Ateneo de Manila University

BASIC TAXATION I

Income Taxation

Title	Facts	Doctrine	Notes
Definitions			
🟠 Garrison v. CA	Six individuals (petitioners) are US citizens who entered this country under § 9 (a) of the Immigration Act. They are all working in the USN Base, Olongapo City. All received separate notices from RDO Olongapo City, directing them to file their tax returns for the year 1969. Petitioners refused to do so, claiming they are not resident aliens, but only special temporary visitors. Are petitioners excused from filing ITR? NO	The IRC requires the filing of an ITR by any "alien residing in the Philippines, regardless of whether the gross income was derived from sources within or outside the Philippines." None of them may be considered a non-resident alien, a "mere transient or sojourner" who is not under any legal duty to file an ITR under the Philippine tax code.	RR No. 2 (1940): Whether he is a transient or not is determined by his intentions with regards to the **length and nature of his stay**. A mere floating intention indefinite as to time, to return to another country is not sufficient to constitute him as transient. If he lives in the Philippines and has no definite intention as to his stay, he is a resident. One who comes to the Philippines for a definite purpose which in its nature may be promptly accomplished is a transient. But if his purpose is of such a nature that an extended stay may be necessary to its accomplishment, and to that end the alien makes his home temporarily in the Philippines, he becomes a resident, though it may be his intention at all times to return to his domicile abroad when the purpose for which he came has been consummated or abandoned.
🟠 AFISCO Insurance Corp. v. CA	Forty-one non-life insurance corporations, organized and existing under Philippine laws, entered into a Quota Share Reinsurance Treaty and a Surplus Reinsurance Treaty with Munich, a nonresident foreign insurance corporation. The treaties required petitioners to form a pool, which they did. In 1976, the pool submitted a financial statement and filed an "information return of organization exempt from income tax," on the basis of which it was assessed by the CIR deficiency corporate taxes and withholding taxes. Petitioners submitted a protest, which the CIR denied. On review, the CA ruled that the pool was a partnership taxable as a corporation.	A partnership is formed when persons contract "to devote to a common purpose either money, property, or labor with the intention of dividing the profits between themselves." Meanwhile, an association implies associates who enter into a "joint enterprise . . . for the transaction of business."	In this case, the companies entered into an association that would handle all the insurance business covered under their quota-share reinsurance treaty and surplus reinsurance treaty: 1. The pool has a common fund, consisting of money and other valuables that are deposited in the name and credit of the pool 2. The pool functions through an executive board, which resembles the board of directors of a corporation 3. True, the pool itself is not a reinsurer and does not issue any insurance

	Was the clearing house a partnership or association subject to tax as a corporation? YES		policy; however, its work is indispensable, beneficial and economically useful to the business of the ceding companies and Munich. The ceding companies share in the business and expenses. Profit is the primordial reason for the pool's formation.
🟠 Pascual v. CIR	Pascual and Dragon bought 2 parcels of land in 1965, and another 3 in 1966. and on May 28, 1966, they bought another three (3) parcels of land from Juan Roque. The first two parcels of land were sold in 1968, while the three parcels of land were sold on March 19, 1970. They realized a net profit in the sale made in 1968 in the amount of P165,224.70, while they realized a net profit of P60,000.00 in the sale made in 1970. The corresponding capital gains taxes were paid by petitioners in 1973 and 1974 by availing of the tax amnesties granted in the said years. However, the BIR assessed them for deficiency in corporate income taxes, deeming them an unregistered partnership or joint venture taxable as a corporation. Are the petitioners an unregistered partnership? NO	In *Evangelista*, there was a series of transactions where petitioners purchased 24 lots showing that the purpose was not limited to the conservation or preservation of the common fund or even the properties acquired by them. The *character of habituality peculiar to business transactions engaged in for the purpose of gain was present*. In this case, the transactions were isolated.	
🟠 Oña v. CIR	Following the death of Julia Buñales, her surviving spouse, Lorenzo T. Oña, and their five children opted not to divide the inherited estate after the court approved the project of partition in 1949. Instead, Oña managed the properties as a single unit, reinvesting the income and proceeds from sales into new real estate and securities, which caused the collective wealth to grow significantly over several years. Because the heirs allowed their shares to be pooled and used by Oña in a series of business transactions for profit, the Commissioner of Internal Revenue (CIR) ruled that they had formed an unregistered partnership. Consequently, the estate's earnings were found subject to corporate	For tax purposes, the co-ownership of inherited properties is automatically converted into an unregistered partnership the moment the said common properties and/or the incomes derived therefrom are used as a common fund with intent to produce profits for the heirs in proportion to their respective shares in the inheritance as determined in a project partition either duly executed in an extrajudicial settlement or approved by the court in the corresponding testate or intestate proceeding.	

	income tax. Are the petitioners an unregistered partnership? YES		
Income			
✅ Fisher v. Trinidad	In 1919, the Philippine American Drug Company declared a stock dividend, of which the appellant (a stockholder) received a share valued at P24,800. Under protest, the appellant paid P889.91 in income tax on that dividend to the appellee in March 1920. This legal action was subsequently filed to recover the paid amount, challenging the taxability of stock dividends as income. Are stock dividends income and taxable? NO	The receipt of a stock dividend in no way increases the money received by the stockholder nor his cash account at the close of the year. It simply shows that there has been an increase in the amount of the capital of the corporation during the particular period, which may be due to an increased business or to a natural increase of the value of the capital due to business, economic, or another reason. We believe that the Legislature, when it provided for an income tax, intended to tax only the income of corporations, firms, or individuals, as that term is generally used in its common acceptation; that is, that the income means money received, common to a person or corporation for services, interest, or profit from investments. We do not believe that the Legislature intended that a mere increase in the value of the capital or assets of a corporation, firm, or individual, should be taxed as income. Such property can be reached under the ordinary form of taxation.	That the fundamental relation of 'capital' to 'income' has been much discussed by economists, the former being likened to the tree or the land, the latter to the fruit or the crop; the former depicted as a reservoir supplied from springs; the latter as the outlet stream, to be measured by its flow during a period of time.
✅ Commissioner v. Glenshaw Glass Co	Glenshaw Glass Co. and William Goldman Theaters Inc., in separate cases, both received payment of punitive damages for fraud and antitrust violations, and treble damages, respectively. Should money received as exemplary damages for fraud be reported as gross income? YES	Congress applied no limitations as to the source of taxable receipts, nor restrictive labels as to their nature. And the Court has given a liberal construction to this broad phraseology in recognition of the intention of Congress to tax all gains except those specifically exempted. The mere fact that the payments were extracted from the wrongdoers as punishment for unlawful conduct cannot detract from their character as taxable income to the recipients.	“Gross income includes ... gains or profits and income derived from any source whatever”
🟠 Cesarini v. US	In 1964, a couple discovered $4,467 in old	While neither of these listings expressly	Except as otherwise provided in this subtitle,

	currency hidden inside a used piano they had purchased years earlier for only $15. After exchanging the cash at a bank, they initially reported the find as ordinary income on their joint tax return but later filed an amended return seeking a refund of $836.51, arguing the "treasure trove" should not be taxed. The Commissioner of Internal Revenue rejected their refund claim, leading the plaintiffs to file a lawsuit in 1967 to recover the disputed tax payment. Are the plaintiffs entitled to a refund? NO	includes the type of income which is at issue in the case at bar, Part III of Subchapter B (Sections 101 et seq.) deals with items specifically excluded from gross income, and found money is not listed in those sections either. This absence of express mention in any of the code sections necessitates a return to the "all income from whatever source" language of Section 61(a) of the code, and the express statement there that gross income is "not limited to" the following fifteen examples. The decisions of the United States Supreme Court have frequently stated that this broad all-inclusive language was used by Congress to exert the full measure of its taxing power.	gross income means all income from whatever source derived, including (but not limited to) the following items Found money constitutes taxable gross income in the year it is reduced to undisputed possession
🟠 Association of Non-Profit Clubs Inc. v. BIR	In 2012, the BIR issued RMC No. 35-2012, which declared that *non-profit recreational clubs are subject to both income tax and VAT*. The BIR justified this change by noting that such clubs were intentionally omitted from the tax-exempt list in the 1997 NIRC and argued that their gross receipts—*including membership fees and assessment dues*—constitute taxable income and payments for services. In response, ANPC filed a petition for declaratory relief, arguing that the BIR exceeded its rule-making authority by taxing fees that are merely used to defray collective expenses rather than generate profit. Is the RMC entirely valid? NO	*Madrigal v. Rafferty:* “Capital" has been delineated as a "fund" or "wealth, " as opposed to "income" being "the flow of services rendered by capital" or the "service of wealth. The essential difference between capital and income is that capital is a fund; income is a flow. A fund of property existing at an instant of time is called capital. A flow of services rendered by that capital by the payment of money from it or any other benefit rendered by a fund of capital in relation to such a fund through a period of time is called income. Capital is wealth, while income is the service of wealth. Income may be defined as an amount of money coming to a person or corporation within a specified time, whether as payment for services, interest or profit from investment. Income can also be thought of as a flow of the fruits of one's labor. To constitute "income," there must be realized "gain.”	Indeed, applying the doctrine of *casus omissus pro omisso habendus est* (meaning, a person, object or thing omitted from an enumeration must be held to have been omitted intentionally), the fact that the 1997 NIRC omitted recreational clubs from the list of exempt organizations under the 1977 Tax Code evinces the deliberate intent of Congress to remove the tax income exemption previously accorded to these clubs. As such, the income that recreational clubs derive “from whatever source” is now subject to income tax under the provisions of the 1997 NIRC. However, RMC No. 35-2012 erroneously foisted a sweeping interpretation that membership fees and assessment dues are sources of income of recreational clubs from which income tax liability may accrue. Membership fees, assessment dues, and other fees of similar nature only constitute contributions to and/or replenishment of the funds for the maintenance and operations of the facilities offered by recreational clubs to their exclusive members. They represent funds "held in trust" by these clubs to defray their operating and general costs and hence, only constitute infusion of capital.

			For as long as these membership fees, assessment dues, and the like are treated as collections by recreational clubs from their members as an inherent consequence of their membership, and are, by nature, intended for the maintenance, preservation, and upkeep of the clubs' general operations and facilities, then these fees cannot be classified as "the income of recreational clubs from whatever source" that are "subject to income tax. " 54 Instead, they only form part of capital from which no income tax may be collected or imposed
Statutory 'inclusions'			
✅ Old Colony Trust v. CIR	Between 1918 and 1920, the American Woolen Company paid its president, William M. Wood, a substantial salary and commissions. Under a corporate resolution, the company also agreed to pay all of Wood's federal and state income taxes directly to the government so that his compensation would remain "net" and undiminished. Did the payment by the employer of the income taxes assessable against the employee constitute additional taxable income to such employee? YES	Payment by an employer of the income taxes assessable against the compensation of an employee, made in consideration of his services, constitutes additional taxable income of the employee. The payment of the tax by the employers was in consideration of the services rendered by the employee and was a gain derived by the employee from his labor. The form of the payment is expressly declared to make no difference. It is therefore immaterial that the taxes were directly paid over to the Government. The discharge by a third person of an obligation to him is equivalent to receipt by the person taxed. The taxes were paid upon a valuable consideration, namely, the services rendered by the employee and as part of the compensation therefor. Nor can it be argued that the payment of the tax was a gift. The payment for services, even though entirely voluntary, was nevertheless compensation within the statute	
✅ Hevelring v. Bruun	In 1915, a landowner entered into a 99-year lease that allowed the tenant to demolish existing structures and build new ones, provided all improvements were surrendered to the lessor upon the lease's termination. In	While it is true that economic gain is not always taxable as income, it is settled that the realization of gain need not be in cash derived from the sale of an asset. Gain may occur as a result of exchange of property,	Here, as a result of a business transaction, the respondent received back his land with a new building on it, which added an ascertainable amount to its value. It is not necessary to recognition of taxable gain that he should be

	1929, the tenant replaced the old building with a new one, but the lease was subsequently canceled in 1933 due to the tenant's default. Upon regaining possession of the property, the lessor acquired a new building with a net fair market value of $51,434.25 (after accounting for the unamortized cost of the demolished structure). The CIR determined that this amount represented realization of a gain subject to income tax in the year of the lease cancellation. Is the gain in question taxable gross income? YES	payment of the taxpayer's indebtedness, relief from a liability, or other profit realized from the completion of a transaction. The fact that the gain is a portion of the value of property received by the taxpayer in the transaction does not negative its realization.	able to sever the improvement begetting the gain from his original capital. If that were necessary, no income could arise from the exchange of property; whereas such gain has always been recognized as realized taxable gain.
✅ CIR v. CA [1999]	Following the death of founder Don Andres Soriano, the family-owned corporation ANSCOR underwent a series of capital restructurings, including the reclassification of common shares into preferred shares for his widow, Doña Carmen, to facilitate a recapitalization scheme. Between 1968 and 1969, the corporation redeemed 108,000 common shares from Don Andres's estate, citing the business purpose of reducing foreign exchange remittances on future dividends. However, the BIR disputed this characterization, assessing the company for deficiency withholding tax-at-source on the exchange and redemption of these stocks. Should ANSCOR's redemption of common shares from the estate of Don Andres, alongside the exchange of common shares for preferred shares by Doña Carmen, be characterized as being "essentially equivalent to the distribution of a taxable dividend," thereby rendering the proceeds subject to deficiency withholding tax-at-source? YES	General rule: A stock dividend representing the transfer of surplus to capital account shall not be subject to tax Exception: 1. There is redemption or cancellation 2. The transaction involves stock dividends 3. The "Time and Manner" requisite The test of taxability under the exempting clause, when it provides "such time and manner" as would make the redemption "essentially equivalent to the distribution of a taxable dividend," is whether the redemption resulted in a flow of wealth. If no wealth is realized from the redemption, there may not be a dividend equivalence treatment. The three elements in the imposition of income tax are: 1. there must be gain or profit, 2. that the gain or profit is realized or received, actually or constructively, and 3. it is not exempted by law or treaty from income tax	(1) there was a clear redemption when the corporation reacquired 108,000 shares from the estate in exchange for cash; (2) the transaction involved stock dividends because the number of shares redeemed far exceeded the estate's original capital investment, with the balance of 82,752.5 shares necessarily coming from profit-based stock declarations; and (3) the "time and manner" of the transaction made it essentially equivalent to a taxable dividend because the "net effect" was a flow of wealth to the shareholder, a conclusion bolstered by the short interval between issuance and redemption and the absence of a credible business purpose, as the alleged "Filipinization" plan was unsupported by corporate records and contradicted by the company's thirty-year failure to declare regular cash dividends.
✅ Wise & Co. Inc. v. Meer	In 1937, the shareholders of Wise & Co. authorized the sale of Manila Wine Merchants	The distinction between an ordinary dividend and a liquidating dividend lies in the context	

