REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

BLOOMBERRY RESORTS CORPORATION, *Petitioner,*	**CTA CASE NO. 10193**
	Members:
- versus -	**BACORRO-VILLENA**, *Acting Chairperson,* **CUI-DAVID**, *and* **FERRER-FLORES***, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 29 2023 4:00 p.m.

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DECISION

CUI-DAVID, J.:

Before the Court is a *Petition for Review* [1] filed by petitioner Bloomberry Resorts Corporation on October 18, 2019, assailing the undated Decision[2] (assailed Decision) of respondent Commissioner of Internal Revenue (CIR), which denied petitioner's protest letter against the Formal Letter of Demand (FLD) dated December 27, 2018, and ordered the payment of deficiency Documentary Stamp Tax (DST) in the aggregate amount of Php49,175,051.37, inclusive of surcharge, interest and compromise penalty, for the taxable year (TY) 2015.

Petitioner prays that judgment be rendered ordering the cancellation of the assailed Decision, including the FLD dated December 27, 2018, for being erroneous and/or void.

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*Designated as Special Member *per* Memorandum dated April 19, 2023.
[1] Docket, pp. 6-23.
[2] Docket, pp. 27-28.

THE PARTIES

Petitioner is a corporation duly organized and existing under Philippine laws, with principal business address at The Executive Offices, Solaire Resort & Casino, 1 ASEAN Avenue, Entertainment City, Barangay Tambo, Parañaque City.[3]

Respondent is impleaded in his official capacity as the head of the Bureau of Internal Revenue (BIR) and for issuing the decision denying the protest letter against the FLD. Respondent may be served with processes of the Honorable Court at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

THE FACTS AND THE PROCEEDINGS

On October 30, 2018, petitioner received an undated Preliminary Assessment Notice[5] (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[a]	₱ 2,976,228.02
FBT	141,176.47	70,147.30	35,294.12	20,000.00[b]	266,617.89
*	-	-	-	50,000.00[c]	50,000.00
DST	27,802,465.00	13,814,397.40	6,950,616.25	50,000.00[d]	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.

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.

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[3] Docket, p. 7.
[4] *Id.*; Amended Respondent's Pre-trial Brief, Docket, p. 210.
[5] Exhibit P-4, Docket, pp. 39-42.

However, concerning the assessment for deficiency DST and considering the amount involved, petitioner filed a Letter[6] 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[7] 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[8] to the FLD and asked for a reinvestigation.

On September 18, 2019, petitioner received a copy of the assailed undated Decision[9] 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.

In his *Answer*[10] filed within the extension period given, respondent interposed as a defense that the loans and advances made by petitioner to its affiliates are subject to DST under Section 173, in relation to Section 179 of the National Internal Revenue Code (NIRC or Tax Code) of 1997, as amended; and that even assuming petitioner's affiliates [Solaire Korea Co., Ltd. (SKCL) and Golden & Luxury Co. Ltd. (G&L)], both non-resident foreign corporations (NRFCs) duly organized and existing under the laws of the Republic of Korea and not doing business in the Philippines, are not within the scope of BIR's taxing power, the loans and advances extended to them by petitioner are still subject to DST, considering that

[6] Exhibit P-6, Docket, pp. 165-169.
[7] Exhibit P-3, Docket, pp. 33-38.
[8] Exhibit P-2, Docket, pp. 29-32.
[9] See Note 2, *Supra*.
[10] Docket, pp. 70-79.

"*whenever one party to the taxable documents enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax.*"

On 23 January 2020, the Court in Division issued a *Notice of Pre-Trial Conference,*[11] informing the parties of the pre-trial conference set on February 27, 2020.

Ahead of the scheduled pre-trial conference, respondent filed his Pre-Trial Brief[12] on February 20, 2020, while petitioner filed its own[13] on February 24, 2020.

During the scheduled pre-trial conference on February 27, 2020, the Court in Division ordered the parties to appear before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) for mediation proceedings on 25 March 2020.[14]

On October 6, 2020, the PMC-CTA transmitted the *No Agreement to Mediate,*[15] which the Court in Division noted in the Resolution[16] dated October 12, 2020. In the same Resolution, the pre-trial conference was set anew on December 2, 2020.

During the pre-trial conference on December 2, 2020, respondent's counsel requested additional time to submit her Special Power of Attorney (SPA), while petitioner's counsel manifested that his SPA was already attached to the *Petition* and that the pre-trial conference should not proceed until respondent's counsel has submitted her SPA. Thus, the pre-trial conference was reset to February 15, 2021.[17]

On December 3, 2020, and in compliance[18] with the Court's directive, respondent's counsel submitted her SPA. On even date, respondent filed a *Motion to Admit Amended Pre-Trial Brief,*[19] with attached *Amended Pre-Trial Brief.*[20]

[11] Docket, pp. 81-82.
[12] Docket, pp. 88-92.
[13] Docket, pp. 112-123.
[14] Minutes of the Hearing, Docket, p. 191.
[15] Docket, p. 197.
[16] Docket, p. 199.
[17] Minutes of the Hearing. Docket, p. 200.
[18] Docket, pp. 202-203.
[19] Docket, pp. 206-208.
[20] Docket, pp. 210-214.

