REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

BLOOMBERRY RESORTS CORPORATION,
Respondent.

CTA EB No. 2933
(CTA Case No. 10193)

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BLOOMBERRY RESORTS CORPORATION,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2935
(CTA Case No. 10193)

Present:

Del Rosario, *P.J.*
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo,
Cui-David,
Ferrer-Flores, and
Angeles, *JJ.*

Promulgated:

AUG 06 2025 2:10 pm

x--x

DECISION

RINGPIS-LIBAN, *J.*:

THE CASES

Before the Court *En Banc* are consolidated Petitions for Review, docketed as follows:

a. CTA EB No. 2933, that the Commissioner of Internal Revenue (CIR) filed on July 8, 2024;[1] and

b. CTA EB No. 2935, that Bloomberry Resorts Corporation ("Bloomberry") filed on June 21, 2024.[2]

Both Petitions for Review seek the reversal of the Decision dated May 29, 2023,[3] (Assailed Decision) and the Resolution dated May 27, 2024[4] (Assailed Resolution) of the Special Second Division (Court in Division)[5] of this Court in CTA Case No. 10193, entitled *"Bloomberry Resorts Corporation v. Commissioner of Internal Revenue."*

The respective dispositive portions of the Assailed Decision and Assailed Resolution are quoted hereunder:

<u>Assailed Decision</u>:

> "**WHEREFORE**, premises considered, the instant *Petition for Review* is **PARTIALLY GRANTED**. The assessment issued by respondent against petitioner for the taxable year 2015 covering a compromise penalty in the amount of Php50,000.00 is **CANCELLED AND SET ASIDE**. However, the assessment for deficiency documentary stamp tax for the taxable year 2015 is **AFFIRMED but with modification.**
>
> Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **Php49,149,426.14**, inclusive of the 25% surcharge and deficiency interest imposed under Sections 248(A)(3) and 249(B) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by Revenue Regulations (RR) No. 21-2018, computed as follows:

Basic Deficiency Documentary Stamp Tax	₱ 27,802,465.00
25% Surcharge	6,950,616.25
20% Deficiency Interest	
- Jan. 6, 2016 to Dec. 31, 2016 [₱27,802,465.00 x 20% x 361/365 days]	5,499,556.09

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[1] CTA EB No. 2933 Docket, pp. 7-16.
[2] CTA EB No. 2935 Docket, pp. 8-49.
[3] *Id.*, pp. 58-94.
[4] *Id.*, pp. 96-102.
[5] Composed of Associate Justice Jean Marie A. Bacorro-Villena (Acting Chairperson), Associate Justice Lanee S. Cui-David (ponente) and Associate Justice Corazon G. Ferrer-Flores.

- Jan. 1, 2017 to Dec. 31, 2017 [₱27,802,465.00 x 20% x 1 year]	5,560,493.00
12% Deficiency Interest	
- Jan. 1, 2018 to Dec. 31, 2018 [₱27,802,465.00 x 12% x 1 year]	3,336,295.80
Total Amount Due as of December 31, 2018	**₱49,149,426.14**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the ₱49,149,426.14 total amount due as of December 31, 2018, as determined above, or an amount of ₱16,158.72 per day, from January 1, 2019 until full payment thereof under Section 249(C) of the NIRC of 1997, as amended by RA No. 10963 and implemented by RR No. 21-2018.

SO ORDERED."

Assailed Resolution:

"**ACCORDINGLY**, the *Motions for Partial Reconsideration* separately filed by petitioner Bloomberry Resorts Corporation and respondent Commissioner of Internal Revenue are **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

As found by the Court in Division in the Assailed Decision, the relevant facts of the case are as follows:[6]

"On October 30, 2018, petitioner received an undated Preliminary Assessment Notice (PAN), with attached Details of Discrepancies, assessing it for deficiency Expanded Withholding Tax (EWT), Fringe Benefits Tax (FBT), and DST, plus compromise penalties, for TY 2015 in the aggregate amount of Php51,910,324.56, broken down as follows:

Tax	Basic	Interest	Surcharge	Compromise Penalty	Total:
EWT	₱ 1,968,776.60	₱ 967,451.42	₱	₱ 40,000.00	₱ 2,976,228.02
FBT			35,294.12	20,000.00	266,617.89
*	-	-	-	50,000.00	50,000.00
DST	27,802,465.00	13,814,397.40	6,950,616.25	50,000.00	48,617,478.65
Total	₱29,912,418.07	₱14,851,996.12	₱6,985,910.37	₱160,000.00	**₱ 51,910,324.56**

a Failure to pay the correct amount of EWT.
b Failure to pay the correct amount of FBT.
c Failure to submit a complete alpha list of employees.
d Failure to pay the correct amount of DST.

[6] CTA EB No. 2935 Docket, pp. 59-60 (Citations omitted).

> Petitioner opted to pay the assessments for alleged deficiency EWT and unpaid FBT in the amounts of Php2,936,228.02 and Php246,617.89, respectively. It also paid the compromise penalties corresponding to the deficiency EWT and unpaid FBT and its failure to submit a complete *alphalist* of employees in the total amount of Php110,000.00.
>
> However, concerning the assessment for deficiency DST and considering the amount involved, petitioner filed a Letter dated November 14, 2018 (Protest to the PAN), responding to the PAN and contesting only the assessed deficiency DST and the related compromise penalty.
>
> On January 22, 2019, petitioner received a copy of the FLD dated December 27, 2018 [with Details of Discrepancies and Assessment Notices (ANs)], signed by the then Deputy Commissioner for Operations Group, Arnel SD. Guballa (Deputy Commissioner Guballa). The FLD reiterated and demanded the payment of the assessment for unpaid DST in the amount of Php49,125,051.37, inclusive of interest as of December 27, 2018, and the corresponding compromise penalty of Php50,000.00.
>
> On February 21, 2019, petitioner filed its Protest to the FLD and asked for a reinvestigation.
>
> On September 18, 2019, petitioner received a copy of the assailed undated Decision of then Commissioner Dulay, denying its Protest and finding it liable for deficiency DST in the aggregate amount of Php50,852,339.81, inclusive of interest as of June 30, 2019, and the corresponding compromise penalty of Php50,000.00.
>
> Aggrieved, petitioner elevated its case before the Court in Division *via* this *Petition for Review* on October 18, 2019."

After due proceedings and trial, the Court in Division rendered the Assailed Decision on May 29, 2023. Thereafter, both parties moved for partial reconsideration of the Assailed Decision.

On May 27, 2024, the Court in Division promulgated the Assailed Resolution denying both *Motions* for lack of merit.

Within the extended period granted by this Court *En Banc*,[7] Bloomberry filed its *Petition for Review* on June 21, 2024 docketed as CTA EB No. 2935.

[7] Minute Resolution dated June 24, 2024, CTA EB No. 2935 Docket, p. 391.

Likewise within the extended period granted by the Court *En Banc*,[8] the CIR filed his *Petition for Review* on July 8, 2024 and docketed as CTA EB No. 2933.

In a Minute Resolution dated July 10, 2024, the Court *En Banc* ordered the consolidation of CTA EB No. 2935 with CTA EB No. 2933, the latter case bearing the lower docket number.[9]

In a Minute Resolution dated August 14, 2024,[10] the CTA *En Banc* ordered the parties to file their respective Comments to each other's *Petition for Review* within 10 days from receipt thereof.

On August 27, 2024, the CTA *En Banc* received the CIR's *Comment (to Petitioner's Petition for Review June 19, 2024)*.[11] On the other hand, Bloomberry's *Comment*[12] was received by the Court *En Banc* on August 30, 2024.

In a Minute Resolution dated September 20, 2024, the CTA *En Banc* noted the respective *Comments* of both parties and then referred the consolidated cases to mediation before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA). On October 28, 2024, however, the CTA *En Banc* was informed that the parties decided not to have their cases mediated as per the *No Agreement to Mediate* dated October 22, 2024 submitted by PMC-CTA.

In a Minute Resolution dated November 27, 2024, the Court *En Banc* noted the PMC-CTA's *No Agreement to Mediate* report and the consolidated cases were then submitted for decision.

THE ISSUES

In **CTA EB No. 2933**, the CIR filed his *Petition for Review* based on the sole ground that the Court in Division erred when it cancelled and set aside the compromise penalty for taxable year 2015.[13]

On the other hand, in **CTA EB No. 2935**, Bloomberry submits the following issues for the Court *En Banc*'s resolution, to wit:[14]

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[8] Minute Resolution dated June 21, 2024, CTA EB No. 2933 Docket, p. 6.
[9] CTA EB No. 2933 Docket, p. 69.
[10] *Id.*, p. 70.
[11] *Id.*, pp. 71-80.
[12] *Id.*, pp. 82-87.
[13] *Id.*, p. 10.
[14] CTA EB No. 2935 Docket, pp. 24-25.

WHETHER RESPONDENT CIR INCORRECTLY ASSESSED PETITIONER BRC FOR DST UNDER SECTION 179 AND/OR SECTION 173 OF THE TAX CODE, INCLUDING SURCHA[R]GE, INTEREST AND COMPROMISE PENALTY, ON THE LOAN AND ADVANCES OBTAINED FROM IT BY SKLC AND G&L CONSIDERING, AMONG OTHERS, THAT THESE OBLIGORS ARE NON-RESIDENT FOREIGN (REPUBLIC OF KOREA) CORPORATION AFFILIATES NOT DOING BUSINESS IN THE PHILIPPINES AND THAT THE LOAN AND ADVANCES WERE THUS OBTAINED AND DELIVERED, AND THE DOCUMENTS THEREFOR ISSUED BY THE OBLIGORS, IN THE REPUBLIC OF KOREA OR OUTSIDE PHILIPPINE TAXING JURISDICTION.

WHETHER RESPONDENT CIR HAD EXCEEDED ITS TAXING POWER WHEN HE ASSESSED PETITIONER BRC FOR DST, INCLUDING SURCHA[R]GE, INTEREST AND COMPROMISE PENALTY, SUPPOSEDLY UNDER SECTIONS 179 AND 173 OF THE TAX CODE, ON THE LOAN AND ADVANCES OBTAINED FROM IT BY OBLIGORS SKLC AND G&L WHEN SECTION 173 DOES NOT IMPOSE ANY TAX RATE AND THESE LOAN AND ADVANCES ARE NOT 'DEBT INSTRUMENTS' UNDER SECTION 179 CONSIDERING, AMONG OTHERS, THAT THESE OBLIGORS ARE NON-RESIDENT FOREIGN (REPUBLIC OF KOREA) CORPORATION AFFILIATES NOT DOING BUSINESS IN THE PHILIPPINES AND THAT THE LOAN AND ADVANCES WERE THUS OBTAINED AND DELIVERED, AND THE DOCUMENTS THEREFOR ISSUED BY THE OBLIGORS, IN THE REPUBLIC OF KOREA OR OUTSIDE PHILIPPINE TAXING JURISDICTION.

WHETHER THIS PETITION FOR REVIEW SHOULD BE GRANTED.

THE COURT *EN BANC*'S RULING

Timeliness of the Petitions

The Court *En Banc* shall first determine whether the present *Petitions for Review* were timely filed.

Section 3(b), Rule 8 of the RRCTA provides:

"Rule 8 Procedure in Civil Cases

xxx xxx xxx

SEC. 3. *Who may appeal; period to file petition.* –

xxx xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution.** xxx" (Emphasis supplied)

With respect to CTA EB No. 2933, the records show that the CIR received the Assailed Resolution on June 7, 2024. Counting fifteen (15) days therefrom, the CIR had until June 22, 2024 within which to file his *Petition for Review* before the Court *En Banc.*

On June 18, 2024, however, the CIR filed a *Motion for Extension of Time to File Petition for Review*[15] which was granted in the Minute Resolution dated June 21, 2024.[16] The Court *En Banc* granted the CIR an additional period of fifteen (15) days from June 22, 2024 or until July 7, 2024 within which to file his *Petition for Review* before the Court *En Banc.* Since July 7, 2024 fell on a Sunday, the CIR timely filed his *Petition for Review* on July 8, 2024, the next working day.

With regard to CTA EB No. 2935, Bloomberry received the Assailed Resolution on June 4, 2024. Counting fifteen (15) days therefrom, Bloomberry had until June 19, 2024 within which to file its *Petition for Review.* In a Minute Resolution dated June 24, 2024, the Court *En Banc* granted Bloomberry's *Motion for Additional Time* allowing the latter an additional 15-day period from June 19, 2024 or until July 4, 2024 within which to file its *Petition for Review*, as prayed for in said motion. Accordingly, the filing of Bloomberry's *Petition for Review* on June 21, 2024 was also timely made.

CTA EB No. 2933

As stated above, the CIR's *Petition for Review* is anchored on the argument that the Court in Division erred when it cancelled and set aside the compromise penalty for taxable year 2015.

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[15] CTA EB No. 2933 Docket, pp. 1-4.
[16] *Id.*, p. 6.

The CIR insists that the imposition of compromise penalty is justified by the fact that Bloomberry failed to pay the deficiency documentary stamp tax (DST) at the time or times required by law or regulation as provided under Section 255 of the National Internal Revenue Code of 1997, as amended (1997 NIRC), and in accordance with the provisions of Revenue Memorandum Order (RMO) No. 7-2015.[17]

In support of his position, the CIR invokes the Supreme Court's ruling in *Commissioner of Internal Revenue v. Filinvest Development Corporation*,[18] where the imposition of compromise penalty was upheld by the Court. He also postulates that while the Tax Code uses the term "compromise" in the imposition of penalties in lieu of criminal prosecution for violations committed by taxpayers, the nature and essence of said compromise penalty are, in reality, fines imposed for any violation of the Tax Code.[19]

The CIR's argument is without merit.

The Court *En Banc* fully concurs with the ruling that a compromise penalty is imposed to avoid prosecution for criminal violations of the Tax Code and that compromise penalty cannot be unilaterally imposed by one party without concurrence of the other. In *San Miguel Corporation* v. *Commissioner of Internal Revenue*,[20] the Supreme Court affirmed the cancellation of the compromise penalty, reiterating the dictum that compromise is, by its nature, bilateral and consensual and thus requires agreement by the taxpayer for the same to be validly imposed. What is remarkable in said case is that although the Supreme Court re-visited the doctrine it had previously laid down in *Filinvest,* it nonetheless upheld the cancellation of the compromise penalty. The Court even went further as follows:

> "It must also be noted that compromise penalty are amounts (sic) suggested in the settlement of criminal tax liability. **Since SMC's case does not involve criminal tax liabilities, the compromise penalty should not have been imposed and collected."** *(Emphasis supplied)*

To be sure, the imposition of a compromise penalty without the conformity of the taxpayer is illegal and unauthorized.[21] Moreover, since the present case does not involve criminal tax liabilities, there is no basis for the CIR to require payment of compromise penalty.

