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₱5,000.00 as attorney's fees and ₱1,000.00 as litigation expenses. Costs against petitioners.

**SO ORDERED.**

*Puno, Mendoza, Quisumbing,* and *Buena, JJ.,* concur.

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**THIRD DIVISION**

[G.R. No. 112675. January 25, 1999]

**AFISCO INSURANCE CORPORATION; CCC INSURANCE CORPORATION; CHARTER INSURANCE CO., INC.; CIBELES INSURANCE CORPORATION; COMMONWEALTH INSURANCE COMPANY; CONSOLIDATED INSURANCE CO., INC.; DEVELOPMENT INSURANCE & SURETY CORPORATION; DOMESTIC INSURANCE COMPANY OF THE PHILIPPINES; EASTERN ASSURANCE COMPANY & SURETY CORP.; EMPIRE INSURANCE COMPANY, EQUITABLE INSURANCE CORPORATION; FEDERAL INSURANCE CORPORATION INC.; FGU INSURANCE CORPORATION; FIDELITY & SURETY COMPANY OF THE PHILS., INC.; FILIPINO MERCHANTS' INSURANCE CO., INC.; GOVERNMENT SERVICE INSURANCE SYSTEM; MALAYAN INSURANCE CO., INC.; MALAYAN ZURICH INSURANCE CO., INC.; MERCANTILE INSURANCE CO., INC.; METROPOLITAN INSURANCE COMPANY; METRO-TAISHO INSURANCE CORPORATION; NEW ZEALAND INSURANCE CO., LTD.; PAN-MALAYAN INSURANCE CORPORATION; PARAMOUNT INSURANCE CORPORATION; PEOPLE'S**

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**TRANS-EAST ASIA INSURANCE CORPORATION; PERLA COMPANIA DE SEGUROS, INC.; PHILIPPINE BRITISH ASSURANCE CO., INC.; PHILIPPINE FIRST INSURANCE CO., INC.; PIONEER INSURANCE & SURETY CORP.; PIONEER INTERCONTINENTAL INSURANCE CORPORATION; PROVIDENT INSURANCE COMPANY OF THE PHILIPPINES; PYRAMID INSURANCE CO., INC.; RELIANCE SURETY & INSURANCE COMPANY; RIZAL SURETY & INSURANCE COMPANY; SANPIRO INSURANCE CORPORATION; SEABOARD-EASTERN INSURANCE CO., INC.; SOLID GUARANTY, INC.; SOUTH SEA SURETY & INSURANCE CO., INC.; STATE BONDING & INSURANCE CO., INC.; SUMMA INSURANCE CORPORATION; TABACALERA INSURANCE CO., INC.—all assessed as "POOL OF MACHINERY INSURERS,"** *petitioners, vs.* **COURT OF APPEALS, COURT OF TAX APPEALS and COMMISSIONER OF INTERNAL REVENUE,** *respondents.*

## SYNOPSIS

This is a Petition For Review on *Certiorari* assailing the Decision of the Court of Appeals dismissing petitioners' appeal of the Decision of the Court of Tax Appeals which had sustained petitioners' liability for deficiency income tax, interest and withholding tax. Petitioners contended that the Court of Appeals erred in finding that the pool or clearing house was an informal partnership, which was taxable as a corporation under the NIRC. Petitioners further claimed that the remittances of the pool to the ceding companies and Munich are not dividends subject to tax. They insisted that taxing such remittances contravene Sections 24 (b) (I) and 263 of the 1977 NIRC and would be tantamount to an illegal double taxation. Moreover, petitioners argued that since Munich was not a signatory to the Pool Agreement, the remittances it received from the pool cannot be deemed dividends. However, even if such remittances were treated as dividends, they would

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have been exempt under the previously mentioned sections of the 1977 NIRC, as well as Article 7 of paragraph 1and Article 5 of the RP-West German Tax Treaty. Petitioners likewise contended that the Internal Revenue Commissioner was already barred by prescription from making an assessment.

In the present case, the ceding companies entered into a Pool Agreement or association that would handle all the insurance businesses covered under their quota-share reinsurance treaty and surplus reinsurance treaty with Munich.

Petitioner's allegation of double taxation is untenable. The pool is a taxable entity distinct from the individual corporate entities of the ceding companies. The tax on its income is different from the tax on the dividends received by the said companies. The tax exemptions claimed by petitioners cannot be granted. The sections of the 1977 NIRC which petitioners cited are inapplicable, because these were not yet in effect when the income was earned and when the subject information return for the year ending 1975 was filed. Petitioners' claim that Munich is tax-exempt based on the RP-West German Tax Treaty is likewise unpersuasive, because the Internal Revenue Commissioner assessed the pool for corporate taxes on the basis of the information return it had submitted for the year ending 1975, a taxable year when said treaty was not yet in effect. Petitioners likewise failed to comply with the requirement of Section 333 of the NIRC for the suspension of the prescriptive period. The Resolutions of the Court of Appeals are affirmed.

## SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; RULING OF THE COMMISSION OF INTERNAL REVENUE IS ACCORDED WEIGHT AND EVEN FINALITY IN THE ABSENCE OF SHOWING THAT IT IS PATENTLY WRONG.**— The opinion or ruling of the Commission of Internal Revenue, the agency tasked with the enforcement of tax laws, is accorded much weight and even finality, when there is no showing that it is patently wrong, particularly in this case where the findings and conclusions of the internal

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revenue commissioner were subsequently affirmed by the CTA, a specialized body created for the exclusive purpose of reviewing tax cases, and the Court of Appeals. Indeed, "[I]t has been the long standing policy and practice of this Court to respect the conclusions of quasi-judicial agencies, such as the Court of Tax Appeals which, by the nature of its functions, is dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of its authority."

2. **CIVIL LAW; PARTNERSHIP; REQUISITES.**— Article 1767 of the Civil Code recognizes the creation of a contract of partnership when "two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves." Its requisites are: "(1) mutual contribution to a common stock, and (2) a joint interest in the profits." In other words, 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 x x x for the transaction of business."

3. **ID.; ID.; INSURANCE POOL IN CASE AT BAR DEEMED PARTNERSHIP OR ASSOCIATION TAXABLE AS A CORPORATION UNDER SECTION 24 OF THE NIRC.**— In the case before us, the ceding companies entered into a Pool Agreement or an association that would handle all the insurance businesses covered under their quota-share reinsurance treaty and surplus reinsurance treaty with Munich. The following unmistakably indicates a partnership or an association covered by Section 24 of the NIRC: (1) The pool has a common fund, consisting of money and other valuables that are deposited in the name and credit of the pool. This common fund pays for the administration and operation expenses of the pool. (2) The pool functions through an executive board, which resembles the board of directors of a corporation, composed of one representative for each of the ceding companies. (3) True, the pool itself is not a reinsurer and does not issue any insurance policy; however, its work is indispensable, beneficial

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and economically useful to the business of the ceding companies and Munich, because without it they would not have received their premiums. The ceding companies share "in the business ceded to the pool" and in the "expenses" according to a "Rules of Distribution" annexed to the Pool Agreement. Profit motive or business is, therefore, the primordial reason for the pool's formation.

**4. TAXATION; NIRC; SECTION 24 THEREOF, UNREGISTERED PARTNERSHIPS AND ASSOCIATIONS ARE CONSIDERED AS CORPORATIONS FOR TAX PURPOSES.**— This Court rules that the Court of Appeals, in affirming the CTA which had previously sustained the internal revenue commissioner, committed no reversible error. Section 24 of the NIRC, as worded in the year ending 1975, provides: "SEC. 24. Rate of tax on corporations. — (a) Tax on domestic corporations. — A tax is hereby imposed upon the taxable net income received during each taxable year from all sources by every corporation organized in, or existing under the laws of the Philippines, no matter how created or organized, but not including duly registered general co-partnership *(compañias colectivas)*, general professional partnerships, private educational institutions, and building and loan associations xxx." Ineludibly, the Philippine legislature included in the concept of corporations those entities that resembled them such as unregistered partnerships and associations. Parenthetically, the NLRC's inclusion of such entities in the tax on corporations was made even clearer by the Tax Reform Act of 1997, which amended the Tax Code. The Court of Appeals did not err in applying Evangelista, which involved a partnership that engaged in a series of transactions spanning more than ten years, as in the case before us.

**5. ID.; DOUBLE TAXATION; DEFINED; NO DOUBLE TAXATION IN CASE AT BAR.**— Double taxation means taxing the same property twice when it should be taxed only once. That is, "xxx taxing the same person twice by the same jurisdiction for the same thing." In the instant case, the pool is a taxable entity distinct from the individual corporate entities of the ceding companies. The tax on its income is obviously different from the tax on the dividends received by the said companies. Clearly, there is no double taxation here.