	Ltd. (a Hong Kong company) to a new Philippine entity, initiating a process to dissolve the foreign corporation. Between the sale agreement and the formal liquidation, the company passed several resolutions distributing over P280,000 in "dividends" and "surplus" to its stockholders. While the plaintiffs argued these were ordinary dividends exempt from certain taxes, the BIR classified them as liquidating dividends under Section 25(a) of the Income Tax Law. Are they liquidating dividends? YES	of the distribution: - Ordinary dividends are distributed in the ordinary course of business with an intent to maintain the corporation as an ongoing concern - Liquidating dividends are distributed during the liquidation of a business and are in the nature of payments for the surrender and relinquishment of the stockholders' interest in a corporation. Contrary to the plaintiffs' claim, the distributions in this case are not ordinary dividends but are liquidating dividends, as both Schedules B and B-1 contained an instruction that the surplus to be distributed be that resulting after providing for the return of the capital and various expenses. Consequently, these distributions were to be made after the complete and final liquidation of the HK Company. Furthermore, because the HK company agreed in its July 22 meeting that the sale and transfer of assets would take effect as of June 1, 1937, any distributions made after that date are considered liquidating dividends since the corporation could no longer be deemed a going concern.	
✅ James v. US	Eugene James, a union official, embezzled over $738,000 between 1951 and 1954 from his employer union and an insurance company. James failed to report these embezzled funds as gross income on his federal tax returns. Are the embezzled funds considered gross income? YES	Ill-gotten gains are taxable income even if they must be repaid. The scope of the Sixteenth Amendment was not limited to "lawful" income, a distinction that had been found in the Revenue Act of 1913. The absence of the "lawful" modifier indicated that the framers of the Sixteenth Amendment had intended no safe harbor for illegal income.	
✅ CIR v. Sps. Manly	The tax investigation into spouses Antonio and Ruby Manly began in 2005 when the BIR issued a Letter of Authority to examine their liabilities for 2003 and prior years. While Antonio's declared net income from 1998 to	The BIR's Complaint-Affidavit clearly stated the amount of tax due, explained the expenditure method used, and identified the rental business as the likely source of unreported income. The BIR's evidence,	In the case of income, for it to be taxable, there must be a gain realized or received by the taxpayer, which is not excluded by law or treaty from taxation.

	2003 totaled only approximately 1.72M, the couple made over 20.8M in cash purchases, including a Tagaytay log cabin and two luxury vehicles. By applying the expenditure method, the BIR identified massive underdeclarations reaching as high as 957.27% for the year 2000. Under Section 248(B) of the NIRC, these discrepancies exceeded the 30% threshold, constituting prima facie evidence of false or fraudulent tax returns. In their defense, the spouses claimed the funds came from 24 years of accumulated savings and argued that a prior deficiency assessment was required before criminal charges could be filed. However, after the couple refused to allow an inspection of Antonio's rental property, the BIR concluded that the business was the likely source of the undeclared income. Was there probable cause? YES	massive cash purchases grossly disproportionate to the declared income, Antonio's refusal to allow inspection of the rental property, and underdeclarations exceeding 30% of declared income was sufficient to establish probable cause. The spouses' defense of "lifetime savings" was found self-serving for purposes of the probable cause determination since no evidence was presented to support it.	The government is allowed to resort to all evidence or resources available to determine a taxpayer's income and to use methods to reconstruct his income. A method commonly used by the government is the expenditure method, which is a method of reconstructing a taxpayer's income by deducting the aggregate yearly expenditures from the declared yearly income. The theory of this method is that when the amount of the money that a taxpayer spends during a given year exceeds his reported or declared income and the source of such money is unexplained, it may be inferred that such expenditures represent unreported or undeclared income.
Exclusions			
🟠 CIR v. CA [1992]	The GCL Retirement Plan, an employees' trust maintained by GCL Inc. to provide retirement, pension, disability, and death benefits, was officially qualified by the CIR as exempt from income tax under RA No. 4917. Despite this status, 15% was withheld from the Plan's 1984 interest income earned through market placements and treasury bills pursuant to the final withholding tax under PD No. 1959. In response, GCL filed two claims for refund in early 1985 for amounts withheld by Anscor Capital and Investment Corp. and the Commercial Bank of Manila, totaling over P11,000. GCL argued against the lawfulness of these collections, maintaining that as a qualified trust, it remained fully exempt from income tax under RA No. 4917 in relation to Section 56(b) (now 53(b)) of the Tax Code. Should the refund be granted? YES	The final withholding tax is collected from income in respect of which employees trusts are declared exempt. The application of the withholdings system to interest on bank deposits or yield from deposit substitute is essentially to maximize and expedite the collection of income taxes by requiring its payment at the source. If an employees' trust like the GCL enjoys a tax-exempt status from income, the Court sees no logic in withholding a certain percentage of that income which it is not supposed to pay in the first place. Since the final tax and the withholding thereof are embraced within the title on "Income Tax" of the Tax Code, it follows that said trust must be deemed exempt therefrom. Otherwise, the exception becomes meaningless.	The tax advantage in the Tax Code was conceived in order to encourage the formation and establishment of private Plans for the benefit of employees outside of the Social Security Act. The explanatory note of RA 1983 suggests that the tax exemption is likewise to be enjoyed by the income of the pension trust. Otherwise, taxation of those earnings would result in a diminution of accumulated income and reduce whatever the trust beneficiaries would receive out of the trust fund. The GLC Plan was formally qualified as exempt in accordance with RA 4917; insofar as employees' trust are concerned, this should be taken in relation to Section 56(b) of the Tax Code, as amended by RA 1983. The tax-exemption privilege of employees' trusts springs from the foregoing provisions; manifest is that the Tax Code has singled out employees' trusts for exemption. By virtue of

			the raison d'etre behind the creation of employees' trusts: trusts or benefit plans provide economic assistance to employees upon the occurrence of certain contingencies. It provides security against certain hazards; is an independent and additional source of protection; and is established for their exclusive benefit and for no other purpose.
🟠 IBC v. Amarilla	Between 1975 and the mid-1990s, IBC underwent a complex ownership transition, beginning with its sequestration by the government from its original owner, Roberto Benedicto, and culminating in a Compromise Agreement with the PCGG that officially transferred all of Benedicto's interests to the state. During this period, employees Quinones Jr., Lagahit, Otadoy, and Amarilla served the station until their eventual retirement, at which point they received retirement benefits on a staggered basis under the 1993 Collective Bargaining Agreement (CBA). While a subsequent P1,500 salary increase was granted to both current and retired staff, IBC refused to release these funds to the four specific retirees, claiming the differentials would instead be used to offset taxes due on their retirement benefits under the NIRC. This refusal prompted the four retirees to file formal complaints before the NLRC for unfair labor practice and non-payment of backwages.	Under the NIRC, the retirement benefits of respondents are part of their gross income subject to taxes. For the retirement benefits to be exempt from the withholding tax, the taxpayer is burdened to prove the concurrence of the following elements: (1) a reasonable private benefit plan is maintained by the employer; (2) the retiring official or employee has been in the service of the same employer for at least 10 years; (3) the retiring official or employee is not less than 50 years of age at the time of his retirement; and (4) the benefit had been availed of only once	
🟠 CIR v. Mitsubishi Metal Corp.	*Id.*	Mitsubishi is not a mere conduit of the Japanese government's Eximbank. Thus, it is not exempt from income taxation	For income derived *by* a foreign government to be exempt, the income should be received by: 1. Foreign governments 2. Financing institutions owned, controlled or enjoying re-financing from foreign governments 3. International or regional financial institutions established by foreign governments
Source of Income Rules			

✅ CIR v. Marubeni Corp.	*Id.*	A contractor's tax, being an excise tax, can be levied by the taxing authority only when the acts, privileges or business are done or performed within the jurisdiction of said authority.	
🟠 CIR v. BOAC	British Overseas Airways Corporation (BOAC), a state-owned British airline, conducted ticket sales in the Philippines through a general sales agent between 1959 and 1963, despite having no landing rights or direct flight operations within the country. This commercial activity led the Commissioner of Internal Revenue (CIR) to issue deficiency income tax assessments, initially totaling P2.5 million, on the grounds that the revenue generated from these domestic ticket sales constituted taxable income from Philippine sources. Following a protest and subsequent reinvestigation, the CIR reduced the assessment to approximately P850,000, a sum which BOAC paid under protest to challenge the legal basis of taxing an international carrier that does not physically operate within the jurisdiction.	For the source of income to be considered as coming from the Philippines, it is sufficient that the income is derived from activity within the Philippines.	In BOAC's case, the sale of tickets in the Philippines is the activity that produces the income. The tickets exchanged hands here and payments for fares were also made here in Philippine currency. The source of payments is the Philippines. The flow of wealth proceeded from, and occurred within, Philippine territory, enjoying the protection accorded by the Philippine government. In consideration of such protection, the flow of wealth should share the burden of supporting the government.
✅ NDC v. CIR	*Id.*	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.	Sec. 42 (A) (1): Interests derived from sources within the Philippines, and interests on bonds, notes or other interest-bearing obligations of residents, corporate or otherwise.
🟠 Howden & Co. Ltd. v. CIR	Commonwealth Insurance Co., a domestic corporation, entered into reinsurance contracts with 32 British insurance companies not engaged in business in the Philippines. Alexander Howden & Co., another British corporation, represented these foreign companies. While the contracts were signed by the reinsurers in England, they were perfected in Manila when signed by Commonwealth. In 1951, Commonwealth remitted reinsurance premiums and paid income tax on behalf of the foreign corporations, but later filed for a refund, arguing that the premiums were from sources	The source of an income is the property, activity, or service that produced the income. An activity may consist of a single act, as compared to a business which implies continuity of transactions. An income may be earned by a corporation in the Philippines, although such corporation conducts all its business abroad.	Thus, reinsurance premiums ceded to foreign reinsurers are considered income from Philippine sources.

	outside the Philippines and thus not taxable.		
✅ CIR v. Baier-Nickel	JUBANITEX, a domestic corporation, appointed Juliane Baier-Nickel, a non-resident German citizen and its President, as a commission agent entitled to 10% sales commission on sales she generated. She received P1.7M in commissions, from which P170,000 withholding tax was deducted and remitted to the BIR. Three years later, Baier-Nickel claimed a refund, arguing that the income was not taxable in the Philippines because it was compensation for marketing services performed in Germany, thus income from sources outside the Philippines.	The important factor which determines the source of income of personal services is not the residence of the payor, or the place where the contract for service is entered into, or the place of payment, but the place where the services were actually rendered. With respect to rendition of labor or personal service, as in the instant case, it is the place where the labor or service was performed that determines the source of the income.	
🟠 A. Soriano Y Cia v. CIR	A. Soriano y Cia acquired surplus tractors from the Foreign Liquidation Commission and sold 57 of them to United Africa Co., Ltd., a foreign buyer, under an agreement that the tractors would be delivered f.a.s. Manila and in working condition. Although the buyer's technician, Tex Taylor, selected the tractors from U.S. military bases, Soriano first withdrew them, brought them to its own yards in Manila for inspection and reconditioning, and later delivered them to the Manila pier for shipment to East Africa.	For purposes of sales tax and source-of-income analysis, the controlling factor is where title or ownership passes. When the contract provides for delivery f.a.s. Manila, ownership passes only upon delivery at the wharf or dock, absent proof of a contrary intent; thus, if title passes in the Philippines, the sale is deemed consummated here and is taxable here even if the goods are intended for export	Gain on sale of <u>personal</u> property
✅ Aces Philippines v. CIR	Under their agreement, Aces Bermuda provided satellite communications time via a system where a satellite in outer space transmitted signals to ground terminals and gateways operated by Aces Philippines. The BIR issued a deficiency assessment of Php 170.9 million, contending that these payments constitute income from Philippine sources subject to a 35% final withholding tax. Conversely, Aces Philippines argues that the income is sourced outside the Philippines because the revenue-generating activity—the transmission of radio signals—occurs entirely in outer space, and Aces Bermuda maintains no physical equipment, machinery, or employees within Philippine jurisdiction to	In ascertaining the income source, we must inquire into the property, activity, or service that produced the income, or where the inflow of wealth originated. - It is insufficient to identify just any property, activity, or service. The subject may only be regarded as an income source if the particular property, activity, or service causes an increase in **economic benefits**, which may be in the form of an inflow or enhancement of assets or a decrease in liabilities with a corresponding increase in equity other than that attributable to a capital contribution	

	facilitate the calls.		
🟠 South Dakota v. Wayfair Inc.	The Dormant Commerce Clause has historically shielded out-of-state retailers from state tax collection duties, with Supreme Court precedents in 1967 and 1992 establishing that a physical presence was required before a state could demand sales tax. However, as the digital economy began to hollow out state budgets, Justice Kennedy's 2015 concurrence signaled a potential judicial shift, suggesting that these older rules were increasingly obsolete in the age of internet commerce. Seizing this opening, the South Dakota Legislature enacted a law requiring major out-of-state sellers—those with over $100,000 in revenue or 200 transactions—to remit sales tax.	Sellers who engage in a significant quantity of business within a state may be required to collect and remit taxes, despite not having a physical presence in the state. A substantial nexus is established when a business avails itself of a state's market through significant economic activity.	
Deductions			
✅ CIR v. Isabela Cultural Corp.	The Bureau of Internal Revenue (BIR) issued two deficiency tax assessments against Isabela Cultural Corporation (ICC) for the 1986 taxable year. The first assessment for deficiency income tax resulted from the disallowance of claimed expense deductions for auditing, legal, and security services—including those billed and paid in 1986 but pertaining to prior years—as well as an alleged understatement of interest income from promissory notes. The second assessment for deficiency expanded withholding tax was based on ICC's failure to withhold the required 1% tax on its security service payments	The requisites for the deductibility of ordinary and necessary trade, business, or professional expenses are: (a) the expense must be ordinary and necessary; (b) it must have been paid or incurred during the taxable year (*matching principle*); (c) it must have been paid or incurred in carrying on the trade or business of the taxpayer; and (d) it must be supported by receipts, records or other pertinent papers.	As to 2nd requisite: - The deduction shall be taken for the taxable year in which paid or accrued or paid or incurred, dependent upon the method of accounting upon the basis of which the net income is computed
✅ CIR v. General Foods Inc.	General Foods (Phils.), Inc. claimed a deduction of P9,461,246 for media advertising of a single product, "Tang," in its 1985 tax return. The Commissioner of Internal Revenue (CIR) disallowed 50% of this deduction, arguing it was excessive and more akin to a capital expenditure for goodwill than an ordinary business expense.	First requisite. While an expense may be considered "necessary" if incurred in the conduct of business, it must also be "ordinary," which requires that the expenditure be reasonable in amount. **Reasonableness** is determined by considering factors such as the type and size of the business, net earnings, the nature of	Thus, advertising expenses that are inordinately large or incurred to protect or enhance a brand franchise (analogous to maintaining goodwill or property rights) are not considered ordinary business expenses and therefore are not fully deductible in the year incurred.