During the February 15, 2021 *Pre-Trial Conference*, the Court in Division, in open court, granted the parties twenty (20) days to submit their Joint Stipulation of Facts and Issues (JSFI). It also set: (1) the Commissioner's Hearing for comparison of the parties' respective exhibits on March 1, 2021, (2) the initial presentation of petitioner's evidence on March 22, 2021, and (3) the continuation of petitioner's presentation of evidence on April 19, 2021.[21]

On March 22, 2021, both parties manifested in open court that they could not come up with a JSFI. That being the case, the Court in Division ordered the parties to proceed to trial on the merits of the case. However, petitioner's initial presentation of evidence was reset to May 17, 2021, given petitioner's manifestation that its intended witness was not available for being under quarantine.[22]

During the hearing on May 17, 2021, petitioner presented its lone witness, Gerard Angelo Emilio J. Festin (Festin), who testified, through his Judicial Affidavit[23] dated February 20, 2020, that: (1) he is petitioner's Vice President-Controller; (2) his functions include the establishment, monitoring and enforcement of policies and procedures on finances, internal controls and compliances with the SEC, the BIR and other regulatory bodies; (3) petitioner is a corporation duly organized and existing under Philippine laws as evidenced by the SEC Certificate of Filing of Amended Articles of Incorporation dated June 26, 2014 and Amended Articles of Incorporation; (4) the instant *Petition for Review* is an appeal from the undated assailed Decision of then Commissioner Dulay; (5) his office received the assailed Decision on September 18, 2019, and he authorized the procurement of a certified true copy thereof; (6) he authorized the filing of petitioner's Protest to the FLD disputing respondent's assessment on the unpaid DST for TY 2015; (7) his office received the FLD and he authorized the procurement of a certified true copy thereof; (8) petitioner received the PAN on October 30, 2018, assessing it for deficiency DST and the corresponding compromise penalty in the amounts of Php48,567,478.65 and Php50,000.00, respectively; (9) petitioner then filed a Protest to the PAN on November 14, 2018; (10) SKCL and G&L are petitioner's subsidiaries, both

[21] Order, Docket, p. 240.
[22] Minutes of the Hearing, Docket, p. 254.
[23] Exhibit P-12, Docket, pp. 94-108.

registered and operating in the Republic of Korea, as evidenced by the apostilled Certificates of Residence from the Republic of Korea National Tax Service,[24] and not doing business in the Philippines, as evidenced by the SEC Certificates of Non-Registration of Company;[25] (12) petitioner's advances to SKCL and G&L are indicated in Note 8 (Related Party Transactions) of petitioner's 2015 Audited Financial Statements[26]; and, (13) the said advances were used by SKCL and G&L in the Republic of Korea.

Given the absence of respondent's counsel and upon the instance of petitioner's counsel, the Court in Division deemed respondent to have waived his right to cross-examine petitioner's lone witness. There being no other witnesses to be presented, petitioner was given fifteen (15) days to file its Formal Offer of Evidence (FOE), and respondent had the same period to file his comment to it.

On June 1, 2021, petitioner filed a *Formal Offer of Evidence.*[27] The Court in Division admitted all evidence formally offered by petitioner in a Resolution[28] dated July 1, 2021. In the same Resolution, the Court set the initial presentation of respondent's evidence to July 26, 2021.

On his turn to present evidence, respondent called to the witness stand his lone witness, Janice U. Yu (Yu), who testified by way of a Judicial Affidavit[29] that: (1) she holds the position of Revenue Officer (RO) II assigned at the BIR's Regular Large Taxpayers Audit Division (RLTAD) III; (2) she was one of the ROs who conducted the reinvestigation or examination of all internal revenue tax cases; (3) Letter of Authority No. SN:eLA201500089667[30] dated July 20, 2017 (First LOA) was issued to authorize the ROs indicated therein to examine petitioner's books of account and other accounting records for TY 2015; (4) the BIR also issued to petitioner a Request for Production of Documents[31] dated August 2, 2017; (5) petitioner submitted the documents requested and the investigation proceeded; (6) the ROs named in the First LOA recommended the issuance of a PAN through a

[24] Exhibits P-7 and P-8, Docket, pp. 170 and 171, respectively.
[25] Exhibit P-9 and P-10, Docket, pp. 172 and 174, respectively.
[26] Exhibit P-5, Docket, pp. 125-164.
[27] Docket, pp. 272-284.
[28] Docket, pp. 294-296.
[29] Exhibit R-12, Docket, pp. 225-232.
[30] Exhibit R-1, BIR Records, p. 2.
[31] Exhibit R-2, BIR Records, p. 1.

Memorandum[32] dated October 8, 2018, (7) respondent issued and served upon petitioner the PAN dated October 29, 2018 with Details of Discrepancies; (8) the ROs named in the First LOA recommended the issuance of an FLD through a Memorandum [33] dated December 3, 2018, (9) respondent issued and served upon petitioner the FLD dated December 27, 2018 with Details of Discrepancies, (10) petitioner filed a Protest to the FLD, requesting for a reinvestigation; (11) respondent granted petitioner's request for reinvestigation and later issued and served upon petitioner LOA No. LOA-126-2019-00000005/eLA201600056810[34] dated March 14, 2019 (Second LOA), which informed petitioner that they [*i.e.*, ROs Yu and Ruel Custodio (Custodio) and Group Supervisor (GS) Asela Sese (Sese)] are authorized to conduct the audit and investigation of its books of accounts and other accounting records for DST for TY 2015; (12) after the reinvestigation, her team (i.e., ROs Yu and Custodio and GS Sese) recommended the issuance of a Final Decision on Disputed Assessment (FDDA) through a Memorandum[35] dated May 28, 2019; (13) respondent issued and served upon petitioner the said FDDA (herein referred to as the undated assailed Decision); and, (14) all the documents that she mentioned and identified are part of the BIR Records.

