San Pedro.
ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

With due respect, I maintain my Dissenting Opinion Position.
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

With due respect, please see my Dissenting Opinion.
LANEE S. CUI-DAVID
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2214** (CTA Case No. 9626)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
ESTATE OF MR. CHARLES MARVIN ROMIG REPRESENTED BY ITS SOLE HEIR MRS. MARICEL NARCISO ROMIG, *Respondent.*	Promulgated: JUL 19 2022 4:00 pm

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DISSENTING OPINION

CUI-DAVID, J.:

With high respect to my esteemed colleague Justice Marian Ivy F. Reyes-Fajardo, I vote to deny respondent's claim for refund of alleged erroneously paid estate taxes in the amount of ₱4,565,349.07.

In essence, the *ponencia* holds that foreign currency deposits (FCDs) are exempt from any and all taxes, including estate tax pursuant to Section 6 of Republic Act (RA) No. 6426,[1] as amended, or the Foreign Currency Deposit Act (FCDA),

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[1] AN ACT INSTITUTING A FOREIGN CURRENCY DEPOSIT SYSTEM IN THE PHILIPPINES, AND FOR OTHER PURPOSES, April 4, 1974. ...
SEC. 6. *Tax exemption.* – All foreign currency deposits made under this Act, as amended by PD No. 1035, as well as foreign currency deposits authorized under PD 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 nonresidents so long as the deposits are eligible or allowed under aforementioned laws and, in the case of nonresidents, irrespective of whether or not they are engaged in trade or business in the Philippines. (As amended by PD No. 1246, prom. November 21, 1977.)

which, as the *ponencia* suggests, remains to be the governing law on the exemption from estate tax of FCDs.

I respectfully dissent. The tax exemption contemplated under Section 6 of RA No. 6426 refers to tax exemption *on FCDs*, including interest and all other income or earnings of such deposits; whereas estate tax is an excise tax imposed *on the privilege of transferring a property* upon the death of the owner.[2] An estate tax is *not* a *property tax* because their imposition does not rest upon general ownership but rather, they are imposed on the *act of passing ownership of property.*[3]

The Supreme Court has held that statutes are to be construed in light of the purposes to be achieved and the evils sought to be remedied.[4] Thus, in construing a statute, the reason for its enactment should be kept in mind and the statute should be construed with reference to the intended scope and purpose.[5] The Court may consider the spirit and reason of the statute, where a literal meaning would lead to absurdity, contradiction, injustice, or would defeat the clear purpose of the lawmakers.[6]

From the foregoing, let us first ascertain the purpose behind RA No. 6426, its amendments, as well as its related statute, RA No. 8424[7] (Tax Reform Act of 1997 or the 1997 National Internal Revenue Code [NIRC], as amended) in order to determine whether the HSBC USD Savings Account of the decedent herein, a resident alien, is exempt from estate tax.

The circumstances, among others, that led to the enactment of RA No. 6426 are spelled out in the following "Whereas" clause of Presidential Decree (PD) 1246[8] amending the said RA, *viz.*:

> ... WHEREAS, in order to assure the development and speedy growth of the Foreign Currency Deposit System and the Offshore Banking System in the Philippines, certain incentives

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[2] Cabaneiro, From Living to Leaving (2018), p. 127, cited in 2019 Edition, Memory Aid in Taxation Law, San Beda University, College of Law, p. 178.
[3] Memory Aid in Taxation Law, San Beda University, College of Law, p. 178.
[4] *Limson v. Gonzalez*, G.R. No. 162205, March 31, 2014.
[5] *Ursua v. Court of Appeals*, citing *People v. Purisima*, G.R. Nos. L-42050-66, November 28, 1978.
[6] *Id.*, citing Gregorio, Antonio L., Fundamentals of Criminal Law Review, 1985 Ed., p. 9; *People v. Manantan*, G.R. No. L-14129, July 31, 1962.
[7] AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES, January 1, 1998.
[8] FURTHER AMENDING CERTAIN PROVISIONS OF REPUBLIC ACT NUMBERED SIXTY-FOUR HUNDRED AND TWENTY-SIX, AS AMENDED BY PRESIDENTIAL DECREE NUMBERED ONE THOUSAND THIRTY-FIVE, November 21, 1977.

were provided for under the two Systems such as confidentiality of deposits subject to certain exceptions and tax exemptions on the interest income of depositors who are nonresidents and are not engaged in trade or business in the Philippines; ....