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[17] *Id.,* p. 11.
[18] G.R. Nos. 163653 & 167689, July 19, 2011 ("*Filinvest*").
[19] CTA EB No. 2933 Docket, pp. 13-15.
[20] G.R. Nos. 257697 & 259446, April 12, 2023.
[21] *Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc. et. al.,* G.R. No. L-35266, January 21, 1991.

CTA EB No. 2935

In its *Petition for Review*, Bloomberry argues as follows:

1. The loans or advances obtained from Bloomberry by its NRFC-affiliates do not involve obligation or right arising from Philippine sources or a property situated in the Philippines; therefore, said loans or advances are not subject to Philippine tax, including DST.

2. The Court in Division erroneously considered citizenship or residency as the determinative basis for locating the *situs* of taxation. Citing *National Development Co. v. Commissioner of Internal Revenue,*[22] Bloomberry posits that the obligation or right could not have arisen from Philippine sources because the *obligor* was not a resident of the Philippines. Bloomberry postulates that the rules governing *situs* of income may be suppletorily applied to determine *situs* of DST as both interest income and DST on debt instruments hinge, as specified by Philippine law, on transactions from Philippine sources. It also claims that both the obligations of the NRFC-affiliates to pay and Bloomberry's right to collect arise from sources outside the Philippines. Bloomberry likewise asserts that the alternative threshold requirement for imposition of DST, *i.e.*, "the property is situated in the Philippines" under Section 173, or the "object of contract is located or used in the Philippines" under Section 179, also do not apply. A loan contract, being a real contract, is perfected only upon delivery of the object of the contract, *i.e.*, the loan proceeds.

3. It could not be held liable for the DST on the basis of the shifting of the obligation to pay the same as prescribed by the proviso under Section 173 and the *Philacor*[23] case, because no DST is, in the first place, due on such loans or advances.

4. The loans or advances to the NRFC-affiliates are not subject to DST because these are not "debt instruments" contemplated under Section 179, given that the object of the contract is not located or used inside the Philippines (but in Republic of Korea).

In the Assailed Decision, the Court in Division held that the loans and advances extended by Bloomberry to its nonresident foreign corporation (NRFC)-affiliates are subject to DST pursuant to Section 179 in relation to Section 173 of the 1997 NIRC. The Court in Division ruled that the involvement of Bloomberry (a Philippine domestic corporation) as an *obligee* in the loan

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[22] G.R. No. L-53961, June 30, 1987. In this case, the Supreme Court held that the residence of the obligor who pays the interest, rather than the physical location of the securities, bonds, or notes, or the place of payment, is the determining factor of the source of interest income.

[23] *Philacor Credit Corporation v. Commissioner of Internal Revenue*, G.R. No. 169899, February 6, 2013.

transactions made these transactions as arising from Philippine sources under Section 173 notwithstanding that its counterparties are nonresident foreign corporations. To quote the pertinent portions of the Assailed Decision:

> "Petitioner's disclosures in Notes 4, 8 and 12 of the Notes to Parent Company Financial Statements attached to the Audited Financial Statements as of December 31, 2015 (2015 AFS), as will be further explained below, leaves no doubt that loans were extended to SKCL and G&L, and petitioner is the principal party to the loan transaction being the lender, creditor or *obligee*. Its involvement as an *obligee* made the transaction one that arises from Philippine sources under Section 173. Thus, even if the *obligors* are non-resident foreign corporations, since petitioner, the *obligee*, is a domestic corporation organized under Philippine laws, the said loans and advances clearly involve 'obligation or right arising from Philippine sources.'
>
> More, as ruled in *Philacor*, *any* of the parties shall be liable for the full amount of the DST due, and when one party is exempted, the other party who is not exempt would be liable.
>
> Hence, petitioner would still be liable for the DST payment under Section 179, even if its non-resident obligors are found exempt from the DST payment.
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> x x x x x x x x x
>
> DST is, by nature, an excise tax since it is levied on the exercise by persons of privileges conferred by law. It is an excise tax because it is imposed on **<u>the transaction</u>** rather than **<u>the document</u>**.
>
> Hence, a DST may be imposed even in the absence of a debt instrument so long as the transaction is distinctly established. This is clear under Section 6 of RR No. 9-94, which provides for the imposition of DST even when no formal agreements or promissory notes have been executed to cover the credit or loan extended to another party.
>
> Similarly, in *Filinvest*, the Supreme Court applied Section 6 of RR No. 9-94 and held that the instructional letters, journals, and cash vouchers evidencing the advances Filinvest extended to its affiliates qualified as loan agreements upon which documentary stamp taxes may be imposed.
>
> In the instant case, petitioner does not dispute nor deny that it extended loans to its non-resident foreign affiliates. It admitted the existence of its *borrowing and lending transactions* with SKCL and G&L by declaring the loan amount extended to them as *'Receivables (Notes 4, 8 and 12)'* and as *'Due from a related party (Note 8)'* in its 2015 AFS.
>
> Petitioner provided more details of these loan transactions in the Notes to Parent Company Financial Statements attached to its 2015 AFS, specifically in Note 4 - *Receivables*, Note 8 - *Related Party Transactions*, and

Note 12 - *Financial Assets and Liabilities and Financial Risk Management Objectives and Policies.*

Given the foregoing admissions and disclosures in the 2015 AFS, the subject loans and advances with related parties need not be embodied in a document or debt instrument to be subjected to DST under Section 179 since petitioner itself satisfactorily proved the borrowing and lending transactions.

Moreover, there is nothing in Sections 173 and 179 of the NIRC of 1997, as amended, requiring that the loan proceeds, referred to by petitioner as the 'object' of the loans and advances, be located or used in the Philippines.

In Section 179, the term *'debt instrument'* shall mean debt instrument representing *borrowing and lending transactions*, including but not limited to ... <u>loan agreements</u>, *including those signed abroad wherein the object of contract is located or used in the Philippines.* The second paragraph of Section 179 states in full:

> For purposes of this section, the term **'debt instrument'** shall mean **debt instrument representing <u>borrowing and lending transactions</u>, including** but not limited to debentures, certificates of indebtedness, due bills, bonds, **<u>loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines,</u>** instruments and securities issued by the government or any of its instrumentalities, deposit substitute debt instruments, certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation.' *(Emphasis supplied)*

Indeed, the phrase *'including those signed abroad wherein the object of the contract is located or used in the Philippines'* applies to loan agreements signed abroad, which is not the situation in the instant case. Hence, petitioner's reliance on the said phrase is erroneous.

Clearly, the loan proceeds are not required to be located or used in the Philippines by SKCL and G&L, given that the same arose from transactions involving rights or obligations arising from Philippines sources, as stated in Section 173 and as discussed earlier.

Further, in *Filinvest,* the Supreme Court had the opportunity to harmonize these two provisions, Sections 173 and 179, stating that the payment of DST applies to '(a)ll loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources **<u>OR</u>** the property or object of the contract is located or used in the Philippines.'

> The use of the conjunction 'or' denotes that only one of the instances is required for DST to be imposable. In its elementary sense, 'or,' as used in a statute, is a disjunctive article indicating an alternative. It often connects a series of words or propositions indicating either choice. When 'or' is used, the various members of the enumeration are to be taken separately. Thus, given the statute's use of the word 'or,' the object of the loan (loan proceeds) need not be used in the Philippines for the transaction to be subjected to DST.
>
> It bears emphasizing and reiterating that the loans and advances extended by petitioner, a Philippine domestic corporation, to its non-resident foreign affiliates are borrowing and lending transactions that give rise to an obligation (to pay) or right (to collect) arising from Philippine sources.
>
> Hence, petitioner is liable to pay the DST due on the said transactions under Section 179 in relation to Section 173 of the NIRC of 1997, as amended."[24]

In her Dissenting Opinion on the Assailed Decision, Associate Justice Jean Marie A. Bacorro-Villena submitted that the loans and advances involved in this case are not subject to DST for being outside the territorial jurisdiction of the State's taxing power. While she opined that Sections 173 and 179 of the Tax Code clearly fixed the *situs* of DST on debt instruments, she posited that the term *"sources"* as found in Section 173 refers to the *residence of the issuer or the debtor*, applying by analogy the *situs* rules for income taxation. According to her, if the "issuer or the debtor is a resident of the Philippines such that income from the debt instrument is derived from sources within the Philippines" then the DST must be imposed. The relevant portions of the Dissenting Opinion are quoted below:

> "Sections 173 and 179 of the NIRC of 1997, as amended, clearly fix the *situs* (meaning place) of DST on debt instruments through the use of the phrases ***'wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines"*** and ***"including those signed abroad wherein the object of contract is located or used in the Philippines,'*** respectively.
>
> As can be gathered from the foregoing, the NIRC of 1997, as amended, clearly intended to limit the *situs* of DST on debt instruments under Section 179 thereof to be within the Philippines consistent with the inherent limitation of territoriality in taxation. The phrase ***'wherever the document is made, signed, issued, accepted or transferred'*** taken in conjunction with the phrase ***'where the obligation or right from Philippine sources'*** indicates that, for DST to be imposed, the transaction or taxable event must have a connection or *nexus* to the

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[24] CTA EB No. 2935 Docket, pp. 75-79.

Philippines irrespective of the place of execution of the document covering the same. **The existence of a *nexus* ensures that the taxing power does not extend beyond its territorial limits.**

Notably, the meaning of the phrase ***'where the obligation or right from Philippine sources'*** is not provided for in Title VII of the NIRC of 1997, as amended, which contains the provisions dealing with the imposition of DST and, as such, it is susceptible to several interpretations. Nonetheless, the Supreme Court's declaration in *National Development Company v. Commissioner of Internal Revenue* on the significance of the term **'source'** as pertaining to the **'residence of the obligor'** is instructive, *viz.*:

x x x x x x x x x

Following the logic applied in the above case where the interest payments made to NRFCs not doing business in the Philippines were deemed taxable since the 'source' thereof or the obligor is a domestic corporation despite that all the related activities (*i.e.*, the signing of the contract, the construction of the vessels, the payment of the stipulated price, and their delivery to the debtor or obligor) were done outside the Philippines, it stands to reason that the imposition of DST on debt instruments is warranted only when the issuer or obligor is within the taxing jurisdiction of the Philippines.

Based on the foregoing interpretation of the term '**source**,' there is basis to sustain petitioner's contention that, with respect to debt instruments, the phrase ***'where the obligation or right from Philippine sources'*** in Section 173 refers to the **residence of the issuer or debtor**. It thus follows that if the issuer or debtor is a resident of the Philippines such that income from the debt instrument is derived from sources within the Philippines, DST must be imposed. Conversely, if the issuer or debtor is a non-resident of the Philippines such that the income from the debt instrument is derived from sources outside the Philippines, DST may not be imposed.

The phrase ***'including those signed abroad wherein the object of contract is located or used in the Philippines'*** in Section 179 of the NIRC of 1997, as amended, serves to extend the coverage of DST to loan agreements and promissory notes that are signed outside the Philippines but have a connection or *nexus* to the Philippines. Specifically, it means that loan agreements and promissory notes that are signed outside the Philippines are still subject to DST only if the object of the contract, such as the property being mortgaged or the funds being lent, is located or used in the Philippines. For example, if a foreign corporation signs a contract outside the Philippines to borrow funds to be used in the Philippines, the contract may still be subject to DST even if it was signed abroad. The purpose of this provision is to ensure that transactions with a connection to the Philippines are subject to the appropriate taxes and duties, regardless of where the contract was executed or signed." *(Citations omitted)*

After due consideration of the arguments raised by the parties and the pieces of evidence duly presented vis-à-vis the relevant statutory provisions and jurisprudence on the matter, the Court *En Banc* finds sufficient basis to reverse the ruling in the Assailed Decision.

Given that the resolution of the present controversy revolves around the issue of taxability, *i.e.*, whether the loan transactions between Bloomberry and its NRFC-affiliates are subject to DST under Section 173 in relation to Section 179 of the 1997 NIRC, the Court *En Banc*'s inquiry must then be carried out in light of the fundamental principle that "tax laws must be construed strictly against the State and liberally in favor of the taxpayer."[25] As the Supreme Court aptly puts it in *Petron Corp. v. Commissioner of Internal Revenue*,[26] to wit:

> "x x x Thus, in the absence of a law expressly and unambiguously imposing excise tax on alkylate, the appropriate rule to be applied is **the strict interpretation in the imposition of taxes such that the statute must be construed most strongly against the government and in favor of the taxpayer. Simply put, <u>insofar as excise tax is concerned, non-taxability is the rule, while taxability is the exception</u>.** Verily, since alkylate is not categorically covered by Sec. 148(e) of the 1997 NIRC, as amended, the doubt should be resolved in petitioner's favor. **As burdens, taxes should not be unduly exacted nor assumed beyond the plain meaning of the tax laws.** *(Emphasis and underscoring supplied; citations omitted)*

In *Commissioner of Internal Revenue v. The Court of Appeals et al.*,[27] the Supreme Court also expounded the strict construction principle in the following manner:

> "**[I]n the interpretation of tax laws that '(a) statute will not be construed as imposing a tax unless it does *so clearly, expressly, and unambiguously.* x x x *(A) tax cannot be imposed without clear and express words* for that purpose. Accordingly, the general rule of requiring *adherence to the letter in construing statutes applies with peculiar strictness to tax laws* and the provisions of a taxing act are *not to be* extended by implication.'** Parenthetically, in answering the question of who is subject to tax statutes, it is basic that 'in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import.'" *(Emphasis supplied and citations omitted)*

[25] *Commissioner of Internal Revenue v. La Tondeña Distillers, Inc. (LTDI) [now Ginebra San Miguel]*, G.R. 175188, July 15, 2015 citing *Philacor Credit Corporation v. Commissioner of Internal Revenue*, G.R. No. 169899, February 6, 2013, 690 SCRA 28, 45; *Michel J. Lhuillier Pawnshop. Inc. v. Commissioner of Internal Revenue*, G.R. No. 166786, May 3, 2006; *Lincoln Philippine Life Insurance Company, Inc. (now Jardine-CMG Life Insurance Co., Inc.)*, G.R. No. 118043, July 23, 1998; *Commissioner of Internal Revenue v. The Court of Appeals, et. al.*, G.R. No. 115349, April 18, 1997.
[26] G.R. No. 255961, March 20, 2023.
[27] G.R. No. 115349, April 18, 1997.