		the expenditure, the taxpayer's intention, and prevailing economic conditions. Moreover, a distinction must be drawn between advertising expenses aimed at stimulating current sales, which are deductible, and those intended to stimulate future sales or enhance goodwill, which must be amortized over time as capital expenditures.	
🟠 CIR v. Lancaster Philippines Inc.	Lancaster Philippines, a domestic tobacco corporation, challenged a P6.4 million deficiency income tax assessment after the BIR disallowed tobacco purchases made in early 1998 as deductions for the 1999 fiscal year, arguing they should have been declared in 1998 instead. Lancaster defended its accounting treatment by asserting that it aligns its deductions with the tobacco-cropping season to satisfy the matching principle, ensuring that costs are offset against the related revenues. The corporation maintains that under the National Internal Revenue Code and relevant regulations, these purchases are properly deductible in the 1999 fiscal year to accurately reflect its annual income and business cycle.	Second requisite. Under the crop method of accounting, the recognition of the expenses incurred for the production of crops are deducted in the year that the crops are sold (when income is realized).	
✅ Aguinaldo Industries Corp. v. CIR	Aguinaldo Industries Corporation, which operated both a tax-exempt fishing net division and a taxable furniture division, challenged the denial of a tax deduction for bonuses paid to its officers following the sale of its Muntinlupa land. The corporation argued that the profit from the sale was non-taxable because it was recorded under the books of its fish net division, which enjoyed tax-exempt status as a "new and necessary industry."	Whenever a controversy arises on the deductibility, for purposes of income tax, of certain items for alleged compensation of officers of the taxpayer, two questions become material: (a) Have personal services been actually rendered by said officers? (b) In the affirmative case, what is the reasonable allowance thereof?	Thus, the payment of a bonus to them of the gain realized from the sale cannot be considered as a selling expense; nor can it be deemed reasonable and necessary so as to make it deductible for tax purposes.
🟠 Atlas Consolidated Mining v. CIR	In 1957 and 1958, the CIR issued deficiency income tax assessments against Atlas Consolidated Mining, which the corporation subsequently protested. After the 1957 assessment was canceled and the 1958 assessment was significantly reduced, Atlas	"Necessary" – Considered necessary where the expenditure is appropriate and helpful in the development of the taxpayer's business "Ordinary" - Ordinary when it connotes a	Hence, litigation expenses incurred in defense of title to property are capital in nature and are *not* deductible.

	appealed to the CTA to argue for the deductibility of several items, including transfer agent fees, stockholders relation service fees, and litigation expenses. The CTA allowed most deductions but specifically denied the stockholders relation service fees paid to a New York PR firm and certain suit expenses.	payment which is normal in relation to the business of the taxpayer and the surrounding circumstances - Ordinary does not require that payments be habitual, since the payments may be unique or non-recurring	
🟠 Calanoc v. CIR	Calanoc financed and promoted a boxing and wrestling exhibition for a charitable purpose; for the orphans and destitute children of the Children Workers Club. He applied with the CIR for exemption from payment of amusement tax. The CIR demanded P7,378.57 after the event, as it found that only a portion of its proceeds was actually remitted to the Club. Thus, Calanoc assailed the CIR's assessment.	Fourth requisite (receipts): Most of the items of expenditures contained in the statement submitted to the agent are either exorbitant or not supported by receipts. The payment of P461.65 for police protection is illegal as it is a consideration given by the petitioner to the police for the performance by the latter of the functions required of them to be rendered by law. The expenditures of P460.00 for gifts, P1,880.05 for parties and other items for representation are rather excessive, considering that the purpose of the exhibition was for a charitable cause.	
🟠 Pilmico-Mauri Corp. v. CIR	Pilmico-Mauri Foods Corp. (PMFC) was assessed by the CIR for tax deficiencies amounting to Php 3.0M. PMFC contested this stating that the CIR did not allow the deductions of its purchase of raw materials from its gross income. CIR disallowed this due to the lack of substantiation through evidence that such purchases were actually made. The CTA ruled in favor of the CIR finding that the evidence that PMFC actually submitted contained discrepancies which raised doubts on its authenticity. It based its decision on Sec. 238 (NIRC of 1977), requiring the issuance and preservation of receipts or invoices	Fourth requisite (receipts): Deductible expenses are required to be substantiated by the taxpayer to be able to claim the same. Aside from the substantial requirements for claiming an expense, substantiating the said claims is also an indispensable requisite. In addition, not only must the taxpayer meet the business test, he must substantially prove by evidence or records the deductions claimed under the law, otherwise, the same will be disallowed.	Revenue laws are not intended to be liberally construed. Taxes are the lifeblood of the government. While the 1977 NIRC required substantiation requirements for claimed deductions to be allowed, PMFC insists on leniency, *which is not warranted under the circumstances.*
✅ DOF v. AUB	The DOF and BIR issued Revenue Regulations No. 4-2011, which required banks and other financial institutions to allocate their costs and expenses among their different income streams and units, such as their Regular Banking Unit (RBU) and Foreign Currency Deposit Unit (FCDU), thereby	A revenue regulation cannot impose an additional requirement for the deductibility of ordinary and necessary business expenses under Section 34 (A) (1) where the Tax Code itself does not require such allocation or limitation.	The regulation required banks to allocate their common expenses among different income streams, including those subject to preferential or final tax, based on the proportion of each unit's gross income. This allocation system reduced the amount of

	limiting what may be deducted from taxable RBU income. Is RR 4-2011 valid? NO		expenses that could be deducted against income subject to regular corporate income tax, thereby imposing a limitation not found in the statute.
🟠 Paper Industries Corp. v. CA	In April 1983, Paper Industries Corporation of the Philippines (PICOP), a BOI-registered pioneer and non-pioneer enterprise, received two formal letters of assessment and demand from the CIR for deficiencies in transaction tax, documentary and science stamp tax, and 1977 income tax totaling PHP 88,763,255.00. Later that same month, PICOP filed a formal protest against these assessments, challenging the legal and factual basis of the multi-million peso tax liabilities. For over a year, the CIR failed to take formal action on these protests until September 1984, when the CIR finally denied PICOP's claims and simultaneously issued warrants of distraint and levy against the corporation's properties to forcibly collect the contested amounts	Interest payments on loans incurred by a taxpayer (whether BOI-registered or not) are allowed by the NIRC as deductions against the taxpayer's gross income. Thus, **the general rule is that interest expenses are deductible against gross income and this certainly includes interest paid under loans incurred in connection with the carrying on of the business of the taxpayer**.	
🟠 CIR v. Vda. de Prieto	In 1954, Prieto donated real property to her four children and subsequently paid a total gift tax assessment of P117,000, which included P55,000 in accrued interest. When she filed her income tax return for that year, she claimed the Php 55,000 interest payment as a deductible expense from her gross income, asserting it was interest paid on indebtedness under the tax code. Are interest payments on unpaid taxes deductible? YES	For interest to be allowed as deduction from gross income, it must be shown that: 1. there be indebtedness, 2. that there should be interest upon it, and 3. that what is claimed as an interest deduction should have been paid or accrued within the year The term "indebtedness" has been defined as an **unconditional and legally enforceable obligation for the payment of money**. Within the meaning of that definition **a tax may be considered an indebtedness**. Hence, *interest paid for late payment of donor's tax is deductible* from gross income under said section.	
✅ CIR v. Lednicky	Spouses Lednicky are both American citizens residing in the Philippines, and have derived all their income from Philippine sources. Since they were U.S. citizens, they also had to pay income tax to the US on that income. They	An **alien** resident who derives income *wholly* from sources within the Philippines may **not deduct** from gross income **the income taxes he paid to his home country** for the taxable year.	*As to tax credits, only resident citizens and domestic corporations are affected by this.* - Alien individuals and foreign corporations are not allowed to avail of tax credits.

	filed their Philippine income tax return in 1956 and paid P326,000. Subsequently, they sought to deduct the U.S. income taxes they paid from their Philippine gross income. They also claim a refund for the excess payment in the years 1955 & 1967, on the same basis.	An alien resident's right to deduct from gross income the income taxes he paid to a foreign government is **given only as an alternative to his right to claim a tax credit for such foreign income taxes**; so that unless he has a right to claim such tax credit if he chooses, he is precluded from said deduction. However, an alien resident is not entitled to tax credit for foreign income taxes paid when his income is derived wholly from sources within the Philippines. - So, no deductions.	Formula: [(Net income from foreign country) / (Net income worldwide)] x Tax due (total)
✅ Tambunting Pawnshop v. CIR	The BIR issued assessment notices and demand letters to H. Tambunting Pawnshop, Inc. (Tambunting) for alleged deficiency percentage tax, income tax, and compromise penalties for the taxable year 1997. Tambunting, a domestic corporation engaged in the pawnshop business, filed an administrative protest with the CIR challenging these assessments. When the CIR failed to act on the protest, Tambunting filed a petition for review with the CTA, asserting that it was entitled to deductions for losses from auction sales and loss due to fire.	The CTA En Banc aptly rejected Tambunting's claim for deductions due to losses from fire and theft. The documents it had submitted to support the claim, namely: (a) the certification from the Bureau of Fire Protection in Malolos; (b) the certification from the Police Station in Malolos; (c) the accounting entry for the losses; and (d) the list of properties lost, were not enough. What was required was for Tambunting to **submit the sworn declaration of loss**. Its failure to do so was prejudicial to the claim because the sworn declaration of loss was necessary to forewarn the BIR that it had suffered a loss whose extent it would be claiming as a deduction of its tax liability, and thus enable the BIR to conduct its own investigation of the incident leading to the loss.	A declaration of loss which must be filed with the Commissioner of Internal Revenue or his deputies within a certain period prescribed in these regulations after the occurrence of the casualty, robbery, theft or embezzlement (RR 12-77).
✅ Philex Mining Corp. v. CIR	Philex Mining entered into a "Power of Attorney" with Baguio Gold to manage and operate the Sto. Niño mine, and under that arrangement both parties contributed money, property, and industry to the project, while Philex would receive 50% of the net profits. When the mine suffered losses and operations ceased, the parties executed compromise agreements recognizing Baguio Gold's liability to Philex, and Philex later wrote off the remaining balance and claimed it as a	Requisites to deduct a bad debt: 1. There was a valid and existing debt; 2. The debt was ascertained to be worthless; and 3. It was charged off within the taxable year when it was determined to be worthless Losses from investments is not a bad debt. Hence, it's not deductible.	

	bad debt deduction in its 1982 income tax return.		
✅ Philippine Refining Company v. CA	Petitioner Philippine Refining Company (PRC) was assessed by respondent Commissioner of Internal Revenue (Commissioner) to pay a deficiency tax for the year 1985 in the amount of P1,892,584. The assessment was protested by petitioner on the ground that it was based on the erroneous disallowances of "bad debts" and "interest expense" although the same are both allowable and legal deductions.	For debts to be considered as "worthless," and thereby qualify as bad debts making them deductible, the taxpayer should show that: (1) there is a valid and subsisting debt; (2) the debt must be actually ascertained to be worthless and uncollectible during the taxable year; (3) the debt must be charged off during the taxable year; and (4) the debt must arise from the business or trade of the taxpayer. Additionally, before a debt can be considered worthless, the taxpayer must also **show that it is indeed uncollectible** even in the future. Furthermore, there are steps outlined to be undertaken by the taxpayer to prove that he exerted diligent efforts to collect the debts, viz: (1) sending of statement of accounts; (2) sending of collection letters; (3) giving the account to a lawyer for collection; and (4) filing a collection case in court.	
✅ Basilan Estates Inc. v. CIR	On March 24, 1954, Basilan Estates, Inc. filed its 1953 income tax return and paid P8,028, reporting a substantial depreciation deduction of P51,252.98 based on the reappraised value of its assets and new hospital equipment. During a subsequent investigation, the CIR discovered that the corporation had abandoned the original acquisition cost of its assets—which yielded an allowable depreciation of only P36,842.04 in 1952—in favor of a higher reappraised valuation for the 1953 tax year. Consequently, the CIR disallowed the excess deduction of P10,500.49 resulting from this unauthorized change in accounting method and issued a deficiency income tax assessment of P3,912 against the company.	Depreciation is the gradual diminution in the useful value of tangible property resulting from wear and tear and normal obsolescence. - The term is also applied to amortization of the value of intangible assets, the use of which in the trade or business is definitely limited in duration. Depreciation commences with the acquisition of the property and its owner is not bound to see his property gradually waste, without making provision out of earnings for its replacement. It is entitled to see that from earnings the value of the property invested is kept unimpaired, so that at the end of any given term of years, the original investment	The income tax law does not authorize the depreciation of an asset beyond its acquisition cost. Hence, a deduction over and above such cost cannot be claimed and allowed.