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6. **ID.; TAX EXEMPTION; GRANT THEREOF NOT JUSTIFIED IN CASE AT BAR; REASONS.** — The tax exemptions claimed by petitioners cannot be granted, since their entitlement thereto remains unproven and unsubstantiated. It is axiomatic in the law of taxation that taxes are the lifeblood of the nation. Hence, "exemptions therefrom are highly disfavored in law and he who claims tax exemption must be able to justify his claim or right." Petitioners have failed to discharge this burden of proof. The sections of the 1977 NIRC which they cite are inapplicable, because these were not yet in effect when the income was earned and when the subject information return for the year ending 1975 was filed. Referring to the 1975 version of the counterpart sections of the NIRC, the Court still cannot justify the exemptions claimed. Section 255 provides that no tax shall "xxx be paid upon reinsurance by any company that has already paid the tax xxx." This cannot be applied to the present case because, as previously discussed, the pool is a taxable entity distinct from the ceding companies; therefore, the latter cannot individually claim the income tax paid by the former as their own.

7. **ID.; ID.; CANNOT BE CLAIMED BY NON-RESIDENT FOREIGN INSURANCE CORPORATION IN CASE AT BAR; REASONS; TAX EXEMPTION CONSTRUED *STRICTISSIMI JURIS*.**— Section 24 (b) (1) pertains to tax on foreign corporations; hence, it cannot be claimed by the ceding companies which are domestic corporations. Nor can Munich, a foreign corporation, be granted exemption based solely on this provision of the Tax Code because the same subsection specifically taxes dividends, the type of remittances forwarded to it by the pool. Although not a signatory to the Pool Agreement, Munich is patently an associate of the ceding companies in the entity formed, pursuant to their reinsurance treaties which required the creation of said pool. Under its pool arrangement with the ceding companies, Munich shared in their income and loss. This is manifest from a reading of Articles 3 and 10 of the Quota-Share Reinsurance Treaty and Articles 3 and 10 of the Surplus Reinsurance Treaty. The foregoing interpretation of Section 24 (b) (1) is in line with the doctrine that a tax exemption must be construed *strictissimi juris*, and the statutory exemption claimed must be expressed in a language too plain to be mistaken.

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8. **ID.; ID.; BASED ON TAX TREATY NOT APPLICABLE IN CASE AT BAR; REASON.**— The petitioners' claim that Munich is tax-exempt based on the RP-West German Tax Treaty is likewise unpersuasive, because the internal revenue commissioner assessed the pool for corporate taxes on the basis of the information return it had submitted for the year ending 1975, a taxable year when said treaty was not yet in effect. Although petitioners omitted in their pleadings the date of effectivity of the treaty, the Court takes judicial notice that it took effect only later, on December 14, 1984.

9. **ID.; ASSESSMENT AND COLLECTION OF TAX; PRESCRIPTION; CHANGE IN THE ADDRESS OF THE TAXPAYER WILL NOT TOLL THE RUNNING OF THE PRESCRIPTIVE PERIOD UNLESS THE COMMISSIONER OF INTERNAL REVENUE HAS BEEN INFORMED OF SAID CHANGE.** — The CA and the CTA categorically found that the prescriptive period was tolled under then Section 333 of the NIRC, because "the taxpayer cannot be located at the address given in the information return filed and for which reason there was delay in sending the assessment." Indeed, whether the government's right to collect and assess the tax has prescribed involves facts which have been ruled upon by the lower courts. It is axiomatic that in the absence of a clear showing of palpable error or grave abuse of discretion, as in this case, this Court must not overturn the factual findings of the CA and the CTA. Furthermore, petitioners admitted in their Motion for Reconsideration before the Court of Appeals that the pool changed its address, for they stated that the pool's information return filed in 1980 indicated therein its "present address." The Court finds that this falls short of the requirement of Section 333 of the NIRC for the suspension of the prescriptive period. The law clearly states that the said period will be suspended only "if the taxpayer informs the Commissioner of Internal Revenue of any change in the address."

**APPEARANCES OF COUNSEL**

*Angara Abello Concepcion Regala* for petitioners.

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## DECISION

**PANGANIBAN, *J.*:**

Pursuant to "reinsurance treaties," a number of local insurance firms formed themselves into a "pool" in order to facilitate the handling of business contracted with a nonresident foreign reinsurance company. May the "clearing house" or "insurance pool" so formed be deemed a partnership or an association that is taxable as a corporation under the National Internal Revenue Code (NIRC)? Should the pool's remittances to the member companies and to the said foreign firm be taxable as dividends? Under the facts of this case, has the government's right to assess and collect said tax prescribed?

### *The Case*

These are the main questions raised in the Petition for Review on *Certiorari* before us, assailing the October 11, 1993 Decision[1] of the Court of Appeals[2] in CA-GR SP 29502, which dismissed petitioners' appeal of the October 19, 1992 Decision[3] of the Court of Tax Appeals[4] (CTA) which had previously sustained petitioners' liability for deficiency income tax, interest and withholding tax. The Court of Appeals ruled:

"WHEREFORE, the petition is DISMISSED, with costs against petitioners."[5]

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[1] *Rollo*, pp. 57-69.

