REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Second Division

G4S INTERNATIONAL HOLDINGS LIMITED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 11159

Members:

RINGPIS-LIBAN, *P.J., Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
MAY 2 6 2026

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DECISION

RINGPIS-LIBAN, J.:

The Case

The *Petition for Review* on May 19, 2023, prays for the refund of the amount of Php221,221,740.07, allegedly representing capital gains tax (CGT), including surcharge, interest and compromise penalties, erroneously, excessively, illegally and/or wrongfully collected from petitioner.[1]

The Facts

Petitioner G4S International Holdings Limited is a private limited company incorporated pursuant to the laws of England and Wales, and is a resident of the United Kingdom, with registered office address at 5th Floor

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[1] Docket, Pre-Trial Order dated February 5, 2024, Summary of the Case, p. 203.

Southside, 105 Victoria Street, London, United Kingdon.[2] It is not registered as a corporation, partnership or one person corporation in the Philippines.[3]

Respondent is the head of the Bureau of Internal Revenue ("BIR") and is vested by law with the power to decide, approve, and grant claims for refund or tax credit of internal revenue taxes. Respondent holds office at the Office of the Commissioner of Internal Revenue, BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

Prior to June 8, 2020, petitioner was the stockholder on record of 510,000 shares of common stock in G4S Cash Solutions Philippines, Inc. ("G4S PH"), including the shares of five (5) nominee shareholders.[5] G4S PH is a corporation organized and existing under the laws of the Philippines, with principal office address at 100 E. Rodriguez Avenue, Brgy. Ugong Norte, Quezon City.[6]

On June 8, 2020, petitioner entered into a *Deed of Absolute Sale of Shares* with Brink's Security International, Inc. ("BSII"), a corporation incorporated under the laws of the Unites States of America,[7] wherein petitioner sold its rights, titles, and interests in and to the subject shares for and in consideration of £26,004,000.00.[8]

In the letter dated January 11, 2021 issued by the *Bangko Sentral ng Pilipinas* ("BSP") International Operations Department,[9] the Monetary Board of the BSP, under its Resolution No. 12 dated January 7, 2021, approved the request of petitioner to open a Peso deposit account with Citibank Phils. for the specific purpose of facilitating payment of the CGT and corresponding increments to the BIR and utilizing the same Peso account in the eventual refund to petitioner of the amounts paid for the CGT and corresponding increments.

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2 BIR Records, Exhibits "P-3" and "P-4", pp. 228 to 257.

3 *Id.*, Exhibit "P-5", p. 223

4 Docket, *Joint Stipulation of Facts and Issue* (JSFI), Summary of Admitted Facts, p. 191.

5 Docket, Exhibit "P-6", pp. 340 to 341; BIR Records, Exhibit "P-7", pp. 180 to 181; Docket, Exhibit "P-8", pp. 345 to 346; BIR Records, Exhibits "P-9" to "P-12", pp. 183 to 187 and 174 to 178, respectively; Docket, Exhibit "P-24", pp. 450 to 451; BIR Records, Exhibits "P-25" to "P-28", pp. 161 to 169; BIR Records, Exhibit "P-39", pp. 152 to 160.

6 BIR Records, Exhibit "P-39", pp. 152 to 160.

7 Docket, *Petition for Review*, Statement of the Material Facts and Antecedent Proceedings, Par. 20, p. 12; *Respondent's Memorandum*, Statement of Facts, Par. 7, p. 755.

8 BIR Records, Exhibit "P-13", pp. 216 to 221.

9 *Id.*, Exhibit "P-15", pp. 88 to 89.

On May 21, 2021, petitioner filed the CGT return and paid the corresponding CGT, including surcharge, interest, and compromise penalties, in the aggregate amount of Php221,221,740.07.[10]

Thereafter, petitioner filed its *Tax Treaty Relief Application* ("TTRA") letter on March 22, 2022,[11] together with the *Application for Treaty Purposes (Relief from Philippine Income Tax on Capital Gains)* [BIR Form No. 0901-C],[12] with the BIR – International Tax Affairs Division ("ITAD"), requesting for confirmation, among others, that the gains realized from the sale of 510,000 common shares in the capital stock of G4S PH in favor of BSII are exempt from CGT pursuant to Article 12(4) of the *Convention between the Republic of the Philippines and United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains* ("RP-UK Tax Treaty"), and thus, entitled for a refund of the CGT paid including penalties in the amount of Php221,221,740.07, pursuant to Sections 204(C) and 229 of the National Internal Revenue Code ("NIRC"), as amended.