There being no other witnesses to be presented, respondent was granted 15 days to file his FOE, and petitioner had the same period to file its comment.

On October 21, 2021, respondent filed his *Formal Offer of Evidence.* [36] The Court in Division admitted all evidence formally offered by respondent in a Resolution [37] dated February 8, 2022. In the same Resolution, the Court granted both parties thirty (30) days from notice to file their respective memoranda.

In compliance with the Court's directive, respondent filed his Memorandum[38] on March 18, 2022, while petitioner filed its Memorandum[39] (attached to its Manifestation) on March 31, 2022.

[32] Exhibit R-3, BIR Records, pp. 251-255.
[33] Exhibit R-5, BIR Records, pp. 289-290.
[34] Exhibit R-8, BIR Records, p. 308.
[35] Exhibit R-9, BIR Records, pp. 309-312.
[36] Docket, pp. 298-303.
[37] Docket, pp. 315-316.
[38] Docket, pp. 317-330.
[39] Docket, pp. 334-361.

Accordingly, the Second Division deemed the case submitted for decision on 18 April 2022.[40]

Hence, this Decision.

THE ISSUE

The parties submit the following issue for the Court's resolution:

> WHETHER PETITIONER BLOOMBERRY RESORTS CORPORATION IS LIABLE FOR THE DEFICIENCY DOCUMENTARY STAMP TAX (DST) UNDER SECTION 179, IN RELATION TO SECTION 173, OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED, ON THE SUBJECT LOANS AND ADVANCES TO ITS NON-RESIDENT FOREIGN CORPORATION (NRFC)-AFFILIATES, *I.E.*, SOLAIRE KOREA CO., LTD. (SKCL) AND GOLDEN & LUXURY CO. LTD. (G&L).

Petitioner's Arguments:

Petitioner submits that the loans and advances made to its NRFC-affiliates, *i.e.*, SKCL and G&L, both not doing business in the Philippines, are outside the ambit of Section 173 of the NIRC of 1997, as amended. According to petitioner, its obligors are not registered in the Philippines, and the place of the object or activity, which is the perfection of the loan contract, occurred outside the Philippines; thus, the corresponding obligation or right does not arise from Philippine sources.

Petitioner likewise submits that respondent acted beyond his powers and committed grave and reversible errors of facts and law in defining "debt instruments" (that are subject to DST under Section 179 of the NIRC of 1997, as amended) to include transactions the 'object' of which is not located or used in the Philippines or to include transactions wherein "the obligation or right does not arise from Philippines sources." Petitioner asserts that in this case, the "object" (*i.e.*, the loan proceeds) of the loan and advances being subjected by respondent to DST were used for the gaming operations of SKCL and G&L in the Republic of Korea, both of which are non-resident foreign corporations operating outside the

[40] Resolution dated April 18, 2022, Docket, p. 399.

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Philippines. For petitioner, this means that the "object" of each of these contracts is not located or not used in the Philippines. Thus, even assuming that the loans and advances represent borrowing and lending transactions between petitioner and its non-resident foreign affiliates, the same cannot be subject to DST under Section 179 of the Tax Code because the "object" of each such loan and advance is located or used outside the Philippines.

Petitioner also submits that respondent acted beyond his powers and committed grave and reversible errors of facts and law when he considered the disclosure of the loans and advances in petitioner's Audited Financial Statements as an admission of transactions subject to DST. According to petitioner, while it may have disclosed loans and advances to SKCL and G&L in its audited financial statements, it is not conclusive that a taxable transaction existed or that such loans and advances are taxable for DST under Section 179 of the Tax Code, especially since the object of each of the transactions is located or used outside the Philippines.

Lastly, petitioner submits that respondent acted beyond his powers and committed grave and reversible errors of facts and law in imposing DST on the subject loans and advances based only on the theory that, since SKCL and G&L are exempt from DST under Section 173 of the NIRC of 1997, as amended, petitioner shall be the one directly liable for the DST considering that the transaction itself is not subject to DST.

Respondent's Arguments:

Respondent, on the other hand, asseverates that the advances petitioner extended to its NRFC-affiliates are in the nature of 'loans' which are subject to DST under Section 173 of the NIRC of 1997, as amended, and as held by the Supreme Court in *Commissioner of Internal Revenue v. Filinvest Development Corporation.* Moreover, respondent contends that even though NRFCs are not within the scope of the state's taxing power, loans and advances extended to them are still subject to DST since Section 173 of the NIRC of 1997, as amended, provides "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."

THE RULING OF THE COURT

Timeliness of the Petition for Review.

The Court of Tax Appeals (CTA), being a special and limited jurisdiction court, can only take cognizance of matters clearly within its jurisdiction.[41] Section 7(a)(1) of RA 1125,[42] as amended, provides:

> Sec. 7. ***Jurisdiction.*** — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions** of the Commissioner of Internal Revenue in cases **involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue [Code] or other laws administered by the Bureau of Internal Revenue. (*Emphasis supplied*)

It is well-settled that the perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional, and non-compliance with these legal requirements is fatal to a party's cause.[43]

Under Section 228 of the NIRC of 1997, as amended, if the protest is denied in whole or in part, the taxpayer adversely affected by the decision may appeal to the CTA within 30 days from receipt of the adverse decision; otherwise, the decision shall become final, executory and demandable. Section 228 partly reads:

> Sec. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: ...
>
> ... ...

