THIRD DIVISION

G.R. No. 260912 – THE DEPARTMENT OF ENERGY, *petitioner*, ***versus*** **COURT OF TAX APPEALS,** *respondent*.

Promulgated:

August 17, 2022

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CONCURRING OPINION

CAGUIOA, *J*.:

The crux of the controversy in the present case is which authority has jurisdiction to resolve the controversy involving the disputed tax assessment issued by the Bureau of Internal Revenue (BIR) against the Department of Energy (DOE), both of which are government entities.

In affirming the Decision of the Court of Tax Appeals (CTA) *En Banc* (CTA EB) that it is the Secretary of Justice, and not the CTA, that has jurisdiction over the controversy, the *ponencia* applied the ruling in *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*[1] (*PSALM*), where the Supreme Court *En Banc* categorically resolved that for tax disputes solely between government entities, including, government-owned and controlled corporations (GOCC), it is the Secretary of Justice that has jurisdiction over the case and not the CTA.

I concur with the *ponencia* in denying the instant Petition.

I submit this Concurring Opinion to underscore that settled and prevailing jurisprudence indeed recognizes the Secretary of Justice to have the exclusive jurisdiction to resolve tax disputes between the BIR and another government entity — pursuant to Presidential Decree No. (PD) 242[2] and the Administrative Code of 1987.[3]

Sections 1, 2, and 3 of PD 242 read:

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1 815 Phil. 966 (2017). Penned by Associate Justice Antonio T. Carpio, with Chief Justice Maria Lourdes P.A. Sereno and Associate Justices Teresita J. Leonardo-De Castro, Diosdado M. Peralta, Jose C. Mendoza, Marvic Mario Victor F. Leonen, Francis H. Jardeleza, Alfredo Benjamin S. Caguioa, Samuel R. Martires, Noel G. Tijam, and Andres B. Reyes, Jr. concurring. Associate Justice Presbitero J. Velasco, Jr. penned a Concurring Opinion. Associate Justice Mariano C. Del Castillo penned a Dissenting Opinion and he is joined by Associate Justice Lucas P. Bersamin. Associate Justice Estela M. Perlas-Bernabe took no part.

2 PRESCRIBING THE PROCEDURE FOR ADMINISTRATIVE SETTLEMENT OR ADJUDICATION OF DISPUTES, CLAIMS AND CONTROVERSIES BETWEEN OR AMONG GOVERNMENT OFFICES, AGENCIES AND INSTRUMENTALITIES, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, AND FOR OTHER PURPOSES, approved on July 9, 1973.

3 Executive Order No. 292, July 25, 1987.

> Section 1. Provisions of law to the contrary notwithstanding, **all disputes, claims and controversies** solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations but excluding constitutional offices or agencies, **arising from the interpretation and application of statutes, contracts or agreements, shall henceforth be administratively settled or adjudicated as provided hereinafter**: *Provided*, That this shall not apply to cases already pending in court at the time of the effectivity of this decree.
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> Section 2. **In all cases involving only questions of law, the same shall be submitted to and settled or adjudicated by the Secretary of Justice**, as Attorney General and *ex-officio* legal adviser of all government-owned or controlled corporations and entities, in consonance with Section 83 of the Revised Administrative Code. His ruling or determination of the question in each case shall be conclusive and binding upon all the parties concerned.
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> Section 3. Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:
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> (a) The **Solicitor General**, with respect to disputes o[r] claims or controversies between or among the departments, bureaus, offices and other agencies of the National Government;
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> (b) The **Government Corporate Counsel**, with respect to disputes or claims or controversies between or among the government-owned or controlled corporations or entities being served by the Office of the Government Corporate Counsel; and
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> (c) The **Secretary of Justice**, with respect to all other disputes or claims or controversies which do not fall under the categories mentioned in paragraphs (a) and (b). (Emphasis supplied, italics in the original)

The above-cited provisions were incorporated into Book IV, Chapter 14 of the Administrative Code of 1987 on Controversies Among Government Offices and Corporations. Relevant provisions read:

> Section 66. *How Settled.* – All **disputes, claims and controversies, solely** between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, **such as those arising from the interpretation and application of statutes, contracts or agreements**, *shall be administratively settled or adjudicated in the manner provided in this Chapter.* This Chapter shall, however, not apply to disputes involving the Congress, the Supreme Court, the Constitutional Commissions, and local governments.
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> Section 67. *Disputes Involving Questions of Law.* – All cases involving only questions of law shall be submitted to and settled or adjudicated by the Secretary of Justice as Attorney-General of the National Government and as *ex officio* legal adviser of all government-owned or controlled corporations. His ruling or decision thereon shall be conclusive and binding on all the parties concerned.