PD 1246 did not only incorporate amendments with provisions relating to tax exemption[9] and secrecy of FCDs,[10] but also expressly allowed the enactment of new laws and regulations decreasing said rights but shall be applied prospectively.[11]

It is in view of the above provision that the sweeping preferential tax treatment of FCDs was lifted on January 1, 1998, when RA No. 8424 took effect. Notably, the phrase that FCDs "are hereby exempted from any and all taxes whatsoever" contained in Section 6 of RA No. 6426, as amended, was deleted in RA No. 8424.[12]

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[9] SEC. 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.

[10] SEC. 8. *Secrecy of Foreign Currency Deposits*– All foreign currency deposits authorized under this Act, as amended by Presidential Decree No. 1035, as well as foreign currency deposits authorized under Presidential Decree No. 1034, are hereby declared as and considered of an absolutely confidential nature and, except upon the written permission of the depositors, in no instance shall such foreign currency deposits be examined, inquired or looked into by any person, government official, bureau or office whether judicial or administrative or private: Provided, however, that said foreign currency deposits shall be exempt from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever.

[11] SEC. 12-A. *Amendatory Enactments and Regulations* – In the event a new enactment or regulation is issued decreasing the rights hereunder granted, such new enactment or regulation shall not apply to foreign currency deposits already made or existing at the time of issuance of such new enactment or regulation, but such new enactment or regulation shall apply only to foreign currency deposits made after its issuance.

[12] Below is the summary of tax treatments of FCDs:

Income Type	Tax Rates		
	PD 1158-A (1977 Tax Code; September 30, 1977)	**PD 1246, amending RA 6426** (November 21, 1977)	**RA 8424** (1997 Tax Code)
Income from foreign currency loan and transactions with nonresidents, OBUs and other depositary banks under EFCDS	5% of the NTI in lieu of all taxes, except net income subject to RCIT [Sec. 24, (b)(2)(f)(2), par. 1]	Exempt	10% FWT [Sec. 27 (D)(3)]
Interest income from foreign currency loans granted by such depositary bank under EFCDs to residents	10% FWT [Sec. 24, (b)(2)(f)(2), par. 2]	Exempt	10% FWT [Sec. 28[A][7][B]
Interest income received by an individual taxpayer (except a nonresident	None provided; Net income subject to	Exempt	7 1/2% FWT [Sec. 24 (B)(1)]

The legislative intent to repeal the tax exemption of FCDs is clear during the Senate deliberations of House Bill No. 1977[13] sponsored by Senator Enrile, which later became the Tax Reform Act of 1997 on January 1, 1998:

> Senator Gonzales: ...
> On page 24, there is provided in subparagraph (1) a final tax at the rate of 20% upon "the amount of interest from any currency bank deposit."
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> Is this what is commonly known as the dollar deposit or dollar account?
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> Senator Enrile: This is the expanded foreign currency deposit system, Mr. President[.] ...
>
> Senator Gonzales: Is this the same as the so-called "FCDUs," Mr. President, or is it different?
>
> Senator Enrile: That is correct, Mr. President.
>
> Senator Gonzales: It is the FCDUs.
>
> Senator Enrile: Yes. I would like to define the operation of this banking system...
>
> ...[T]his is what they call the "expanded foreign currency deposit system," where one goes to a commercial bank and he is allowed to open a dollar account. But these are dollar accounts. The dollars are either kept here in the vault or deposited in the foreign depository bank of the local commercial bank outside of the country. These are not also included in the reserve, in the foreign currency reserve of the Republic.
>
> Now, in both cases, the offshore banking unit is exempted from income taxation on its interest income or whatever income it derives from the utilization of deposits made to it in foreign currency. And these are large amounts.
>
> Equally, **a domestic banking institution that is allowed to operate an FCDU is <u>exempt</u> from taxation for**