		remains as it was in the beginning. It is not only the right of a company to make such a provision, but it is its duty to its bond and stockholders, and, in the case of a public service corporation, at least, its plain duty to the public.	
✅ 3M Philippines v. CIR	In 1974, 3M Philippines, the local subsidiary of 3M USA, entered into technical service and royalty agreements with its parent company, agreeing to pay fees totaling 5% of its net sales. On its income tax return for that fiscal year, the corporation claimed P3 million in royalty and service fee deductions and a P97,000 pre-operational cost for a new tape coater. During an ensuing investigation, the CIR disallowed P2 million of the claimed royalties, arguing that fees should only apply to locally manufactured goods rather than finished products imported from the parent company—effectively treating the excess payment as a disguised dividend. Additionally, the CIR ruled that the P97,000 capital expenditure must be amortized over five years, allowing only one-fifth of the deduction for 1974. Consequently, the CIR issued a deficiency assessment of P840,000 plus interest, eventually leading to the issuance of warrants of distraint and levy which 3M Philippines successfully moved to enjoin through the CTA.	No royalty is payable on the wholesale price of finished products imported by the licensee from the licensor. Improper payments of royalty are not deductible as legitimate business expenses.	
✅ Paper Industries Corp. v. CA	*Id.*	Under our Tax Code, losses may be deducted from gross income only if such losses were actually sustained in the same year that they are deducted or charged off.	
✅ Esso Standard Eastern Inc. v. CIR	*Id.*	The margin fees were paid for the remittance by ESSO as part of the profits to the head office in the United States. Such remittance was an expenditure necessary and proper for the conduct of its corporate affairs. As stated in the Lopez case, the margin fees are not expenses in connection with the production or earning of petitioner's incomes in the Philippines. They were expenses incurred in	A margin fee is not a tax but an exaction designed to curb the excessive demands upon our international reserve. Margin fees are *not* deductible.

		the disposition of said incomes; expenses for the remittance of funds after they have already been earned by petitioner's branch in the Philippines for the disposal of its Head Office in New York which is already another distinct and separate income taxpayer.	
POST-MIDTERMS			
Individuals			
✅ SMI-Ed Philippines Technology, Inc. vs. CIR	After registering with PEZA in June 1998 to manufacture microprocessors, SMI-Ed Philippines invested over P3.1 billion in buildings and machinery but failed to commence actual operations, leading to its temporary closure in October 1999. On August 1, 2000, the corporation sold its assets to another PEZA enterprise for approximately P893.5 million and subsequently dissolved on November 30, 2000. Despite its lack of operational income, SMI-Ed initially subjected the gross sales of these properties to the 5% final tax for PEZA-registered corporations, paying P44.6 million to the government. By February 2001, following the cancellation of its registration, the company filed an administrative claim for a full refund, contending that the tax was erroneously paid because it had actually incurred a massive net loss of over P2.2 billion and should not have been subject to the preferential 5% final tax on a transaction that did not arise from registered operations. Is SMI-Ed entitled to a refund? YES	For SMI-Ed's properties to be subjected to capital gains tax, the properties must form part of its capital assets. Thus, "capital assets" refers to taxpayer's property that is NOT any of the following: 1. Stock in trade; 2. Property that should be included in the taxpayer's inventory at the close of the taxable year; 3. Property held for sale in the ordinary course of the taxpayer's business; 4. Depreciable property used in the trade or business; and 5. Real property used in the trade or business. Individuals are taxed on capital gains from sale of all real properties located in the Philippines and classified as capital assets.	
✅ Republic v. Sps. Salvador	The DPWH filed an expropriation complaint to acquire 83 square meters of the respondents' land and its improvements for the C-5 Northern Link Road Project. The respondents received two checks totaling P685,349.22, representing the full zonal value of the land and the cost of the residential house, leading the RTC to issue a Writ of Possession in favor of the government. On that same day, the	It is settled that the transfer of property through expropriation proceedings is a sale or exchange within the meaning of Sections 24 (D) and 56 (A) (3) of the National Internal Revenue Code, and profit from the transaction constitutes capital gain. Since capital gains tax is a tax on passive income, it is the seller, or respondents in this case, who are liable to shoulder the tax.	

	respondents appeared in open court to formally recognize the public purpose of the project and manifested that, having received the full payment, they had no objections to the expropriation and would no longer seek further just compensation. However, the RTC directed the Republic to pay respondents consequential damages equivalent to the value of the capital gains tax and other taxes necessary for the transfer of the subject property in the Republic's name. Is the Republic liable for the capital gains tax and other taxes? NO	Thus, as far as the government is concerned, the capital gains tax in expropriation proceedings remains a liability of the seller, as it is a tax on the seller's gain from the sale of real property.	
✅ Southern Luzon Drug Corporation vs. DSWD	Are the laws which allow covered establishments to claim the discounts given to PWDs and senior citizens as tax deductions–not tax credits–from the gross income, based on the net cost of goods sold or services rendered unconstitutional? NO	It is in the exercise of its police power that the Congress enacted RA Nos. 9257 and 9442, the laws mandating a 20% discount on purchases of medicines made by senior citizens and PWDs. It is also in further exercise of this power that the legislature opted that the said discount be claimed as tax deduction, rather than tax credit, by covered establishments.	
Corporations			
✅ SMI-Ed Philippines Technology, Inc. vs. CIR	*Supra.*	For corporations, the Tax Code treats the sale of land and buildings, and the sale of machineries and equipment, differently. Domestic corporations are imposed a 6% capital gains tax only on the presumed gain realized from the sale of lands and/or buildings. The Tax Code does not impose the 6% capital gains tax on the gains realized from the sale of machineries and equipment. Therefore, only the presumed gain from the sale of petitioner's land and/or building may be subjected to the 6% capital gains tax. The income from the sale of petitioner's machineries and equipment is subject to the provisions on normal corporate income tax.	
✅ Saint Wealth Ltd. v. Bureau of Internal Revenue	*Supra.*	The “source” of income is not determined by where income is disbursed or physically	Applying the rulings of BOAC and Baier-Nickel to the instant case, it appears

		received, but rather, where the business activity that produced such income is actually conducted.	that offshore-based POGO licensees derive no income from the sources within the Philippines because the "activity" which produces income occurs and is located outside the territory of the Philippines. Indeed, the flow of wealth or the income-generating activity—the placing of bets less the amount of payout—transpires outside the Philippines.
✅ Air Canada v. CIR	Air Canada (AC) is a foreign corporation organized and existing under the laws of Canada. It has the authority to operate as an offline carrier. As an offline carrier, AC does not have flights originating from or coming to the Philippines and does not operate any airplane in the Philippines. AC engaged the services of Aerotel as its *general sales agent* in the Philippines. Aerotel sells AC tickets in the Philippines. From Q3 2000 to Q2 2002, AC, through Aerotel, filed quarterly and annual ITR and paid income tax on Gross Philippine Billings worth P5.16 million. In Q4 2002, AC filed a claim for the entire amount, arguing that it should be taxed under § 28 (A) (3) (a) of the NIRC. Is AC entitled to the refund? NO	AC is not liable to tax on GPB. The provision only attaches when the carriage originated from the Philippines in a continuous and uninterrupted flight. Not having flights to and from the Philippines, AC is not liable for GPB. AC falls within the definition of a resident foreign corporation. Thus, it is subject to 32% on its taxable income. "Resident foreign corporation" – A foreign corporation engaged in trade or business within the Philippines. - "ETOB" – The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. AC is ETOB in the Philippines, because Aerotel performs acts or works or exercises functions that are incidental and beneficial to the purpose of AC's business. The activities of Aerotel bring direct receipts or profits to AC.	§ 28 (A) (2) (a): 'Gross Philippine Billings' refers to the amount of gross revenue derived from carriage of persons, excess baggage, cargo, and mail *originating from the Philippines in a continuous and uninterrupted flight*, irrespective of the place of sale or issue and the place of payment of the ticket or passage document. § 28 (A) (1): Except as otherwise provided in this Code, a corporation organized, authorized, or existing under the laws of any foreign country, engaged in trade or business within the Philippines, shall be subject to an income tax equivalent to twenty-five percent (25%) of the taxable income derived in the preceding taxable year from all sources within the Philippines effective July 1, 2020.
✅ Bank of America NT & SA v. CA	Bank of America (BA) is a foreign corporation duly licensed to engage in business in the Philippines, with its branch office in Makati. It paid 15% branch profit remittance tax in the amount of P7.5 million on profit from its	In the 15% remittance tax, the law specifies its own tax base to be on the "profit remitted abroad." There is absolutely nothing equivocal or uncertain about the language of the provision. The tax is imposed on the	§ 28 (A) (4): Any profit remitted by a branch to its head office shall be subject to a tax of fifteen (15%) which shall be based on the total profits applied or earmarked for remittance without any deduction for the tax component

	regular banking unit operations and P445,790.25 on profit from its foreign currency deposit unit (total of P7.9 million). The tax was based on *net profits after income tax without deducting the amount corresponding to the 15% tax*. BA filed a claim for refund of that portion of the payment which corresponds to the 15% branch profit remittance tax–on the ground that the tax should have been computed on the basis of profits actually remitted–and not on the amount *before profit remittance*. Thus, it sought the recovery of P1 million. Is BA entitled to a refund? YES	amount sent abroad, and the law (then in force) calls for nothing further. The taxpayer is a single entity, and it should be understandable if, such as in this case, it is the local branch of the corporation, using its own local funds, which remits the tax to the Philippine Government. The remittance tax was conceived in an attempt to equalize the income tax burden on foreign corporations maintaining, on the one hand, local branch offices and organizing, on the other hand, subsidiary domestic corporations where at least a majority of all the latter's shares of stock are owned by such foreign corporations.	thereof [xxx].
✅ Marubeni Corp. v. CIR	Marubeni Corp. of Japan has equity investments in AG&P of Manila. AG&P declared and paid cash dividends to Marubeni in the amount of P849,720 and withheld the corresponding 10% final dividend tax thereon. AG&P directly remitted the cash dividends to Marubeni, net of the 10% final dividend tax and the 15% profit remittance tax based on the remittable amount after deducting the final withholding tax of 10%. However, Marubeni sought a ruling from the BIR on whether or not the dividends it received from AG&P are effectively connected with its conduct or business in the Philippines as to be considered branch profits subject to the 15% profit remittance tax. Is Marubeni a resident or a nonresident foreign corporation? RESIDENT	A resident foreign corporation is one that is engaged in trade or business within the Philippines. The general rule that a foreign corporation is the same juridical entity as its branch office in the Philippines cannot apply here. This rule is based on the premise that the business of the foreign corporation is conducted through its branch office, following the principal-agent relationship theory. It is understood that the branch becomes its agent here. So that when the foreign corporation transacts business in the Philippines independently of its branch, the principal-agent relationship is set aside. The transaction becomes one of the foreign corporations, not of the branch. Consequently, the taxpayer is the foreign corporation, not the branch or the resident foreign corporation. Corollarily, if the business transaction is conducted through the branch office, the latter becomes the taxpayer, and not the foreign corporation.	Steps: 1. Identify *who* your taxpayer is – Marubeni Japan (the investor) 2. Identify the tax status of the taxpayer (foreign corp., but with a branch in PH) – Resident foreign corp. Single entity rule – Branch and resident the corporation is a single entity. Thus, the resident foreign corporation is also a resident corporation. Marubeni: I am liable to 0% tax only. BIR: No, the transaction was "independently entered into"; you can't rely on single entity rule–you're a nonresident foreign corporation.
✅ N.V. Reederij "Amsterdam" and Royal InterOcean Lines v. CIR	MV Amstelmeer and MV Amstelkroon, vessels of N.B. Reederij, called on PH ports to load cargoes for foreign destinations. The	In order that a foreign corporation may be considered engaged in trade or business, its business transactions must be continuous. A	NV Reederij is a foreign corporation not authorized or licensed to do business in the Philippines. It does not have a branch office in

	freight fees for these transactions were paid abroad (USD 98,175 and USD137,193, respectively). Royal Interocean Lines (RIL) acted as husbanding agent for a fee/commission on said vessels. No income tax was paid on the freight receipts. Thus, the CIR filed the corresponding ITR for NV Reederij and assessed P193,973.2 and P262,904.94 as deficiency income tax for 1963 and 1964, respectively, as a nonresident foreign corporation not engaged in trade or business in the Philippines. On the assumption that NV Reederij is a foreign corporation engaged in trade or business in the Philippines, RIL filed an ITR and paid the tax thereon in the amount of P1,835.52 and P9,448.94, respectively.
	
	Is NV Reederij a resident or nonresident foreign corporation? NONRESIDENT
		casual business activity in the Philippines by a foreign corporation does not amount to engaging in trade or business in the Philippines for income tax purposes.	the Philippines and made only two calls in PH ports.
			- Domestic corporation – Worldwide income
			- Foreign corporation – Only on its income sources within the PH
			  - Resident foreign – Permitted to claim deductions from gross income only to the extent connected with income earned in PH
			  - Nonresident foreign – Gross income payor

✅ Commissioner of Internal Revenue v. Procter & Gamble Philippines Manufacturing Corp. [*En Banc*]	For TYs 1974 and 1975, P&G-PH declared dividends payable to its parent company and sole stockholder (P&G-US), amounting to P24.1M. From which, P8.4M representing the 35% WT at source was deducted. In 1977, P&G-PH filed with the CIR a refund/tax credit worth P4.8M, claiming that the applicable rate on the dividends remitted was only 15% and not 35%. Is P&G-PH entitled to the refund? YES	The 35% tax rate applicable to dividend remittances to nonresident corporate stockholders of a PH corporation goes down to 15% if the country of domicile of the foreign stockholder corporation shall allow such foreign corporation a tax credit for taxes deemed paid in the Philippines, applicable against the tax payable to the domiciliary country by the foreign stockholder corporation. In other words, the reduced 15% dividend tax rate is applicable if the USA “shall allow” to P&G-USA a tax credit for "taxes deemed paid in the Philippines applicable against the US taxes of P&G-USA. - The NIRC specifies that such tax credit for taxes deemed paid in the Philippines must, as a minimum, reach an amount equivalent to 20 p.p. which represents the difference between the 35% dividend tax rate and the preferred 15% dividend tax rate.	