> Section 68. *Disputes Involving Questions of Fact and Law.* – Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:
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> (1) The **Solicitor General**, if the dispute, claim or controversy involves only departments, bureaus, offices and other agencies of the National Government as well as government-owned or controlled corporations or entities of whom he is the principal law officer or general counsel; and
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> (2) The **Secretary of Justice**, in all other cases not falling under paragraph (1). (Emphasis, italics and underscoring supplied)

From the foregoing, all disputes, claims, and controversies ***solely*** between government agencies and offices, including GOCCs, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved. For cases involving only questions of law, it is the Secretary of Justice that has jurisdiction to settle or adjudicate such controversy. For cases involving mixed questions of law and of fact, or purely factual issues, they shall be submitted to the Solicitor General if the latter is the principal law officer or general counsel of the parties, otherwise, the issues shall be submitted to and resolved by the Secretary of Justice.

On the other hand, Section 4 of the National Internal Revenue Code of 1997[4] (1997 NIRC), as amended, as well as Section 7 of Republic Act No. (RA) 9282,[5] vest the CTA with jurisdiction over the decisions or inactions of the Commissioner of Internal Revenue (CIR) involving disputed assessments:

> [Section 4, Title I, 1997 NIRC]
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> Section 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
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> The power to decide **disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, **subject to the exclusive appellate jurisdiction of the Court of Tax Appeals**.
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> [Section 7, RA 9282]
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> Section 7. *Jurisdiction.* – The CTA shall exercise:

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4 Republic Act No. 8424, AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES, otherwise known as the "TAX REFORM ACT OF 1997," approved on December 11, 1997.

5 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS, ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES, approved on March 30, 2004.

(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;

(2) Inaction by 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, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial[.][6] (Emphasis supplied)

In 2005, the Court declared in *Philippine National Oil Company v. Court of Appeals*[7] (*PNOC*) that the CTA retained exclusive appellate jurisdiction over tax disputes, even though they were solely between government entities. According to the Court, PD 242 is a general law while RA 1125[8] is a special law and constitutes an exception to PD 242. Nevertheless, the Court also said that:

> Even if, for the sake of argument, that P.D. No. 242 should prevail over Rep. Act No. 1125, the present dispute would still not be covered by P.D. No. 242. Section 1 of P.D. No. 242 explicitly provides that only disputes, claims and controversies solely between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including constitutional offices or agencies, as well as government-owned and controlled corporations, shall be administratively settled or adjudicated. While the BIR is obviously a government bureau, and both PNOC and PNB are government-owned and controlled corporations, respondent Savellano is a private citizen. His standing in the controversy could not be lightly brushed aside. It was private respondent Savellano who gave the BIR the information that resulted in the investigation of PNOC and PNB; who requested the BIR Commissioner to reconsider the compromise agreement in question; and who initiated CTA Case No. 4249 by filing a Petition for Review.[9] (Italics and underscoring omitted)

In the 2016 case of *CIR v. Secretary of Justice, et al.*,[10] the Court reiterated its ruling in *PNOC* that the Secretary of Justice lacks jurisdiction to review disputed tax assessments between government entities. The Court once again reasoned that RA 1125, being a special law, is an exception to PD 242, a general law. It also held that the Secretary of Justice should have adhered to

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6 *See also* A.M. No. 05-11-07-CTA, REVISED RULES OF THE COURT OF TAX APPEALS, Rule 4, Sec. 3.
7 496 Phil. 506 (2005) (Supreme Court *En Banc*).
8 AN ACT CREATING THE COURT OF TAX APPEALS, approved on June 16, 1954.
9 *Philippine National Oil Company v. Court of Appeals*, supra note 7, at 558.
10 799 Phil. 13 (2016) (Supreme Court First Division).

PNOC by desisting from acting on the tax dispute between the BIR and the Philippine Amusement and Gaming Corporation.