[41] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, October 22, 2014.
[42] AN ACT CREATING THE COURT OF TAX APPEALS.
[43] *China Banking Corporation v. City Treasurer of Manila*, G.R. No. 204117, July 1, 2015; *Team Pacific Corporation v. Josephine Daza in her capacity as Municipal Treasurer of Taguig*, G.R. No. 167732, July 11, 2012.

> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> ... ...
>
> **If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days <u>from receipt</u> of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.** (*Emphasis supplied*)

Corollary, Section 3 of Revenue Regulations (RR) No. 12-99,[44] as amended by RR No. 18-2013,[45] implements Section 228 of the NIRC of 1997, as amended, as it lays down a more detailed procedure relative to the issuance and protest of a deficiency tax assessment.

Specifically, Section 3.1.4 of RR No. 12-99, as amended, provides the taxpayer's options on disputed assessments, to wit:

> Sec. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> ... ...
>
> Sec. 3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation as follows:
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> (i) *Request for reconsideration* — ...
>
> (ii) *Request for reinvestigation* — ...
>
> ... ...

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[44] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

[45] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> **If the protest or administrative appeal**, as the case may be, **is denied, in whole or in part, by the Commissioner**, the **taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision**. Otherwise, the assessment shall become final, executory, and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA. (*Emphasis supplied*)

In applying the foregoing rules, the Supreme Court, in *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue et al.*,[46] and later in *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*,[47] explained that there are three (3) options by which a taxpayer may appeal the denial of its administrative protest, to wit:

> Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR only three options:
>
> 1. **If the protest is wholly or partially denied by the CIR** or his authorized representative, **then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest**.
>
> 2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.
>
> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period. (*Emphasis supplied*)

Based on the foregoing, if the CIR himself denies the taxpayer's protest, the latter has 30 days from receipt of the CIR's adverse decision to appeal to the CTA.

The pertinent dates and events in determining the timeliness of the present *Petition for Review* are as follows:

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[46] G.R. No. 208731, January 27, 2016
[47] G.R. No. 221780, March 25, 2019.

Date	Event
January 22, 2019	Petitioner received respondent's FLD dated December 27, 2018.
February 21, 2019	Petitioner filed its protest (described as a request for reinvestigation, but it is merely a request for reconsideration) to the FLD dated December 27, 2018.
September 18, 2019	Petitioner received respondent's undated Decision.
October 18, 2019	**Petitioner filed the instant Petition for Review.**

Petitioner timely filed the instant *Petition for Review* on October 18, 2019, which is within 30 days from receipt of respondent's undated decision. Thus, the Court has acquired jurisdiction to take cognizance of the present case.

Now, on the merits.

The crux of the controversy hinges on whether the loans and advances extended by petitioner to its affiliates, which are non-resident foreign corporations not doing business in the Philippines, are subject to DST under Section 179 in relation to Section 173 of the NIRC of 1997, as amended.

The loans and advances extended by petitioner to SKCL and G&L, its NRFCs-affiliates, are subject to DST.

Petitioner claims that the *loans and advances* made to SKCL and G&L are not covered by Section 179 in relation to Section 173 of the NIRC of 1997, as amended. It asserts that the said loans and advances did not involve "*obligation or right arising from Philippine sources*" or that the situs thereof is clearly outside the Philippines. It further asserts that since the obligation or right does not arise from Philippine sources because the "*obligor*" is not a resident of the Philippines, no DST under Section 179 is due.

Respondent counters that DST, as defined under the Tax Code, 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. He argues that *Advances to/from affiliates* are in the nature of loans subject to DST under Section 173 in relation to Section 179 of the NIRC of 1997, as amended. He further argues that Section 42(A)(1) of the Tax Code, as amended, should not be considered in determining the taxability of the loans and advances subject of the instant case as the said provision applies only to income taxes and not to documentary stamp taxes. Thus, the deficiency DST assessment on the aforementioned loans and advances is justified.

Section 173 of the NIRC of 1997, as amended, 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 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. (*Emphasis supplied*)

On the other hand, Section 179 of the NIRC of 1997, as amended, provides:

> SEC. 179. *Stamp Tax on All Debt Instruments.*- On every original issue of debt instruments, there shall be collected documentary stamp tax of ...: ...
>
> 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**, , ..." *(Emphasis supplied)*

In *Commissioner of Internal Revenue v. Filinvest Development Corporation*[48] (*Filinvest*), the Supreme Court interpreted the term ***"loan agreements"*** in Section 180 of the *1993* Tax Code (now Section 179 of the 1997 Tax Code) as subject to DST.[49]

[48] G.R. Nos. 163653 & 167689, July 19, 2011.
[49] *E.E. Black Ltd.-Philippine Branch v. The Commissioner of Internal Revenue*, Notice, G.R. No. 221655, January 20, 2021.

In *Filinvest*, the Supreme Court emphasized that when read in conjunction with Section 173 of the 1993 Tax Code, Section 180 applies to ***all loan agreements***, to wit:

> 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, ... : ...
>
> 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** when the obligation or right arises from Philippine sources or the property or object of the contract is located or used in the Philippines." Correlatively, Section 3(b) and Section 6 of Revenue Regulations No. 9-94 provide as follows:
>
> > Section 3. *Definition of Terms.* — For purposes of these Regulations, the following term shall mean:
> >
> > (b) 'Loan agreement' — refers to a contract in writing where 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. ...
> >
> > Section 6. *Stamp 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, ...