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individual) from a depository bank under the EFCDs	graduated tax rates [Sec. 21]		
Any Income of nonresidents not engaged in trade or business in the Philippines from foreign currency loans to depositary banks under EFCDS	Exempt [Sec. 24, (b)(2)(f)(2), par. 3]	Exempt	Exempt

[13] Record of the Senate, Third Regular Session, July 28 to September 30, 1997.

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the interest it earns out of the lending of this deposit. But, at the same time, the interest that it pays to the depositor is deducted from its gross income. I think this is unfair, apart from the fact that these banking institutions are the most affluent ones. That is why we have a very thriving banking system in the country because of this system. **They are exempted from taxation on this particular item**.

Mr. President, according to the Bangko Sentral, the total FCDU in the country is US$17 billion. If they lend that out at 10%, that is US$1.7 billion times ₱29:US$1.00, that is more than almost US$60 billion in interest. Twenty percent of that is $12 billion. That is what the Philippine government is losing from this sector of the economy.

That is why **I see no justification in exempting this group from taxation**. If we are going to burden a *sari-sari* store, a professional with income tax, then I ask the pertinent questions: **Why should we exempt these people from income taxation? What is the impelling reason?**

Senator Gonzales: Mr. President, **I understand**—and correct me if I am wrong—**that FCDUs were originally introduced as a means to encourage remittances and to reverse capital flight**. Through the years, there has been a rapid expansion of these accounts and foreign exchange liberalization which permitted the exporters to retain their earnings in foreign currency to such an extent that by the sponsor's own statement, the amount of dollar deposits now, according to the Bangko Sentral and also the Philippine Chamber of Commerce and Industry, is about US$17 billion which is actually higher than our international reserves of only US$12 billion.[14]

...

Senator Enrile: ...

Money will go anywhere where it can make money. They are in the Philippines not because we exempt them from taxation but because they earn a very high interest rate in the Philippines.

... They will never leave this country, and yet **we are foolish enough to accept that proposition that they ought to be exempted from income taxation**.

Now, of the FCDUs that we have, I understand from the government sector, from the Executive, that **81 percent of all FCDUs in the country are actually held by the residents of the republic. They converted their pesos into dollars and deposited them as dollars because we are foolish enough to exempt these FCDUs from income taxation.**

[14] *Id.* at 279.

So, I leave it to the Chamber if we want to be deluded with this kind of a system.

...

I have an FCDU account; yet I am imposing that obligation that I must pay tax on it.[15]

... ...

Senator Angara: ... Let me move to my next point, and that is the **lifting of the preferential tax treatment of FCDUs as well as OBUs**.

Would this not cause some drastic consequences on offshore as well as foreign currency deposits which I understand today are the prime sources of our current account spending? Many of our exporters depend on this FCDUs and OBUs for their foreign exchange needs, and if we remove the preferential tax treatment that we have been enjoying all these years, are we not going to drive away the foreign currency deposits and OBUs from our shore?

Senator Enrile: Mr. President, money goes to a place where it can make profit. Whether we have the tax on FCDUs or OBUs, if depositors can make a margin that is favorable to them, they will be here. Business makes profit because it assumes risk.

I do not subscribe to the theory that these people will run away. In fact, they are saying that because of the announcement we made, on this FCDUs, deposits are flying away from the country. But if we look at the figures, out of a total of ₱17 billion or so, only a little over ₱200 million left the country. But, I think, this ₱200 million left the country to pay for obligations in order to stave off a potential increase in the peso equivalent of the foreign currency obligation, and not because of the effort to tax FCDUs. That is one.