Then, on August 8, 2017, the Court *En Banc* promulgated *PSALM*, in which it upheld the jurisdiction of the Secretary of Justice over a tax dispute between Power Sector Assets and Liabilities Management Corporation and National Power Corporation, on the one hand, and the BIR, on the other. In *PSALM*, the Court adopted the following interpretation in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the 1997 NIRC or other laws administered by the BIR to harmonize PD 242 and the 1997 NIRC:

> [(1) As regards **private entities and the BIR**, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR is vested in the CIR subject to the exclusive appellate jurisdiction of the **CTA**, in accordance with Section 4 of the NIRC; and
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> (2) Where the **disputing parties are all public entities** (covers disputes between the BIR and other government entities), the case shall be governed by **PD 242.**][11] (Emphasis supplied)

Clearly, the Court in *PSALM* specifically and purposely overturned its earlier pronouncements in *PNOC* that the CTA has jurisdiction over tax disputes between government entities. The Court also distinguished *PSALM* from *PNOC* by emphasizing that the dispute in *PSALM* is solely between a bureau and two (2) GOCCs, whereas the controversy in *PNOC* involved a private citizen, *viz.*:

> This case is different from the case of *Philippine National Oil Company v. Court of Appeals,* (*PNOC v. CA*) which involves not only the BIR (a government bureau) and the PNOC and PNB (both government-owned or controlled corporations), but also respondent Tirso Savellano, **a private citizen**. Clearly, PD 242 is not applicable to the case of *PNOC v. CA*. Even the *ponencia* in *PNOC v. CA* stated that the dispute in that case is not covered by PD 242 x x x.[12] (Emphasis in the original)

The Court's ruling in *PSALM* was squarely applied in the 2018 case of *CIR v. Secretary of Justice, et al.*,[13] where the Court, by a unanimous vote, held that:

> Nevertheless, the SOJ's jurisdiction over tax disputes between the government and government-owned and controlled corporations has been finally settled by this Court in the recent case of *Power Sector Assets and*

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11 *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*, supra note 1, at 1001-1002.

12 Id. at 996; citation omitted.

13 835 Phil. 931 (2018). Rendered by the First Division; penned by Associate Justice Noel G. Tijam, with Associate Justices Teresita J. Leonardo-De Castro, Diosdado M. Peralta, Mariano C. Del Castillo, and Alexander G. Gesmundo, concurring.

Liabilities Management Corporation v. Commissioner of Internal Revenue, to wit:

> x x x x
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> Since this case is a dispute between the CIR and respondent, a local water district, which is a GOCC pursuant to P.D. No. 198, also known as the Provincial Water Utilities Act of 1973, clearly, the SOJ has jurisdiction to decide over the case.[14]

Just last year, in the case of *Philippine Mining Development Corp. v. CIR*,[15] the Court unanimously held that the Secretary of Justice has jurisdiction over disputes solely between or among government agencies and GOCCs, ***regardless of the nature of the dispute*** — be it a protest on a tax assessment or a conflict in the interpretation of a contract.

Evidently, prevailing jurisprudence recognizes the jurisdiction of the Secretary of Justice over tax disputes between government agencies and offices. PD 242 will apply when all the parties involved are government offices and GOCCs. On the other hand, if the dispute involves a private citizen, PD 242 is no longer applicable.

Going back to the case of *PSALM*, the Court's ruling therein was correctly justified on the following grounds:

(a) Under Section 17, Article VII of the Constitution, the President's constitutional power of control over all the executive departments, bureaus and offices must be guaranteed;

(b) Under the doctrine of exhaustion of administrative remedies, relief under PD 242 must be sought first before seeking judicial recourse; otherwise, the action will be premature and the case will not be ripe for judicial determination; and

(c) Because the 1997 NIRC is a general law and PD 242 is a special law, the latter must take precedence over the former.

I expound on the above-mentioned points discussed in *PSALM vis-à-vis* the observations of Associate Justice Japar B. Dimaampao (Justice Dimaampao) in his Dissenting Opinion for this case.

According to Justice Dimaampao, contrary to the Court's position in *PSALM*, the settlement of tax disputes cannot be justified by the President's power of control and supervision because the power to collect taxes ultimately rests with Congress. Justice Dimaampao opines that interpreting PD 242 to

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14 Id. at 938-942; citations omitted.