		Thus, to determine whether US tax law complies with the applicability of the preferential tax rate, it is necessary to: 1. Determine the amount of the 20 pp dividend tax waived by the PH gov't under the NIRC (and which hence goes to P&G-US) 2. Determine the amount of the "deemed paid" tax credit which US tax law must allow to P&G-US 3. Ascertain that the amount of the "deemed paid" tax credit allowed by US law is at least equal to the amount of the dividend tax waived by the PH gov't	
✅ CIR v. Goodyear Philippines Inc.	Goodyear PH's preferred shares were solely and exclusively subscribed by Goodyear, a foreign company in the US and unregistered in the PH. In 2008, Goodyear PH authorized the redemption of Goodyear's preferred shares at the redemption price of P470.6M, of which P97.7M was the accrued and unpaid dividends. Following the redemption, Goodyear PH filed an application for relief from double taxation. This, notwithstanding, Goodyear PH still withheld and remitted the sum of P14.6M, representing 15% FWT, computed based on the gain (Redemption Price – Par Value). Goodyear PH filed an administrative claim for refund/tax credit in the sum of P14.6M. It also filed a judicial claim with the CTA. Is Goodyear PH entitled to the refund? <u>YES</u>	Under the RP-US Tax Treaty, "dividends" should be understood according to the taxation law of the State in which the corporation making the distribution is a resident, which, in this case, pertains to the respondent, a resident of the Philippines. Pursuant to the NIRC, "dividends" means any distribution made by a corporation to its shareholders out of its earnings or profits and payable to its shareholders, whether in money or in other property. It is also worth mentioning that one of the primary features of an ordinary dividend is that the distribution should be in the nature of a recurring return on stock. The P97.7M did not represent a periodic distribution of dividend, but rather a payment by Goodyear OH for the redemption of Goodyear's preferred shares.	In this case, the redemption price could not be treated as accumulated dividends in arrears that could be subjected to 15% FWT. Goodyear PH's AFS from 2003-2009 show that it did not have unrestricted retained earnings, and in fact, operated from a position of deficit. Thus, absent the availability of unrestricted retained earnings, the board of directors of respondent had no power to issue dividends. This rule on dividend declaration — i.e., that it is dependent upon the availability of unrestricted retained earnings — was further edified in Section 43 of The Corporation Code of the Philippines.
✅ Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue	*Supra.*	A state that has contracted valid international obligations is bound to make in its legislation those modifications that may be necessary to ensure the fulfillment of the obligations undertaken. Thus, laws and issuances must ensure that the reliefs granted under tax treaties are accorded to the parties entitled thereto. The BIR must not impose additional requirements that would negate the availment	

		of the reliefs provided for under international agreements.	
Withholding Tax			
✅CIR v. Smart Communications Inc.	Smart and Prism (NRFC) entered into three agreements for programming and consultancy services. Prism was to provide services for the installation of the service downloader manager and the channel manager, and for the installation and implementation of Smart Money and Mobile Banking Service SIM Applications and Private Text Platform. Prism billed SMART in the amount of USD547,822.45. Thinking that these payments constitute royalties, Smart withheld the amount of USD136,955.61 or P7M, representing 25% royalty tax under the RP-Malaysia Tax Treaty. Within the 2-year period to claim refund, Smart filed with the BIR a claim of the entire payment. It eventually filed a claim for refund with the CTA. The CTA 2nd div. only granted a *partial refund*, holding that the payments for the CM and SIM Application agreements are business profits and therefore not subject to tax under the treaty. Does Smart have the right to file the claim for refund? YES	A withholding agent may file a claim for refund. The person entitled to claim a tax refund is the taxpayer (*i.e.,* Prism). However, in case the taxpayer does not claim for refund, the withholding agent (*i.e.,* Smart) may file the claim. A "person liable for tax" has been held to be a "person subject to tax" and properly considered a "taxpayer." The terms "liable for tax" and "subject to tax" both connote legal obligation or duty to pay a tax. It is very difficult, indeed conceptually impossible, to consider a person who is statutorily made "liable for tax" as not "subject to tax. " By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him. In this connection, it is however significant to add that while the withholding agent has the right to recover the taxes erroneously or illegally collected, he nevertheless has the obligation to remit the same to the principal taxpayer. As an agent of the taxpayer, it is his duty to return what he has recovered; otherwise, he would be unjustly enriching himself at the expense of the principal taxpayer from whom the taxes were withheld, and from whom he derives his legal right to file a claim for refund.	
✅Philippine Airlines Inc. v. CIR	In 2002, PAL made USD and PHP deposits and placements in Chinabank, JPMorgan, PBCom, and Standard Chartered. PAL earned interest income and the agent banks deducted final withholding taxes (FWT). A	PAL is entitled to a refund because it is not responsible for the remittance of tax to the Bureau of Internal Revenue. The taxes on interest income from bank deposits are in the nature of a withholding tax. Thus, the party	Here, PAL is the income earner and the payee of the final withholding tax, and the Agent Banks are the withholding agents who are the payors responsible for the deduction and remittance of the tax. Thus, the failure of the

	total of USD20,443.19 and P510,223.13 were withheld and paid to the BIR by the banks. Claiming it was exempt from FWT under its franchise, PD 1590, PAL filed with the CIR a written request for a tax refund. CIR failed to act, prompting PAL to file the claim with the CTA. The CTA 2nd div. held that PAL was exempted from FWT on interest on bank deposits, but also ruled that PAL failed to adequately substantiate its claim as it failed to prove that the banks remitted the withheld amounts to the BIR (only the ones withheld by JPMorgan was refunded). Is PAL entitled to the refund for *all* the banks? YES	liable for remitting the amounts withheld is the withholding agent (*i.e.,* Banks) of the Bureau of Internal Revenue. When a particular income is subject to a final withholding tax, it means that a withholding agent will withhold the tax due from the income earned to remit it to the Bureau of Internal Revenue. Thus, the liability for remitting the tax is on the withholding agent. Clearly, the withholding agent is the payor liable for the tax, and any deficiency in its amount shall be collected from it. Should the BIR find that the taxes were not properly remitted, its action is against the withholding agent (*i.e.,* Banks) and not against the taxpayer. The taxes withheld from PAL are considered its full and final payment of taxes. Necessarily, when taxes were withheld and deducted from its income, PAL is deemed to have paid them.	Agent Banks to remit the amounts does not affect and should not prejudice PAL. In case of failure of remittance of taxes, the Bureau of Internal Revenue's cause of action is against the Agent Banks. Thus, PAL is not obliged to remit, let alone prove the remittance of, the taxes withheld. Final Withholding Tax – Under the final withholding tax system the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income. The liability for payment of the tax rests primarily on the payor as a withholding agent. Thus, in case of his failure to withhold the tax or in case of under withholding, the deficiency tax shall be collected from the payor/withholding agent. The payee is not required to file an income tax return for the particular income. Certificates of Final Taxes Withheld issued by the Agent Banks are sufficient evidence to establish the withholding of the taxes.
✅Philippine National Bank v. CIR	Gotesco entered into a syndicated loan agreement with PNB and 3 other banks. To secure the loan, Gotesco mortgaged the Ever Ortigas Commercial Complex in favor of PNB. Gotesco defaulted. Thus, PNB foreclosed the property. Gotesco sued PNB for the annulment of the foreclosure proceedings. Meanwhile, as it prepared for the consolidation of its ownership over the foreclosed property, PNB paid the BIR P18.6M as DST. PNB also withheld and remitted to the BIR withholding taxes equivalent to 6% of the bid price of P1.2B or P74.4M. The BIR informed PNB that it was imposing interests, penalties and surcharges of P61.M on CGT and P15.5M on DST. To facilitate the release of the CAR, PNB paid all these in the amount of P77.1M. Nevertheless, PNB filed a claim for refund, arguing that it should have applied 5% creditable withholding tax (CWT) on the sale	In claims for excess and unutilized CWT, the submission of **BIR Forms 2307** is to prove the fact of withholding of the excess creditable withholding tax being claimed for refund. That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom. Hence, the probative value of **BIR Form 2307**, which is basically a statement showing the amount paid for the subject transaction and the amount of tax withheld therefrom, is to establish only the fact of withholding of the claimed creditable withholding tax. There is nothing in BIR Form No. 2307 which would establish either utilization or non-utilization, as the case may be, of the creditable withholding tax.	The evidence presented by petitioner sufficiently proved its entitlement to the claimed refund. There is no need for PNB to present Gotesco's BIR Form No. 2307, as insisted by the First Division, because the information contained in the said form may be very well gathered from other documents already presented by PNB First, Gotesco's AFS for 2003 still included the foreclosed property in the Asset account. Certainly, Gotesco's refusal to transfer registered ownership of the property to PNB constitutes proof enough that Gotesco will not do any act inconsistent with its claim of ownership over the foreclosed asset, including claiming the creditable tax imposed on the foreclosure sale as tax credit and utilizing such amount to offset its tax liabilities. Further, Gotesco's former accountant, stated in her JA that the tax credits claimed for 2003 did not include

	of ordinary assets, instead of 6%. It also filed a claim for refund for the surcharges, penalties and interests. The CTA granted PNB's refund for the surcharges, but denied its claim for the excess CWT. Is PNB entitled to the refund of CWT? YES		any portion of the amount subject to the claim for refund.
Special rules			
✅ Chamber of Real Estate Builders' Association, Inc. v. Executive Secretary [*En Banc*]	Petitioners assail the validity of the imposition of minimum corporate income tax (MCIT) on corporations and CWT on sales of real properties classified as ordinary assets. Petitioner argues that the MCIT violates the due process clause because it levies income tax even if there is no realized gain. Is the MCIT scheme unconstitutional? NO	In enacting the MCIT, Congress intended to put a stop to the practice of corporations which, while having large turn-overs, report minimal or negative net income resulting in minimal or zero income taxes year in and year out, through under-declaration of income or over-deduction of expenses otherwise called tax shelters. For sure, certain tax avoidance schemes resorted to by corporations are allowed in our jurisdiction. The MCIT serves to put a cap on such tax shelters. As a tax on gross income, it prevents tax evasion and minimizes tax avoidance schemes achieved through sophisticated and artful manipulations of deductions and other stratagems. Since the tax base was broader, the tax rate was lowered. Certainly, an income tax is arbitrary and confiscatory if it taxes capital because capital is not income. In other words, it is income, not capital, which is subject to income tax. However, the MCIT is not a tax on capital. The MCIT is imposed on gross income which is arrived at by deducting the capital spent by a corporation in the sale of its goods, *i.e.,* the cost of goods and other direct expenses from gross sales. Clearly, the capital is not being taxed. Furthermore, the MCIT is not an additional tax imposition. It is imposed in lieu of the normal net income tax, and only if the normal income tax is suspiciously low.	Under the MCIT scheme, a corporation, beginning on its 4th year of operation, is assessed an MCIT of 2% of its gross income when such MCIT is greater than the normal CIT imposed under § 27 (A). If the regular income tax is higher than the MCIT, the corporation does not pay the MCIT. Any excess of the MCIT over the normal tax shall be carried forward and credited against the normal income tax for the three immediately succeeding taxable years. Three safeguards of the MCIT: 1. The imposition of the MCIT commences only on the 4th taxable year immediately following the year in which the corporation commenced its operations 2. The law allows the carrying forward of any excess of the MCIT paid over the normal income tax which shall be credited against the normal income tax for the three immediately succeeding years 3. The law authorizes the Finance Secretary to suspend the imposition of MCIT if a corporation suffers losses due to prolonged labor dispute, *force majeure*, and legitimate business reverses.
✅ Benaglia v. Commissioner of Internal Revenue (US) (BTA)	Since 1926, the petitioner served as the manager of several Hawaiian resort hotels, where he and his wife occupied a suite and	Under such circumstances, the value of meals and lodging is not income to the employee, even though it may relieve him of an expense	There remains no room for doubt that the petitioner's residence at the hotel was not by way of compensation for his services, not for

	received meals entirely for the convenience of his employer and the proper performance of his duties. Although his salary was fixed independently of these accommodations and neither party treated them as taxable compensation, the Commissioner added $7,845 to the petitioner's annual gross income, asserting that the fair market value of the rooms and meals constituted additional compensation. The Commissioner further contended that the accommodations were not provided strictly for the employer's convenience, thereby challenging the applicability of established legal precedents and regulations that might otherwise exclude such benefits from taxable income. Are the rooms and meals taxable? YES	which he would otherwise bear. The advantage to him was merely an incident of the performance of his duty, but its character for tax purposes was controlled by the dominant fact that the occupation of the premises was imposed upon him for the convenience of the employer.	his personal convenience, comfort or pleasure, but solely because he could not otherwise perform the services required of him.
✅CIR v. Filinvest Corp.	Filinvest Development Corp. (FDC) owns 80% of Filinvest Alabang Inc. (FAI). FDC also owns 67.42% of Filinvest Land Inc. (FLI). In 1996, FDC and FAI entered into a deed of exchange with FLI, whereby the former transferred in favor of the latter parcels of land appraised at P4.3B. In exchange for said parcels, 463K shares of stock of FLI were issued to FDC and FAI. As a result, FLI's ownership structure was changed: 61.03% owned by FDC; 9.96% owned by FAI; and 29.01% owned by Others. FLI then requested a ruling from the BIR to the effect that *no gain or loss should be recognized* in the aforesaid transfer, which the BIR granted. On various dates, in the meantime, FDC extended advances in favor of its affiliates FAI, FLI, Davao Sugar and Filinvest Capital *at no interest*. Consequently, FDC received from the BIR a formal notice of demand to pay deficiency income and DST plus interests assessed on the taxable gain supposedly realized by FDC from the deed of exchange it executed with FAI and FLI, as well as the "arm's-length" interest rate and DST imposable on the advances FDC extended to its affiliates. FAI similarly received a FLD. Thus, FDC and FAI filed a pet. for review with	Aside from owning significant portions of the shares of stock of FLI, FAI, DSCC and FCI, the fact that FDC extended substantial sums of money as cash advances to its said affiliates for the purpose of providing them financial assistance for their operational and capital expenditures seemingly indicate that the situation sought to be addressed by § 50, NIRC exists. For as long as the controlled taxpayer's taxable income is not reflective of that which it would have realized had it been dealing at arm's length with an uncontrolled taxpayer, the CIR can make the necessary rectifications in order to prevent evasion of taxes. Despite the broad parameters provided, however, the CIR's powers of distribution, apportionment or allocation of gross income and deductions under § 50 and Section 179 of Revenue Regulations No. 2 does not include the power to impute "theoretical interests" to the controlled taxpayer's transactions. There must be proof of the actual or, at the very least, probable receipt or realization by the controlled taxpayer of the item of gross income sought to be distributed, apportioned	More so, when it is borne in mind that, pursuant to Article 1956 of the Civil Code of the Philippines, no interest shall be due unless it has been expressly stipulated in writing. Considering that taxes, being burdens, are not to be presumed beyond what the applicable statute expressly and clearly declares, the rule is likewise settled that tax statutes must be construed strictly against the government and liberally in favor of the taxpayer. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication.