Accordingly, to justify a ruling that Bloomberry's loan transactions with its NRFC-affiliates are subject to DST pursuant to Sections 173 and 179 of the 1997 NIRC, it must be convincingly shown that the transactions are clearly and unambiguously covered by the plain terms of the statute. To do so requires a more circumspect reading and, if need be, a proper construction of the law.

Before delving into the textual analysis of these statutory provisions, certain clarifications on the nature of DST need to be made in order to appreciate better the true import of these provisions and how each and every part of them should be read and applied to specific factual situations.

In *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue*,[28] the Supreme Court held that:

> "Documentary stamp tax is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. **A DST is actually an excise tax because it is <u>imposed on the transaction</u> rather than on the document.** A DST is also levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. **<u>Hence, in imposing the DST, the Court considers not only the document but also the nature and character of the transaction</u>.** *(Emphasis and underscoring supplied; citations omitted)*

Verily, **DST is essentially a tax on the transaction** as represented by the document and not on the document itself. Given this, the nature and character of the underlying transaction being taxed should be considered in determining whether DST may be imposed.

After an in-depth study of the case, the Court *En Banc* finds that the reasonings in the Assailed Decision are not only at odds with the text of the statute; their soundness is likewise negated by the legislative intent and history of Sections 173 and 179.

As will be shown in the succeeding discussion, the ruling in the Assailed Decision is untenable because:

1. Nothing in the statutory texts indicates that the nationality and/or residence of the contracting parties should be determinative of the *situs* for purposes of imposing the DST.

[28] G.R. No. 170574, January 30, 2009.

2. The statutory provisions were amended by Congress to change the *situs* rules for DST precisely to plug a loophole which enabled the contracting parties to avoid the payment of DST by simply executing or issuing the taxable document abroad. Before the amendment, the *situs* is the place of execution or issuance of the document. The amendment changed this to the effect that *situs* pertains to the Philippines when the obligation or right arises from Philippine sources. With specific reference to debt instruments, the DST shall be imposed when the object of the contract is located or used in the Philippines.

3. The term *"sources"* in the phrase *"when the obligation or right arises from Philippine sources"* under Section 173 refers to the **contract** itself that the parties have entered into inasmuch as under Philippine law, contract is among the statutorily enumerated sources of obligation. Accordingly, the obligation will be considered as arising from Philippine source only if the contract from which it has originated was perfected in the Philippines.

4. The *situs* rules as provided under the DST Law are complete. There is no need to make any reference to the *situs* rules for income taxation even by way of analogy.

Structure of the DST Law Under the Tax Code

As it stood at the time of the questioned transactions, the laws on DST of the 1997 NIRC are found under Title VII thereof consisting of twenty-nine (29) provisions (Sections 173 to Sections 201). Section 173 serves as the general provision inasmuch as it lays down in broad terms the rules for the imposition of DST. Sections 174 to 198 contain twenty-five (25) specific types of documents or transactions that are subject to DST with their corresponding tax bases and rates. Section 199 enumerates the various documents or papers exempt from DST. Section 200 governs the time and manner of DST payment. Lastly, Section 201 prescribes the effects of failure to affix documentary stamp to a taxable document.

The Legislative Intent and History of Sections 173 and 179 of the Tax Code

The aforequoted portions of the Assailed Decision markedly show that, at its core, the crux of the present controversy is concentrated on the proper interpretation of the phrase *"wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines"* in Section 173 as well as the phrase *"including those signed abroad wherein the object of contract is located or used in the Philippines"* in Section 179.

At the time relevant to this case, Section 173 of the 1997 NIRC pertinently reads:

> SEC. 173. ***Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers.*** - Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same **wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines**, and at the same time such act is done or transaction had: *Provided,* That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax. *(Emphasis supplied)*

The phrase "*wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines*" first appeared in 1993 when Section 173 was amended by Republic Act No. 7660.[29] Note that the wordings of Section 173 as introduced by RA 7660, remain exactly the same at the time when the subject loan transactions were entered into, even up to the present. That being so, the legislative intent that animated the enactment of said amendatory law may reasonably be deemed as carried over to its present form.

Immediately prior to its amendment by RA 7660, Section 173 used to be Section 186 of the National Internal Revenue Code of 1977 (1977 Tax Code),[30] as amended by Presidential Decree (PD) No. 1994.[31] It reads as follows:

> **Sec. 186.** ***Stamp taxes upon documents, instruments, and papers.*** - Upon documents, instruments, and papers, and upon acceptance, assignments, sales, and transfers of the obligation, right, or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following sections of this Title, by the person making, signing, issuing, accepting, or transferring the same, and at the same time such act is done or transaction had: Provided, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax.

[29] An Act Rationalizing Further the Structure and Administration of the Documentary Stamp Tax, Amending for the Purpose Certain Provisions of the National Internal Revenue Code, As Amended, Allocating Funds for Specific Programs, and for Other Purposes (Approved on December 23, 1993).
[30] Presidential Decree (PD) No. 1158 (Approved on June 3, 1977).
[31] Further Amending Certain Provisions of the National Internal Revenue Code (Approved on November 5, 1985).

For clarity, Section 186 of the 1977 Tax Code, as amended by PD No. 1994, was re-numbered under RA 7660 as Section 173 of the 1977 Tax Code. Since the enactment of RA 7660 in 1993, the language of the provision remains unchanged and still numbered as Section 173 under the present Tax Code.

Below is a comparative table highlighting the amendments supplied by RA 7660 to Section 173:

SEC. 186, 1977 TAX CODE (As amended by PD 1994)	**SEC. 173, 1997 TAX CODE (As Amended by RA 7660)**
SEC. 186. ***Stamp taxes upon documents, instruments, and papers.*** - Upon documents, instruments, and papers, and upon acceptance, assignments, sales, and transfers of the obligation, right, or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following sections of this Title, by the person making, signing, issuing, accepting, or transferring the same, and at the same time such act is done or transaction had: *Provided,* That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax.	**SEC. 173.** ***Stamp Taxes Upon Documents, <u>Loan Agreements,</u> Instruments and Papers.*** - Upon documents, instruments, **<u>loan agreements</u>** and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same **<u>wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines</u>**, and at the same time such act is done or transaction had: *Provided,* That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax.

Aside from re-numbering the provision, RA 7660 also provides two (2) amendments thereto, namely: (1) the insertion of the term "loan agreements"; and (2) the insertion of the phrase *"wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines."* Notice that the two provisions have identical language save for the abovementioned insertions in the amended version. Even the proviso which prescribes the shifting of DST liability in case one of the parties to the transaction is exempt therefrom was already present in the earlier version.

Noticeably absent in the language of the earlier version is any statement regarding the *situs* rules to be followed in imposing DST. This absence of statement regarding *situs* coupled with the mistaken belief that DST is a tax on the document itself (a belief which was eventually corrected by the Supreme Court in a number of cases)[32] engendered the *implied* understanding that the place where the document is executed or issued serves as the *situs* for the DST.

The amendment of the law through the insertion of the contentious phrase was intended to plug a loophole which allowed the transacting parties to avoid the payment of DST by simply going outside the Philippines for the purpose of signing or executing the document evidencing their transaction. This legislative intent may be gathered from the following exchanges between then Senator Ernesto F. Herrera, Chairman of the Senate Committee on Ways and Means, and then Senator Anna Dominique M. L. Coseteng during the deliberations on Senate Bill No. 1330 which eventually became RA 7660:[33]

> "SENATOR COSETENG:
>
> I am quite hesitant, Mr. President, to impose new taxes on our people who are already suffering from unemployment and underemployment, and obviously have not enough money to pay for additional taxes. However, I recognize the importance of this documentary stamp tax, and this could be a source of raising revenue for the Government.
>
> **But, as in the other cases or taxes imposable, the documentary stamp tax has been the subject of creative violations committed by persons on whom the same is imposable, and this robs the Government of a legitimate source of revenue.** I would like to ask the following questions: First of all, how much in revenue is raised by the Government through the collections of documentary stamp tax?
>
> SENATOR HERRERA:
>
> First, this is a very good source of revenues. Under existing law, the Government generates about P6.4 billion.
>
> Now, as a short reaction to an earlier comment by the distinguished Lady Senator. **The present bill which we are now debating is primarily instituting reforms on the present structure as we lessen the problem of administration of this bill because there are certain**

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[32] *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*, G.R. Nos. 172045-46, June 16, 2009; *Philippine Bank of Communications v. Commissioner of Internal Revenue*, G.R. No. 194065, June 20, 2016; *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 170574, January 30, 2009; *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166786, May 3, 2006.

[33] Transcript of Session Proceedings, Senate, 9th Congress (November 17, 1993), pp. 28-31.

loopholes. So we are plugging the loopholes and then proposing some restructuring in order to make the present law realistic, because the last time this law was amended was in 1984. Since then, the rates of this documentary stamp tax become unrealistic if we consider the inflation rates since 1984.

SENATOR COSETENG:

Mr. President, does the Gentleman have an estimate of how much has been lost due to the creative means by which DST's have been evaded?

SENATOR HERRERA:

Let me put it this way. **If we will not plug the loopholes, there can be leakages. <u>If we will recall, early part of this year, one of the issues raised against an Acting Secretary of Finance during the deliberations on his confirmation in the Commission on Appointments was the matter of his participation in executing a contract outside of the country in order to avoid the payment of the documentary stamp tax</u>.**

That is one of the loopholes that we are trying to immediately correct here so that even in transactions like this, <u>even if transactions are executed outside of the country, the Government will not be deprived of the documentary stamp tax</u>.

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SENATOR COSETENG:

Finally, the Gentleman mentioned earlier that <u>whenever the sale or the transfer of documents are made outside the Philippines, this would no longer be exempted from the documentary stamp taxes.</u> Is this a fact, Mr. President?

SENATOR HERRERA:

<u>This is now one of the amendments under the present law.</u> This is, in fact, an amendment authored by Senator Gonzales himself. He authored the bill primarily to plug this loophole because this is one source of evasion. That is why I said that this present bill is very important in the sense that we are improving the administration of the existing documentary stamp tax, and at the same time, we are instituting structural reforms.

SENATOR COSETENG:

Thank you, Senator Herrera, and thank you, Mr. President." *(Emphasis and underscoring supplied)*

On the other hand, at the time when the subject loan transactions were entered into, Section 179 of the 1997 NIRC, as amended by Republic Act No. 9243,[34] reads as follows:

> SEC. 179. ***Stamp Tax on All Debt Instruments.*** - On every original issue of debt instruments, there shall be collected a documentary stamp tax of One peso and fifty centavos (P1.50) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instruments: *Provided,* That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: *Provided, further,* That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.
>
> For purposes of this section, the term "debt instrument" shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements, **including those signed abroad wherein the object of contract is located or used in the Philippines**, instruments and securities issued by the government or any of its instrumentalities, deposit substitute debt instruments, certificates or other evidences of deposits that are either drawing interest significantly higher the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation. *(Emphasis supplied)*

As mentioned earlier, the proper interpretation of the phrase *"including those signed abroad wherein the object of contract is located or used in the Philippines"* in the above provision is also one of the contentious subjects in the present suit.

The above phrase also first appeared in 1993 upon the passage of RA 7660, when that law amended Section 180 of the 1977 NIRC. It states:

> Sec. 180. *Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand.* - **On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines**; bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities or certificates of deposits drawing interest, or orders for the payment of any sum of money otherwise than at sight or on demand, or on all

[34] An Act Rationalizing the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997, As Amended, and for Other Purposes (Approved on February 17, 2004).

promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note: *Provided,* That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax: *Provided, however,* That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (P250,000) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this section. *(Emphasis supplied)*

A review of the legislative history of RA 7660 revealed that the insertion of the phrase *"On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines"* in Section 180 was related to, and meant to reinforce, the amendment introduced to Section 173 with the avowed aim of plugging loopholes in the DST law to prevent tax leakages.[35]

When the Tax Reform Act of 1997[36] was enacted, the phrase was modified to read: *"...loan agreements, including those signed abroad, wherein the object of the contract is located or used in the Philippines..."* This modification is significant because it clarified the mandate that *all* loan agreements, not only those which are signed abroad, must have their object located or used in the Philippines to be covered by the law. With the passage of RA 9243 in 2004, the said phrase was retained but was subsumed within the definition of what constitutes "debt instrument" for purposes of DST imposition under the law, as amended.

Section 180 of the 1977 Tax Code, as amended by RA 7660, still retained its number under the Tax Reform Act of 1997. Upon the enactment of RA 9243 in 2004, Section 180 was re-numbered as Section 179.

The collective effect of the change in the phraseology of the statutory texts combined with the legislative intent and history behind them firmly signifies the untenability of the conclusion that Bloomberry's involvement as an *obligee* in the subject loan transactions automatically qualifies these as transactions involving obligation or right arising from Philippine sources under Section 173. It is illogical to treat the nationality and/or residence of the transacting parties as basis for determining whether a loan transaction is subject to DST when nothing in the statutory texts clearly backs up such view. What Section 173 merely states is that the DST must be paid *"by the person making, signing, issuing, accepting, or transferring the same"* without any indication whatsoever that the nationality and/or

[35] Transcript of Committee Meetings, Senate Committee of Ways and Means of 9th Congress (August 13, 1993), pp. 53-54.
[36] Republic Act No. 8424 (An Act Amending the National Internal Revenue Code, As Amended, and for Other Purposes) Approved on December 11, 1997 (herein also referred to as the "1997 NIRC").

residence of such person shall be used as determinant of *situs* for purposes of DST imposition. More importantly, the fact that the DST law was amended in 1993 precisely to plug the loophole unabashedly exploited by Filipino nationals and/or residents to skirt the payment of DST by merely going abroad unmistakably indicates that the nationality and/or residence of the transacting parties were never really established or used as *nexus* between the subject transactions and the taxing powers of the Philippines insofar as DST is concerned.