15 G.R. No. 250748, October 6, 2021 (Unsigned Resolution). Rendered by the First Division composed of Chief Justice Alexander G. Gesmundo, Chairperson; Associate Justice Alfredo Benjamin S. Caguioa, Working Chairperson; and Associate Justices Amy C. Lazaro-Javier, Mario V. Lopez, and Jhosep Y. Lopez, Members.

include tax disputes would result in situations where the Secretary of Justice would be able to supplant the actions of the taxing agencies, thereby undermining the power delegated by Congress to collect taxes. In contrast, the CTA's exercise of appellate jurisdiction over such controversies would not be an overstep into legislative power because judicial review in such cases would merely ensure that the duly delegated agency is enforcing the law within the bounds intended by Congress.[16]

I disagree. I join the *ponencia* in ruling that the administrative settlement procedure in PD 242 is not meant to supplant or override the power of Congress to tax.[17] The application of PD 242 to tax disputes between the BIR and another government entity does not, ***in any way***, encroach upon the legislative taxing power. Neither does it impede with the BIR's power to enforce and collect taxes.

The power to levy taxes is inherent in the State, such power being inherently legislative.[18] On the other hand, the power to enforce tax laws, through assessment and collection of taxes is exercised by the BIR,[19] which is under the executive department of the government. Next, judicial review is essential to ensure the maintenance and enforcement of the separation of powers and the balancing of powers among the three great departments of the government.[20] As such, actions involving issues related to taxation may be brought before and reviewed by the courts based on the judicial power of review granted to them by the Constitution and relevant statutes.

As stated at the outset, the application of PD 242 to tax disputes between government entities does not outweigh legislative power nor supplant the BIR's tax assessment and collection powers. To be sure, PD 242 does not prohibit the enforcement of tax laws, or the assessment and collection of taxes against government entities. All that PD 242 does is, as explained by the Court in *PSALM*, to simply recognize the President's power of control over the executive department and provides an administrative remedy to settle intra-government disputes. Section 17, Article VII of the Constitution states that "[t]he President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed." This constitutional power of control of the President is self-executing and does not require any implementing law. Congress cannot limit or curtail the President's

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16 *J.* Dimaampao, Dissenting Opinion, pp. 8-9.

17 *Ponencia*, pp. 12-14.

18 *Commissioner of Internal Revenue v. Fortune Tobacco Corp.*, 581 Phil. 146, 158 (2008).

19 Section 2, Title I of the 1997 NIRC reads:

> Section 2. *Powers and Duties of the Bureau of Internal Revenue.* – The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws.

20 *Sps. Imbong, et al. v. Hon. Ochoa, Jr.*, 732 Phil. 1, 122 (2014).

power of control over the Executive branch.[21] In other words, if the office is part of the Executive branch, it must remain subject to the control of the President.[22]

Thus, the Court ruled in *PSALM* that it is only proper that intra-governmental disputes be settled administratively since the opposing government offices, agencies and instrumentalities are all under the President's executive control and supervision:

> x x x Thus, if two executive offices or agencies cannot agree, it is only proper and logical that the President, as the sole Executive who under the Constitution has control over both offices or agencies in dispute, should resolve the dispute instead of the courts. The judiciary should not intrude in this executive function of determining which is correct between the opposing government offices or agencies, which are both under the sole control of the President. Under his constitutional power of control, the President decides the dispute between the two executive offices. The judiciary cannot substitute its decision over that of the President. **Only after the President has decided or settled the dispute can the courts' jurisdiction be invoked.** Until such time, the judiciary should not interfere since the issue is not yet ripe for judicial adjudication. Otherwise, the judiciary would infringe on the President's exercise of his constitutional power of control over all the executive departments, bureaus, and offices.[23] (Emphasis supplied)

I also agree with the Court's characterization in *PSALM* of the process under PD 242 as an administrative remedy that parties must observe before resorting to judicial action, non-observance of which results in a lack of cause of action, which is one of the grounds in the Rules of Court justifying the dismissal of the complaint.[24]

The doctrine of exhaustion of administrative remedies calls for resort first to the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before being elevated to the courts of justice for review.[25] This is under the theory that the administrative agency, by reason of its particular expertise, is in a better position to resolve particular issues:

> One of the reasons for the doctrine of exhaustion is the separation of powers, which enjoins upon the Judiciary a becoming policy of non-interference with matters coming primarily (albeit not exclusively) within the competence of the other departments. **The theory is that the administrative authorities are in a better position to resolve questions addressed to their particular expertise and that errors committed by subordinates in their resolution may be rectified by their superiors if given a chance to do so.** A no less important consideration is that

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21 *Rufino v. Endriga*, 528 Phil. 473, 504 (2006).