Two, we are not discussing here a problem of competition between pesos and dollars or deutschmark or francs. **We are talking here of <u>equity in taxation</u>. These are the more affluent members of the taxable community and yet, they get away with their tax burden**. Another thing that I cannot take is, as a member of this Senate and as a member of the community, that we should tax depositors of our own currency in banks and we exclude from taxation depositors of foreign currencies. We are insulting our own currency.

Senator Angara: Mr. President, I can accept all the reasons given by the sponsor. But this ***repeal* of the exemption** to me is a very strong signal that we are changing policies in the middle of the stream. We attracted these FCDUs as well as OBUs on the promise that their income will be

[15] *Id.* at 280.

subject to special tax or in some cases, the offshore income of FCDUs will be exempt from any taxation. Now we are saying "No, we do not need you anymore."[16]

...

Senator Enrile: ... I would like to put into the *Record* that **the exemption of FCDUs from paying <u>income</u> tax** in the Philippines as well as the secrecy of their bank deposits **was introduced in 1977**, on November 21, 1977, **under Presidential Decree No. 1246** by the then President Ferdinand E. Marcos. I would like to remind the nation and this Chamber that they have been enjoying this tax concession since then.

But what have they done at a time when we were in crisis? In 1983, 1984, 1985, 1986 all the way to 1990, they all flew away. They left the country. So it is not really a question of taxation that is involved here. It is a question of whether the economy is stable enough, strong enough to lessen the risk. **They will withdraw from this country even if we give them all these tax concessions** and the secrecy for as long as they feel that they are going to risk their capital **because of the economic weakness of the country—not because we are taxing them**. They will remain here as other foreign businessmen and Filipino businessmen will remain in business even if we tax them if they can make money.[17]

...

We are just saying, "Well, you earn money; you pay your share of the tax burden of the government."[18]

...

The point is, why should we tax our depositors of pesos and we do not tax these people? Yet, these banks, the local banks which are enjoying the protection of government, are paying I think less on their peso deposits and higher on their FCDUs.

...

I cannot justifiably support the proposition that we should be <u>exempting</u> the most capable members of the economy from <u>income taxation</u> and tax sari-sari stores, barbershops and beauty parlors for their income.

Senator Angara: But is this move also in contradiction to the liberalization of our foreign exchange?

Senator Enrile: No, Mr. President. **Taxation is one thing. Liberalization and conversion of funds into foreign currencies is different. These are quite apart.**[19] (*Emphasis supplied*)

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[16] *Id.* at 414.
[17] *Id.* at 414-415.
[18] *Id.* at 416.
[19] *Id.* at 417.

The foregoing interpellations also solidify the thesis that the tax exemption under RA No. 6426 pertains to the *income* of FCDs and such exemption was repealed by RA No. 8424.

Accordingly, with the enactment of RA No. 8424, the interest income received by an individual taxpayer (except a nonresident individual) from a depository bank under the expanded foreign currency deposit system (EFCDS) is subjected to a final income tax at the rate of 7½% (increased to 15% under RA No. 10963 or the TRAIN Law) of such interest income.[20]

It is basic in statutory construction that there exists a valid presumption that undesirable consequences were never intended by a legislative measure, and that a construction of which the statute is fairly susceptible is favored, which will avoid all objectionable, mischievous, indefensible, wrongful, evil, and injurious consequences.[21]

Hence, it must be presumed that when a law, such as RA No. 6426, was promulgated, it was not intended to bring up an inequitable or oppressive result at the expense of another.[22] Indeed, as put forth by Senator Gonzales during the 1997 Tax Code deliberations, RA No. 6426 was initially enacted to increase remittances and reverse capital flight. However, according to the data, as explained by Senator Enrile, the dollars still flew away even if there was income tax exemption on FCDs because of the economic weakness of the country; hence, the manifest repeal of FCDs' tax exemption by RA No. 8242.