Situs Rules for the Imposition of DST on Debt Instruments under Sections 173 and 179 of the Tax Code

It is a settled rule that a State's taxing power is inherently confined by the limits of its territory. No State may tax anything not found within its territorial jurisdiction.[37] Simply put, for a State to legitimately exercise its taxing powers over a particular subject, whether it be person, property, income, business, or transaction, there must be an established *nexus* between such subject and the State's territorial jurisdiction.[38] When this *nexus* is found to exist, it is said that the subject has its *situs* in that State. *Situs* of taxation may thus be defined as the place where the power to tax a particular subject rightfully belongs.

The determination of *situs* of taxation, being purely legislative in nature, is a function properly vested in Congress.[39] As the Supreme Court fittingly held in *Chamber of Real Estate and Builders' Associations, Inc. v. Romulo*,[40] to wit:

> "[The Legislature] has the authority to prescribe a certain tax at a specific rate for a particular public purpose on persons or things within its jurisdiction. **In other words, the legislature wields the power to define what tax shall be imposed, why it should be imposed, how much tax shall be imposed, against whom (or what) it shall be imposed and where it shall be imposed**." *(Emphasis and underscoring supplied)*

The rules to be followed in determining *situs* of taxation are those which the Congress prescribes by law which, in turn, largely depend on the nature or character of the subject involved vis-à-vis the nature of tax to be imposed. According to the Supreme Court in *Manila Gas Corporation v. The Collector of Internal Revenue*,[41] viz:

[37] *Manila Gas Corporation v. The Collector of Internal Revenue*, G.R. No. 42780, January 17, 1936; *Cargill Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. 203346, September 9, 2020.
[38] *Aces Philippines Cellular Satellite Corporation v. Commissioner of Internal Revenue*, G.R. No. 226680, August 30, 2022.
[39] *Tan v. Del Rosario, Jr.*, G.R. No. 109289, October 3, 1994; *Commissioner of Internal Revenue v. Santos*, G.R. No. 119252, August 18, 1997.
[40] G.R. No. 160756, March 9, 2010.
[41] G.R. No. 42780, January 17, 1936.

> "If an interest in property is taxed, the situs of either the property or interest must be found within the state. If an income is taxed, the recipient thereof must have a domicile within the state or the property or business out of which the income issues must be situated within the state so that the income may be said to have a situs therein. Personal property may be separated from its owner, and he may be taxed on its account at the place where the property is although it is not the place of his own domicile and even though he is not a citizen or resident of the state which imposes the tax. But debts owing by corporations are obligations of the debtors, and only possess value in the hands of the creditors."

Prior to the enactment of RA 7660, Section 186 of 1977 NIRC had tacitly treated the **place of execution or issuance of the document evidencing the loan transaction** as the *situs* for DST imposition. The implied understanding is that only those that were executed, signed, issued, accepted, or transferred within the Philippines are covered. Conversely, those transactions evidenced by documents executed or issued abroad were back then deemed beyond the ambit of the law. With the enactment of RA 7660, the rule has been changed. In lieu of the place where the document evidencing the transaction is made, signed, issued, accepted, or transferred as basis of *situs* for DST purposes, Congress replaced the same with the rule that *situs* pertains to Philippine jurisdiction ***"when the obligation or right arises from Philippine sources or the property is situated in the Philippines"*** and with specific reference to debt instruments, the amended law provides that debt instruments are subject to DST when *"**the object of the contract is located or used in the Philippines.**"* The Supreme Court categorically adopted this interpretation in *Filinvest* and even went further by condensing the *situs* rules into ***"when the obligation or right arises from Philippine sources or the property or object of the contract is located or used in the Philippines."*** In doing so, the Supreme Court effectively clarified that the phrase *"the property is situated in the Philippines"* as found in Section 173 practically carries the same meaning as the phrase *"the object of the contract is located or used in the Philippines"* as found in Section 179. The Supreme Court said:

> "On the other hand, insofar as documentary stamp taxes on loan agreements and promissory notes are concerned, Section 180 of the NIRC provides follows:
>
> > Sec. 180. *Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand.* - On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines; bill of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities or certificates of deposits drawing interest, or orders for the payment of any sum of money otherwise than at sight or on demand, or on all promissory notes, whether negotiable or

> non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit or note: *Provided,* That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax: *Provided however,* That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (P250,000.00) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of documentary stamp tax provided under this Section.
>
> **When read in conjunction with Section 173 of the 1993 NIRC, the foregoing provision concededly applies to '(a)ll loan agreements, whether made or signed in the Philippines, or abroad <u>when the obligation or right arises from Philippine sources or the property or object of the contract is located or used in the Philippines</u>.'"** *(Emphasis and underscoring supplied; citations omitted)*

Interestingly, the Court in Division cited *Filinvest* in the Assailed Decision in support of its conclusion that since Bloomberry admitted and disclosed in its 2015 AFS the subject loans with related parties, these loans need not be embodied in a formal instrument to be subjected to DST under Section 179. However, there is neither any dispute in the present case as regards the existence of the subject loans nor is there any argument that DST shall not be imposed due to the absence of formal document evidencing these transactions. Also, as astutely observed by Associate Justice Bacorro-Villena in her Dissenting Opinion, the Supreme Court in *Filinvest* made no distinction between advances extended to domestic and foreign affiliates. There are no foreign affiliates involved in *Filinvest* let alone any categorical finding as to the place where the loan proceeds were used by the affiliates. In other words, there was no issue of *situs* in *Filinvest* unlike in the present case where the primary point of contention is whether the subject loan transactions have the necessary jurisdictional connection to the Philippines for purposes of DST imposition. Needless to say, *Filinvest* was erroneously invoked by the Court in Division in the Assailed Decision.

As mentioned earlier, DST is essentially a **tax on the transaction** as represented by the document and not on the document itself. Therefore, in imposing DST, the nature and character of the transaction being taxed shall be taken into account.

In line with the above precept, the Court *En Banc* is of the view that the term *"sources"* in the phrase *"when the obligation or right arises from Philippine sources"* under Section 173 refers to the **contract** itself that the parties have entered into inasmuch as under Philippine law, contract is among the statutorily enumerated **sources of obligation**.[42] This is not to say that DST may be properly imposed on obligations or rights arising from other sources such as law, quasi-contract, delict, and quasi-delict. Only *contractual* obligations or rights are subject to DST because of the nature of DST as an excise tax, *i.e.*, it is imposed on the exercise by persons of privilege conferred by law. This was the point made by the Supreme Court in *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*[43] where it said:

> "DST is by nature, an excise tax since it is levied on the exercise by persons of privileges conferred by law. These privileges may cover the creation, modification or termination of **contractual** relationships by executing specific documents like deeds of sale, mortgages, pledges, trust and issuance of shares of stock. **The sale of Fort Bonifacio land was not a privilege but an obligation imposed by law which was to sell lands in order to fulfill a public purpose. To charge DST on a transaction which was basically a compliance with a legislative mandate would go against its very nature as an excise tax**." *(Emphasis and underscoring supplied; citation omitted)*

In practical terms, therefore, the obligation will be considered as arising from Philippine source if the contract from which it originates is perfected in the Philippines. It is the perfection of the contract that actualizes its "birth" and the exact point at which the rights and obligations of the parties thereto come into being.[44]

Sections 173 and 179 clearly prescribe the *situs* rules of DST on debt instruments. Such *situs* rules are complete. They precisely operate within a specific context. Accordingly, there is no need to make any reference to the source rules designated for income taxation, particularly those provided under Section 42 of the 1997 NIRC and its cognate jurisprudence, and to invoke these rules for DST purposes even by way of analogy. The fact that Congress explicitly crafted separate *situs* rules for income taxation and DST, respectively, and intentionally placed their corresponding provisions under different titles of the Tax Code strongly militates against the idea of conflating these two distinct concepts.

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[42] Article 1157 of the Civil Code provides:

"Art. 1157. **Obligations arise from**:

(1) Law;
(2) Contracts;
(3) Quasi-contracts;
(4) Acts or omissions punished by law; and
(5) Quasi-delicts." *(Emphasis supplied)*

[43] G.R. Nos. 164155 & 175543, February 25, 2013.

[44] *Ang Yu Asuncion v. Court of Appeals*, G.R. No. 109125, December 2, 1994; *National Housing Authority v. Grace Baptist Church*, G.R. No. 156437, March 1, 2004; *Manila Metal Container Corporation v. Philippine National Bank*, G.R. No. 166862, December 20, 2006; *Locsin v. Puerto Galera Resort Hotel, Inc. et. al.*, G.R. No. 233678, July 27, 2022.

The Subject Loan Agreements, Being in the Nature of *Real Contracts*, Were Perfected Outside the Philippines

Article 1933 of the Civil Code states that by the contract of simple loan or *mutuum*, one of the parties delivers to another money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid. On the other hand, Article 1934 of the Civil Code succinctly provides that loan contracts shall not be perfected until the delivery of the object of the contract. In other words, simple loan or *mutuum* is in the nature of *real contract.* With real contracts, the delivery of the object of the contract is essential for its creation and until and unless such delivery is effected, there will be no contract to speak of.[45] In a contract of loan, the object of the contract is the proceeds thereof.[46] The release of the loan proceeds to the debtor is an essential requisite for the perfection of such contract.[47]

It bears stressing that the specific requirement under Section 179 of the Tax Code that *"the object of the contract is located or used in the Philippines"* for debt instruments to be subject to DST within Philippine jurisdiction fits perfectly with the characterization of loan as a real contract under Philippine law. This must be so because it is only when the object of the loan contract is released, located, and/or used in the Philippines that the loan transaction enjoys protection from the Philippine government. It is only then that the Philippines can reasonably demand exaction from the transacting parties in return for the protection received.

Bloomberry's 2015 AFS[48] is bereft of any categorical statement as to where the proceeds of the subject loans were released or used. Nonetheless, Bloomberry's witness testified in his Judicial Affidavit[49] that the proceeds of the subject loans were used by the NRFC-affiliates in their operations **within the Republic of Korea**. The relevant portion of such testimony is quoted below:

> Q81 : Please state whether or not you are familiar with the aforesaid advances?
>
> A : I am familiar with the advances as these are part of my responsibilities, ma'am.

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[45] Article 1316, Civil Code.

[46] *Spouses Sy, et. al. v. Westmont Bank (now United Overseas Bank Philippines) et. al.*, G.R. No. 201074, October 19, 2016; *Spouses Ong et. al. v. BPI Family Savings Bank, Inc.*, G.R. No. 208638, January 14, 2018; *Naguiat v. Court of Appeals*, G.R. No. 118375, October 3, 2003.

[47] *Spouses Palada v. Solidbank Corporation*, G.R. No. 172227, June 29, 2011; *BPI Investment Corporation v. Court of Appeals*, G.R. No. 133632, February 15, 2002.

[48] Exhibit "P-5", Division Docket, pp. 125-164.

[49] Exhibit "P-12", Division Docket, pp. 94-110.

Q82 : From where should the payments for these advances to Solaire Korea Co., Ltd. and Golden & Luxury Co., Ltd. come from?
A : From the two companies in the Republic of Korea, ma'am.

Q83 : What proof do you have, if any, of this statement?
A : I know this as part of my responsibilities. The financial statements of the two companies are consolidated at the BRC level and they show the results of operations and statement of cash flows which all indicate operations within the Republic of Korea. **Also, they are operating within the Republic of Korea and I have Certificates of Residence and Certificates of Non-Registration of Company, ma'am.**

Q84 : If you know, in which country were the proceeds of the advances subject of the formal letter of demand used?
A : The advances were used by Solaire Korea Co., Ltd. and Golden & Luxury Co., Ltd. in the Republic of Korea, ma'am. *(Emphasis supplied)*

In view thereof, the weight of evidence on the matter preponderates in favor of the conclusion that the loan proceeds were released, located, and/or used outside the Philippines. Accordingly, the loan agreements are deemed perfected outside the Philippines, specifically in Republic of Korea. Given that the *situs* of the subject transactions lies outside the Philippine jurisdiction, these transactions are not subject to DST.

At any rate, if there is any doubt on this particular matter, the same shall be resolved in favor of the taxpayer and against the taxability of the subject transactions, consistent with the principle of strict construction of tax laws.

Finally, the proviso in Section 173 which allows the shifting of DST liability in case one of the parties to the transaction is exempt therefrom cannot be used as basis to impute DST liability to Bloomberry. Said proviso presupposes that the transaction itself is already liable to DST, thus:

> "*Provided*, That whenever one party to the **<u>taxable</u>** document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax." *(Emphasis and underscoring supplied)*

The proviso only allows the shifting of the responsibility for the payment of DST to other transacting parties in case the one supposedly obligated to pay is exempt therefrom. It certainly does not operate to create liability for DST when there is none to begin with.

Response to Associate Justice Lanee S. Cui-David's Concurring and Dissenting Opinion

In her *Concurring and Dissenting Opinion*, Associate Justice Lanee S. Cui-David disagreed with the ruling that the subject loan agreements are not subject to documentary stamp tax (DST) on the ground that the *situs* of the loan transactions was outside the Philippines. While the points she raised have already been addressed in the foregoing discussion, the Court deems it prudent to specifically respond to the following italicized statements she made, for further clarification:

> *"Usage is not synonymous with delivery. While the loan proceeds were 'used' in Korea, this does not necessarily mean they were delivered in Korea. It must be emphasized that the 'loan proceeds' originated from BRC, a domestic corporation, and were generated and disbursed from a Philippine entity. Hence, it is reasonable to conclude that the 'loan proceeds' were released, accepted, and delivered in the Philippines.*
>
> xxx xxx xxx
>
> *In the instant case, the witness for BRC testified that the proceeds of the subject loans were 'used' by the NRFC-affiliates in their operations in Korea. However, the location of the funds upon agreement is in the Philippines, i.e., with BRC, which makes the object of the contract 'located in the Philippines'."*

It is unwarranted to infer that the loan proceeds were delivered in the Philippines solely on the basis that the creditor is a domestic corporation. As clearly shown in the records, the subject loan transactions were merely evidenced by the disclosures in Notes 4, 8, and 12 of the Notes to Bloomberry's 2015 Audited Financial Statements (AFS). These disclosures do not categorically indicate where the loan proceeds were delivered or utilized. They merely establish the existence of the loans and nothing more. To presume that the loan proceeds were released in, or situated within, the Philippines by reason of the creditor's domicile is purely speculative and logically flawed. It is a settled rule that courts cannot rely on speculation, conjecture, or guesswork, but must base their conclusions on competent proof and the best evidence obtainable under the circumstances.[50]

While there is no direct evidence, whether testimonial or documentary, establishing that the loan proceeds were delivered in the Philippines, Bloomberry's witness testified in his Judicial Affidavit that the proceeds were utilized by the NRFC-affiliates in their operations within the Republic of Korea. This testimony remains uncontradicted on record. Such testimonial evidence supports the conclusion that the loan proceeds were located outside the Philippines. Admittedly, use is not necessarily equivalent to delivery. However,

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[50] *Pilipinas Shell Petroleum Corporation v. Commissioner of Customs*, G.R. No. 195876, June 19, 2017.

it would be implausible—if not entirely unreasonable—to argue that the NRFC-affiliates could have used the loan proceeds in their operations in the Republic of Korea without having first received them there.