22 Id. at 506.

23 *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*, supra note 1, at 998-999.

24 *Teotico v. Baer*, 523 Phil. 670, 676 (2006).

25 *Castro v. Sec. Gloria*, 415 Phil. 645, 651 (2001).

> administrative decisions are usually questioned in the special civil actions of certiorari, prohibition and mandamus, which are allowed only when there is no other plain, speedy and adequate remedy available to the petitioner. **It may be added that strict enforcement of the rule could also relieve the courts of a considerable number of avoidable cases which otherwise would burden their heavily loaded dockets.** x x x[26] (Emphasis supplied)

Thus, for disputes solely between government entities, PD 242 applies and the same must first be settled or adjudicated administratively by the Secretary of Justice. In turn, the decision of the Secretary of Justice may be appealed to the Office of the President following Section 70,[27] Chapter 14, Book IV of the Administrative Code of 1987 and Section 5[28] of PD 242. Thereafter, if the appeal to the Office of the President is denied, then the aggrieved party, ***and only then***, may file an appeal to the Court of Appeals under Section 1, Rule 43 of the 1997 Rules of Civil Procedure.[29] PD 242 does not eliminate the government entity's judicial recourse for tax controversies resolved by the Office of the President.

Clearly, the application of PD 242 also does not, in any way, manner or form, diminish the jurisdiction of the courts. Again, at the risk of being repetitious, all it does is to prescribe an administrative procedure for the settlement of disputes, claims, or controversies between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including GOCCs. It is an alternative to, or substitute for, traditional court litigation, with the added benefit of avoiding the delays, vexations, and expense of court proceedings.[30]

Justice Dimaampao further states that neither PD 242 nor the Administrative Code of 1987 provide further detail as to the nature of "the disputes, claims and controversies" which fall under its coverage.[31] From this he concludes that the phrase should be understood in its most common and general sense, but taxes are not in the nature of ordinary civil debt, demand, or contract which may be the subject of setting off or recoupment.[32]

The premise of the above argument is that the "disputes, claims, and controversies" covered by PD 242 exclude tax disputes. On the contrary,

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26 *International Container Terminal Services, Inc. v. The City of Manila, et al.*, 842 Phil. 173, 212-213 (2018); citation omitted.

27 Section 70. *Appeals.* – The decision of the Secretary of Justice as well as that of the Solicitor General, when approved by the Secretary of Justice, shall be final and binding upon the parties involved. Appeals may, however, be taken to the President where the amount of the claim or the value of the property exceeds one million pesos. The decision of the President shall be final.

28 Section 5. The decisions of the Secretary of Justice, as well as those of the Solicitor General or the Government Corporate Counsel, when approved by the Secretary of Justice, shall be final and binding upon the parties involved. Appeals may be taken to and entertained by the Office of the President only in cases wherein the amount of the claim or value of the property exceeds P1 million. The decisions of the Office of the President on appealed cases shall be final.

29 *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*, supra note 1, at 1005.

30 *Phil. Veterans Investment Dev't. Corp. (PHIVIDEC) v. Judge Velez*, 276 Phil. 439, 443 (1991).

31 J. Dimaampao, Dissenting Opinion, p. 2.

32 Id. at 9.

disputed tax assessments are included under the term "disputes, claims and controversies" under PD 242 and Section 66 of the Administrative Code of 1987.