[2] Second Division, composed of *J.* Vicente V. Mendoza (now an associate justice of the Supreme Court), *ponente* and chairman of the Division; concurred in by *JJ.* Jesus M. Elbinias and Lourdes K. Tayao-Jaguros, members.

[3] *Rollo*, pp. 172-191.

[4] Penned by Presiding Judge Ernesto D. Acosta and concurred in by Judges Manuel K. Gruba and Ramon O. De Veyra.

[5] Decision of the Court of Appeals, p. 12; *rollo*, p. 68.

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The petition also challenges the November 15, 1993 Court of Appeals (CA) Resolution[6] denying reconsideration.

*The Facts*

The antecedent facts,[7] as found by the Court of Appeals, are as follows:

"The petitioners are 41 non-life insurance corporations, organized and existing under the laws of the Philippines. Upon issuance by them of Erection, Machinery Breakdown, Boiler Explosion and Contractors' All Risk insurance policies, the petitioners on August 1, 1965 entered into a Quota Share Reinsurance Treaty and a Surplus Reinsurance Treaty with the Munchener Ruckversicherungs-Gesselschaft (hereafter called Munich), a non-resident foreign insurance corporation. The reinsurance treaties required petitioners to form a [p]ool. Accordingly, a pool composed of the petitioners was formed on the same day.

"On April 14, 1976, the pool of machinery insurers submitted a financial statement and filed an "Information Return of Organization Exempt from Income Tax" for the year ending in 1975, on the basis of which it was assessed by the Commissioner of Internal Revenue deficiency corporate taxes in the amount of ₱1,843,273.60, and withholding taxes in the amount of ₱1,768,799.39 and ₱89,438.68 on dividends paid to Munich and to the petitioners, respectively. These assessments were protested by the petitioners through its auditors Sycip, Gorres, Velayo and Co.

"On January 27, 1986, the Commissioner of Internal Revenue denied the protest and ordered the petitioners, assessed as "Pool of Machinery Insurers," to pay deficiency income tax, interest, and with[h]olding tax, itemized as follows:

| | |
|---|---|
| Net income per information return | ₱3,737,370.00 |
| Income tax due thereon | ₱1,298,080.00 |
| Add: 14% Int. fr. 4/15/76 to 4/15/79 | 545,193.60 |

[6] *Rollo*, p. 71.

[7] The petition aptly raises only questions of law, not of facts.

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| | |
|---|---|
| TOTAL AMOUNT DUE & COLLECTIBLE | ₱1,843,273.60 |
| Dividend paid to Munich Reinsurance Company | ₱3,728,412.00 |
| 35% withholding tax at source due thereon | ₱1,304,944.20 |
| Add: 25% surcharge | 326,236.05 |
| 14% interest from 1/25/76 to 1/25/79 | 137,019.14 |
| Compromise penalty-non-filing of return | 300.00 |
| late payment | 300.00 |
| TOTAL AMOUNT DUE & COLLECTIBLE | ₱ 1,768,799.39 |
| Dividend paid to Pool Members | ₱ 655,636.00 |
| 10% withholding tax at source due thereon | ₱ 65,563.60 |
| Add: 25% surcharge | 16,390.90 |
| 14% interest from 1/25/76 to 1/25/79 | 6,884.18 |
| Compromise penalty-non-filing of return | 300.00 |
| late payment | 300.00 |
| TOTAL AMOUNT DUE & COLLECTIBLE | ₱ 89,438.68 |

"[8]

The CA ruled in the main that the pool of machinery insurers was a partnership taxable as a corporation, and that the latter's collection of premiums on behalf of its members, the ceding companies, was taxable income. It added that prescription did not bar the Bureau of Internal Revenue (BIR) from collecting the taxes due, because "the taxpayer cannot be located at the address given in the information return filed." Hence, this Petition for Review before us.[9]

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[8] CA Decision, pp. 1-3; *rollo*, pp. 57-59.

[9] The case was deemed submitted for resolution on January 20, 1998, upon receipt by this Court of the Memorandum for Respondent

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*The Issues*

Before this Court, petitioners raise the following issues:

"1.Whether or not the Clearing House, acting as a mere agent and performing strictly administrative functions, and which did not insure or assume any risk in its own name, was a partnership or association subject to tax as a corporation;

"2.Whether or not the remittances to petitioners and MUNICHRE of their respective shares of reinsurance premiums, pertaining to their individual and separate contracts of reinsurance, were "dividends" subject to tax; and

"3.Whether or not the respondent Commissioner's right to assess the Clearing House had already prescribed."[10]

*The Court's Ruling*

The petition is devoid of merit. We sustain the ruling of the Court of Appeals that the pool is taxable as a corporation, and that the government's right to assess and collect the taxes had not prescribed.