> **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 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**.
>
> Applying the aforesaid provisions to the case at bench, we find that the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997 qualified as **loan agreements upon which documentary stamp taxes may be imposed**. (*Emphasis supplied*)

In *Philacor Credit Corporation v. Commissioner of Internal Revenue (Philacor)*,[50] the Supreme Court identified the persons liable for the payment of the DST, *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:
>
> > 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. *[Emphases supplied; underscores ours]*
>
> 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, the other party who is not exempt would then be liable.**
>
> ... ...

[50] *Philacor Credit Corporation v. Commissioner of Internal Revenue*, G.R. No. 169899, February 06, 2013.

> Revenue Regulations No. 9-2000[51] 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:
>
> > 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 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]

Based on the foregoing, ***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 payment of DST. 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 transaction (*i.e.*, loan transaction) are primarily liable for the DST, not only the person making, signing, issuing, accepting, or transferring the document or facility evidencing the transaction. Any of the parties thereto shall be liable for the full amount of the tax due. However, when one party is exempted from paying tax, the other party who is not exempt would be liable.

[51] Issued on November 22, 2000.

In the instant case, petitioner claims that the loans and advances are not covered by Sections 173 and 179 of the NIRC of 1997, as amended, because the *obligors,* SKCL and G&L, are not residents of the Philippines; hence, the said loans and advances are not "*obligation or right arising from Philippine sources*" under Section 173.

This contention fails to persuade.

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),[52] 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.

The loans and advances to SKCL and G&L are subject to DST even if they are not "debt instruments" as contemplated in Section 179 of the NIRC of 1997, as amended.

Petitioner contends that the loans and advances to SKCL and G&L are not subject to DST because they are not "debt instruments" as contemplated in Section 179 of the NIRC of

[52] Exhibit P-5, Docket, pp. 152, 154, 160-161.

1997, as amended. It maintains that in this case, the "object" (*i.e.*, the loan proceeds) of the loans and advances subject of the DST was used for the gaming operations in the Republic of Korea, which means that the "object" of each contract is not located or not used in the Philippines. Hence, the same cannot be subject to DST because the "object" of each loan is located or used outside the Philippines and beyond the contemplation of Section 179.

We disagree.

DST is, by nature, an excise tax since it is levied on the exercise by persons of privileges conferred by law.[53] It is an excise tax because it is imposed on **the transaction** rather than **the document**.[54]

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,[55] 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.[56]

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[53] *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 164155 and 175543, February 25, 2013.
[54] *Id.; Philippine Bank of Communications v. Commissioner of Internal Revenue*, G.R. No. 194065, June 20, 2016.
[55] *Section 6. Stamp on all Loan Agreements.* — … .
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 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.
[56] Exhibit P-5, Docket, pp. 152, 154, 160-161.

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*,[57] Note 8 – *Related Party Transactions*,[58] and Note 12 – *Financial Assets and Liabilities and Financial Risk Management Objectives and Policies*.[59]

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.

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[57] NOTES TO PARENT COMPANY FINANCIAL STATEMENTS

... ...

4. **Receivables**
This account consists of:

	2015	2014
Advances to officers and employees (see Note 8)	₱114,749,499	₱ 574,135
Due from related parties (see Note 8)	**225,546,326**	**60,356,244**
Others	1,245,847	275,141
	₱341,541,672	₱ 61,205,520

[58] NOTES TO PARENT COMPANY FINANCIAL STATEMENTS

... ...

8. **Related Party Transactions**

Other information on related party transactions follows:

a. In 2015, the Company made loan advances to Solaire Korea in the total principal amount of ₱5,334.9 million at 1% interest per annum, payable five years from the drawdown date (except for the principal amount of ₱943.3 million payable in 2018). Interest income related to these loan advances amounted to ₱35.2 million.

[59] NOTES TO PARENT COMPANY FINANCIAL STATEMENTS

... ...

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

The Company's foreign-currency denominated monetary assets as of December 31, 2015 and 2014 and their Philippine Peso equivalents follow:

	Original Currency (in USD)		Peso Equivalent	
	2015	**2014**	**2015**	**2014**
Financial assets:				
Cash in banks	₱5,154,826	₱120,810,528	₱243,153,142	₱5,402,646,812
Due from related parties*	118,628,029	-	5,595,684,129	-
Net foreign currency denominated financial assets	₱123,782,855	₱120,810,528	₱5,838,837,271	₱5,402,646,812

**Including due from related parties classified as current presented under "Receivables" and due from a related party presented separately in the noncurrent section of the 2015 statement of financial position*

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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 ... loan agreements, *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 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." *(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.[60] 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.

The Compromise Penalty should be cancelled.

It must be stressed that a compromise penalty is imposed to avoid prosecution for violation of the provisions of the Tax Code.[61] The nature of a compromise penalty is explained in the case of *Commissioner of Internal Revenue v. Armando L. Abad*,[62] to wit:

> "**a compromise implies agreement. One party cannot impose it upon the other**. If an offer of compromise is rejected by the taxpayer, as in this case, the Commissioner of Internal Revenue should file a criminal action if he believes that the taxpayer is criminally liable for violation of the tax law as the only way to enforce a penalty. As penalty can be imposed only on a finding of criminal liability." (*Emphasis supplied*)

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[60] *Centeno v. Villalon-Pornillos*, G.R. No. 113092, September 1, 1994.
[61] *The Philippines International Fair, Inc. v. The Collector of Internal Revenue, et al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962.
[62] G.R. No. L-19627, June 27, 1968.