	the CTA, alleging that no taxable gain should have been assessed from the deed of exchange since FDC and FAI collectively gained further control of FLI as a consequence of the exchange. May the BIR impose the theoretical interests? NO	or allocated by the CIR.	
🟠 DOF v. AUB	*Supra.*	Under § 50, NIRC, the CIR is authorized to distribute, apportion, or allocate gross income or deductions if they determine that such distribution, apportionment, or allocation: a. is necessary in order to prevent evasion of taxes; or b. clearly to reflect the income of organizations, trades, or businesses. § 50 is limited only to allocating expense deductions between two or more organizations, trades or business. The purpose of § 50 is to place a controlled taxpayer on a tax parity with an uncontrolled taxpayer by determining, according to the standard of an uncontrolled taxpayer, the true net income from the property and business of a controlled taxpayer. If this has not been done and the taxable net incomes are understated, the law grants the CIR the authority to intervene by making distributions, apportionments or allocations of gross income or deductions among the controlled taxpayers to determine the true net income of each controlled taxpayer.	To reiterate, these two (2) units (FCDU/EFCDU and RBU) are part of a single bank or financial institution. It is hence evident that Section 50 cannot be invoked as statutory basis for RR 4-2011 to require the allocation of costs and expenses among different units or income streams within a bank or single business unit thereof.
✅ HM Queen v. GlaxoSmithKline Inc. (Can.)	Between 1990 and 1993, Glaxo Canada, purchased *ranitidine*, the active pharmaceutical ingredient in the brand name anti-ulcer drug Zantac, from Adechsa S.A., a related non-resident company, for between CAD1,512 and CAD1,651 per kilogram. During the same period, two Canadian generic pharmaceutical companies, Apotex Inc. and Novopharm Ltd., purchased ranitidine from other sources for use in their generic anti-ulcer drugs for between CAD194 and	Section 69(2) requires the court to determine **whether the transfer price was greater than the amount that would have been reasonable in the circumstances, had the parties been dealing at arm's length**. If transactions other than the purchasing transaction are relevant in determining this question, they must not be ignored. Section 69(2) does not, itself, offer guidance as to how to determine the "reasonable amount" that would have been payable had the parties	In this case, **Glaxo Canada was paying for at least some of the rights and benefits under the Licence Agreement** as part of the purchase prices for ranitidine from Adechsa. As such, the Licence Agreement could not be ignored in determining the reasonable amount paid to Adechsa under s. 69(2), which applies not only to payment for goods but also to payment for services. Considering the Licence and Supply Agreements together offers a realistic picture of the profits of Glaxo

	CAD304 per kilogram from *arm's length suppliers*. A Licence Agreement conferred rights and benefits on Glaxo Canada and a Supply Agreement set the transfer prices of *ranitidine*. The combined effect of the Licence and Supply agreements enabled Glaxo Canada, among other things, to purchase *ranitidine*, put it in a delivery mechanism, and market it under the trademark Zantac. The Minister of National Revenue, reassessed Glaxo Canada for the years 1990, 1991, 1992, and 1993 on the basis that the prices it paid for *ranitidine* were greater than an amount that would have been reasonable in the circumstances had they been dealing at arm's length. Glaxo Canada appealed to the Tax Court of Canada, where, with one minor revision, the reassessment was upheld on the basis that the Licence and Supply agreements were to be considered independently. The Federal Court of Appeal allowed the appeal and remitted the matter back to the Tax Court for redetermination of the "reasonable amount" payable for Glaxo Canada's ranitidine transactions. Did the Court of Appeal err in remanding the matter? <u>NO</u>	been dealing at arm's length. The OECD's 1979 Guidelines and the OECD's 1995 Guidelines are not controlling as if they were a Canadian statute. However, they suggest a **number of methods for determining whether transfer prices are consistent with prices determined between parties dealing at arm's length**. A proper application of the arm's length **principle requires that regard be had for the "economically relevant characteristics"** of the arm's length and non-arm's length circumstances to ensure they are "sufficiently comparable." - Where there are no related transactions or where related transactions are not relevant to the determination of the reasonableness of the price in issue, a transaction-by-transaction approach may be appropriate. - However, "economically relevant characteristics of the situations being compared" may make it necessary to consider other transactions that impact the transfer price under consideration. In each case, it is necessary to address this question by considering the relevant circumstances and, if required, transactions other than the purchasing transactions must be taken into account. Such circumstances will include **agreements that may confer rights and benefits** in addition to the purchase of property where those agreements are linked to the purchasing agreement. The **objective is to determine what an arm's length purchaser would pay for the property and the rights and benefits together where the rights and benefits are linked to the price paid for the property.** However, transfer pricing is not an exact science and it is highly unlikely that any comparisons will yield identical circumstances	Canada. **The prices paid by Glaxo Canada to Adechsa were a payment for a bundle of at least some rights and benefits** under the Licence Agreement and product under the Supply Agreement. The generic comparators used by the Tax Court do not reflect the economic and business reality of Glaxo Canada and, at least without adjustment, do not indicate the price that would be reasonable in the circumstances, had Glaxo Canada and Adechsa been dealing at arm's length. It is only after identifying the circumstances arising from the Licence Agreement that are linked to the Supply Agreement that arm's length comparisons under any of the OECD methods or other methods may be determined. The assumption that the prices paid by Glaxo Canada for ranitidine were greater than the amount that would have been reasonable in the circumstances had Glaxo Canada and Adechsa been dealing at arm's length has not been demolished. As found by the Federal Court of Appeal, the matter should be remitted to the Tax Court to be redetermined, having regard to the effect of the Licence Agreement on the prices paid by Glaxo Canada for the supply of ranitidine from Adechsa. Whether or not compensation for intellectual property rights is justified in this particular case is a matter for determination by the Tax Court.

		and the court will be required to exercise its best informed judgment in establishing a satisfactory arm's length price.	
✅ Amazon.com, Inc. vs. Commissioner (US) (9th Cir. CA)	In 2005 and 2006, Amazon restructured its European businesses to shift income from U.S. entities to newly created European subsidiaries, specifically Amazon Europe Holding Technologies SCS or AEHT. Under a qualified cost sharing arrangement, AEHT was required to make an arm's length buy-in payment for the pre-existing intangibles Amazon contributed, such as website technology, trademarks, and customer lists. Amazon initially reported a buy-in payment of about USD255 million, but the Commissioner of Internal Revenue performed its own calculation, valuing the buy-in at approximately USD3.6 billion. The Commissioner's methodology employed a discounted-cash-flow valuation that swept in residual-business assets including workforce in place, going concern value, goodwill, and growth options. Amazon filed a petition in the United States Tax Court challenging this valuation, arguing these nebulous assets were not compensable intangibles under the then-applicable 1994/1995 transfer pricing regulations. The tax court sided primarily with Amazon, concluding that the regulatory definition of intangible does not include residual-business assets. Was the regulatory definition of an intangible asset, under the applicable 1994 and 1995 transfer pricing regulations, broad enough to require a buy-in payment for residual-business assets? NO	The regulatory definition of an intangible under Treas. Reg. § 1.482-4(b) does **not** include residual-business assets such as a culture of innovation, workforce in place, going concern value, goodwill, and growth options. The **definition of intangible is limited to independently transferrable assets and does not embrace those assets that are inseparable from the business**. The drafting history of the regulations showed intangible was understood to be limited to those assets that can be bought and sold independently. Furthermore, the court held that the Commissioner's *post hoc* interpretation was not entitled to Auer deference because it would create unfair surprise for taxpayers who were not given fair warning of this broad construction. Consequently, the buy-in payment required for pre-existing intangible property under the outdated regulations need not include compensation for residual-business assets.	The court found that the **Commissioner's USD3.6 billion valuation was legally overbroad** because it **necessarily swept into the calculation items like workforce in place and growth options** that do not meet the regulatory criteria for an intangible. While the Commissioner argued these assets derive value from intellectual content and have substantial value independent of the services of any individual, the court found that such amorphous attributes are inseparable from the enterprise itself. The court noted that Treasury clearly knew how to write its regulations to include goodwill when it intended to, yet specifically omitted it from the 1994/1995 section 482 regulations. Because the 28 specific items listed in the regulation are all independently transferrable, the catchall for other similar items cannot be stretched to include assets that cannot be transferred independently. Thus, the Commissioner's akin to a sale theory failed because **a cost sharing arrangement is not a sale of the entire business, and Amazon was only required to be compensated for the specific, transferrable intangibles it made available**. Because Amazon and other taxpayers were not given clear, fair notice that the definition would be expanded to include residual-business assets, the lower court's valuation—which isolated and valued only the transferred assets—was correct.
Special entities			
🟠CIR v. St. Luke's Medical Center Inc.	*Supra.*	Sec. 27 (B)'s effect is to subject the taxable income of proprietary nonprofit educational institutions and proprietary nonprofit hospitals to the 10% preferential rate instead of the ordinary corporate rate.	**Sec. 27 (B). *Proprietary Educational Institutions and Hospitals.–*** Proprietary educational institutions and hospitals which are nonprofit shall pay a tax of ten percent (10%) on their taxable income except those

		Sec. 27 (B) imposes a 10% preferential tax rate on the income of: 1. Proprietary nonprofit educational institutions 2. Proprietary nonprofit hospitals The only qualifications for hospital are that they must be proprietary and nonprofit. "Proprietary" – Private with a government permit "Non-profit" – No net income or asset accrues or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted not for profit.	covered by Subsection (D) hereof:
🟠CIR v. De La Salle University Inc.	*Supra.*	By the Tax Code's clear terms, a proprietary educational institution is entitled only to the reduced rate of 10% CIT. The reduced rate is applicable only if: 1. The proprietary educational institution is nonprofit; and 2. Its gross income from unrelated trade, business or activity does not exceed 50% of its total gross income These limitations do not apply to nonstock, nonprofit educational institutions.	**Sec. 27 (B).** ***Proprietary Educational Institutions and Hospital. –*** *[xxx] Provided, further,* That if the gross income from 'unrelated trade, business or other activity' exceeds fifty percent (50%) of the total gross income derived by such educational institutions or hospitals from all sources, the tax prescribed in Subsection (A) hereof shall be imposed on the entire taxable income. For purposes of this Subsection, the term 'unrelated trade, business or other activity' means *any trade, business or other activity, the conduct of which is not substantially related to the exercise or performance by such educational institution or hospital of its primary purpose or function*. 'Proprietary' means a private hospital or any private school maintained and administered by private individuals or groups with an issued permit to operate from the Department of Education (DepEd), or the Commission on Higher Education (CHED), or the Technical Education and Skills Development Authority (TESDA), as the case may be, in accordance with existing laws and regulations.
🟠CIR v. CA & YMCA	*Supra.*	Under Sec. 30, last paragraph, the income of exempt organizations (such as the YMCA)	**Sec. 30.** ***Exemptions from Tax on Corporations.*** – [xxx] Notwithstanding the

		from any of their properties, real or personal, be subject to the tax imposed. Thus, rentals received by YMCA are taxable.	provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to tax imposed under this Code.
✅PAGCOR v. BIR [*En Banc*]	Congress amended the NIRC, which excluded PAGCOR from the enumeration of GOCCs exempted from liability for CIT. The Court upheld the validity of the law. Accordingly, BIR issued RMC No. 33-2013, which essentially implemented the amendatory law. Thus, PAGCOR's income from its operations and licensing of gambling casinos, clubs and other similar recreation or amusement places, gaming pools, and other related operations are now subject to CIT. Moreover, PAGCOR was also subject to a 5% franchise tax of the gross revenue/earnings it derives from its operations and licensing (pursuant to PD 1869). Did the BIR erroneously interpret the Court decision? <u>YES</u>	PAGCOR's income from gaming operations is subject *only* to 5% franchise tax under PD 1869, while its income from other related services is subject to CIT, pursuant to PD 1869 and the Tax Code. *First.* Under PD 1869, PAGCOR is subject to income tax only with respect to its operation of related services. Accordingly, the income tax exemption under Sec. 27 (C) clearly pertains *only to PAGCOR's income from operation of related services*. This exemption could not have been applicable to PAGCOR's income from gaming operations as it is already exempt under PD 1869, Sec. 13 (2) (a). In other words, there was no need for Congress to grant tax exemption to PAGCOR with respect to its income from gaming operations as the same is already exempted from all taxes of any kind or form, income or otherwise, whether national or local, under its Charter, save only for the 5% franchise tax.	**Sec. 27 (C) *Government-owned or –Controlled Corporations, Agencies or Instrumentalities.*** - The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Home Development Mutual Fund (HDMF), the Philippine Health Insurance Corporation (PHIC), and the local water districts shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity.
🟠CIR v. G. Sinco Educational Corp. [*En Banc*]	Sinco established and operated the Foundation College of Dumaguete. It became the VG Sinco Educational Institution, when it was organized as a nonstock corporation. From 1949 to 1953, it derived gross profits from tuition fees. The CIR assessed against the college an income tax for the years 1950 and 1951 in the aggregate sum of P5,364.77, which was paid by the college. Two years later, the corporation filed an action for refund, alleging that it is exempt from income tax under Sec. 27 (e) of the old Tax Code. The corporation claims its exemption, because it is allegedly organized and maintained exclusively for the educational purposes and	The fact is that, as it has been established, the appellee is a nonprofit institution and since its organization it has never distributed any dividend or profit to its stockholders. Of course, part of its income went to the payment of its teachers or professors and to the other expenses of the college incident to an educational institution but *none of the income has ever been channeled to the benefit of any individual stockholder*. The authorities are clear to the effect that whatever payment is made to those who work for a school or college as a remuneration for their services is not considered as distribution of profit as would make the school one	**Sec. 30 *Exemptions from Tax on Corporations.*** - The following organizations shall not be taxed under this Title in respect to income received by them as such: [xxx] (E) Nonstock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans, no part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person