Section 1 of PD 242 states that it applies to "all disputes, claims and controversies x x x arising from the interpretation and application of statutes, contracts or agreements x x x." A closer reading of Section 66 of the Administrative Code of 1987, however, reveals that it slightly deviated from the original language of Section 1 of PD 242. Section 66 of the Administrative Code of 1987 states: "[a]ll disputes, claims and controversies x x x ***such as*** **those arising from the interpretation and application of statutes**, contracts or agreements x x x."[33]

Tax disputes between the BIR and another government entity necessitate the "interpretation and application of statutes," such as the 1997 NIRC. For instance, if the issue involves the validity of the assessment issued by the BIR against another government entity, the applicable provisions under the 1997 NIRC pertaining to the tax imposed upon the government entity and the remedies for assessment and collection thereof, among others, must be "interpreted" and "applied." The resolution of such issue through the interpretation and application of the 1997 NIRC falls within the purview of the examples of disputes mentioned in PD 242 and the Administrative Code of 1987.

In any event, the phrase "such as," which was added to Section 66 of the Administrative Code of 1987, is commonly known, understood and used to introduce an example or series of examples. This additional phrase does not imply that the disputes, claims, or controversies are limited only to those arising from the interpretation and application of statutes, contracts or agreements. On the contrary, the phrase "such as" connotes that the enumeration is merely illustrative. Section 66 of the Administrative Code of 1987 did not intend said enumeration to be exclusive. Consequently, the jurisdiction of the Secretary of Justice over disputes between or among government agencies and GOCCs cannot be limited to those arising from the interpretation and application of statutes, contracts, or agreements, as Section 66 of the Administrative Code of 1987 merely refers to them as an example of such disputes covered.[34] This was emphasized by the Court in *PSALM* when it categorically ruled that, when the law says "all disputes, claims and controversies solely" among government agencies, **the law means all, without exception**.[35]

Justice Dimaampao adds that even assuming that tax disputes are necessarily included under the term "disputes, claims and controversies," the application of the basic rules of statutory construction would still yield to the

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33 Emphasis and italics supplied.

34 *Philippine Mining Development Corp. v. CIR*, supra note 15.

35 *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*, supra note 1, at 994.

conclusion that the Secretary of Justice has no jurisdiction over tax disputes. In support of this claim, Justice Dimaampao finds that *PSALM* erroneously characterized PD 242 as the more specialized law. Rather, according to Justice Dimaampao, Section 7 of RA 1125, as amended by RA 9282, should be taken as an exception to PD 242 and the Administrative Code of 1987.[36]

As stated, I agree with the Decision in *PSALM*.

In *PNOC*, the Court considered PD 242 as a general law and RA 1125 as a special law. However, the Court modified this interpretation in *PSALM* when it ruled that it is PD 242 that is the special law as it applies only to disputes involving solely government offices, agencies, or instrumentalities, whereas the 1997 NIRC is the general law as it governs the imposition of national internal revenue taxes, fees, and charges. Given that PD 242 is a special law, its provisions are paramount to the provisions of the 1997 NIRC and hence, must be followed.

While the Court in *PSALM* weighed PD 242 against the 1997 NIRC, I submit that even if the Court were to consider PD 242 against RA 9282, the provisions of PD 242 must still prevail over the provisions of RA 9282.

As early as *Valera v. Tuason, Jr.*,[37] the Court defined a general law as one that embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class, whereas a special law relates to particular persons or things of a class.[38] The definitions of a general law and a special law even more support the conclusion that RA 9282 is the general law governing the CTA's jurisdiction over decisions or inactions of the CIR involving disputed assessments. PD 242, on the other hand, is the special law specifically dealing with disputes, claims, and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including GOCCs.

A fundamental tenet of statutory construction is that a special law prevails over a general law regardless of the dates of enactment of both laws.[39] When there is an inconsistency between two statutes, and one is a general law and the other is a special law, courts should not assume that Congress intended to enact a repeal of the older law. The Court explained this principle in one case[40] in this way:

> Where there are two acts or provisions, one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, would include the same matter and thus conflict with the special act or provision, **the special must be taken as intended to constitute an exception to the general act or provision,**

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36 *J.* Dimaampao, Dissenting Opinion, pp. 9-10.
37 80 Phil. 823 (1948).
38 Id. at 828.
39 *Goldenway Merchandising Corp. v. Equitable PCI Bank*, 706 Phil. 427, 434 (2013).
40 *Lichauco & Co. v. Apostol and Corpus*, 44 Phil. 138 (1922).