In reply, the BIR, through Mr. Larry M. Barcelo, Assistant Commissioner of Legal Service, issued on March 13, 2023 the *Certificate of Entitlement to Treaty Benefit* in favor of petitioner.[13] In the *Certificate of Entitlement*, the BIR certifies that the income derived by petitioner from the alienation of its shares in G4S PH to BSII in the amount of Php1,595,266,432.80 is exempt from income tax, pursuant to Article 12 of the RP-UK Tax Treaty, and from CGT imposed under Section 28(B)(5)(c) of the NIRC of 1997, as amended.[14]

On March 24, 2023, petitioner filed its *Application for Refund of Excess Withholding Tax in Accordance with the Double Taxation Convention* (BIR Form No. 1913) with the BIR – ITAD.[15]

Subsequently, on March 28, 2023, petitioner filed its letter [*Refund Application–Capital Gains tax (CGT) & penalties paid on 21 May 2021*] of even date,[16] and *Application for Tax Credit/Refunds* (BIR Form No. 1914),[17] with the BIR Revenue District Office No. 39 – Quezon City, requesting for a refund of the CGT, including the penalties, amounting to Php221,221,740.07.

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[10] Docket, JSFI, Jointly Stipulated Fact, p. 192; BIR Records, Exhibits "P-16" and "P-17", pp. 99 to 100 and 279, respectively; Docket, Exhibit "P-18", p. 428.
[11] Docket, Exhibit "P-19", pp. 430 to 442.
[12] *Id.*, Exhibit "P-32", pp. 464 to 466.
[13] *Id.*, Exhibit "P-20", pp. 443 to 444.
[14] *Id.*
[15] *Id.*, Exhibit "P-23", p. 449.
[16] *Id.*, Exhibit "P-44", pp. 582 to 583.
[17] *Id.*, Exhibit "P-22", p. 448.

As earlier stated, on May 19, 2023, petitioner filed a judicial claim for refund unto this Court, *via* the present *Petition for Review.*[18]

Within the period granted by the Court,[19] on August 22, 2023, respondent filed his *Answer*,[20] interposing the following special and affirmative defenses, to wit: (1) petitioner is not entitled to the refund of the CGT arising from the transfer of shares; and (2) petitioner is not entitled to the claim for refund or issuance of tax credit for alleged erroneously paid CGT.

On October 4, 2023, respondent transmitted the *BIR Records* for this case, consisting of 347 pages in one (1) folder.[21]

The Pre-Trial Conference was set and held on October 12, 2023,[22] wherein respondent manifested that he has no documentary evidence nor does he intend to present any witness. Prior thereto, *Respondent's Pre-Trial Brief* was filed on October 4, 2023,[23] while petitioner's *Pre-Trial Brief* was submitted on October 9, 2023.[24]

On November 13, 2023, the parties posted their *Joint Stipulation of Facts and Issue*,[25] which was admitted and approved by the Court in its Resolution dated December 13, 2023,[26] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated February 5, 2024 was then issued.[27]

As trial ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following individuals, namely: (1) Atty. Thyrza F. Marbas,[28] Tax Partner at Sycip Gorres Velayo & Co.; and (2) Mr. Jeffrey Campbell,[29] Regional General Counsel – Asia Pacific of G4S Secure Solutions (Asia) Limited, an affiliate of petitioner.

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18 *Id.*, pp. 7 to 34, and 98 to 101 (for the *Verification and Certification Against Forum Shopping* and *Special Power of Attorney*).

19 *Id.*, Respondent's *Motion for Extension of Time to File Answer* dated July 19, 2023, and Minute Resolution dated July 20, 2023, pp. 105 to 108 and 110, respectively.

20 *Id.*, pp. 111 to 118.

21 *Id.*, Respondent's *Compliance* dated October 3, 2023, pp. 174 to 176.