In the instant case, there is no showing that petitioner consented to the compromise penalty. Hence, its imposition should be removed. The imposition of the compromise penalty without the taxpayer's conformity is illegal and unauthorized.[63] Thus, petitioner cannot be held liable for the Compromise Penalty of Php50,000.00.

In closing, it is well to emphasize that all presumptions favor the correctness of a tax assessment. The burden of proof is on the taxpayer to show the contrary.[64] On the other hand, tax exemptions, being in derogation of the State's power of taxation, are strictly construed against the taxpayer and liberally in favor of the taxing authority.[65] In this case, petitioner failed to discharge the burden of showing that the advances it made to its foreign affiliates are not taxable.

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
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**

[63] *Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc., et al.*, G.R. No. L-35266, January 21, 1991.
[64] *Collector of Internal Revenue v. Bohol Land Transportation Co.*, G.R. Nos. L-13099 and L-13462, April 29, 1960.
[65] *PLDT v. City of Davao*, G.R. No. 143867, March 25, 2003.

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,[66] 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.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

(*With due respect, see Dissenting Opinion*)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

[66] ₱49,149,426.14 x 12%/365 days.

ATTESTATION

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

BLOOMBERRY RESORTS CORPORATION, Petitioner,	**CTA Case No. 10193**
	Members:
- versus -	**BACORRO-VILLENA,** *Acting Chairperson,* **CUI-DAVID,** *and* **FERRER-FLORES*,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 29 2023 4:10 p.m.

x - x

DISSENTING OPINION

BACORRO-VILLENA, J.:

With all due respect to my esteemed colleague, Associate Justice Lanee S. Cui-David, I register my dissent to the *ponencia* as it denies petitioner Bloomberry Resorts Corporation's (**petitioner**'s/**BRC**'s) Petition for Review to the extent of affirming with modification respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) assessment for deficiency documentary stamp tax (**DST**) for the taxable year (**TY**) 2015.

The *ponencia* ruled that the subject loans and cash advances extended by petitioner to its affiliates (*i.e.*, Solaire Korea Co., Ltd. [**SKCL**] and Golden & Luxury Co. Ltd. [**G&L**], both non-resident foreign corporations [**NRFCs**] duly organized and existing under the laws of the Republic of Korea and not doing business in the Philippines), are subject to DST pursuant to Section 179[1], in relation to Section 173[2], of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

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* Designated as Special Member *per* Memorandum dated 19 April 2023.

1 **SEC. 179.** *Stamp Tax on All Debt Instruments. – ...*
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**...[.] (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**

The *ponencia* reasoned that since petitioner, a domestic corporation organized under Philippine laws, is a principal party to the transaction — being the lender, creditor or *obligee* — the subject 'loans and cash advances' must be considered as transactions that arose from Philippine sources under Section 173[3] of the NIRC of 1997, as amended, irrespective of the fact that *obligors* are NRFCs not doing business in the Philippines. The *ponencia* went on to state that it is not necessary that the 'object' thereof or the proceeds of the 'loan and cash advances' were not used in the Philippines given that these transactions are already obligations arising from Philippine sources.

I, respectfully, beg to differ.

For the reasons essayed below, I humbly submit that the transactions in question, *i.e.*, the 'loans and advances' extended by petitioner to its NRFC-affiliates, are not subject to DST on debt instruments under Section 179[4], in relation to Section 173[5], of the NIRC of 1997, as amended, for being outside the territorial jurisdiction of the State's taxing power.

DEBT INSTRUMENTS ISSUED BY PETITIONER'S NON-RESIDENT FOREIGN CORPORATION (NRFC)-AFFILIATES ARE *NOT* SUBJECT TO DOCUMENTARY STAMP TAX (DST).

For proper context, the borrower or debtor is the party that ordinarily issues the debt instrument to raise funds, while the lender or creditor is the party that provides the funds by investing or purchasing the debt instrument. The debt instrument represents the borrower or debtor's obligation to repay the borrowed funds, typically with interest, according to the terms and conditions outlined in the instrument.

In this case, it is undisputed that the 'loans and cash advances' to petitioner's NRFC-affiliates subject of respondent's assessment for deficiency DST partake the nature of 'loan agreements' and, despite the fact that the actual documents issued, embodying the transactions entered into by petitioner and its foreign affiliates, were not presented in evidence, the transactions presumably covered by the debt instruments issued by

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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 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. (Emphasis and underscoring supplied)

3 Supra at note 2.
4 Supra at note 1.
5 Supra at note 2.

petitioner's foreign affiliates, in their capacity as borrowers or debtors, are clearly established in Note 8 (Related Party Transactions) of petitioner's 2015 Audited Financial Statements[6] (**AFS**), *viz*:

...

8. Related Party Transactions

...