> *"Even assuming the 'loan proceeds' were delivered in Korea, the Supreme Court, in the case of Aces Philippines Cellular Satellite Corporation v. The Commissioner of Internal Revenue, emphasized that tax liability cannot be avoided by structuring transactions to occur outside Philippine jurisdiction if the economic benefit or burden remains tied to the Philippines. In this case, the critical fact remains that the obligation that established the lending and borrowing relationship originated in the Philippines."*

The Supreme Court's ruling in *Aces Philippines Cellular Satellite Corporation v. The Commissioner of Internal Revenue*[51] was rendered in the context of **income taxation**, specifically in determining the *situs* of income derived from the provision of satellite communication services within the Philippines by a nonresident foreign corporation. It cannot be applied to the present case, which involves DST, as the latter is governed by a distinct set of rules and principles.

It is plainly incorrect to assert that the economic benefit or burden arising from the subject loan transactions is tied to the Philippines, or that the obligation which gave rise to the lending and borrowing relationship originated therein. The obligation arising from the loan transactions pertains to the debtors—the NRFC-affiliates—and the loan proceeds were in fact utilized in their operations in the Republic of Korea. It is therefore unequivocal that the economic benefit or burden attributable to these transactions materialized outside the Philippines.

> *"With due respect, the draft ponencia may set an unintended precedent, one that effectively exempts loan transactions from DST based on the delivery of proceeds outside the Philippines. The draft ponencia appears to introduce this as a definitive rule, without regard to other relevant aspects of the contract. While delivery is an essential element in perfecting a loan contract under the Civil Code, equating it as the sole determinant of the obligation's situs may not be entirely appropriate.*
>
> *If adopted, this interpretation could allow parties to structure loan agreements in a manner that circumvents DST liability, provided the proceeds are delivered abroad, regardless of the parties' domicile, the place of contract execution, or the intended use of funds. Notably, the Senate deliberations extensively cited in the ponencia sought to prevent precisely this outcome. Established principles of statutory construction caution against interpretations that lead to absurd or unintended consequences."*

In the interpretation of tax laws during the exercise of its adjudicative functions, it is neither fair nor proper for this Court—or any of its members—to impute ill motives to taxpayers absent a solid factual basis. It is unjust and unwarranted to speculate that taxpayers deliberately structure their business transactions solely to circumvent tax laws or fraudulently evade the payment of

[51] G.R. No. 226680, August 30, 2022.

taxes. Such a presumption runs counter to the evidentiary rules under the Rules of Court, which require the presumption that "the ordinary course of business has been followed"[52] and "that private transactions have been fair and regular."[53] This Court must not adopt a narrow or parochial perspective in construing tax statutes, especially when doing so would disregard the prevailing economic realities that often provide legitimate business justifications for how transactions are arranged. In interpreting the applicable statutory provisions in this case, the Court merely applied the plain language of the law, consistent with legislative intent and history, and guided by relevant jurisprudence and settled principles of statutory construction.

> *"In the instant case, no contract was presented, as the assessment of the CIR was based only on the Notes to the Financial Statements of BRC. BRC, as the taxpayer challenging the assessment, has the burden of proving its inaccuracy. However, it failed to proffer any evidence to establish that such loan agreements were not agreed upon in the Philippines, or that the proceeds were neither located nor used within Philippine jurisdiction.*
>
> *In closing, the statutory language, legislative intent, and evidentiary record all support the conclusion that the loan transactions in question fall within the ambit of DST. Tax assessments are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise. The burden of proof rests upon the taxpayer to show that the assessment is erroneous. Here, BRC fell short in proving that the assessment was wrong."*

Contrary to the foregoing assertions, Bloomberry presented sufficient testimonial evidence establishing that the loan proceeds were utilized by its NRFC-affiliates in their operations within the Republic of Korea. This is adequate to overcome the presumption of correctness in the subject tax assessment. There is no requirement under Section 173 of the 1997 NIRC for Bloomberry to prove that the loan agreements were **not** entered into in the Philippines—or elsewhere—as the place of execution is no longer determinative of *situs* for DST purposes. As previously discussed, the statutory provisions on documentary stamp tax were amended precisely to eliminate the place of execution as the basis for taxation. In sum, Bloomberry successfully discharged its burden of proving the inaccuracy of the assessment.

ACCORDINGLY, the Petition for Review filed by the Commissioner of Internal Revenue docketed as CTA EB No. 2933 is **DENIED** for lack of merit.

On the other hand, the Petition for Review filed by Bloomberry Resorts Corporation docketed as CTA EB No. 2935 is **GRANTED.**

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[52] Section 3(q), Rule 131 of the Rules of Court.
[53] Section 3(p), Rule 131 of the Rules of Court.

The Assailed Decision dated May 29, 2023 and Assailed Resolution dated May 27, 2024 both rendered by the Special Second Division of this Court in CTA Case No. 10193 are **REVERSED** and **SET ASIDE**. The Assailed Decision dated May 29, 2023 is **MODIFIED** to read as follows:

> "**WHEREFORE**, premises considered, the instant *Petition for Review* is **GRANTED**. The assessment issued by respondent against petitioner for deficiency documentary stamp tax for taxable year 2015 in the amount ₱50,802,339.81, inclusive of increments, and for compromise penalty in the amount of ₱50,000.00, is **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED.**"

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

With due respect, I join Associate Justice Lanee S. Cui-David's Concurring and Dissenting Opinion
CATHERINE T. MANAHAN
Associate Justice

With Separate Concurring Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

With due respect, I join the Concurring and Dissenting Opinion of Associate Justice Lanee S. Cui-David
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

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

With due respect, I join the Concurring and Dissenting Opinion of Associate Justice Lanee S. Cui-David
CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 2933
(CTA Case No. 10193)

- versus -

BLOOMBERRY RESORTS CORPORATION,
Respondent.

x--x

BLOOMBERRY RESORTS CORPORATION,
Petitioner,

CTA EB No. 2935
(CTA Case No. 10193)

- versus -

Present:

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 0 6 2025 2:10 PM

x - x

SEPARATE CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur in the denial of the Commissioner of Internal Revenue's (**CIR**'s) *Petition for Review* in CTA EB No. 2933 and the grant of Bloomberry Resorts Corporation's (**BRC**'s) *Petition for Review* in CTA EB No. 2935.

It is my considered view that **the transactions in question, *i.e.*, the 'loans and advances' extended by BRC to its affiliates** (*i.e.*, Solaire Korea Co., Ltd. [**SKCL**] and Golden & Luxury Co. Ltd. [**G&L**], both nonresident foreign corporations [**NRFCs**] **duly organized and existing under the laws of the Republic of Korea and not doing business in the Philippines**), are ***not* subject to documentary stamp tax (DST)** pursuant to Section 179[1], in relation to Section 173[2], of the National Internal Revenue Code (**NIRC**) of 1997, as amended, for being outside the territorial jurisdiction of the State's taxing power.

The *ponencia* correctly held that the Special Second Division's ruling (*i.e.*, that the subject loans and cash advances are subject to DST being deemed sourced from the Philippines under Section 173 of the NIRC of 1997, as amended, since the BRC, a domestic corporation, is the creditor, regardless of the debtors' foreign status or the proceeds' use abroad) is not only at odds with the text of the statute, the soundness thereof is likewise negated by the legislative intent and history of Sections 173 and 179 of the NIRC of 1997, as amended.

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1 SEC. 179. *Stamp Tax on All Debt Instruments.* — On every original issue of debt instruments, there shall be collected documentary stamp tax of… or fractional part thereof, of the issue price of any such debt instruments: Provided, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: Provided, further, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.

For purposes of this section, **the term '*debt instrument*' shall mean instrument representing borrowing and lending transactions including but not limited to** debentures, certificates of indebtedness, due bills, bonds, **loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines**…[.] (Italics in the original text and emphasis supplied)

2 SEC. 173. *Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers.* – **Upon documents, instruments, loan agreements and papers**, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and **in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted or transferred <u>when the obligation or right arises from Philippine sources or the property is situated in the Philippines</u>**, and at the same time such act is done or transaction had: *Provided*, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax. (Italics in the original text, emphasis and underscoring supplied)

However, with all due respect to my esteemed colleague, Senior Associate Justice Ma. Belen M. Ringpis-Liban, I am unable to fully concur with the *ponencia*, particularly in the portion where it lays down a definitive rule that the *situs* for DST purposes is determined solely by the place where the loan transaction was perfected or where the loan proceeds were delivered. To my mind, this broad assertion overlooks what is arguably the **most critical consideration: the existence of a substantial connection or *nexus* to the Philippines**. In matters of taxation, especially with respect to excise taxes like DST, it is not merely the formalities of contract execution or delivery that should dictate taxability, but rather the underlying economic realities and the presence of a jurisdictional link to the taxing State.

Foremost, I wish to underscore the significance of this case as one of first impression. Unlike any other case previously brought before and resolved by the Supreme Court, this case squarely presents the issue of the *situs* of taxation in relation to the imposition of DST on debt instruments.

At its core, the central question is whether the subject loan and cash advances extended by a domestic corporation to its NRFC-affiliates possess the necessary jurisdictional connection or *nexus* to the Philippines to warrant the imposition of DST. To resolve this question, it is essential to first establish a clear and precise understanding of the concept of *situs* of taxation as it applies to debt instruments under existing law.

That taxation is inherent in sovereignty limits the scope of taxing power within a State's territorial jurisdiction. There must be an established *nexus* between the subject (*e.g.*, person, property, income, or business) and the State that intends to tax it. The existence of a *nexus* ensures that the taxing power does not extend beyond its territorial limits.[3]

The concept of *situs* of taxation refers to the place or jurisdiction where a tax may lawfully be imposed and collected, or where the tax liability is deemed to arise. It determines which State's tax laws govern a particular transaction or activity. Establishing the *situs* is crucial because taxes are generally imposed based on the existence of a substantial connection or *nexus* between the object of taxation and the taxing jurisdiction.[4] In the case of indirect taxes such as DST, the *situs* may be determined by factors such as the

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[3] *Aces Philippines Cellular Satellite Corporation v. The Commissioner of Internal Revenue*, G.R. No. 226680, 30 August 2022.

[4] See definition of "tax *situs*", Black's Law Dictionary, p. 1503 (8[th] ed., 2004).

place where the instrument is executed or where the debt obligation is deemed to originate.

The *ponencia* advances the theory that, in the case of loans, advances or debt instruments (*i.e.*, contracts of simple loan or *mutuum*), which are classified as real contracts, the *situs* for DST imposition is the **place where the contract is perfected**. Under this view, the obligation is deemed to arise from Philippine sources if the contract from which it originates is perfected in the Philippines. This position draws support from the Supreme Court's ruling in *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*[5] (**Fort Bonifacio**), which has been interpreted to mean that only contractual obligations or rights are subject to DST, given the nature of DST as an excise tax imposed on the exercise of privileges granted by law.

While the foregoing theory is not without merit, I respectfully submit that, in the Philippines, the *situs* for DST imposition on debt instruments is determined not by the place of perfection of the contract *per se*, but by the **location or use of the object of the contract**, as expressly provided in Sections 173[6] and 179[7] of the NIRC of 1997, as amended. In my view, an obligation is deemed to arise from Philippine sources if the object of the contract from which it originates is located or used in the Philippines. To be clear, it is not the mere perfection of the contract that establishes the *situs* for DST purposes, but rather the presence of a substantial *nexus* between the transaction and the Philippines.

The word "**wherever**" in Section 173 of the NIRC of 1997, as amended, clearly indicates a legislative policy that it is immaterial where the document—regardless of its nature, as held in *Commissioner of Internal Revenue v. Filinvest Development Corporation*[8] (**Filinvest**)—is made, signed, issued, accepted, or transferred. What is determinative, rather, is whether the covered transaction can be substantially linked to the Philippines. This is evident from the succeeding phrase in the same provision: "**when the obligation or right arises from Philippine sources or the property is situated in the Philippines.**" This clause, when read in conjunction with the language of Section 179 of the same law—specifically, "**wherein the object of contract is located or used in the Philippines**"—supports the view that, in the case of loan agreements, the obligation or right is deemed to arise from Philippine sources when the object of the contract, or the subject matter being loaned, is located or used within the Philippines.

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5 G.R. Nos. 164155 & 175543, 25 February 2013.
6 Supra at note 2.
7 Supra at note 1.
8 G.R. Nos. 163653 & 167689, 19 July 2011.

For clarity, the **next important question is: what does the word "object" mean, or more precisely, what does it consist of?** The second paragraph of Section 179 of the NIRC of 1997, as amended, suggests a broader and more functional interpretation, *viz*:

> ...
>
> SEC. 179. *Stamp Tax on All Debt Instruments.* — ...
>
> ...
>
> For purposes of this section, the term '**debt instrument**' shall mean **debt instrument representing borrowing and lending transactions including but not limited to** debentures, certificates of indebtedness, due bills, bonds, **loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines**, instruments and securities issued by the government or any of its instrumentalities, deposit substitute debt instruments, certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation.[9]
>
> ...