*First Issue:*
*Pool Taxable as a Corporation*

Petitioners contend that the Court of Appeals erred in finding that the pool or clearing house was an informal partnership, which was taxable as a corporation under the NIRC. They point out that the reinsurance policies were written by them "individually and separately," and that their liability was limited to the extent of their allocated share in the original risks thus reinsured.[11] Hence, the pool did not act or earn income as a reinsurer.[12] Its role was limited to its principal function of

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Commissioner. Petitioners' Memorandum was received earlier, on July 11, 1997.

[10] Memorandum for Petitioners, p. 10; *rollo*, p. 390.

[11] *Ibid.*, p.14; *rollo*, p. 394.

[12] *Ibid.*, p. 28; *rollo*, p. 408.

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"allocating and distributing the risk(s) arising from the original insurance among the signatories to the treaty or the members of the pool based on their ability to absorb the risk(s) ceded[;] as well as the performance of incidental functions, such as records, maintenance, collection and custody of funds, etc."[13]

Petitioners belie the existence of a partnership in this case, because (1) they, the reinsurers, did not share the same risk or solidary liability;[14] (2) there was no common fund;[15] (3) the executive board of the pool did not exercise control and management of its funds, unlike the board of directors of a corporation;[16] and (4) the pool or clearing house "was not and could not possibly have engaged in the business of reinsurance from which it could have derived income for itself."[17]

The Court is not persuaded. The opinion or ruling of the Commission of Internal Revenue, the agency tasked with the enforcement of tax laws, is accorded much weight and even finality, when there is no showing that it is patently wrong,[18] particularly in this case where the findings and conclusions of the internal revenue commissioner were subsequently affirmed by the CTA, a specialized body created for the exclusive purpose of reviewing tax cases, and the Court of Appeals.[19] Indeed,

"[I]t has been the long standing policy and practice of this Court to respect the conclusions of quasi-judicial agencies, such as the

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[13] *Ibid.*, p. 15; *rollo*, p. 395.

[14] *Ibid.*, p. 24; *rollo*, p. 404.

[15] *Ibid.*, p. 26; *rollo*, p. 406.

[16] *Ibid.*, pp. 24-25; *rollo*, pp. 404-405.

[17] *Ibid.*, p. 25; *rollo*, p. 405.

[18] See *Joebon Marketing Corporation v. Court of Appeals, the Commissioner of Internal Revenue*, GR No. 125070, July 17, 1996, Third Division, Minute Resolution; citing *Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary*, 238 SCRA 63, 68, November 10, 1994.

[19] See *Commissioner of Internal Revenue v. Court of Appeals*, 271 SCRA 605, 619-620, April 18, 1997.

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Court of Tax Appeals which, by the nature of its functions, is dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of its authority."[20]

This Court rules that the Court of Appeals, in affirming the CTA which had previously sustained the internal revenue commissioner, committed no reversible error. Section 24 of the NIRC, as worded in the year ending 1975, provides:

"SEC. 24. *Rate of tax on corporations.*— (a) *Tax on domestic corporations.*—A tax is hereby imposed upon the taxable net income received during each taxable year from all sources by every corporation organized in, or existing under the laws of the Philippines, no matter how created or organized, but not including duly registered general co-partnership (*compañias colectivas* ), general professional partnerships, private educational institutions, and building and loan associations xxx."

Ineludibly, the Philippine legislature included in the concept of corporations those entities that resembled them such as unregistered partnerships and associations. Parenthetically, the NLRC's inclusion of such entities in the tax on corporations was made even clearer by the Tax Reform Act of 1997,[21] which amended the Tax Code. Pertinent provisions of the new law read as follows:

"SEC. 27. Rates of Income Tax on Domestic Corporations. —

*(A) In General.*— Except as otherwise provided in this Code, an income tax of thirty-five percent (35%) is hereby imposed upon the taxable income derived during each taxable year from all sources within and without the Philippines by every corporation, as defined in Section 22 (B) of this Code, and taxable under this Title as a corporation xxx."

"SEC. 22.— Definition.— When used in this Title:

xxx xxx xxx

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[20] *Commissioner of Internal Revenue v. Court of Appeals*, 204 SCRA 182, 189-190, per Regalado, *J.*

[21] RA No. 8424, which took effect on January 1, 1998.

