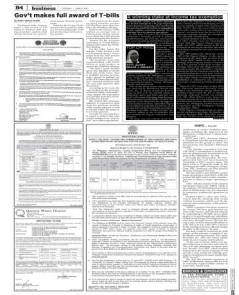


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A winning stake at income tax exemption

Integrated casino and hotel operator has found triumph in a 15-page Supreme Court decision resolving, once and for all, that gaming establishments are not subject to pay regular corporate income tax on earnings from its gaming operations.

In less than 10 years, the Philippines witnessed a booming growth in gaming establishments all over the metropolis. The wave of gaming establishments promised not only a considerable contribution

TOP OF MIND



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to the country's economy and employment opportunities, but also a profitable return for investors. But while considered a flourishing investment, the gaming industry was not spared from controversies. Several cases involving gaming regulator, the Philippine Gaming Corp. (Pagcor) and its contractees and licensees, have been filed, wherein the entities encountered quite a "taxing" dilemma, literally and figuratively.

One of the more recent controversies was resolved in *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue* (Aug. 10, 2016, G.R. No. 212530), where an integrated casino and hotel operator was faced with issues stemming from Revenue Memorandum Circular (RMC) 33-2013. The Supreme Court Third Division, through Associate Justice Jose Perez, ruled that Pagcor is not subject to corporate income tax on all income derived from its gaming operations. Earnings from other "related services" are, however, subject to tax. In principle, this also benefits all Pagcor contractees and licensees.

The issue was not entirely novel. In a

2014 case, the Supreme Court was faced with a similar predicament hinging on Pagcor's tax liability in light of the enactment of RMC 33-2013. The case was an offshoot of an even earlier ruling where it was settled that Pagcor's exclusion from the list of GOCCs enjoying corporate income tax exemption was valid and constitutional.

Constant features in the *Bloomberry* case and other related cases are Presidential Decree 1869 (the Pagcor Charter) and Republic Act 9337, which served as the key indicators in arriving at a decision. But what made these enactments relevant to the issue at hand?

July 1983 marked the effectivity of P.D. 1869 or the Pagcor Charter. At the outset, it unequivocally states that no form of tax or charge shall "attach in any way to the earnings of the (Pagcor), except a Franchise Tax of five percent of the gross revenue or earnings derived by the (Pagcor) from its operation under this Franchise." A further reading into the law instructs us that the five percent franchise tax is to be paid "in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority."

When RA 9337 took effect in July 2005, the National Internal Revenue Code (NIRC) was amended, among others by omitting Pagcor from the list of entities enjoying corporate income tax exemption. The other GOCCs were, however, retained namely, the Government Service and Insurance System, the Social Security System, the Philippine Health Insurance Corporation and the Philippine Charity Sweepstakes Office.

With Pagcor's omission from its previous tax exemption privilege, the Bureau of Internal Revenue (BIR) thereafter issued RMC No. 33-2013 in its attempt to further

Turn to B7

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Top of Mind... From B4

clarify Pagcor's tax liability. The issuance, however, presented a problem rather than a solution when it imposed a sweeping taxability on all of Pagcor's income without regard to its classification and source. Under the RMC, Pagcor is liable to pay a regular corporate income tax rate of 30 percent on its income derived from operations "related" to gaming activities as well as on income earned from "operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools." A five percent franchise tax is likewise separately charged under the RMC in addition to the income tax rate payable. Contractees and licensees of Pagcor shoulder the same tax fate.

As the operator and owner of the now renowned Solaire Resort & Casino, Bloomberry assailed RMC No. 33-2013 after being considered liable to pay corporate income tax in addition to the five percent franchise tax. Bloomberry's main assertion revolves around the RMC's contravention of the Pagcor Charter which expressly states that aside from a franchise tax of five percent, no taxes or charges shall in any way, attach the earnings of Pagcor. More so, Bloomberry sought to annul the unlawful regulations,

especially the provisions of RMC No. 33-2013.

In resolving the controversy presented before it, the Supreme Court paralleled its ruling with a pilot case decided in 2014, where it instructively held that "income from gaming operations is subject only to five percent franchise tax under PD No. 1869, as amended, while its income from other related services is subject to corporate income tax."

A notable and crucial point in the court's decision was the distinction as to which income is subject to tax. Evidently, whether income of gaming establishments should be taxed or not will be entirely dependent on the income's source.

Income realized from gaming operations such as the operation and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools and related operations is subject only to five percent franchise tax, in lieu of all other taxes, including corporate income tax. On the other hand, income from other related services such as exhibition of shows and other forms of entertainment and even those obtained from incidental hotel and restaurant operations will be subject to regular corporate income tax.

As a final resolution to the issue, the Supreme Court ordered the BIR to cease and desist in implementing RMC No. 33-2013 insofar as it imposes regular corporate income tax on

Bloomberry's income from its gaming operations.

A discerning analysis of the case discounts all conflict seemingly brought about by the provisions of P.D. No. 1869 and R.A. No. 9337. The court explained that in the first place, Pagcor cannot be "exempted from paying taxes which it was not liable to pay." What was imposed by P.D. No. 1869 was a mere five percent franchise tax on earnings derived under Pagcor's franchise in place of all other taxes, while R.A. No. 9337 can be seen as an enactment reinstating Pagcor's tax liability on income derived from other related services. When harmonized, these enactments should complement rather than contradict each other.

Another interesting and innovative aspect in the Bloomberry case is the court's determination of the applicability of Pagcor's tax regime. P.D. No. 1869 states that the exemption shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Pagcor or operator has any contractual relationship in connection with the operations of the casino(s). This necessarily means that all contractees and licensees of Pagcor, to which Bloomberry is one, are also income tax-exempt provided that they pay the five percent franchise tax on earnings from their gaming operations. Note that this is a new pronouncement in the

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Bloomberry case since the 2014 decision was silent on this issue.

The latest development on the Bloomberry case is the court's issuance of an Entry of Judgment dated March 6, 2017. This means that parties can no longer appeal their respective positions and must instead, respect the disposition of the issues presented. But more than that, the finality of the court's decision signals an end to the gaming industries' income tax worries; with the Bloomberry case being a refuge to all future legal controversies they may encounter.

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