22 *Id.*, Notice of Pre-Trial Conference dated August 30, 2023, pp. 120 to 121; Minutes of the hearing held on, and Order dated, October 12, 2023, pp. 169 and 172 to 173, respectively.

23 *Id.*, pp. 128 to 130.

24 *Id.*, pp. 131 to 165.

25 *Id.*, pp. 191 to 194.

26 *Id.*, p. 200.

27 *Id.*, pp. 203 to 209.

28 *Id.*, Exhibit "P-2", pp. 62 to 95; Minutes of the hearing held on, and Order dated, February 8, 2024, pp. 210 to 210-A.

29 *Id.*, Exhibit "P-1", pp. 42 to 61; Minutes of the hearing held on, and Order dated March 7, 2024, pp. 212 to 212-B.

On April 5, 2024, petitioner filed its *Formal Offer of Evidence*,[30] to which respondent filed his *Comment (To Petitioner's Formal Offer of Evidence)* on April 22, 2024.[31] Subsequently, on May 23, 2024, petitioner filed its *Motion for Leave to File and Admit Reply to Respondent's Comment*,[32] with attached *Reply to Respondent's Comment (To Petitioner's Formal Offer of Evidence dated April 5, 2024)*.[33] In response thereto, respondent filed his *Comment (On Petitioner's Motion for Leave to File and Admit Reply to Respondent's Comment*) on August 20, 2024.[34]

In the Resolution dated January 7, 2025,[35] the Court granted petitioner's *Motion for Leave to File and Admit Reply to Respondent's Comment*, admitting petitioner's *Reply to Respondent's Comment (To Petitioner's Formal Offer of Evidence dated April 5, 2024)*, and admitted petitioner's offered exhibits, *except* Exhibit "P-35", for failure of the exhibit formally offered to correspond with the document actually marked.

Thereafter, on January 30, 2025, petitioner filed its *Urgent Omnibus Motion ([1] for Partial Reconsideration of the Resolution dated January 7, 2025; [2] for Leave to Admit Attached Amended Formal Offer of Evidence and [3] to Defer the Submission of the Parties' Memoranda)*,[36] with attached *Amended Formal Offer of Evidence*,[37] with respondent having failed to file a comment thereto.[38] In the Resolution dated August 18, 2025,[39] the Court granted petitioner's *Urgent Omnibus Motion* and admitted its *Amended Formal Offer of Evidence* and Exhibit "P-35".

The *Ad Cautelam Memorandum for Petitioner* was filed on February 13, 2025,[40] while *Respondent's Memorandum* was submitted on February 20, 2025.[41]

The present case was deemed submitted for decision on August 18, 2025.[42]

The Issue

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30 *Id.*, pp. 225 to 251.
31 *Id.*, pp. 637 to 644.
32 *Id.*, pp. 645 to 648.
33 *Id.*, pp. 649 to 666.
34 *Id.*, pp. 670 to 673.
35 *Id.*, pp. 676 to 678.
36 *Id.*, pp. 680 to 688.
37 *Id.*, pp. 689 to 714.
38 *Id.*, Records Verification dated April 25, 2025 issued by the Judicial Records Division of this Court, p. 760.
39 *Id.*, pp. 763 to 766.
40 *Id.*, pp. 720 to 749.
41 *Id.*, pp. 754 to 759.
42 *Id.*, Resolution dated August 18, 2025, pp. 763 to 766.

As stipulated by the parties, the issue for this Court's resolution is:

> "Whether Petitioner is entitled to a refund of capital gains tax amounting to [Php]221,221,740.07 arising from the transfer of the shares of G4S Cash Solutions Philippines, Inc, to Brink's Security International, Inc."[43]

Petitioner's arguments:

Petitioner argues that the income it derived from the transaction is exempt from CGT pursuant to paragraph 4, Article XII of the RP-Uk Tax Treaty and as confirmed by the Certificate of Entitlement specifically issued by the BIR to petitioner, and thus the payment by petitioner of the CGT and related penalties amounting, in the aggregate, to Php221,221,740.07 was erroneous, excessive, illegal and/or wrongful; that the assessment is void for violating petitioner's right to due process; that as party to the RP-UK Tax Treaty, the government of the Republic of the Philippines must perform in good faith its obligations under the treaty and grant to petitioner the income tax exemption to which it is entitled; and that petitioner has complied with the procedural requirements under Revenue Memorandum Order ("RMO") No. 14-2021 for the availment of treaty benefits.