The underlined phrase above clarifies that even debt instruments executed abroad or offshore may still be subject to DST in the Philippines if the object of the contract has a sufficient *nexus* to the country. In this context, the term "**object**" must be interpreted in light of Article 1347 of the Civil Code of the Philippines, which substantially provides that the object of a contract may include **all things not outside the commerce of men, transmissible rights, and lawful services**.

In loan agreements, the object is typically money or other fungible goods. However, for purposes of DST, where collateral, rights, or the intended use of the funds are closely linked to the loan transaction, these elements may likewise be considered part of the contract's economic object for determining its *situs*. Moreover, the statutory definition of "debt instrument" encompasses not only loan agreements, but also orders for payment, promissory notes, certificates of deposit, and government securities. These instruments do not always involve a simple exchange of money as their exclusive object. Accordingly, the "object" of a contract may be understood to include not only the funds lent, but also the collateral securing the obligation and the economic use to which the funds are applied.

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9 Italics in the original text, emphasis and underscoring supplied.

DST imposition on debt instruments therefore centers on the subject matter and economic substance of the transaction—not merely the act of executing the instrument—regardless of the place of execution or the domicile or residence of the transacting parties.

On this score, I agree with the *ponencia* that it would be illogical to treat the nationality or residence of the transacting parties as the basis for determining whether a loan transaction is subject to DST, as this view is unsupported by the language of Sections 173 and 179 of the NIRC of 1997, as amended. The same critique applies to the *ponencia*'s theory that the "perfection" of the contract—coinciding with the "delivery" or release of loan proceeds to the debtor—determines the *situs* for DST purposes. As aptly pointed out in the Concurring and Dissenting Opinion of Associate Justice Lanee S. Cui-David, nowhere in Section 179 does the law hinge DST imposition on "delivery" as a determinative factor.

In view of the foregoing, **I respectfully submit that the proper interpretation of the *situs* requirement for DST imposition on debt instruments under Section 179[10], in relation to Section 173[11], of the NIRC of 1997, as amended, must focus on the economic substance of the transaction and its substantial *nexus* to the Philippines**, rather than on formalistic criteria such as the place of perfection or delivery of loan proceeds. **The determining factor should be whether the object of the contract—be it the funds, collateral, or intended economic activity—is located, used, or otherwise connected to Philippine territory. This approach not only aligns with the text and legislative intent of the law, but also avoids absurd results where taxable transactions with real economic effects in the Philippines escape taxation simply because they were executed abroad.** Ultimately, the imposition of DST must rest on a fair and reasonable standard that gives effect to the underlying purpose of the law: to tax transactions that draw from or affect Philippine resources and economic activity.

Having established that the imposition of DST on a debt instrument is triggered by the presence of a sufficient Philippine *nexus* grounded in the economic substance of the underlying transaction, **the next logical question arises: what is the principal (or most crucial) consideration in determining the "economic substance" of a debt transaction?**

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[10] Supra at note 1.
[11] Supra at note 2.

To my mind, in determining the economic substance of a debt transaction, it is more appropriate to consider the **domicile or residence of the debtor**, rather than that of the creditor. This is because the debtor's domicile or residence identifies the **location of the obligation** and reflects the **source of the funds** and the **economic connection** to the taxing jurisdiction.

For proper context, it is the borrower (or debtor/*obligor*) who initiates the debt transaction by issuing a debt instrument for the purpose of raising capital, while the lender (or creditor/*obligee*) merely provides the funds in exchange for a promise of repayment, typically with interest. The debt instrument, therefore, embodies the debtor's legal and financial obligation to repay the borrowed amount under the terms of the agreement.

Since it is the debtor who incurs the liability and undertakes the duty to repay, the **economic substance of the transaction** is necessarily tied to the debtor's circumstances. The act of borrowing, the capacity to generate funds, and the fulfillment of the debt obligation all originate from the debtor's economic activity within their jurisdiction of residence. Accordingly, it is more logical to anchor the determination of economic substance—and any corresponding tax implications—on the debtor's domicile or residence, where the obligation arises and where the financial effects of the transaction are most concretely realized.

For example, in income tax law, the taxation of interest income is generally tied to the debtor's jurisdiction of residence, since it is from the debtor's funds that the interest payments originate. As such, that jurisdiction has a direct and legitimate interest in taxing the financial activities and economic outputs of the debtor. This is consistent with the Supreme Court's declaration in *National Development Company v. Commissioner of Internal Revenue*[12] (**NDC**) that the **residence of the obligor** is the determining factor of the source of the interest income, to wit:

> ...
>
> The petitioner argues that the Japanese shipbuilders were not subject to tax under the above provision because all the related activities — the signing of the contract, the construction of the vessels, the payment of the stipulated price, and their delivery to the NDC — were done in Tokyo. **The law, however, does not speak of activity but of "source," which in this case is the NDC. This is a domestic and resident corporation with principal offices in Manila.**

[12] G.R. No. L-53961, 30 June 1987; Citations omitted, italics in the original text and emphasis supplied.

As the Tax Court put it:

> "It is quite apparent, under the terms of the law, that the Government's right to levy and collect income tax on interest received by foreign corporations not engaged in trade or business within the Philippines is not planted upon the condition that 'the activity or labor — and the sale from which the (interest) income flowed had its situs' in the Philippines. The law specifies: 'Interest derived from sources within the Philippines, and interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise.' Nothing there speaks of the 'act or activity' of non-resident corporations in the Philippines, or place where the contract is signed. **The *residence of the obligor* who pays the interest rather than the physical location of the securities, bonds or notes or the place of payment, is the determining factor of the source of interest income.** (Mertens, Law of Federal Income Taxation, Vol. 8, p. 128, citing A.C. Monk 8: Co. Inc. 10 T.C. 77; Sumitomo Bank, Ltd., 19 BTA 480; Estate of L.E. Mckinnon, 6 BTA 412; Standard Marine Ins. Co., Ltd., 4 BTA 853; Marine Ins. Co., Ltd., 4 BTA 867). **Accordingly, if the obligor is a resident of the Philippines the interest payment paid by him can have no other source than within the Philippines. The interest is paid not by the bond, note or other interest-bearing obligations, but by the obligor.** (See Mertens, Id., Vol. 8, p. 124.)
>
> "Here in the case at bar, petitioner National Development Company, a corporation duly organized and existing under the laws of the Republic of the Philippines, with address and principal office at Calle Pureza, Sta. Mesa, Manila, Philippines unconditionally promised to pay the Japanese shipbuilders, as obligor in fourteen (14) promissory notes for each vessel, the balance of the contract price of the twelve (12) ocean-going vessels purchased and acquired by it from the Japanese corporations, including the interest on the principal sum at the rate of five per cent (5%) per annum. (See Exhs. "D", D-1" to "D-13", pp. 100-113, CTA Records; par. 11, Partial Stipulation of Facts.) And pursuant to the terms and conditions of these promissory notes, which are duly signed by its Vice Chairman and General Manager, petitioner remitted to the Japanese shipbuilders in Japan during the years 1960, 1961, and 1962 the sum of $830,613.17, $1,654,936.52 and $1,541.031.00, respectively, as interest on the unpaid balance of the purchase price of the aforesaid vessels. (pars. 13, 14, & 15, Partial Stipulation of Facts.).
>
> "The law is clear. Our plain duty is to apply it as written. **The residence of the obligor which paid the interest under consideration, petitioner herein, is Calle Pureza, Sta. Mesa, Manila, Philippines; and as a corporation duly organized and existing under the laws of the Philippines, it is a domestic corporation, resident of the Philippines.** (Sec. 84(c), National Internal Revenue Code.) The interest paid by petitioner, which is admittedly a resident of the Philippines, is on the promissory notes issued by it. Clearly, therefore, the interest remitted to the Japanese shipbuilders in Japan in 1960, 1961 and 1962 on the unpaid balance of the purchase price of the vessels acquired by petitioner is interest derived from sources within the Philippines subject to income tax under the then Section 24(b)(1) of the National Internal Revenue Code."

...

In *NDC*, interest payments made to NRFCs not engaged in business in the Philippines were deemed taxable because the "source" of the income—or the *obligor*—was a domestic corporation, notwithstanding that all related activities (including the signing of the contract, the construction of the vessels, the payment of the stipulated price, and the delivery of the vessels to the debtor or *obligor*) took place outside the Philippines. While income tax and DST operate under separate *situs* rules, the underlying principle that triggers tax imposition is similar in both cases: a focus on the **economic substance of the transaction**. In both instances, taxation is justified where there is a substantial economic connection to the taxing jurisdiction.

As to the alternate view that the object of the contract is deemed located in the Philippines if the loan funds are physically situated there at the time of the agreement—such as when the creditor is a domestic corporation—this position overlooks the more relevant consideration: **the role of the debtor in establishing economic substance.**

The creditor, by contrast, is merely the party receiving payments. While the creditor's domicile may differ, it has limited relevance in determining the *situs* of taxation. The primary focus remains on the **debtor's capacity to satisfy the debt obligation**, which is tied to the generation of income or assets within the debtor's jurisdiction. **The economic substance of the transaction lies in the obligation to repay, and that obligation—together with the financial source for repayment—arises from the debtor's economic activity in their place of residence. Accordingly, it is the debtor's domicile, not the creditor's, that provides the appropriate basis for establishing a substantial *nexus* to the taxing jurisdiction.**

Stated differently, the *situs* of the debt is more logically linked to the location of the debtor, as this is where the payment obligations originate and where the economic benefit—namely, the interest and principal repayments—is generated. The creditor's residence merely reflects where the payments are received, not where the debt is incurred or sustained as an economic burden.

It thus follows that the imposition of DST on debt instruments is warranted only when the issuer, borrower, debtor, or obligor is situated within the Philippines, as such presence establishes the necessary *nexus* to the State's taxing authority. Accordingly, the domicile or residence of the debtor serves as the more appropriate basis for determining the economic substance of a loan transaction. It is the debtor's legal and financial obligation to repay—supported by

income or assets generated within their jurisdiction of residence—that creates the relevant connection for tax purposes.

Additionally, it is worth noting that DST on debt instruments under Section 179[13] of the NIRC of 1997, as amended, is similar to that of DST on original issuance of shares of stock under Section 174[14] of the same law in that both provisions make use of the phrase *"[o]n every original issue"*. Under Section 174[15], the prevailing interpretation is that the issuance of shares should be subject to DST only if the corporation issuing the shares is a domestic corporation whose principal office is within the Philippines. Consequently, where a foreign corporation whose principal office is outside the Philippines issues shares of stock, where the subscribers of the shares are residents of the Philippines, the DST should not be imposed. This is because the transaction takes place outside the Philippines.[16]

By the same token, DST may not be imposed on the original issuance of a debt instrument issued by an NRFC to a domestic corporation because the issuance did not arise from a Philippine source given that the issuer or debtor is outside the taxing jurisdiction of the Philippines. Clearly, the fact that the other party to the transaction, in both scenarios, is a domestic corporation (*i.e.*, in the issuance of shares of stock, as a stockholder or investor to whom the stock certificate is issued and, in the issuance of a debt instrument, as a creditor or *obligee* to whom the debt instrument is issued) is of no consequence. To be precise, the fact that the lender, creditor or *obligee* is a domestic corporation does not automatically render the transaction as one arising from Philippine sources as contemplated in Section 173[17] of the NIRC of 1997, as amended. Instead, what determines the same is the residence of the issuer or debtor. **And, *by way of exception*, the only instance where DST may nonetheless be imposed on a debt instrument issued by an NRFC is when the object thereof is located or used in the Philippines.**

It may thus be argued that a Philippine lender or creditor in a cross-border loan transaction stands in the same legal position as a Philippine shareholder subscribing to foreign shares—both are recipients of documents issued by entities beyond the reach of the Philippine taxing jurisdiction.

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13 Supra at note 1.

14 SEC. 174. *Stamp Tax on Original Issue of Shares of Stock.* — **On every original issue**, whether on organization, reorganization or for any lawful purpose, **of shares of stock** by any association, company or corporation, there shall be collected a documentary stamp tax of .... or fractional part thereof, of the par value, of such shares of stock: *Provided*, That in the case of the **original issue of shares of stock** without par value, the amount of the documentary stamp tax herein prescribed shall be based upon the actual consideration for the issuance of such shares of stock: *Provided, further*, That in the case of stock dividends, on the actual value represented by each share. (Italics in the original text, emphasis and underscoring supplied)

15 Id.

16 See BIR Ruling No. 052-99, 16 April 1999.

17 Supra at note 2.

Unless the object of the debt instrument is located or used in the Philippines, no DST may be imposed, just as no DST applies to the foreign issuance of shares. The tax *situs* follows the economic activity and location of the issuer—not the recipient.

Based on the foregoing considerations, **I submit that resolving the issue of whether the subject debt instruments, consisting of 'loans and advances' to NRFC-affiliates, are not subject to (or exempt from) DST requires a two (2)-tiered analytical approach: *first*, it must be determined whether the issuers of the debt instruments, *i.e.*, SKCL and G&L, qualify as NRFCs not engaged in business in the Philippines, such that the loan transaction would fall outside the taxing jurisdiction of the Philippines; and, *second*, it must be assessed whether the 'object' of the debt instruments, *i.e.*, the loan proceeds, was used, applied, or consumed within Philippine territory (as, if so, such use may give rise to a sufficient Philippine *nexus* to justify the imposition of DST).**

i. SOLAIRE KOREA CO., LTD. (SKCL) AND GOLDEN & LUXURY CO. LTD. (G&L) ARE NONRESIDENT FOREIGN CORPORATIONS (NRFCs) NOT DOING BUSINESS IN THE PHILIPPINES.

In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[18] (**Deutsche Knowledge Services**), the Supreme Court discussed that two (2) components must be established to prove NRFC status, as follows:

> ...
>
> For purposes of zero-rating under Section 108(B)(2) of the Tax Code, the claimant must establish the two components of a client's NRFC status, *viz.*: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To **be sure, there must be sufficient proof of *both* of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.**
>
> ...
>
> In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo*'s findings. **To the Court's mind, the SEC Certifications of Non-Registration show that their affiliates are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries,**

[18] G.R. No. 234445, 15 July 2020; Citations omitted, emphasis supplied and italics in the original text.