	no part of its net income inures to the benefit of any private individual. On the other hand, the CIR presented the corporation's AFS which showed a substantial portion of the net profits going to V.G. Sinco. According to Sinco, those accounts were for his salary as president, chairman of the Board and teacher. Is the corporation exempt from taxes? YES	conducted for profit.	
🟠CIR v. JP Morgan Chase Bank, N.A. – Philippine Customer Care Center	*Supra.*		
Capital Gains and Losses			
✅Calasanz v. CIR	Calasanz inherited from her father an agricultural land. To liquidate her inheritance, Calasanz had the land surveyed and subdivided into lots. Improvements such as good roads, concrete gutters, drainage and lighting system were introduced to make the lots saleable. Soon after, the lots were sold to the public at a profit. In their joint ITR in 1957, Sps. Calasanz disclosed a profit of P31,060.06 from the sale of the lots, and reported P15,530.03 as taxable capital gains. Upon audit and review, the BIR assessed a deficiency income tax on the profits derived from the sale of lots based on the *rates for ordinary income*. Are the gains realized from the sale of the lots taxable in full as ordinary income or capital gains taxable at capital gain rates? ORDINARY	The assets of a taxpayer are classified for income tax purposes into *ordinary assets* and *capital assets*. The statutory definition of capital assets is negative in nature. If the asset is not among the exceptions, it is a capital asset. Conversely, assets falling within the exceptions are ordinary assets. And necessarily, any gain resulting from the sale or exchange of an asset is a capital gain or an ordinary gain depending on the kind of asset involved in the transaction. Also a property initially classified as a capital asset may thereafter be treated as an ordinary asset if a combination of the factors indubitably tend to show that the activity was in furtherance of or in the course of the taxpayer's trade or business. - Thus, a sale of inherited real property usually gives capital gain or loss even though the property has to be subdivided or improved or both to make it salable. However, if the inherited property is substantially improved or very actively sold or both it may be treated as held primarily for sale to customers in the ordinary course of the heir's business.	In this case, Sps. Calasanz are engaged in the activities employed by one engaged in the business of selling real estate (ordinary assets; ordinary gains). - They did not sell the land in the condition in which they acquired it. While the land was originally devoted to rice and fruit trees, it was subdivided into small lots and in the process converted into a residential subdivision and given the name Don Mariano Subdivision. - As a matter of fact, the estimated improvements of the lots sold reached P170,028.60 whereas the cost of the land was only P4,742.66. - There is authority that **a property ceases to be a capital asset if the amount expended to improve it is double its original cost**, for the extensive improvement indicates that the seller held the property primarily for sale to customers in the ordinary course of his business

✅Tuason Jr. v. Lingad	In 1948, Tuason inherited from his mother several tracts of land, among which were two contiguous parcels located on Pureza and Sta. Mesa Sts. During his mother's lifetime, the two parcels of land were subdivided into 29 lots, of which 28 were allocated to then occupants who had lease contracts. The 29th lot wasn't leased. After Tuason took possession, he sold the 28 lots. In 1952, the 29th lot was dumped and filled and divided into small lots and paved with macadam roads. The 29th lot was also sold. In 1953–54, Tuason reported his income from the sale of the small lots as *long-term capital gains*. The CIR approved this treatment. In 1957, Tuason as before treated his income from the sale of the small lots as capital gains and included only ½ of it as taxable income. In 1963, the CIR reversed himself and considered Tuason's profits as ordinary gains. Are the properties that the petitioner inherited and sold off in small lots considered capital assets? <u>NO</u>	The term 'capital assets' means property held by the taxpayer (whether or not connected with his trade or business), but does not include: 1. stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year or 2. property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or 3. property used in the trade or business, of a character which is subject to the allowance for depreciation provided in Subsection (F) of Section 34; or 4. real property used in trade or business of the taxpayer If the taxpayer sells or exchanges any of the properties above-enumerated, any gain or loss relative thereto is an ordinary gain or an ordinary loss; the gain or loss from the sale or exchange of all other properties of the taxpayer is a capital gain or a capital loss. If a gain is realized by a taxpayer (other than a corporation) from the sale or exchange of capital assets held for more than 12 months, only 50% of the net capital gain shall be taken into account in computing the net income. - The tax code's provision on so-called long-term capital gains constitutes a *statute of partial exemption*. - Thus, the application of the term "capital assets" is necessarily narrow, while its exclusions must be interpreted broadly.	When the petitioner obtained by inheritance the parcels in question, transferred to him was not merely the duty to respect the terms of any contract thereon, but as well the correlative right to receive and enjoy the fruits of the business and property which the decedent had established and maintained.
✅China Banking Corp. v. CA [*En Banc*]	In 1980, China Banking Corp. (CBC) made a 53% equity investment in the First CBC Capital (Asia) Ltd., a Hong Kong subsidiary. The investment amounted to P16.2M.	An equity investment is a capital, not ordinary, asset of the investor–the sale or exchange of which results either in a capital gain or capital loss. The gain or loss is ordinary when the	In this case, First CBC is a subsidiary corporation of CBC whose shares in the said investee corporation are not intended for purchase/sale but as an investment. Thus, any

	However, it was shown that First CBC became insolvent. Thus, with the approval of BSP, CBC wrote-off as being *worthless* its investment in its 1987 ITR and treated it as a bad debt or as an ordinary loss deductible from its gross income. The BIR disallowed the deduction and assessed CBC for income tax deficiency. Assuming that the securities had indeed become worthless, the BIR held the view that they should then be classified as "capital loss," and *not as a bad debt expense,* there being no indebtedness to speak of between petitioner and its subsidiary. Did the CIR err in disallowing the deduction? NO	property sold or exchanged is *not* a capital asset. Shares of stock would be ordinary assets *only to a dealer in securities or a person engaged in the purchase and sale of, or an active trader in securities*. In the hands, however, of another who holds the shares of stock by way of an investment, the shares to him would be capital assets. When the shares held by such investors become worthless, the loss is deemed to be a loss from the sale or exchange of capital assets. A capital gain/loss normally requires the concurrence of two conditions for it to result: 1. There is a sale/exchange 2. The thing sold/exchanged is a capital asset Capital losses are allowed to be deducted only to the extent of capital gains, *i.e.,* gains derived from the sale or exchange of capital assets, and not from any other income of the taxpayer.	loss would be a capital loss–not an ordinary loss–to the investor. The capital loss sustained by CBC can only be deducted from capital gains, if any, derived by it during the same taxable year that the securities have become worthless.
Determination of gain/loss from sale of property			
✅CIR v. Rufino	The Rufinos are the majority stockholder of the Old Corporation, organized in 1934, terminating on Jan. 25, 1959. The Rufinos are also the majority stockholders of the New Corporation, organized on Dec. 8, 1958 for a term of 50 years. In a special stockholders' meeting of the Old Corporation, a resolution was passed authorizing it to merge with the New Corporation by transferring all its business, assets, goodwill and liabilities to the latter. In exchange, the New Corporation would issue and distribute to the shareholders of the Old Corporation one share for each share held by them. It was expressly declared that the merger of the Old Corporation with the New Corporation was necessary to continue the exhibition of moving pictures at the Lyric and Capitol	There was a valid merger although the actual transfer of the properties subject of the Deed of Assignment was not made on the date of the merger. - Obviously, it was necessary for the Old Corporation to surrender its net assets first to the New Corporation before the latter could issue its own stock to the shareholders of the Old Corporation because the New Corporation had to increase its capitalization for this purpose. The basic consideration, of course, is the purpose of the merger, as this would determine whether the exchange of properties involved therein shall be subject or not to the capital gains tax. The criterion laid	**Sec. 40 (C) (2). *Exception.* –** No gain or loss shall be recognized on a corporation or on its stock or securities if such corporation is a party to a reorganization and exchanges property in pursuance of a plan of reorganization solely for stock or securities in another corporation that is a party to the reorganization. **Sec. 40 (C) (6) (b). *Definitions.* –** The term "merger" or "consolidation", when used in this Section, shall be understood to mean: (i) the ordinary merger or consolidation, or (ii) the acquisition by one corporation of all or substantially all the properties of another corporation solely for stock: *Provided, That* for a transaction to be regarded as a merger or consolidation within the purview of this

	Theaters. Thus, the Old Corporation and the New Corporation signed a Deed of Assignment. The resolution of the Old Corporation of Dec. 17, 1958, and the Deed of Assignment of Jan. 9, 1959, were approved in a resolution by the stockholders of the New Corporation in their special meeting on Jan. 12, 1959. In the same meeting, the increased capitalization of the New Corporation to P2,000,000.00 was also divided into 200,000 shares at P100.00 par value each share, and the said increase was registered on Mar. 5, 1959, with the Securities and Exchange Commission. Finally, the Rufinos got new shares in the New Corporation. The BIR examined this and declared that the merger was not undertaken for a *bona fide* business purpose, but merely to avoid liability for the CGT. Thus, the BIR imposed deficiency assessments against the Rufinos. Was there a valid merger? <u>YES</u>	down by the law is that the merger "must be undertaken for a bona fide business purpose and not solely for the purpose of escaping the burden of taxation." We must therefore seek and ascertain the intention of the parties. It has been suggested that one certain indication of a scheme to evade the capital gains tax is the subsequent dissolution of the new corporation after the transfer to it of the properties of the old corporation and the liquidation of the former soon thereafter. We see no such furtive intention in the instant case. It is clear, in fact, that the purpose of the merger was to continue the business of the Old Corporation, whose corporate life was about to expire, through the New Corporation to which all the assets and obligations of the former had been transferred. It may be recalled at this point that under the original provisions of the old Corporation Law, which was in effect when the merger agreement was concluded in 1959, it was not possible for a corporation, by mere amendment of its charter, to extend its life beyond the time fixed in the origin articles. What is also worth noting is that, as in the case of the Old Corporation when it was dissolved on December 31, 1958, there has been no distribution of the assets of the New Corporation since then and up to now, as far as the record discloses. To date, the private respondents have not derived any benefit from the merger of the Old Corporation and the New Corporation almost three decades earlier that will make them subject to the capital gains tax.	Section, it must be undertaken for a bona fide business purpose and not solely for the purpose of escaping the burden of taxation: Provided, further, That in determining whether a bona fide business purpose exists, each and every step of the transaction shall be considered and the whole transaction or series of transaction shall be treated as a single unit: *Provided, finally,* That in determining whether the property transferred constitutes a substantial portion of the property of the transferor, the term "property" shall be taken to include the cash assets of the transferor.
✅Gregory v. Helvering (US)	A corporation (United Mortgage) wholly owned by Gregory transferred 1,000 shares of stock in another corporation (Averill) held by it among its assets to a new corporation. The new corporation issued all of its shares to Gregory. Six days later, the new corporation	The question for determination is whether'what was done, apart from the tax motive, was the thing which the statute intended. (NO) The Tax Code does not speak of a transfer of	In these circumstances, the facts speak for themselves and are susceptible of but one interpretation. The whole undertaking, though conducted according to the terms of subdivision (B), was in fact an elaborate and devious form of conveyance masquerading as

	was dissolved and was liquidated by the distribution of the 1,000 shares to Gregory, who immediately sold them for her individual profit. No other business was transacted, or intended to be transacted, by the new corporation. The Commissioner assessed deficiency taxes, ruling that the reorganization attempt was without substance and that Gregory is liable as if the United Mortgage has paid her a dividend consisting of the amount realized from the sale of the shares. Is Gregory liable for the deficiency tax? YES	assets by one corporation to another in pursuance of a plan having no relation to the business of either, as plainly is the case here. *What do we find?* Simply an operation having no business or corporate purpose–a mere device which put on the form of a corporate reorganization as a disguise for concealing its real character, and the sole object and accomplishment of which was the *consummation of a preconceived plan*, not to reorganize a business or any part of a business, but to transfer a parcel of corporate shares to Gregory. No doubt, a new and valid corporation was created. But that corporation was nothing more than a contrivance to the end last described. It was brought into existence for no other purpose; it performed, as it was intended from the beginning it should perform, no other function. When that limited function had been exercised, it immediately was put to death.	a corporate reorganization, and nothing else. The rule which excludes from consideration the **motive of tax avoidance** is not pertinent to the situation, because the transaction upon its face lies outside the plain intent of the statute. To hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose.
Administrative Provisions			
✅Banas Jr. v. CA	In 1976, Bañas sold to Ayala a parcel of land for P2.3M. Per the DOAS, Ayala shall pay upon signing P461,754, while the balance of P1.85M was to be paid in 4 equal consecutive annual installments. Thus, the periodic payments will be done in 1977, 1978, 1979, and 1980. However, on the same day, Bañas discounted the PN with Ayala for its face value (P1.85M). Ayala issued 9 checks to Bañas with the uniform amount of P205,224 dated Feb. 20, 1976. In his 1976 ITR, Bañas reported the initial payment as income. In the succeeding years, until 1980, Bañas reported a uniform income of P230,877 as gain from sale of capital asset. For the BIR, they discovered that petitioner had no outstanding receivable from the 1976 land sale to Ayala and concluded that the sale was cash and the entire profit should have been taxable in 1976 since the income was wholly derived in 1976. Did the CA err in finding that Bañas's income	**General rule:** The *whole profit* accruing from a sale of property is taxable as income in the same year the sale is made. **Exception:** If not all of the sale price is received during such year, and a statute provides that the income shall be taxable in the year in which it is "received," the profit from an installment sale is to be apportioned between or among the years in which such installments are paid and received. Among the entities who may use the installment method is a *seller of real property* who disposes of his property on installment, *provided that the initial payment does not exceed 25%* of the selling price. - Initial payment – The payment received in cash or property, excluding evidence of indebtedness due and payable in subsequent years (*e.g.,* PNs, mortgage) given of	When Banas discounted the PNs issued by Ayala on the same day of the sale, he lost the right to report the sale as a sale on installment since a taxable disposition resulted and Banas was required by law to report in his returns the income derived from the discounting.