Respondent's counter-arguments:

In his *Answer*, respondent contends that the transaction involving the sale of shares which resulted to gain should be subjected to CGT in view of petitioner's non-filing of an application for tax treaty relief; that petitioner cannot out of its own volition and interpretation of the tax treaty just automatically exempt itself from the payment of the tax without observing the provisions under RMO No. 01-2000; and as a consequence thereof, petitioner is not entitled to the claim for refund or issuance of tax credit for alleged erroneously paid CGT.

Discussion/Ruling

The present *Petition for Review* is meritorious.

Governing provisions for refund claims.

[43] Docket – Vol. I, Pre-Trial Order dated February 05, 2024, p. 204 adopting the issues in the JSFI, Jointly Stipulated Issue, p. 192.

Sections 204(C) and 229 of the NIRC of 1997, as amended, read:

"SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund."[44]

"SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any **national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."[45]

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[44] *Emphasis supplied.*
[45] *Emphasis supplied.*

The aforequoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[46]

Moreover, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[47] In other words, what can be refunded or credited is a tax that is erroneously, illegally, excessively or in any manner wrongfully collected. In short, there must be a wrongful payment because what is paid, or part of it, is not legally due.[48]

Thus, for the present claim for refund to prosper, petitioner must not only establish that it has timely filed its refund claim, it must likewise prove that the subject CGT paid falls under the above-stated definition of "erroneous or illegal tax".

Petitioner timely filed its administrative and judicial claims.

In this case, petitioner paid the CGT on the subject transaction on May 21, 2021.[49] Counting two (2) years therefrom, petitioner had until May 21, 2023, to file its administrative and judicial claims for refund. Clearly, petitioner's administrative claim filed on March 28, 2023 with the BIR,[50] and the subsequent appeal before this Court on May 19, 2023,[51] were made within the two (2)-year reglementary period.

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[46] *Commissioner of Internal Revenue v. San Miguel Corporation, et. al.*, G.R. Nos. 180740 and 180910, November 11, 2019.

[47] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

[48] *Commissioner of Internal Revenue v. San Roque Power Corporation, et. al.*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

[49] Docket, JSFI, Jointly Stipulated Fact, p. 192; BIR Records, Exhibits "P-16" and "P-17, pp. 99 to 100 and 279, respectively; Docket, Exhibit "P-18", p. 428.

[50] Docket, Exhibit "P-22" and "P-44", pp. 448 and 582 to 583, respectively.

[51] *Id.*, pp. 7 to 34.

The subject CGT was erroneously or illegally paid, and thus, must be refunded to petitioner.

Petitioner submits that the income it derived from the transaction is exempt from CGT, pursuant to paragraph 4, Article XII of the RP-UK Tax Treaty, and as confirmed by the *Certificate of Entitlement* specifically issued by the BIR to petitioner, and thus, the payment by petitioner of the CGT and the related penalties amounting, in the aggregate, to Php221,221,740.07 was erroneous, excessive, illegal and/or wrongful.

On the other hand, respondent mainly contends that petitioner failed to prove that it is a United Kingdom tax resident, thus, it is not entitled to avail of the benefits under the UK/Philippines Double Taxation Convention.

The Court rules in favor of petitioner.

At the outset, the exemption from the payment of CGT from sale of common shares in G4S PH by petitioner to BSII was confirmed by the BIR when it issued the *Certificate of Entitlement to Treaty Benefit* dated March 13, 2023 to the petitioner,[52] which states:

> "This is to certify that the **income derived by G4S International Holdings Limited (G4S-UK), a resident of the United Kingdom (UK), from the alienation of its shares in G4S Cash Solutions Philippines, Inc. (G4S Philippines) to Brinks Security International, Inc. (BSII) is exempt from income tax** pursuant to Article 12 (Gains from Alienation of Property) of the Convention between the Government of the Republic of the Philippines and the Government of the United Kingdom of Great Britain and Northern I[re]land for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains (PH-UK Tax Treaty).
>
> The details of the transaction are as follows:

Relevant Document/Contract	Deed of Absolute Sale of Shares
Date Execution	June 8, 2020

[52] *Id.*, Exhibit "P-20", pp. 443 to 444.