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(B) The term '*corporation*' shall include partnerships, no matter how created or organized, joint-stock companies, joint accounts (*cuentas en participacion*), associations, or insurance companies, but does not include general professional partnerships [or] a joint venture or consortium formed for the purpose of undertaking construction projects or engaging in petroleum, coal, geothermal and other energy operations pursuant to an operating or consortium agreement under a service contract without the Government. '*General professional partnerships*' are partnerships formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derived from engaging in any trade or business.

x x x x x x x x x"

Thus, the Court in *Evangelista v. Collector of Internal Revenue*[22] held that Section 24 covered these unregistered partnerships and even associations or joint accounts, which had no legal personalities apart from their individual members.[23] The Court of Appeals astutely applied *Evangelista*:[24]

"xxx Accordingly, a pool of individual real property owners dealing in real estate business was considered a corporation for purposes of the tax in Sec. 24 of the Tax Code in *Evangelista v. Collector of Internal Revenue, supra*. The Supreme Court said:

> 'The term 'partnership' includes a syndicate, group, pool, joint venture or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on. * * * (8 Merten's Law of Federal Income Taxation, p. 562 Note 63)'"

Article 1767 of the Civil Code recognizes the creation of a contract of partnership when "two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among

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[22] 102 Phil. 140 (1957).

[23] *Supra*, pp. 146-147; cited in Justice Jose C. Vitug, *Compendium of Tax Law and Jurisprudence*, p. 52, 2nd revised ed. (1989).

[24] Decision of the Court of Appeals, p. 5; *rollo*, p. 61.

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themselves."[25] Its requisites are: "(1) mutual contribution to a common stock, and (2) a joint interest in the profits."[26] In other words, 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."[27] Meanwhile, an association implies associates who enter into a "joint enterprise x x x for the transaction of business."[28]

In the case before us, the ceding companies entered into a Pool Agreement[29] or an association[30] that would handle all the insurance businesses covered under their quota-share reinsurance treaty[31] and surplus reinsurance treaty[32] with Munich. The following unmistakably indicates a partnership or an association covered by Section 24 of the NIRC:

(1) The pool has a common fund, consisting of money and other valuables that are deposited in the name and credit of the pool.[33] This common fund pays for the administration and operation expenses of the pool.[34]

(2) The pool functions through an executive board, which resembles the board of directors of a corporation, composed of one representative for each of the ceding companies.[35]

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[25] Art. 1767, Civil Code of the Philippines.

[26] Tolentino, *Civil Code of the Philippines*, p. 320, Vol. V (1992).

[27] *Prautch, Scholes & Co. v. Dolores Hernandez de Goyonechea*, 1 Phil. 705, 709-710 (1903), per Willard, *J.*; cited in Moreno, *Philippine Law Dictionary*, p. 445, (1982).

[28] *Morrissey v. Commissioner*, 296 US 344, 356; decided December 16, 1935, per Hughes, *CJ.*

[29] Pool Agreement, p. 1; *rollo*, p. 154.

[30] *Ibid.*, p. 2; *rollo*, p. 155.

[31] Annex C; *rollo*, pp. 72-100.

[32] Annex D; *rollo*, pp. 101-153.

[33] Pool Agreement, p. 4; *rollo*, p. 157.

[34] *Ibid.*, p. 6; *rollo*, p. 159.

[35] *Ibid.*, p. 2; *rollo*, p. 155.

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(3) True, the pool itself is not a reinsurer and does not issue any insurance policy; however, its work is indispensable, beneficial and economically useful to the business of the ceding companies and Munich, because without it they would not have received their premiums. The ceding companies share "in the business ceded to the pool" and in the "expenses" according to a "Rules of Distribution" annexed to the Pool Agreement.[36] Profit motive or business is, therefore, the primordial reason for the pool's formation. As aptly found by the CTA:

"xxx The fact that the pool does not retain any profit or income does not obliterate an antecedent fact, that of the pool being used in the transaction of business for profit. It is apparent, and petitioners admit, that their association or coaction was indispensable [to] the transaction of the business. x x x If together they have conducted business, profit must have been the object as, indeed, profit was earned. Though the profit was apportioned among the members, this is only a matter of consequence, as it implies that profit actually resulted."[37]

The petitioners' reliance on *Pascual v. Commissioner*[38] is misplaced, because the facts obtaining therein are not on all fours with the present case. In *Pascual*, there was no unregistered partnership, but merely a co-ownership which took up only two isolated transactions.[39] The Court of Appeals did not err in applying *Evangelista*, which involved a partnership that engaged in a series of transactions spanning more than ten years, as in the case before us.

*Second Issue:*
*Pool's Remittances Are Taxable*

Petitioners further contend that the remittances of the pool to the ceding companies and Munich are not dividends subject to tax. They insist that taxing such remittances contravene

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[36] *Ibid.*, p. 6; *rollo*, p. 159.

[37] CTA Decision, pp. 16-17; *rollo*, pp. 187-188.

[38] 166 SCRA 560, October 18, 1988.

[39] *Pascual v. Commissioner*, *supra*, p. 568.