> **outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines.**
>
> Proof of the above-mentioned second component sets the present case apart from *Accenture, Inc. v. Commissioner of Internal Revenue* and *Sitel Philippines Corp. v. Commissioner of Internal Revenue*. In these cases, the claimants similarly presented **SEC Certifications and client service agreements**. However, the Court consistently ruled **that documents of this nature only establish the *first* component (*i.e.*, that the affiliate is foreign). The absence of any other competent evidence (*e.g.*, articles of association/certificates of incorporation) proving the *second* component (*i.e.*, that the affiliate is not doing business here in the Philippines) shall be fatal to a claim for credit or refund of excess input VAT attributable to zero-rated sales.**
>
> ...

As can be gleaned from the foregoing, there must be sufficient proof of both components, namely: (1) that its clients are **foreign corporations** (which can be proven by the SEC Certifications of Non-Registration); and (2) that they are **not doing business in the Philippines** (the *prima facie* proof of which is the articles of association/certificates of incorporation stating that the client-affiliates are registered to operate in their respective home countries, outside the Philippines).

In this case, to prove that SKCL and G&L are foreign corporations and not doing business in the Philippines, BRC presented their respective SEC Certificates of Non-Registration of Company[19] and the apostilled Certificates of Residence from the Republic of Korea National Tax Service.[20] Thus, BRC has sufficiently proven that SKCL and G&L are NRFCs not doing business in the Philippines.

ii. THE 'OBJECT' OF THE SUBJECT DEBT INSTRUMENTS WAS NOT USED IN THE PHILIPPINES.

In this case, there was no showing or proof that the loan proceeds were used or consumed within the Philippines. BRC's 2015 Audited Financial Statements[21] (**AFS**), which the CIR cited as proof of the existence of BRC's advances to its NRFC-affiliates, made no mention that the advances were used in the Philippines. In fact, portions[22] of the Notes to the AFS seem to indicate

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19 Exhibits "P-9" and "P-10", Division Docket, pp. 172 and 174, respectively.
20 Exhibits "P-7" and "P-8", id., pp. 170 and 171, respectively.
21 Exhibit "P-5", id., pp. 125-164.
22 Id., p. 132.

that SKCL and G&L, as NRFCs, utilized the proceeds to sustain or expand their respective business operations *outside* the Philippines:

> ...
>
> 1. **Organization and Business**
>
> ...
>
> As of December 31, 2015 and 2014, Bloomberry's subsidiaries include the following (see Note 5):
>
> ...
>
> ii. *Solaire Korea Co., Lid. ("Solaire Korea") and Golden & Luxury Co., Ltd ("G&L").* **Solaire Korea was established by Bloomberry in December 2014 to hold the Company's investment in the leisure and entertainment business in the Republic of Korea.** On April 24, 2015, Solaire Korea acquired 77.26% of the outstanding shares of G&L. Subsequently on May 22, 2015, Solaire Korea acquired additional 18.98% of G&L, bringing its ownership in G&L to 96.23%. **On August 20, 2015, Bloomberry acquired 10.00% direct ownership in G&L from Solaire Korea. G&L is a hotel and casino operator in Jeju Island in the Republic of Korea.**[23]
>
> ...

BRC's Vice President-Controller and witness, Gerard Angelo Emilio J. Festin, declared that the proceeds from the subject loans and advances that BRC extended to SKCL and G&L were utilized outside the Philippines. This declaration remains unrebutted[24], to wit:

> ...
>
> Q81 : Please state whether or not you are familiar with the aforesaid advances?
>
> A : I am familiar with the advances as these are part of my responsibilities, ma'am.
>
> Q82 : From where should the payments for these advances to Solaire Korea Co., Ltd. and Golden & Luxury Co., Ltd. come from?
>
> A : **From the two companies in the Republic of Korea**, ma'am.
>
> Q83 : What proof do you have, if any, of this statement?
>
> A : I know this as part of my responsibilities. **The financial statements of the two companies are consolidated at the BRC level and they show the results of operations and statement of cash flows which all indicate operations within the Republic of Korea. Also, they are operating within the Republic of Korea and I have Certificates of Residence and Certificates of Non-Registration of Company**, ma'am.

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[23] Italics in the original text and emphasis supplied.

[24] Exhibit "P-12", Division Docket, pp. 94-110.

Q84 : If you know, **in which country were the proceeds of the advances subject of the formal letter of demand used?**

A : **The advances were used by Solaire Korea Co., Ltd. and Golden & Luxury Co., Ltd. in the Republic of Korea,** ma'am.[25]

...

In light of the foregoing, there is sufficient basis to conclude that the 'object' (or proceeds) of the subject 'loans and advances' that BRC extended to SKCL and G&L were not used within the Philippines. Accordingly, being outside the territorial jurisdiction of the State's taxing authority, the transactions in question are not subject to DST on debt instruments under Section 179[26], in relation to Section 173[27], of the NIRC of 1997, as amended.

As regards the theory that BRC is liable to pay the corresponding DST on the loans and advances extended to its NRFC-affiliates based on Section 173 of the NIRC of 1997, as amended, which states *"[t]hat whenever one party to the* ***taxable document*** *enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax* it must be emphasized that this *proviso* presupposes that the transaction itself is subject to DST. Otherwise stated, the **shifting of DST liability** from an 'exempt taxpayer' to a 'non-exempt taxpayer', both of whom are parties to the taxable document, **only applies if and when the transaction itself is taxable under the law**.

In this case, however, the loans and advances extended by BRC to SKCL and G&L are not subject to DST on debt instruments under Section 179, in relation to Section 173, of the NIRC of 1997, as amended, for the simple reason that the transactions occurred outside the territorial jurisdiction of the State's taxing power. There is therefore **no tax liability to be shifted** to BRC as the alleged "other party" to the transaction.

In fine, and as aptly emphasized in the *ponencia*, since the present controversy centers on the issue of taxability, *i.e.*, whether the loan transactions between BRC and its NRFC-affiliates are subject to DST under Section 179, in relation to Section 173, of the NIRC of 1997, as amended, the Court *En Banc* must be guided by the fundamental principle that "**tax laws must be strictly construed against the State and liberally in favor of the**

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25 Emphasis and underscoring supplied.
26 Supra at note 1.
27 Supra at note 2.

taxpayer." Taxes, as burdens that must be endured by the taxpayer, should not be presumed to go beyond what the law expressly and clearly declares.[28]

All told, I vote to **DENY** the CIR's *Petition for Review* for lack of merit and to **GRANT** BRC's *Petition for Review*. Accordingly, I vote to **REVERSE** and **SET ASIDE** the assailed Decision and Resolution of the Special Second Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[28] *Bureau of Internal Revenue (BIR), as herein represented by its Commissioner Kim S. Jacinto-Henares and Revenue District Officer (RDO) Ricardo B. Espiritu v. First E-Bank Tower Condominium Corp.*, G.R. Nos. 215801 & 218924, 15 January 2020.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 2933** (CTA Case No. 10193)
-versus-	
BLOOMBERRY RESORTS CORPORATION, *Respondent.*	

x---------------------------------------x

BLOOMBERRY RESORTS CORPORATION, *Petitioner,*	**CTA EB No. 2935** (CTA Case No. 10193)
	Present:
-versus-	**DEL ROSARIO,** *PJ,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** and **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 06 2025 2:10 pm

x---x

CONCURRENCE

REYES-FAJARDO, *J.*:

To recall, Bloomberry Resorts Corporation (BRC) extended loans and advances to its non-resident foreign affiliates Solaire Korea Co., Ltd. (SKC) and Golden & Luxury Co. Ltd. (GLC), per Note 8 of BRC's Audited Financial Statements (AFS)[1] for Taxable Year 2015. The Bureau of Internal Revenue (BIR) assessed Documentary Stamp Tax (DST) on said transactions, based on Sections 173[2] and 179[3] of the 1997 National Internal Revenue Code (NIRC), as amended.

With these incidents in mind, is BRC liable for DST found by the BIR?

No.

San Miguel Corporation v. Commissioner of Internal Revenue (SMC)[4] relayed that DST under Section 173 and 179 of the NIRC, as amended, is imposed on "... (a)ll loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right

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1 Exhibit "P-5." *Id.* at pp. 125-164.

2 **SEC. 173.** *Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers.* - Upon documents, instruments, **loan agreements** and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted or transferred **when the obligation or right arises from Philippine sources** or the property is situated in the Philippines, and the same time such act is done or transaction had: Provided, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax.

3 **SEC. 179.** *Stamp Tax on All Debt Instruments.*- On every original issue of debt instruments, there shall be collected documentary stamp tax of One peso and fifty centavos (P1.50) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instrument: Provided, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of proportional amount in accordance with the ratio of its terms in number of days to three hundred sixty days (365): Provided, further, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.

For purposes of this section, the term 'debt instrument' shall mean debt instrument representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements, including those signed abroad **wherein the object of contract is located or used in the Philippines**, instruments and securities issued by the government or any of its instrumentalities, deposit substitute debt instruments, certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation.

4 G.R. No. 257697, April 12, 2023.

arises from Philippine sources or the property or object of the contract is located or used in the Philippines." Conversely, for one to be absolved from DST imposition under said provisions, the following circumstances must be proven: *first,* the obligation or right did *not* arise from Philippine sources; **and** *second,* the property or object of the contract is *located or used outside* the Philippines. BRC satisfactorily proved these two circumstances. In reaching my conclusion, three (3) concepts must be elaborated.

First. *Naguiat v. Court of Appeals, et al.*[5] clarified that the object of a loan contract is the proceeds thereof.

Second. *Spouses Ramon Sy and Anita Ng, et al. v. Westmont Bank (Now United Overseas Bank Philippines), et al.*[6] detailed the characteristics of a loan contract, as follows:

> A simple loan or *mutuum* is a contract where one of the parties delivers to another, either money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid. **A simple loan is a real contract and it shall not be perfected until the delivery of the object of the contract.** Necessarily, the delivery of the proceeds of the loan by the lender to the borrower is indispensable to perfect the contract of loan. Once the proceeds have been delivered, the unilateral characteristic of the contract arises and the borrower is bound to pay the lender an amount equal to that received.

Third. Unlike a contract of *sale,*[7] the Civil Code[8] provisions[9] on *mutuum* or simple loan, are silent as to what constitutes delivery. Despite the silence noted, *Black* nonetheless defines "delivery" as "[t]he act by which the res or substance thereof is placed within the *actual or constructive possession or control* of another."[10] Article 531 of the Civil Code states that "[p]ossession is acquired by the material occupation of a thing or the exercise of a right, or by the fact that it is subject to the action of our will, or by the proper acts and legal formalities established for acquiring such right."

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5 G.R. No. 118375, October 3, 2003.
6 G.R. No. 201074, October 19, 2016. Boldfacing mine.
7 Section 2, Chapter 4, Title VI, Civil Code.
8 Republic Act No. 386, as amended.
9 Title XI, Civil Code.
10 Black's Law Dictionary, Revised Fourth Edition, p. 515. Italics mine. This definition was used in reference to a loan contract in *Garcia v. Thio,* G.R. No. 154878, March 16, 2007.

qfl

The unrebutted testimony of witness Gerard Angelo Emilio J. Festin (Festin) said that the loans and advances extended by BRC to SKC and GLC were used by SKC and GLC in South Korea.[11] Therefore, the object of the loan contract was used and located outside the Philippines.

Festin's testimony, too, reveals that the loan proceeds were subjected to SKC and GLC's will also in South Korea. It means that the *evidence at hand* exhibits that SKC and GLC acquired possession of the loan proceeds outside the Philippines. *A fortiori,* the delivery thereof, and consequently, the birth of the loan contract occurred in South Korea. *Ergo,* said obligation arose from outside the Philippines.

Given that the obligation under the loan agreement arose from sources abroad, and that the proceeds thereof were located and used, also abroad, BRC is *not* liable for DST within the context of Sections 173 and 179 of the NIRC, as amended.

All said, I **CONCUR** with the *ponencia*.

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

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11 Answer to Question No. 84, Judicial Affidavit of Gerard Angelo Emilio J. Festin (Exhibit "P-12"). Docket (CTA Case No. 10193), pp. 94-110.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, *Respondent*.	Promulgated: AUG 06 2025 2:00 PM

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CONCURRING AND DISSENTING OPINION

CUI-DAVID, J.:

While I concur with the *ponencia* in denying the *Petition for Review* filed by the Commissioner of Internal Revenue (CIR), docketed as CTA EB No. 2933, for lack of merit, I respectfully dissent from the decision to grant the *Petition for Review* filed by Bloomberry Resorts Corporation (BRC), docketed as CTA EB No. 2935, as I maintain my stance set forth in the appealed Decision dated May 29, 2023.

The crux of the controversy in BRC's *Petition* hinges on whether the loans and advances extended by BRC to its affiliates, which are non-resident foreign corporations (NFRCs) not doing business in the Philippines, are subject to documentary stamp tax (DST) under Section 179 in relation to Section 173 of the National Internal Revenue Code (NIRC) of 1997, as amended.

The *ponente,* my esteemed colleague, Senior Associate Justice Ma. Belen M. Ringpis-Liban, is of the view that the term "*sources*" in the phrase "*when the obligation or right arises from Philippines sources*" under Section 173 refers to the **contract** itself, as contracts are recognized under Philippine law as sources of obligations. Consequently, the *ponente* concludes that an obligation arises from a Philippine source if the contract from which it originates is perfected in the Philippines. Given that the loan agreements in question are in the nature of real contracts (*i.e.*, not perfected until the delivery of the object of the contract), the *ponente* opines that these agreements were perfected outside the Philippines and are therefore outside the government's taxing jurisdiction.

In arriving at this conclusion, the *ponente* notes that BRC's 2015 Audited Financial Statements (AFS) do not explicitly state where the loan proceeds were released or used. However, BRC's witness testified that the loan proceeds were used by the NRFC-affiliates for their operations in Korea. Hence, for the *ponente*, the loan agreements were deemed perfected outside the Philippines, as the weight of evidence on the matter preponderates in favor of the conclusion that the loan proceeds were released, located, and/or used outside the Philippines.

Furthermore, the *ponente* submits that even if there is doubt in the above conclusion, it should be resolved in favor of the taxpayer and against the taxability of the subject transactions, following the principle of strict interpretation of tax laws.