Subject Shares	510,000 common shares, with a par value of Php100.00 per share
Total Par Value	Php51,000,000.00
Consideration	£26,004,000.00/Php1,646,266,432.80
Income	Php1,595,266,432.80

Income Tax

Paragraph 4, Article 12 of the PH-UK tax Treaty states that gains from the alienation of any property, other than immovable property, movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or such a permanent establishment (alone or together with the whole enterprise), shall be taxable only in the Contracting State of which the alienator is a resident.

The subject shares are not classified as immovable or real property under Article 415 of republic Act No. 386 or the Civil Code of the Philippines and under paragraph 2, Article 6 (Income from Immovable Property) of the PH-UK Tax Treaty. Moreover, G4S-UK does not have a permanent establishment in the Philippines to which the subject shares may be attributed.

Accordingly, since the subject shares do not fall within the aforecited exceptions, the income derived by G4S-UK from the alienation thereof to BSII <u>is exempt from the capital gains tax</u> imposed under Section 28(B)(5)(c) of the National Internal Revenue Code of 1997 (Tax Code), as amended."[53]

Clearly, respondent had already ruled that petitioner is a UK resident and is entitled to the benefits under the RP-UK Tax Treaty. Nonetheless, it must be emphasized that, notwithstanding the issuance of the *Certificate of Entitlement* in favor of petitioner, **<u>cases filed before this Court are litigated *de novo*</u>**, thus, the party-litigants must prove every minute aspect of their cases by presenting, formally offering, and submitting its evidence to the Court.[54] Moreover, since the claim for tax refund/credit was litigated anew before the Court, then the decision should be solely based on the evidence formally presented before it,

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53 *Emphasis and underscoring supplied.*

54 *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007.

notwithstanding any pieces of evidence that may have been submitted (or not submitted) to respondent.[55]

Relative thereto, it should be noted that, to prove its tax residency, petitioner presented its *Certificate of UK Residence* dated October 9, 2020 issued by HM Revenue and Customs,[56] before this Court, and likewise submitted the same in support of its TTRA,[57] and administrative claim for refund.[58]

Further, respondent confirmed through the *Certificate of Entitlement* that petitioner is exempt from CGT from the sale of the shares to BSII pursuant to the same Tax Treaty. Accordingly, respondent cannot now adopt a position contrary to that taken in the *Certificate of Entitlement.* Although there is a provision on the *Certificate of Entitlement* that the same "shall be revoked or cancelled should there be a relevant and significant change in the facts or circumstances upon which the ruling was based", there is no showing that there were significant changes in the facts or circumstances of the subject transaction as will be confirmed in the discussion below.

The Court shall now delve on the exemption of CGT under the RP-UK Tax Treaty and whether petitioner is entitled to a refund of the CGT paid on the sale of shares in G4S PH to BSII.

Section 28(B)(5)(c) of the NIRC of 1997, as amended, imposes CGT on the net capital gains realized from the sale of shares of stock in a domestic corporation not traded in the stock exchange by a non-resident foreign corporation. It reads:

> "SEC. 28. *Rates of Income Tax on Foreign Corporations.* —
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> xxx xxx xxx
>
> (B) *Tax on Nonresident Foreign Corporation.* —
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> xxx xxx xxx

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[55] *Commissioner of Internal Revenue v. Philippine Bank of Communications*, G.R. No. 211348, February 23, 2022.
[56] BIR Records, Exhibit "P-4", p. 228.
[57] Docket, Exhibit "P-19", p. 441.
[58] *Id.*, Exhibit "P-44", at p. 582.