Related party balances are as follows:

Related Party	Nature/Terms of Transaction	Transaction Amounts 2015	Transaction Amounts 2014	Outstanding Receivable (Payable) 2015	Outstanding Receivable (Payable) 2014
Sureste, *subsidiary*	Dividend income (see Note 5)	₱931,952,101	₱-	₱-	₱-
	Additional investment through shared-based payment plan (see Note 9)	59,668,758	46,440,905	-	-
BRHI, *subsidiary through Sureste*	Noninterest-bearing cash advances; due and demandable	(3,855,511,626)	-	(2,923,559,525)	-
	Noninterest-bearing and unsecured cash advances (see Note 4)	-	60,356,244	-	60,356,244
Solaire Korea Co., Lid., *subsidiary*	Equity infusion (see Note 5)	2,703,843,957	90,060,500	-	-
	Interest-bearing and unsecured loan:				
	Principal	5,334,946,260	-	5,334,946,260	-
	Interest	35,191,543	-	35,191,543	-
	Acquisition of G&L shares (see Note 5)	252,299,983	-	-	-
	Noninterest-bearing and unsecured cash advances (see Note 4)	182,011,251	-	182,011,251	-
G&L, subsidiary	Noninterest-bearing and unsecured cash advances (see Note 4)	43,535,075	-	43,535,075	-
Bloom Capital B.V., *subsidiary*	Subscription through cash infusion (see Note 5)	-	2,342	-	-
Officers and employees	Noninterest-bearing and unsecured cash advances (see Note 4)	114,175,364	165,620	114,749,499	574,135
Total due from related parties*				₱225,546,326	₱60,356,244
Total advances to officers and employees*				₱114,749,499	₱574,135
Total due from a related party**				₱5,370,137,803	₱-
Total due to a related party**				(₱2,923,559,525)	₱-

**Presented under "Receivables" account*
***Presented separately in the 2015 parent company statement of financial position*

...

Pertinently, as to the legal basis for the imposition of DST on loan agreements, including intercompany advances, the Supreme Court, for the first time, declared in *Commissioner of Internal Revenue v. Filinvest Development Corporation* (**Filinvest**)[7], that Section 180 (now Section 179[8]), in relation to Section 173[9], of the NIRC of 1997, as amended, applies to *all* loan agreements, and that advances extended to affiliates (therein evidenced by instructional letters as well as the journal and cash vouchers) qualify as loan agreements upon which DST on debt instruments may be imposed.

However, in contrast with *Filinvest*, where the Supreme Court made no distinction between advances extended to domestic and foreign affiliates, petitioner implores this Court to exclude from the coverage of DST under

6 Exhibit "P-5", Division Docket, pp. 125-164.
7 G.R. No. 163653, 19 July 2011.
8 Supra at note 1.
9 Supra at note 2.

Section 179[10] of the NIRC of 1997, as amended, the subject debt instruments issued by its NRFC-affiliates considering that the 'object' thereof or the proceeds of the 'loan and cash advances' were not used in the Philippines.

To my mind, petitioner's proposition begs the more important question of whether DST may be imposed on the subject debt instruments considering that the fact the "**issuer**" thereof (also referred to as borrower, debtor or *obligor*) are **NRFCs**, who are outside the taxing jurisdiction of the Philippines. The answer to this question requires a scrutiny of the relevant provisions governing the imposition of DST on debt instruments under Section 179[11], in relation to Section 173[12], of the NIRC of 1997, as amended, insofar as the extent of the Philippines' taxing power is concerned.

DST is in the nature of an excise tax[13] 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.[14] Examples of such privileges, the exercise of which, as effected through the issuance of particular documents, are subject to the payment of DST are leases of lands, mortgages, pledges, and trusts and conveyances of real property.[15] **Consequently, DST is imposed when the exercise of such privilege is within the Philippines in accordance with the inherent limitation rule that taxation may be exercised only within the territorial jurisdiction of the taxing authority.**

As a rule, the State's power to tax is subject to the inherent limitation of territoriality, *i.e.*, it does not extend beyond its territorial limits.[16] Case law holds that "[i]f an interest in property is taxed, the situs of either the property or interest must be found within the [S]tate. If an income is taxed, the recipient thereof must have a domicile within the [S]tate or the property or business out of which the income issues must be situated within the [S]tate so that the income may be said to have a situs therein. Personal property may be separated from its owner, and he [or she] 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 [S]tate which imposes the tax."[17]

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10 Supra at note 1.
11 Supra at note 1.
12 Supra at note 2.
13 *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166786, 03 May 2006.
14 *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*, G.R. No. 172045-06, 16 June 2009, citing *Philippine Home Assurance Corporation, et al. v. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 119446, 21 January 1999.
15 *Philippine Home Assurance Corporation, et al. v. Court of Appeals and Commissioner of Internal Revenue*, supra.
16 *Manila Gas Corporation v. The Collector of Internal Revenue*, G.R. No. L-42780, 17 January 1936.
17 Id.

Sections 173[18] and 179[19] of the NIRC of 1997, as amended, clearly fix the *situs* (meaning place)[20] 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[21] 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 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.**[22]

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*[23] on the significance of the term "**source**" as pertaining to the "**residence of the obligor**" is instructive, *viz*:

> ...
>
> 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.**
>
> As the Tax Court put it:

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18 Supra at note 2.
19 Supra at note 1.
20 *Commissioner of Internal Revenue v. Juliane Baier-Nickel, as Represented by Marina Q. Guzman (Attorney0in-Fact)*, G.R. No. 153793, 29 August 2006.
21 Supra at note 1.
22 *Aces Philippines Cellular Satellite Corporation v. Commissioner of Internal Revenue*, G.R. No. 226680, 30 August 2022.
23 G.R. No. L-53961, 30 June 1987; Citations omitted, italics in the original text and emphasis supplied.

> 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.

...

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[24] 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[25] 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.