To interpret RA No. 6426 as an all-encompassing tax exemption of FCDs will set a dangerous precedent that would also defeat its legislative intent. As an example, a resident taxpayer in contemplation of his death will convert his peso savings account to dollars to exempt the same from estate tax. As the Supreme Court validly posed in *People v. Purisima,*[23]

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[20] SEC. 24. *Income Tax Rates.*
(A) Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines.
(1) An income tax is hereby imposed:
(B) Rate of Tax on Certain Passive Income.
(1) Interests, Royalties, Prizes, and Other Winnings. – ... Provided, however, That interest income received by an individual taxpayer (except a nonresident individual) from a depository bank under the expanded foreign currency deposit system shall be subject to a final income tax at the rate of seven and one-half percent (7 1/2%) of such interest income:
...
[21] *People v. Purisima*, G.R. No. L-42050-66, November 20, 1978.
[22] *Id.*
[23] *Id.*

could the law have been conceived to produce such unreasonable and insensible results?

Foremost, tax exemptions are to be construed strictly against the taxpayer and liberally in favor of the State. A taxpayer's claim for exemption must be justified by showing that the Legislature intended to exempt him by words too plain to be mistaken.[24] It cannot be made out of inference or implication.[25] At the same time, if the intention of the legislature is open to doubt, then the intention of the legislature must be resolved in favor of the State.[26]

As it is, there is no estate tax exemption on foreign currency deposits of an individual resident, like Mr. Charles Marvin Romig. The provisions on estate tax expressly provide that the resident decedent's gross estate shall include *all* properties wherever situated as provided under Sections 84[27] and 85[28] of the 1997 NIRC, as amended. Hence, the amount of foreign currency deposits should be included in the gross estate.

Also, the FCDs of a resident decedent are not among those that can be deducted or exempted from the gross estate. Sections 86[29] and 87[30] of the 1997 NIRC, as amended, expressly

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[24] *Commissioner of Internal Revenue v. A. D. Guerrero, Special Administrator, in Substitution of Nathaniel I. Gunn, as Administrator of the Estate of the Late Paul I. Gunn*, G.R. No. L-20942, September 22, 1967.

[25] *Quezon City and the City Treasurer of Quezon City v. ABS-CBN Broadcasting Corporation*, G.R. No. 166408, October 6, 2008.

[26] *Smart Communications, Inc v. The City of Davao, represented herein by its Mayor Hon. Rodrigo R. Duterte*, G.R. No. 155491, September 16, 2008.

[27] 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 85 and 86 **of every decedent**, whether **resident** or nonresident of the Philippines, **a tax based on the value of such net estate**. ...

[28] 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 <u>all</u> property, real or personal, tangible or intangible, wherever situated**: ...

[29] SEC. 86. *Computation of Net Estate*. – For the purpose of the tax imposed in this Chapter, the value of the net estate shall be determined:

(A) *Deductions Allowed to the Estate of Citizen or a Resident*. - In the case of a citizen or **resident** of the Philippines, by deducting from the value of the gross estate –

(1) Expenses, Losses, Indebtedness, and taxes. - Such amounts – ...
(2) Property Previously Taxed. – ...
(3) Transfers for Public Use. – ...
(4) The Family Home. – ...
(5) Standard Deduction. – ...
(6) Medical Expenses. – ...
(7) Amount Received by Heirs Under Republic Act No. 4917. – ...

[30] 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.

provide the deductions and exemptions allowed from gross estate. FCD is not one of them.

Further, Section 97 of the 1997 NIRC, as amended, prohibits any withdrawal from the decedent's bank deposit account unless the estate taxes have been paid thereon. Thus:

> SEC. 97. *Payment of Tax Antecedent to the Transfer of Shares, Bonds or Rights.* –
>
> ...
>
> **If a bank has knowledge of the death of a person, who maintained a *bank deposit account* alone, or jointly with another, it shall not allow any withdrawal from the said deposit account, unless the Commissioner has certified that the taxes imposed thereon by this Title have been paid**: Provided, however, That the administrator of the estate or any one (1) of the heirs of the decedent may, upon authorization by the Commissioner, withdraw an amount not exceeding Twenty thousand pesos (P20,000) without the said certification. For this purpose, all withdrawal slips shall contain a statement to the effect that all of the joint depositors are still living at the time of withdrawal by any one of the joint depositors and such statement shall be under oath by the said depositors.[31]

The "bank deposit account" spoken of in Section 97 obviously includes all kinds of deposit accounts, whether in local or foreign currency. Where the laws do not distinguish, we should also not distinguish.