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Sections 24 (b) (I) and 263 of the 1977 NIRC and "would be tantamount to an illegal double taxation, as it would result in taxing the same premium income twice in the hands of the same taxpayer."[40] Moreover, petitioners argue that since Munich was not a signatory to the Pool Agreement, the remittances it received from the pool cannot be deemed dividends.[41] They add that even if such remittances were treated as dividends, they would have been exempt under the previously mentioned sections of the 1977 NIRC,[42] as well as Article 7 of paragraph 1[43] and Article 5 of paragraph 5[44] of the RP-West German Tax Treaty.[45]

Petitioners are clutching at straws. Double taxation means taxing the same property twice when it should be taxed only once. That is, "xxx taxing the same person twice by the same jurisdiction for the same thing."[46] In the instant case, the pool is a taxable entity distinct from the individual corporate entities of the ceding companies. The tax on its *income* is obviously different from the tax on the *dividends* received by the said companies. Clearly, there is no double taxation here.

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[40] Memorandum for Petitioners, pp. 32-33; *rollo*, pp. 412-413.

[41] *Ibid.*, p. 29; *rollo*, p. 409.

[42] *Ibid.*, p. 30; *rollo*, p. 410.

[43] "1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. xxx."

[44] "5. An insurance enterprise of a Contracting State shall, except with regard to re-insurance, be deemed to have a permanent establishment in the other State, if it collects premiums in the territory of that State or insures risks situated therein through an employee or through a representative who is not an agent of independent status within the meaning of paragraph 6."

[45] Memorandum for Petitioners, p. 31; *rollo*, p. 411. Petitioners are referring to the treaty entitled "Agreement between the Federal Republic of Germany and the Republic of the Philippines for the Avoidance of Double Taxation with respect to Taxes on Income and Capital."

[46] *Victorias Milling Co., Inc. v. Municipality of Victorias, Negros Occidental*, 25 SCRA 192, 209, September 27, 1968, per Sanchez, *J.*

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The tax exemptions claimed by petitioners cannot be granted, since their entitlement thereto remains unproven and unsubstantiated. It is axiomatic in the law of taxation that taxes are the lifeblood of the nation. Hence, "exemptions therefrom are highly disfavored in law and he who claims tax exemption must be able to justify his claim or right."[47] Petitioners have failed to discharge this burden of proof. The sections of the 1977 NIRC which they cite are inapplicable, because these were not yet in effect when the income was earned and when the subject information return for the year ending 1975 was filed.

Referring to the 1975 version of the counterpart sections of the NIRC, the Court still cannot justify the exemptions claimed. Section 255 provides that no tax shall "xxx be paid upon reinsurance by any company that has already paid the tax xxx." This cannot be applied to the present case because, as previously discussed, the pool is a taxable entity distinct from the ceding companies; therefore, the latter cannot individually claim the income tax paid by the former as their own.

On the other hand, Section 24 (b) (1)[48] pertains to tax on foreign corporations; hence, it cannot be claimed by the ceding

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[47] Vitug, *supra*, p. 29; citing *Wonder Mechanical Engineering Corporation v. Court of Tax Appeals*, 64 SCRA 555, June 30, 1975. See also *Commissioner of Internal Revenue v. Court of Appeals, Court of Tax Appeals and Young Men's Christian Association of the Philippines, Inc.*, GR No. 124043, pp. 11-12, October 14, 1998; *Commissioner of Internal Revenue v. Court of Appeals*, 271 SCRA 605, 613-614, April 18, 1997.

[48] Section 24 (b) (1), as amended by RA No. 6110 which took effect on August 4, 1969, reads:

> "(b) *Tax on foreign corporations.*— (1) *Non-resident corporations.*— A foreign corporation not engaged in trade or business in the Philippines including a foreign life insurance company not engaged in the life insurance business in the Philippines shall pay a tax equal to thirty-five per cent of the gross income received during each taxable year from all sources within the Philippines, as interests, dividends, rents, royalties, salaries, wages, technical services or otherwise, emoluments or other fixed or determinable annual, periodical or casual gains, profits, and income, and capital gains: *Provided, however*, That premiums shall not include reinsurance premiums."

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companies which are domestic corporations. Nor can Munich, a foreign corporation, be granted exemption based solely on this provision of the Tax Code, because the same subsection specifically taxes *dividends*, the type of remittances forwarded to it by the pool. Although not a signatory to the Pool Agreement, Munich is patently an associate of the ceding companies in the entity formed, pursuant to their reinsurance treaties which required the creation of said pool.