It is also worth noting that DST on debt instruments under Section 179[26] of the NIRC of 1997, as amended, is similar to that of DST on original issuance of shares of stock under Section 174[27] of the same law in that both provisions make use of the phrase "***[o]n every original issue***". Under Section

[24] Supra at note 2.

[25] Supra at note 1.

[26] Supra at note 1.

[27] **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 One peso (P1.00) on each Two hundred pesos (P200), 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. (Underscoring supplied)

174[28], 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.[29]

By the same token and contrary to the *ponencia*, 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 or creditor or *obligee* is a domestic corporation does not automatically render the transaction as one arising from Philippine sources as contemplated in Section 173[30] 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.

Accordingly, resolving the issue of whether the subject debt instruments consisting of 'loans and advances' to foreign affiliates are not subject to DST requires a two (2)-tiered approach: *first*, a determination of whether the 'issuers' thereof, *i.e.*, SKCL and G&L, are NRFCs not doing business in the Philippines and thus, outside the taxing jurisdiction of the Philippines; and, *second*, whether the 'object' of such debt instruments is used or consumed in the Philippines.

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

In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[31] (**Deutsche Knowledge Services**), the Supreme Court discussed that two (2) components must be established to prove NRFC status, *to wit:*

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28 Id.
29 See BIR Ruling No. 052-99, 19 April 1999.
30 Supra at note 2.
31 G.R. No. 234445, 15 July 2020; Citations omitted, emphasis supplied and italics in the original text.

> ...
>
> 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, 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, petitioner presented their respective SEC Certificates of Non-Registration of Company[32] and the apostilled Certificates of Residence from the Republic of Korea National Tax Service.[33] Thus, petitioner has sufficiently proven that SKCL and G&L are NRFCs not doing business in the Philippines.

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32 Exhibits "P-9" and "P-10", Division Docket, pp. 172 and 174, respectively.
33 Exhibits "P-7" and "P-8", id., pp. 170 and 171, respectively.

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

It must be emphasized that the 'object' of *mutuum* or simple loan is the proceeds of the loan, advances or debt instruments, which is indispensable to perfect the contract.[34]

In this case, there was no showing or proof that the loan proceeds were used or consumed within the Philippines. Petitioner's 2015 AFS[35], which respondent cited as proof of the existence of petitioner's advances to its NRFC-affiliates, made no mention that the advances were used in the Philippines. In fact, portions[36] of the Notes to the AFS seem to indicate 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.**[37]
>
> ...

Petitioner's Vice President-Controller and witness, Festin, declared that the proceeds from the subject loans and advances that petitioner extended to SKCL and G&L were utilized outside the Philippines. This declaration remains unrebutted[38], to wit:

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34 See *Spouses Ramon Sy and Anita Ng, et al. v. Westmont Bank (now United Overseas Bank Philippines) and Philippine Deposit Insurance Corporation, as assignee of United Overseas Bank Philippines*, G.R. No. 201074, 19 October 2016 and *BPI Investment Corporation v. Hon. Court of Appeals and ALS Management & Development Corporation*, G.R. No. 133632, 15 February 2002.

35 Exhibit "P-5", supra at note 6.

36 Id., p. 132.

37 Emphasis supplied and italics in the original text.

38 Exhibit "P-12", Division Docket, pp. 94-110.

...

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.
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 <u>Republic of Korea</u>**, ma'am.[39]

...

In light of the foregoing, there is basis to confirm that the 'object' (or proceeds) of the subject 'loans and advances' that petitioner extended to SKCL and G&L were not used within the Philippines. Thus, being outside the territorial jurisdiction of the taxing power of the State, the same is not subject to DST on debt instruments under Section 179[40], in relation to Section 173[41], of the NIRC of 1997, as amended.

SHIFTING OF DOCUMENTARY STAMP TAX (DST) LIABILITY UNDER SECTION 173 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED, DOES NOT APPLY.

As regards respondent's theory that petitioner is liable to pay the corresponding DST on the loans and advances that petitioner extended to its NRFC-affiliates based on Section 173[42] 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*

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[39] Emphasis and underscoring supplied.
[40] Supra at note 1.
[41] Supra at note 2.
[42] Supra at note 2.

directly liable for the tax", it must be noted that such *proviso* could not govern the instant case as it presupposes that the transaction itself is subject to DST. Otherwise stated, the shifting of DST from an 'exempt taxpayer' to a 'non-exempt taxpayer', both of whom are parties to the taxable document, only happens if and when the transaction itself is taxable.

In this case, however, since the transactions in question, *i.e.*, the loans and advances extended by petitioner to SKCL and G&L, as not subject to DST on debt instruments under Section 179[43], in relation to Section 173[44], of the NIRC of 1997, as amended, for being outside the territorial jurisdiction of the State's taxing power, there is nothing to be shifted to petitioner (as the supposed 'other party' not exempt from DST).

In closing, it bears stressing that taxes, as burdens that must be endured by the taxpayer, must not be presumed to go beyond what the law expressly and clearly declares as tax laws must be construed strictly against the State and liberally in favor of the taxpayer.[45]

All told, I vote to **GRANT** the instant Petition for Review based on the foregoing disquisitions.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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43 Supra at note 1.

44 Supra at note 2.

45 *Bureau of Internal Revenue (BIR), as herein represented by its Commissioner Kim S. Jacinto-Henares and Revenue District Officer (RDO) Ricardo B. Espiritu v. E-Bank Tower Condominium Corporation,* G.R. No. 215801, 15 January 2020.