> especially when such general and special acts or provisions are contemporaneous, as the Legislature is not to be presumed to have intended a conflict. x x x
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> **It is well settled that repeals by implication are not to be favored.** And where two statutes cover, in whole or in part, the same matter, and are not absolutely irreconcilable, the duty of the court—no purpose to repeal being clearly expressed or indicated—is, if possible, to give effect to both. In other words, it must not be supposed that the Legislature intended by a later statute to repeal a prior one on the same subject, unless the last statute is so broad in its terms and so clear and explicit in its words as to show that it was intended to cover the whole subject, and therefore to displace the prior statute. x x x[41] (Emphasis supplied)

Justice Dimaampao likewise argues that since the 1997 NIRC and RA 9282 came later than either PD 242 or the Administrative Code of 1987, then "a later law repeals an earlier one because it is the later legislative will. It is to be presumed that the lawmakers knew the older law and intended to change it. In enacting the older law, the legislators could not have known the newer one and hence could not have intended to change what they did not know."[42]

I disagree with the above postulation and find it to be illogical syllogism. Even though RA 9282 is a later enactment, which took effect only on April 23, 2004, PD 242 still prevails.

That a special law is passed before or after the general law does not change the principle. If the special law is enacted later, it will be regarded as an exception to, or a qualification of, the prior general act. If the general law is enacted after the special law, the special law will be construed as remaining an exception to the general law's terms, unless repealed expressly or by necessary implication.[43] Verily, the relevant provisions in PD 242 and the Administrative Code of 1987 are worded in such a way that they serve as exceptions to the terms of RA 9282 only with regard to intra-government disputes.

Similarly, every new statute should be construed in connection with those already existing in relation to the same subject matter, ***and all should be made to harmonize and stand together***, if any fair and reasonable interpretation can do them.[44] Instead of having one considered repealed in favor of the other, the best method of interpretation is one that makes laws consistent with other laws that are to be harmonized. Time and again, it has been held that every statute must be so interpreted and brought in accord with other laws to form a uniform system of jurisprudence. Thus, if diverse statutes relate to the same thing, they ought to be taken into consideration in construing

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41 Id. at 147; citations omitted.
42 *J.* Dimaampao, Dissenting Opinion, pp. 10-11; citation omitted.
43 *Vinzons-Chato v. Fortune Tobacco Corporation*, 552 Phil. 101, 111 (2007).
44 *Akbayan-Youth v. COMELEC*, 407 Phil. 618, 639 (2001).

any one of them, as it is an established rule of law that all acts in *pari materia* are to be taken together, as if they were one law.[45]

Applying the foregoing jurisprudential pronouncements, I reiterate that when there are disputes, claims, or controversies between or among government offices, agencies and instrumentalities, including GOCCs, regardless of whether such dispute, claim or controversy involves a disputed tax assessment or any of the matters mentioned in RA 9282, the relevant provisions of PD 242 and Administrative Code of 1987 shall apply. The CTA does not have jurisdiction to take cognizance of the case, which involves a dispute solely between government offices.

All told, considering that the disputing parties in the present case are both government entities — the BIR and the DOE — the case should be governed by PD 242 and the Administrative Code of 1987 rather than the 1997 NIRC or RA 9282. Accordingly, the Secretary of Justice has the jurisdiction over the present case. Because the DOE and the BIR are both under the executive control and supervision of the President of the Philippines, there is but one real party in interest: the Government itself. Thus, the mechanism for resolving disputes between and among government offices should be respected.

A last point. It must be underscored that, as PD 242 itself explains, its purpose is to provide for the administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including GOCCs, **to avoid litigations in court where government lawyers appear for such litigants to espouse and protect their respective interests although, in the ultimate analysis, there is but one real party in interest in such litigations — *the Government itself*.** Thus, disregarding PD 242 despite its clear objective will contribute to the clogged dockets of the courts and dissipate or waste time and energies not only of the courts, but also of the government lawyers. Hence, it is only proper that disputed tax assessments made by the CIR against government offices and agencies, including GOCCs, that are both subject to the President's executive control and supervision be governed by PD 242, which is now embodied in Book IV, Chapter 14 of the Administrative Code of 1987.

Accordingly, I concur that the Petition should be **DENIED**.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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45 *Phil. International Trading Corp. v. COA*, 635 Phil. 447, 458 (2010).