Under its pool arrangement with the ceding companies, Munich shared in their income and loss. This is manifest from a reading of Articles 3[49] and 10[50] of the Quota Share Reinsurance Treaty and Articles 3[51] and 10[52] of the Surplus Reinsurance Treaty. The foregoing interpretation of Section 24 (b) (1) is in line with the doctrine that a tax exemption must be construed *strictissimi juris*, and the statutory exemption claimed must be expressed in a language too plain to be mistaken.[53]

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[49] *Rollo*, p. 73.

"The 'Ceding Companies' undertake to cede to the 'Munich' fixed quota share of 40% of all insurances mentioned in Article 2 and the 'Munich' shall be obliged to accept all insurances so ceded."

[50] *Ibid.*, p. 76.

"The Munich's proportion of any loss shall be settled by debiting it in account, and a monthly list comprising all losses paid shall be rendered to the 'Munich,' xxx."

[51] *Ibid.*, p. 102.

"The 'Ceding Companies' bind themselves to cede to the 'Munich' the entire 15 line surplus of the insurances specified in Article 2 hereof.

The surplus shall consist of all sums insured remaining after deduction of the Quota Share and of the proportion combined net retention of the 'Pool.'

The Munich undertakes to accept the amounts so ceded up to fifteen times the 'Ceding Company's' proportionate retention."

[52] *Ibid.*, p. 105.

"The 'Munich's' proportion of any loss shall be settled by debiting it in account. A monthly list comprising all losses paid shall be rendered to the 'Munich' on forms to be agreed. xxx"

[53] *Davao Gulf Lumber Corporation v. Commissioner of Internal Revenue and Court of Appeals*, GR No. 117359, p. 15, July 23, 1998.

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Finally, the petitioners' claim that Munich is tax-exempt based on the RP-West German Tax Treaty is likewise unpersuasive, because the internal revenue commissioner assessed the pool for corporate taxes on the basis of the information return it had submitted for the year ending 1975, a taxable year when said treaty was not yet in effect.[54] Although petitioners omitted in their pleadings the date of effectivity of the treaty, the Court takes judicial notice that it took effect only later, on December 14, 1984.[55]

*Third Issue:*
*Prescription*

Petitioners also argue that the government's right to assess and collect the subject tax had prescribed. They claim that the subject information return was filed by the pool on April 14, 1976. On the basis of this return, the BIR telephoned petitioners on November 11, 1981, to give them notice of its letter of assessment dated March 27, 1981. Thus, the petitioners contend that the five-year statute of limitations then provided in the NIRC had already lapsed, and that the internal revenue commissioner was already barred by prescription from making an assessment.[56]

We cannot sustain the petitioners. The CA and the CTA categorically found that the prescriptive period was tolled under then Section 333 of the NIRC,[57] because "the taxpayer cannot

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[54] See *Philippine Treaties Index: 1946-1982*, Foreign Service Institute, Manila, Philippines (1983). See also *Philippine Treaty Series*, Vol. I to VII.

[55] See *Bundesgesetzblatt: Jahrgang: 1984, Teil II* (Federal Law Gazette: 1984, Part II), p. 1008.

[56] Memorandum for Petitioners, pp. 33-35; *rollo*, pp. 413-415.

[57] "SEC. 333. *Suspension of running of statute.*— The running of the statute of limitations provided in section three hundred thirty-one or three hundred thirty-two on the making of assessment and the beginning of distraint or levy or a proceeding in the court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner of Internal Revenue is prohibited from making the assessment or beginning distraint

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be located at the address given in the information return filed and for which reason there was delay in sending the assessment."[58] Indeed, whether the government's right to collect and assess the tax has prescribed involves facts which have been ruled upon by the lower courts. It is axiomatic that in the absence of a clear showing of palpable error or grave abuse of discretion, as in this case, this Court must not overturn the factual findings of the CA and the CTA.

Furthermore, petitioners admitted in their Motion for Reconsideration before the Court of Appeals that the pool changed its address, for they stated that the pool's information return filed in 1980 indicated therein its "present address." The Court finds that this falls short of the requirement of Section 333 of the NIRC for the suspension of the prescriptive period. The law clearly states that the said period will be suspended only "if the taxpayer informs the Commissioner of Internal Revenue of any change in the address."

**WHEREFORE**, the petition is *DENIED*. The Resolutions of the Court of Appeals dated October 11, 1993 and November 15, 1993 are hereby *AFFIRMED*. Costs against petitioners.

**SO ORDERED.**

*Romero, Vitug, Purisima,* and *Gonzaga-Reyes, JJ.,* concur.

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or levy or a proceeding in court, and for sixty days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner when the taxpayer cannot be located in the address by him in the return filed upon which a tax is being assessed or collected: x x x."

[58] Decision of the Court of Appeals, p. 11; *rollo*, p. 67.