MV

Finally, the *ponente* posits that the shifting of DST liability under Section 173 cannot be used as the basis to impute DST liability to BRC, as such shifting presupposes that the transaction is subject to DST, which the *ponente* believes is not the case here.

With all due respect, *I dissent.*

Truly, DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale, or transfer of an obligation, right, or property incident thereto. However, DST is actually an excise tax, because **it is imposed on the transaction rather than on the document**.[1] Hence, even if the subject document was not shown or no debt instrument was identified by the BIR, **DST may still be imposed if the taxable transaction is clearly established.** Section 6 of Revenue Regulations (RR) No. 9-94,[2] provides for the imposition of DST even when no formal agreements or promissory notes are executed, to wit:

> SECTION 6. *Stamp Tax on all Loan Agreements.* – All loan agreements whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located in the Philippines shall be subject to the documentary stamp tax of thirty centavos (P0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreements, pursuant to Section 180 in relation to Section 173 of the Tax Code.
>
> **In cases where no formal agreements or promissory notes have been executed to cover credit facilities**, the documentary stamp tax shall be based on the amount of drawings or availment of the facilities, which

Mr

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1 *San Miguel Energy Corporation v. Commissioner of Internal Revenue,* G.R. No. 252083 (Notice), December 4, 2023 [Per Resolution, Third Division], citing *Commissioner of Internal Revenue v. First Express Pawnshop Co., Inc.*, 607 Phil. 227, 240 (2009) [Per J. Carpio, First Division]; *Philippine Banking Corp. v. Commissioner of Internal Revenue*, 597 Phil. 363, 381 (2009) [Per J. Carpio, First Division]; *See Jaka Investments Corp. v. Commissioner of Internal Revenue*, 640 Phil. 77 (2010) [Per J. Leonardo-De Castro, First Division]; See also *Philippine Bank of Communications v. Commissioner of Internal Revenue*, G.R. No. 194065, June 20, 2016 [Per C. J. Sereno, First Division] citing *Commissioner of Internal Revenue v. First Express Pawnshop Co., Inc.*, 607 Phil 227 (2009) [Per J. Carpio, First Division].

2 Republic Act No. 7660, An Act Rationalizing Further the Structure and Administration of the Documentary Stamp Tax, Amending For The Purpose Certain Provisions of the National Internal Revenue Code, As Amended, March 8, 1994.

> may be evidenced by credit/debit memo, advice or drawings by any form of check or withdrawal slip, under Section 180 of the Tax Code. *(Emphasis supplied)*

Moreover, as held in the more recent case of *San Miguel Energy Corporation v. Commissioner of Internal Revenue (SMEC),*[3] DST is imposable on advances extended by affiliates, even in the absence of a debt instrument or formal loan document, to wit:

> SMEC is in error to insist that DST cannot be imposed on the advances extended by its affiliates in the absence of a formal debt instrument or loan document. As discussed, this issue raised by SMEC is not novel. The Court *en banc*, in *Filinvest*, affirmed the BIR's imposition of DST on the advances extended by a company to its affiliates which were indicated on mere instructional letters, journal, and cash vouchers. The Court said that these instructional letters, journal, and cash vouchers, evidencing intercompany advances fall within the meaning of loan agreements upon which DST may be imposed, to wit:
>
> xxx xxx xxx
>
> Succinctly, *Filinvest* signifies that regardless of the nature of the document, DST is imposable as long as a loan agreement is clearly established.
>
> To be sure, *Filinvest* only acknowledged previous ruling of the Court on the nature of a DST. In a string of cases, the Court has been consistent in its ruling that DST is not limited to the document embodying the enumerated transaction. By nature, DST is an excise tax on **the exercise of a right or privilege to transfer obligations, rights or properties incident thereto**. It is an excise tax because **it is imposed on the transaction rather than on the document**. Hence, in determining the propriety of the imposition of the DST, "the Court considers not only the document but also the nature and character of the transaction." Undoubtedly, a loan agreement is among the transactions subject to DST under the 1997 Tax Code. (*Citations omitted; emphasis in the original*)

In the instant case, the BIR based its DST assessment on the information obtained from BRC's 2015 AFS. BRC does not dispute the existence of the transactions to which the BIR imposed the DST nor its involvement to the transactions. Similarly, in the *SMEC* case, the advances duly established in

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[3] G.R. No. 252083 (Notice), December 4, 2023 [Per Resolution, Third Division].

the 2010 AFS and the Notes appended thereto were deemed loan agreements subject to DST.

The Supreme Court, in *Philacor Credit Corporation v. Commissioner of Internal Revenue (Philacor),*[4] clarified that DST liability extends to all parties to a taxable transaction, *viz.:*

> Section 173 of the 1997 National Internal Revenue Code (*1997 NIRC*) names those who are primarily liable for the DST and those who would be secondarily liable:
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> > Section 173. **Stamp taxes upon documents, instruments, and papers.** – Upon documents, instruments, and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right, or property incident thereto, there shall be levied, collected and paid for, ... the corresponding documentary stamp taxes prescribed in the following sections of this Title, by the person **making, signing, issuing, accepting, or transferring the same**, and at the same time such act is done or transaction had: **Provided**, that wherever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax. *[Emphasis supplied]*
>
> The persons primarily liable for the payment of the DST are the person (1) making; (2) signing; (3) issuing; (4) accepting; or (5) transferring the taxable documents, instruments or papers. **Should these parties be exempted from paying tax, <u>the other party who is not exempt would then be liable.</u>**
>
> ... ...
>
> Revenue Regulations No. 9-2000[5] interprets the law more widely so that **all parties to a transaction** are primarily liable for the DST, and not only the person making, signing, issuing, accepting, or transferring the same becomes liable as the law provides. It provides:
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> > SEC. 2. *Nature of the Documentary Stamp Tax and Persons Liable for the Tax. –*
> >
> > (a) In General. - The documentary stamp taxes under Title VII of the Code is a tax on certain transactions. It is imposed against "**the person making, signing, issuing, accepting, or transferring**" the document or facility evidencing the aforesaid transactions. Thus, in general, it

[4] G.R. No. 169899, February 06, 2013 [Per J. Brion, Second Division].
[5] Issued on November 22, 2000.

> may be imposed on the transaction itself or upon the document underlying such act. **Any of the parties thereto shall be liable for the full amount of the tax due**: Provided, however, that as between themselves, the said parties may agree on who shall be liable or how they may share on the cost of the tax.
>
> (b) Exception. - Whenever one of the parties to the taxable transaction is exempt from the tax imposed under Title VII of the Code, the other party thereto who is not exempt shall be the one directly liable for the tax. [emphasis ours]

In fine, ***all loan agreements***, whether made or signed within or outside the Philippines, shall be subject to DST <u>if the obligation **or** right arises from Philippine sources or the property or object of the contract is located in the Philippines</u>. **In cases where no formal agreements or promissory notes have been executed to cover credit facilities, the documentary stamp tax shall be based on the amount of drawings or availment of the facilities.**

Moreover, ***all parties*** to the loan transaction are primarily liable for the DST, not just the person making, signing, issuing, accepting, or transferring the document or facility evidencing the transaction. Any party involved may be held liable for the full amount of the tax due. However, if one party is exempt from DST, the non-exempt party assumes full liability. Accordingly, even if NRFC debtors/obligors are exempt from DST, BRC remains liable for DST payment under Section 179 of the NIRC of 1997, as amended, since BRC is a domestic corporation and a party to the loan transaction.

In the instant case, the *ponente* ruled that the "loan agreements" are not subject to DST, considering that the *situs* of the subject "loan transactions" lies outside the Philippine jurisdiction. According to the *ponente*, the term "*sources*" in the phrase "*when the obligation or right arises from Philippines sources*" under Section 173 refers to the **contract** that the parties have entered into, which, under Philippine law, is among the statutorily enumerated **sources of obligations**. For the *ponente*, since the "loan agreements" are in the nature of real contracts (which can only be perfected upon delivery of the object of the contract), the same can only be perfected upon the delivery of the object thereof, *i.e.*, loan proceeds.

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The *ponente* observes that while BRC's 2015 AFS is bereft of any categorical statement as to where the proceeds of the subject loans were delivered, the witness for BRC testified that the proceeds of the subject loans were "used" by the NFRC-affiliates in their operations in Korea. For the *ponente*, the "loan agreements" are deemed perfected in Korea as the weight of evidence on the matter preponderates in favor of the conclusion that the loan proceeds were released, located, and/or used outside the Philippines.

I beg to disagree with the *ponente's* ruling that the loan agreements are not subject to DST due to the situs of the loan transactions being outside the Philippines.

Usage is not synonymous with delivery. While the loan proceeds were "used" in Korea, this does not necessarily mean they were delivered in Korea. It must be emphasized that the "loan proceeds" originated from BRC, a domestic corporation, and were generated and disbursed from a Philippine entity. Hence, it is reasonable to conclude that the "loan proceeds" were released, accepted, and delivered in the Philippines.

Even assuming the "loan proceeds" were delivered in Korea, the Supreme Court, in the case of *Aces Philippines Cellular Satellite Corporation v. The Commissioner of Internal Revenue*,[6] emphasized that tax liability cannot be avoided by structuring transactions to occur outside Philippine jurisdiction if the economic benefit or burden remains tied to the Philippines. In this case, the critical fact remains that the obligation that established the lending and borrowing relationship originated in the Philippines.

With due respect, the draft *ponencia* may set an unintended precedent, one that effectively exempts loan transactions from DST based on the delivery of proceeds outside the Philippines. The draft *ponencia* appears to introduce this as a definitive rule, without regard to other relevant aspects of the contract. While delivery is an essential element in perfecting a loan contract under the Civil Code, equating it as the sole determinant of the obligation's situs may not be entirely appropriate.

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[6] See G.R. No. 226680, August 30, 2022 [Per J. Inting, *En Banc*].

If adopted, this interpretation could allow parties to structure loan agreements in a manner that circumvents DST liability, provided the proceeds are delivered abroad, regardless of the parties' domicile, the place of contract execution, or the intended use of funds. Notably, the Senate deliberations extensively cited in the *ponencia* sought to prevent precisely this outcome. Established principles of statutory construction caution against interpretations that lead to absurd or unintended consequences.

Further, a perusal of Title VII of the NIRC of 1997, as amended, underscores the legislative's intent to grant DST broad applicability, as reflected in the assailed Decision of the Court in Division. This is evident in the immediately subsequent provisions, Sections 180, 181, and 182 of the NIRC of 1997, as amended, which impose DST on various forms of bills of exchange. For instance, while Section 180 covers bills of exchange generally, Section 181 imposes DST on acceptances or payments of any bill of exchange or order for the payment of money, even if purporting to be drawn in a foreign country, as long as it is payable in the Philippines. Meanwhile, Section 182 applies DST to foreign bills of exchange and letters of credit drawn in the Philippines but **payable out of the Philippines**.

Thus, if the Court were to follow the Civil Code provision that delivery is the "source" of the right or obligation determinative of DST situs, Section 182 would seemingly conflict with Section 173 of the NIRC of 1997, as amended. This suggests that the legislature deliberately provided DST with a broad reach, not limited solely by the place of delivery.

While it may be contended that Congress so clearly set forth the coverage of DST in relation to bills of exchange in Sections 180, 181, and 182 of the NIRC of 1997, it could have done so with Section 179 on debt instruments. I humbly submit that the legislature has done so.

Section 179 of the NIRC of 1997, as amended, defines a "debt instrument" for purposes of imposition of DST:

> For purposes of this section, the term 'debt instrument' shall mean debt instrument representing <u>**borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines**</u>,

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> instruments and securities issued by the government or any of its instrumentalities, deposit substitute debt instruments, certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation. (*Emphasis supplied*)

The emphasized portion of the definition can be divided into two parts: *first*, borrowing and lending transactions, including but not limited to debentures, certificates of indebtedness, due bills, bonds, and loan agreements; and *second*, those signed abroad wherein the object of the contract is located or used in the Philippines.

In contrast with the *second* part, the *first* part makes no reference to where the contract was signed as long as it falls under "borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements." As the *second* part specifically pertains to "those signed abroad," the *first* part may be safely presumed to pertain to those signed or agreed upon in the Philippines.

In the instant case, no contract was presented, as the assessment of the CIR was based only on the Notes to the Financial Statements of BRC. BRC, as the taxpayer challenging the assessment, has the burden of proving its inaccuracy. However, it failed to proffer any evidence to establish that such loan agreements were not agreed upon in the Philippines, or that the proceeds were neither located nor used within Philippine jurisdiction.

Now, on the *second part*, even assuming the document was signed abroad (which BRC failed to prove), but if the object of the contract is **located or used** in the Philippines, Section 179 still subjects the loan to DST. The object of the contract is certainly **not the perfection of the contract**, but rather, it is the proceeds of the loan. Article 1318 of the Civil Code speaks of the object of the contract as an "object certain which is the subject matter of the contract." Section 179 of the NIRC of 1997, as amended, uses the disjunctive "or" to provide that, even if

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the proceeds were used abroad, the same could still be subject to DST if it was located in the Philippines.

In the instant case, the witness for BRC testified that the proceeds of the subject loans were "used" by the NRFC-affiliates in their operations in Korea. However, the location of the funds upon agreement is in the Philippines, *i.e.*, with BRC, which makes the object of the contract "located in the Philippines".

Undoubtedly, nowhere in Section 179 does the law hinge DST imposition on "delivery" as a determinative factor.

The imposition of DST is generally without regard to the residence or nationality of the parties. Based on all the foregoing, DST applies even if the loan is outbound. Since the loan agreements between BRC and its NRFC-affiliates fall within the definition of "debt instruments" under Section 179 of the NIRC of 1997, as amended, and involve an obligation arising from a Philippine source, they are subject to DST.

In closing, the statutory language, legislative intent, and evidentiary record all support the conclusion that the loan transactions in question fall within the ambit of DST. Tax assessments are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise. The burden of proof rests upon the taxpayer to show that the assessment is erroneous. Here, BRC fell short in proving that the assessment was wrong.

All told, I vote to **DENY** both *Petitions for Review* filed by the Commissioner of Internal Revenue and Bloomberry Resorts Corporation, respectively, and to **AFFIRM** the assailed Decision and Resolution of the Court in Division.

LANEE S. CUI-DAVID
Associate Justice