From the foregoing, there is no doubt that a decedent's foreign currency bank deposit is subject to the payment of estate tax at the rate of 5% to 20% on net estate graduated scale (now fixed at 6% under the TRAIN Law).

At this juncture, it bears to emphasize that even if the tax exemption under RA No. 6426 was not repealed by RA No. 8424, respondent's HSBC USD Savings Account is still subject to the payment of estate tax.

To reiterate, the tax exemption under RA No. 6426 pertains to any and all taxes on foreign currency deposits, including interest and other income or earnings of such deposits, which is *different* and *distinct* from *estate tax* as found by Justice Catherine Manahan in her *Decision*:

[31] This must be contrasted with the amendment of the same provision under the TRAIN Law which allows for the withdrawal of decedent's bank deposit account only upon payment of final withholding tax (FWT) of 6%.

> Respondent's claim for estate tax refund [under RA 6426] is misplaced. It is anchored on an alleged tax exemption law that pertains to income tax which is separate and distinct from estate tax.

In assessing respondent for estate tax, petitioner is *not* taxing respondent's foreign currency deposits with HSBC, nor its interest and earnings *per se,* but the *right or privilege* of Mr. Charles Marvin Romig, the decedent, to transfer his estate to his lawful heirs.

Estate tax is the tax on the privilege to transmit property at death and on certain transfers which are made the equivalent of testamentary dispositions by the statute.[32] In addition, it is laid neither on the property nor on the transferor or the transferee. It is an *excise tax or privilege tax* and its object is to tax the shifting of economic benefits and enjoyment of property from the dead to the living.[33]

The Court should not indulge in expansive construction and write into the law an exemption not expressly set forth therein.[34] Instead, it must go by the reasonable assumption that where the State has granted in express terms certain exemptions, those are the exemptions to be considered, and nothing more.[35]

In this case, no such grant of estate tax exemption could be implied from the history and legislative intent of RA No. 6426. The scope of RA No. 6426 should not be enlarged and extended as to run counter to the controlling rule that "tax exemption is not to be presumed and that if granted, it is to be most strictly construed against the taxpayer."[36]

The following guiding principle of taxation as pointed out by Senator Enrile during his Sponsorship Speech of RA No. 8242 especially rings true in this case:

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[32] Reviewer on Taxation, Mamalateo, Third Ed., 2014, p. 350.
[33] *Id.*, p. 352.
[34] *Commissioner of Internal Revenue v. A. D. Guerrero, Special Administrator, in Substitution of Nathaniel I. Gunn, as Administrator of the Estate of the Late Paul I. Gunn,* G.R. No. L-20942, September 22, 1967.
[35] *Id.*
[36] *Smart Communications, Inc v. The City of Davao, represented herein by its Mayor Hon. Rodrigo R. Duterte,* G.R. No. 155491, September 16, 2008.

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> We should not follow blindly the policy of sparing as many of our people as possible from paying taxes. **We should rather strive for an equitable sharing of the tax burden among our people while we ensure that truly low-income families are spared. True citizenship is enhanced in this manner.**[37](*Emphasis supplied*)

Considering the absence of prevailing laws and amendments of the 1997 NIRC, as amended, expressly providing that the foreign currency deposit of a decedent resident should *not* form part of his gross estate, I vote to deny respondent's claim for refund in the amount of ₱4,565,349.07.

LANEE S. CUI-DAVID
Associate Justice

[37] *Supra*, note 6 at 146.