(5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporation.* –

xxx xxx xxx

(c) *Capital Gains from Sale of Shares of Stock not Traded in the Stock Exchange.* — A final tax at the rates prescribed below is hereby imposed upon the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation, except shares sold, or disposed of through the stock exchange:

Not over P100,000 ....
5%
On any amount in excess of P100,000 .... 10%"

However, Section 32(A)(3) and (B)(5) of the same NIRC of 1997, as amended, provides as follows:

"SEC. 32. *Gross Income.* —

(A) *General Definition.* — Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:

xxx xxx xxx

(3) **Gains derived from dealings in property;**

xxx xxx xxx

(B) ***Exclusions from Gross Income.*** — The following items shall not be included in gross income and shall be exempt from taxation under this Title:

xxx xxx xxx

> (5) ***Income Exempt under Treaty.* — Income of any kind, to the extent required by any treaty obligation binding upon the Government of the Philippines.**"[59]

Based on the foregoing provisions, while the net capital gains, being gains from dealings in property, realized during the taxable year from the sale or other disposition of shares of stock in a domestic corporation not traded in the stock exchange by a nonresident foreign corporation, may be subject to CGT, for being considered as gross income, the same may be exempted therefrom *"to the extent required by any treaty obligation binding upon the Government of the Philippines."*

In *Air Canada vs. Commissioner of Internal Revenue*,[60] the Supreme Court emphasized that the provisions of the Tax Code must be subject to the provisions of tax treaties entered into by the Philippines with foreign countries, explaining the purpose of entering into tax treaties, to wit:

> "A tax treaty is an agreement entered into between sovereign states 'for purposes of eliminating double taxation on income and capital, preventing fiscal evasion, promoting mutual trade and investment, and according fair and equitable tax treatment to foreign residents or nationals.' *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.*[61] explained the purpose of a tax treaty:
>
>> **The purpose of these international agreements is to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two different jurisdictions. More precisely, the tax conventions are drafted with a view towards the elimination of *international juridical double taxation*, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods.**
>>
>> The apparent rationale for doing away with double taxation is to encourage the free flow of goods and services and the movement of capital, technology and persons between countries, conditions deemed vital in creating robust and dynamic economies. Foreign

[59] *Emphasis supplied.*
[60] G.R. No. 169507, January 11, 2016.
[61] 368 Phil. 388 (1999) [Per *J.* Gonzaga-Reyes, Third Division]

> investments will only thrive in a fairly predictable and reasonable international investment climate and the protection against double taxation is crucial in creating such a climate. (Emphasis in the original, citations omitted)
>
> Observance of any treaty obligation binding upon the government of the Philippines is anchored on the constitutional provision that the Philippines 'adopts the generally accepted principles of international law as part of the law of the land[.]' ***Pacta sunt servanda* is a fundamental international law principle that requires agreeing parties to comply with their treaty obligations in good faith.**
>
> Hence, **the application of the provisions of the National Internal Revenue Code must be subject to the provisions of tax treaties entered into by the Philippines with foreign countries.**"[62]

Moreover, in *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., et al.*,[63] the Supreme Court likewise explained that tax treaty resorts to several methods to eliminate double taxation, one of which is conferring an exclusive right to tax to one of the contracting states, to wit:

> "Double taxation usually takes place when a person is resident of a contracting state and derives income from, or owns capital in, the other contracting state and both states impose tax on that income or capital. **In order to eliminate double taxation, a tax treaty resorts to several methods.** First, **it sets out the respective rights to tax of the state of source or situs and of the state of residence with regard to certain classes of income or capital. <u>In some cases, an exclusive right to tax is conferred on one of the contracting states</u>;** however, for other items of income or capital, both states are given the right to tax, although the amount of tax that may be imposed by the state of source is limited."[64]

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[62] *Emphasis supplied.*
[63] G.R. No. 127105, June 25, 1999.
[64] *Emphasis and underscoring supplied.*

One of the above-stated treaty obligations binding upon the Government of the Philippines is the RP-UK Tax Treaty,[65] Article 12 of which reads as follows:

"Article 12
GAINS FROM THE ALIENATION OF PROPERTY

1. Capital gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which such property is situated.

2. Capital gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State.

3. Notwithstanding the provisions of paragraph 2 of this Article, capital gains derived by a resident of a Contracting State from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting State.

4. **Capital gains from the alienation of any property other than those mentioned in paragraphs 1, 2 and 3 of this Article shall be taxable only in the Contracting State of which the alienator is a resident.**

5. The provisions of paragraph 4 of this Article shall not affect the right of a Contracting State to levy according to its own law a tax on capital gains from the alienation of movable property derived by an individual who is a resident of the other

[65] Formally known as the "CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS".