	from the 1976 sale should be declared as a cash transaction in his ITR for the same year? <u>NO</u>	the purchaser during the taxable year of sale. - It does *not* include amounts received by the vendor in the year of the sale from the disposition to a third person of notes given by the vendee as part of the purchase price which are due and payable in subsequent years. If the initial payment is within 25% of total contract price, exclusive of the proceeds of discounted notes, the sale qualifies as an installment sale. Else, it is a deferred sale. Where an installment obligation is discounted at a bank or finance company, a taxable disposition results, even if the seller– a. Guarantees its payment b. Continues to collect on the installment obligation c. Handles repossession of merchandise in case of default **A taxable disposition results when the discounting of the promissory note is done by the seller himself.** Logically, then, the income should be reported at the time of the actual gain. Although the proceeds of a discounted PN is not considered initial payment, still, it must be included as taxable income on the year it was converted to cash.	
Philam Asset Management Inc. (PAMI) v. CIR	PAMI is the investment manager of both Philippine Fund Inc. and Philam Bond Fund Inc., which are open-end investment companies, in the sale of their shares of stocks and in the investment of the proceeds of these sales into a diversified portfolio of debt and equity securities. Thus, PFI and PBFI agreed to pay PAMI, by way of compensation, a monthly management fee from which PFI and PBFI withhold the amount equivalent to a 5% creditable tax. In 1998, PAMI filed its ITR and declared a net loss. Consequently, it failed to utilize the creditable tax withheld worth P522,092. Thus, PAMI filed an	<u>*Refund/credit*</u> Sec. 76 offers two options to a taxable corporation whose total quarterly income tax payments in a given taxable year *exceeds* its total income tax due: 1. Filing for a tax refund 2. Availing of a tax credit The <u>first option</u> is relatively simple. Any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for the refund. The <u>second option</u> works by applying the refundable amount, as shown on	SEC. 76. - Final Adjustment Return. - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either: (A) Pay the balance of tax still due; or (B) Carry-over the excess credit; or (C) Be credited or refunded with the excess amount paid, as the case may be.

	administrative claim for refund with the BIR. The BIR did not act on the request, thus, prompting it to file with the CTA. The CTA denied the refund, which the CA affirmed. The BIR denied the claim of petitioner for a refund of excess taxes withheld in 1997, because the latter (1) had not indicated in its ITR for that year whether it was opting for a credit or a refund; and (2) had not submitted as evidence its 1998 ITR, which could have been the basis for determining whether its claimed 1997 tax credit had not been applied against its 1998 tax liabilities. Should the refund be granted? <u>YES</u>	the FAR of a given taxable year, against the estimated quarterly income tax liabilities of the succeeding taxable year. These two options are **alternative in nature**. Thus, a corporation must signify its intention by marking the corresponding option box provided in the final adjusted return (FAR). One cannot get a tax refund and a tax credit at the same time for the same excess income taxes paid. Failure to signify one's intention in the FAR does not mean outright barring a valid request for a refund, should one still choose this option later on. A tax credit should be construed merely as an alternative remedy to a tax refund under Sec. 76, subject to prior verification and approval by the BIR. The reason for requiring that a choice be made in the FAR upon its filing is to ease tax administration. <u>*Carry-over*</u> The carry-over option under Sec. 76 is *permissive*. A corporation entitled to a tax refund or a tax credit for excess payment of quarterly income taxes may carry over and credit the excess income taxes paid in a given taxable year against the estimated income tax liabilities of the succeeding quarters. Once chosen, the carry- over option shall be considered irrevocable for that taxable period, and no application for a tax refund or issuance of a tax credit certificate shall then be allowed.	In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid during the year, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the said excess quarterly income taxes paid against the income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor: *Provided,* that in case the taxpayer cannot carry over the excess income tax credit due to dissolution or cessation of business, the taxpayer shall file an application for refund of any unutilized excess income tax credit, and the Bureau of Internal Revenue shall decide on the application and refund the excess taxes within two (2) years from the date of the dissolution or cessation of business.
University Physicians Services Inc. – Management Inc. (UPSI-MI) v. CIR	UPSI-MI filed its ITR for TY 2006, reflecting an income tax overpayment of P5.1M. Subsequently, on Nov. 14, 2007, it filed an annual ITR for the short period FY that ended Mar. 31, 2007, reflecting the income tax overpayment of P5.1M from the previous year as "prior year's excess credits." On the same date, UPSI-MI filed an amended ITR reflecting the removal of the claim, amending it from P5.1M to P2.2M. The following year, UPSI-MI filed with the BIR a claim for refund and/or issuance of a tax credit certificate in the	Our reading of the law assumes the interpretation that the irrevocability is limited only to the option of carry-over, such that a taxpayer is still *free to change its choice after electing a refund of its excess tax credit*. But once it opts to carry over such excess creditable tax, after electing refund or issuance of tax credit certificate, the carry-over option becomes irrevocable. Accordingly, the previous choice of a claim for refund, even if subsequently pursued, may no longer be granted.	Applying the foregoing precepts to the given case, UPSI-MI is barred from recovering its excess creditable tax through refund or TCC. It is undisputed that despite its initial option to refund its 2006 excess creditable tax, UPSI-MI subsequently indicated in its 2007 short-period FAR that it carried over the 2006 excess creditable tax and applied the same against its 2007 income tax due. The CTA was correct in considering UPSI-MI to have constructively chosen the option of carry-over, for which reason, the irrevocability rule

	amount of P2.9M, representing alleged excess and unutilized creditable WT for 2006. The BIR did not act and the CTA denied the claim. Is UPSI-MI entitled to a refund when it thereafter filed its ITR for the short period indicating the option of carry-over? NO	Under Sec. 76, there are two options available to the corporation whenever it overpays its income tax for the taxable year: 1. To carry over and apply the overpayment as tax credit against the estimated quarterly income tax liabilities of the succeeding taxable years (automatic tax credit) until fully utilized (*i.e.,* there is no prescriptive period) 2. To apply for a cash refund or issuance of a tax credit certificate within the prescribed period. Sec. 76 does not prevent a taxpayer who originally opted for a refund or tax credit certificate from shifting to the carry-over of the excess creditable taxes to the taxable quarters of the succeeding taxable years. However, in case the taxpayer decides to shift its option to carry-over, it may no longer revert to its original choice due to the irrevocability rule. As Sec. 76 unequivocally provides, once the option to carry over has been made, it shall be irrevocable. Sec. 76 suggests that there are no qualifications or conditions attached to the rule on irrevocability.	forbade it to revert to its initial choice. It does not matter that UPSI-MI had not actually benefited from the carry-over on the ground that it did not have a tax due in its 2007 short period. Neither may it insist that the insertion of the carry-over in the 2007 FAR was by mere mistake or inadvertence.
UCPB v. CIR	UCPB was in the process of disposing of real properties acquired as payments for unpaid principal and interests during TY 2004. According to UCPB, these sales are considered sales of ordinary assets, subject to 6% CWT. However, since UCPB did not have taxable income for TY 2004, these creditable taxes withheld were not utilized. Subsequently, UCPB filed its amended annual ITR, both reflecting losses and excess tax credits. In 2007, UCPB claimed for refund or for the issuance of a tax credit certificate of its unutilized CWT for TY 2004. The BIR did not act on the claim, thus, it filed a petition for review with the CTA. The CTA denied the claim.	Once the taxpayer opts to carry-over the excess income tax against the taxes due for the succeeding taxable years, such option is irrevocable for the whole amount of the excess income tax, thus, prohibiting the taxpayer from applying for a refund for that same excess income tax in the next succeeding taxable years. The unutilized excess tax credits will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income tax liabilities in the succeeding taxable years until fully utilized. The taxpayer's options under Sec. 76 are qualified by the irrevocability rule **only as to the option to carry-over**, not the option to	In the case of UCPB, it marked the option to "To be issued a Tax Credit Certificate" with respect to its income tax overpayment in its first, second, and third amended annual ITRs for the taxable year 2004. However, in its original Quarterly Income Tax Returns for taxable year 2005, it carried over the same as “prior year’s excess credits.” UCPB's option to be issued a tax credit certificate was negated by its very act of carrying over the excess amount as excess tax credits in its 2005 Quarterly ITRs. And since UCPB used its option to carry-over, it may no longer revert to its original choice due to the irrevocability rule.

	Is UCPB entitled to the claim? NO	claim a refund, as is evident from the wording of the law.	
Mindanao II Geothermal Partnership (M2GP) v. CIR	In 2009, M2GP filed its annual ITR for CY 2008, reporting a gross income of P91M, subject to CWT. However, it was unable to utilize the income taxes withheld, hence resulting in excess income tax payments of P27.3M. It did not mark any chosen option in its 2008 annual ITR as regards the income tax overpayment, but it reflected the amount as "prior year's excess credits" in its 2009 annual ITR. In late 2009, M2GP began winding-up. In Mar. 2010, the partnership was dissolved. On even date, M2GP filed its Annual ITR for CY 2009, reporting no income tax liability. M2GP marked the boxes corresponding to the options to be refunded and to be issued a TCC in the amount of PHP2,746,426.31 in its ITR. M2GP also filed with the BIR its administrative claim for refund or issuance of a TCC for its excess CWT for CY 2008 in the amount of PHP4,440,160.00 and PHP2,746,426.31 for 2009, in the total amount of PHP7,186,586.00. Is M2GP entitled to a refund? YES	M2GP is *not* required to submit a short period return covering Jan. 1, 2010 to Mar. 29, 2010 as a precondition to its refund claim for 2008 and 2009. A short period return shall be filed when: a. There is a change in the accounting period of the entity, other than an individual; and b. In other cases where a separate adoption by the corporation of a resolution or plan for its dissolution (Sec. 52 (C)). In other words, a corporation contemplating dissolution shall file a short period return only in instances when its taxable period was shortened because of the dissolution. The short period return is the correct return described in the Tax Code, Section 52 (C) as it is reflective of the results of the operations from the beginning of the taxable year until the cessation of business in the middle of the year. To be sure, the correct return is the basis of the BIR in issuing a tax clearance. It would show in the return whether the dissolving entity still has tax due or is entitled to a refund based on the adjusted figures.	M2GP was dissolved at the end of CY 2009, when MPEHC withdrew as a general partner on January 1, 2010. A short period return becomes unnecessary for CY 2009 because M2GP's taxable period was not shortened. The Annual ITR is, therefore, sufficient compliance with the requirement of the 1997 Tax Code Section 52 (C) on the filing of a correct return.
United Airlines Inc. (UAL) v. CIR	UAL used to be an online international carrier of passenger and cargo. But on Feb. 21, 1998, it appointed Aerotel Ltd. Corp. as its general sales agent, while it ceased cargo operations on Feb. 1, 2001. In Apr. 2002, UAL filed with CIR a claim for income tax refund. It sought the refund of P15.9M pertaining to income taxes paid on gross passenger and cargo revenues for the taxable years 1999 to 2001, which included the amount of P5M allegedly representing income taxes paid in 1999 on passenger revenue from tickets sold in the Philippines, the uplifts of which did not originate in the Philippines. UAL argued that since it no longer operated passenger flights	UAL's arguments regarding the propriety of such determination by the CTA are misplaced. Under Sec. 72, the CTA can make a valid finding that petitioner made erroneous deductions on its gross cargo revenue; that because of the erroneous deductions, petitioner reported a lower cargo revenue and paid a lower income tax thereon; and that petitioner's underpayment of the income tax on cargo revenue is even higher than the income tax it paid on passenger revenue subject of the claim for refund, such that the refund cannot be granted.	SEC. 72. Suit to Recover Tax Based on False or Fraudulent Returns. — When an assessment is made in case of any list, statement or return, which in the opinion of the Commissioner was false or fraudulent or contained any understatement or undervaluation, no tax collected under such assessment shall be recovered by any suit, unless it is proved that the said list, statement or return was not false nor fraudulent and did not contain any understatement or undervaluation; but this provision shall not apply to statements or returns made or to be made in good faith regarding annual depreciation of oil or gas wells and mines.

	originating from the Philippines beginning February 21, 1998, its passenger revenue for 1999, 2000 and 2001 cannot be considered as income from sources within the Philippines, and hence should not be subject to Philippine income tax, per RP-US Tax Treaty. The BIR and CTA denied UAL's claim. The CTA found that petitioner had underpaid its GPB tax for 1999 because petitioner had made deductions from its gross cargo revenues in the income tax return it filed for the taxable year 1999, the amount of underpayment even greater than the refund sought for erroneously paid GPB tax on passenger revenues for the same taxable period. Hence, the CTA ruled petitioner is not entitled to a tax refund. Is UAL entitled to the income tax refund (TY '99 passenger revenues)? NO		*In the case at bar,* the CTA explained that it merely determined whether petitioner is entitled to a refund based on the facts. On the assumption that UAL filed a correct return, it had the right to file a claim for refund of GPB tax on passenger revenues it paid in 1999 when it was not operating passenger flights to and from the Philippines. However, upon examination by the CTA, petitioner's return was found erroneous as it understated its gross cargo revenue for the same taxable year due to deductions of two (2) items consisting of commission and other incentives of its agent. Having underpaid the GPB tax due on its cargo revenues for 1999, petitioner is not entitled to a refund of its GPB tax on its passenger revenue, the amount of the former being even much higher (P31.43 million) than the tax refund sought (P5.2 million). The CTA therefore correctly denied the claim for tax refund after determining the proper assessment and the tax due