> Contracting State and has been a resident of the first-mentioned Contracting State at any time during the six years immediately preceding the alienation of the property."[66]

The foregoing provision governs the taxing rights of each Contracting State relative to gains derived from the alienation of property. Paragraph 1 covers the alienation of immovable as defined in paragraph 2 of Article 6 of the same treaty; while paragraph 2 covers the alienation of movable property, forming part of the business property of a permanent establishment which an enterprise of one of the States has in the other State, or pertaining to a fixed base available to a resident of one of the States in the other State for the purpose of performing professional services, as well as the alienation of such permanent establishment (alone or together with the whole enterprise) or of such a fixed base. And paragraph 3 relates to the alienation of ships and aircraft operated in international traffic, and movable property pertaining to the operation of such ships or aircraft.

Notably, paragraph 4 of the foregoing Article, which petitioner rightly invokes, involves the alienation of any property other than those mentioned in the said paragraphs 1, 2, and 3. Under the said paragraph 4, the taxing right belongs to the Contracting State of which the alienator is a resident. As a corollary, any gain derived from the alienation of the subject property should be exempt from capital gains in the Contracting State in which the alienator is ***not*** a resident.

To determine whether an alienator is a resident, paragraph 1 of Article 4 of the RP-UK Tax Treaty becomes relevant, to wit:

> "Article 4
> FISCAL DOMICILE
>
> 1. For the purposes of this Convention, the term **'resident of a Contracting State'** means, subject to the provisions of paragraphs 2 and 3 of this Article, **any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature**; an individual who is a member of the diplomatic, consular or permanent mission of a Contracting State which is situated in the other Contracting State and who is subject to tax in that other State only if he derives income from sources therein, shall not be deemed to

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[66] *Emphasis supplied.*

be a resident of that other State. The terms 'resident of the Philippines' and 'resident of the United Kingdom' shall be construed accordingly."[67]

In this case, as earlier intimated, petitioner is a resident of the United Kingdom during the year 2020, as evidenced by the *Certificate of UK Residence* dated October 9, 2020 issued by HM Revenue and Customs, S0753, Newcastle, NE98 1ZZ,[68] which reads, in part, as follows:

"**Company Name:**	**G4S International Holdings Ltd**
Registered office address:	5th Floor Southside, 105 Victoria Street, LONDON SW1E 6QT

I certify that to the best of HM Revenue and Customs knowledge, the above company as at 8 October 2020 is a resident of the United Kingdom in accordance with Article 4 of the Convention in force between the United Kingdom and the Philippines."[69]

Thus, for purposes of the RP-UK Tax Treaty, petitioner is a resident of the UK. The fact that petitioner is a resident of the UK, and not of the Philippines, is also bolstered by the *Certification of Non-Registration of Company* dated August 11, 2020,[70] issued by the Philippine Securities and Exchange Commission, which certifies that its records do not show the registration of petitioner as a corporation, partnership or one person corporation.

Considering that petitioner is a resident of the UK in accordance with Article 4 of the RP-UK Tax Treaty, this Court finds that any gain it derived from the alienation of its shares of stocks in G4S PH to BSII is exempt from the CGT imposed under Section 28(B)(5)(c) of the NIRC of 1997, pursuant to paragraph 4, Article 12 of the same Tax Treaty.

Such being the case, the payment of CGT made by petitioner amounting to Php221,221,740.07[71] for the subject transaction should be deemed as an

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[67] *Emphasis supplied.*
[68] BIR Records, Exhibit "P-4", p. 228.
[69] *Emphasis supplied.*
[70] BIR Records, Exhibit "P-5", p. 223.
[71] BIR Records, Exhibits "P-16" and "P-17", pp. 99 to 100 and 279, respectively; Docket, Exhibit "P-18", p. 428.

erroneous or wrongful payment, since no CGT is legally due, and hence, should be refunded to petitioner.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.

Accordingly, respondent is **ORDERED TO REFUND** petitioner the amount of **Php221,221,740.07**, representing the CGT, including surcharge, interest and compromise penalties, erroneously excessively, illegally and/or wrongfully collected on May 21, 2021, on the sale of its common shares of stock in G4S Cash Solutions Philippines, Inc. to Brink's Security International Inc.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
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 case was assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice