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De Leon is hereby **ACQUITTED** of the charge of violation of Section 5, Article II of Republic Act No. 9165, his guilt not having been established beyond reasonable doubt.

Accused-appellant Victor De Leon is **ORDERED** released from confinement unless he is being lawfully held for another cause. The Director of the Bureau of Corrections is **DIRECTED** to inform the Court of his action within five (5) days from notice.

SO ORDERED.

Bersamin, C.J., Gesmundo, and *Hernando,*[*] *JJ.*, concur.

Jardeleza, J., on official leave.

SECOND DIVISION

[G.R. No. 228539. June 26, 2019]

ASSOCIATION OF NON-PROFIT CLUBS, INC. (ANPC), herein represented by its authorized representative, MS. FELICIDAD M. DEL ROSARIO, *petitioner, vs.* **BUREAU OF INTERNAL REVENUE (BIR), herein represented by HON. COMMISSIONER KIM S. JACINTO-HENARES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 41 IN RELATION TO RULE 45 OF THE RULES OF COURT; NO VIOLATION OF THE DOCTRINE OF HIERARCHY OF COURTS BECAUSE THE PRESENT PETITION IS THE SOLE REMEDY TO APPEAL THE DECISION OF THE REGIONAL TRIAL

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[*] Per Raffle dated June 17, 2019.

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COURT IN CASES INVOLVING PURE QUESTIONS OF LAW. — [T]he Court holds that there was no violation of the doctrine of hierarchy of courts because the present petition for review on *certiorari*, filed pursuant to Section 2 (c), Rule 41 in relation to Rule 45 of the Rules of Court, is the *sole* remedy to appeal a decision of the RTC in cases involving pure questions of law. The doctrine of hierarchy of courts is violated only when relief may be had through multiple fora having concurrent jurisdiction over the case, such as in petitions for *certiorari, mandamus*, and prohibition which are concurrently cognizable either by the Regional Trial Courts, the Court of Appeals, or the Supreme Court. x x x Clearly, the correctness of the BIR's interpretation of the 1997 NIRC under the assailed RMC is a pure question of law, because the same does not involve an examination of the probative value of the evidence presented by the litigants or any of them. Thus, being the only remedy to appeal the RTC's ruling upholding the Circular's validity on a purely legal question, direct resort to this Court, through a Rule 45 petition, was correctly availed by ANPC.

2. ID.; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES, RELAXED; THE VALIDITY OF RMC NO. 35-2012 SHOULD HAVE BEEN FIRST SUBJECTED TO THE REVIEW OF THE SECRETARY OF FINANCE BEFORE JUDICIAL RECOURSE MAY BE HAD; THE PRESENT CASE IS AN EXCEPTION TO THE RULE IN VIEW OF THE CIRCUMSTANCES INDICATING THE URGENCY OF JUDICIAL INTERVENTION. — [A]s dictated by the rule on exhaustion of administrative remedies, the validity of RMC No. 35-2012 should have been first subjected to the review of the Secretary of Finance before ANPC sought judicial recourse with the RTC. However, as exceptions to this rule, when the issue involved is purely a legal question (as above-explained), or when there are circumstances indicating the urgency of judicial intervention — as in this case where membership fees, assessment dues, and the like of all recreational clubs would be imminently subjected to income tax and VAT — then the doctrine of exhaustion of administrative remedies may be relaxed.

3. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC) *VIS-A-VIS* RMC NO. 35-2012; RMC NO. 35-2012 PROVIDES FOR THE INTERPRETATION THAT SINCE

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THE OLD TAX EXEMPTION PREVIOUSLY ACCORDED UNDER THE 1977 NIRC TO RECREATIONAL CLUB WAS DELETED IN THE 1997 NIRC, THEN THE INCOME OF RECREATIONAL CLUBS FROM WHATEVER SOURCE SHALL BE SUBJECT TO INCOME TAX. — RMC No. 35-2012 is an interpretative rule issued by the BIR to guide all revenue officials, employees, and others concerned in the enforcement of income tax and VAT laws against clubs organized and operated exclusively for pleasure, recreation, and other non-profit purposes ("recreational clubs" for brevity). As to its income tax component, RMC No. 35-2012 provides the interpretation that since the old tax exemption previously accorded under Section 27 (h), Chapter III, Title II of Presidential Decree No. 1158, otherwise known as the "National Internal Revenue Code of 1977" (1977 Tax Code), to recreational clubs was deleted in the 1997 NIRC, then **the income of recreational clubs from whatever source, including but not limited to membership fees, assessment dues, rental income, and service fees, is subject to income tax.**

4. **ID.; ID.; DISTINCTION OF "CAPITAL" AND "INCOME", REITERATED. —** The distinction between "capital" and "income" is well-settled in our jurisprudence. As held in the early case of *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": Income as contrasted with capital or property is to be the test. **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 fund through a period of time is called income. **Capital is wealth, while income is the service of wealth**. x x x In *Conwi v. Court of Tax Appeals*, the Court elucidated that "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**. Unless otherwise specified, it means cash or its equivalent. Income can also be thought of as a flow of the fruits of one's labor."

5. **ID.; ID.; AS LONG AS 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 INTENDED FOR THE MAINTENANCE, PRESERVATION, AND UPKEEP OF THE CLUBS' GENERAL OPERATIONS AND FACILITIES, THESE FEES CANNOT BE CONSIDERED INCOME THAT ARE SUBJECT TO INCOME TAX; THEY ONLY FORM PART OF CAPITAL FROM WHICH NO INCOME TAX MAY BE IMPOSED. — As correctly argued by ANPC, 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**. x x x ***[F]or 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." Instead, they only form part of capital from which no income tax may be collected or imposed.**

6. **ID.; ID.; ID.; BY SWEEPINGLY INCLUDING IN RMC NO. 35-2012 ALL MEMBERSHIP DUES AND ASSESSMENT DUES IN ITS CLASSIFICATION AS INCOME SUBJECT TO TAX, THE BIR EXCEEDED ITS RULE-MAKING AUTHORITY; SAID BIR INTERPRETATION IS DECLARED INVALID. —** [B]y sweepingly including in RMC No. 35-2012 all membership fees and assessment dues in its classification of "income of recreational clubs from whatever source" that are "subject to income tax," the BIR exceeded its rule-making authority. x x x Accordingly, the Court hereby declares the said interpretation to be invalid, and in consequence, sets aside the ruling of the RTC.

7. **ID.; ID.; ID.; AS THE CLUBS ARE NOT SELLING SERVICES TO THE MEMBERS, MEMBERSHIP DUES, ASSESSMENT DUES AND THE LIKE ARE NOT SUBJECT TO VALUE ADDED TAX (VAT). —** It is a basic principle that **before a**

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> **transaction is imposed VAT, a sale, barter or exchange of goods or properties, or sale of a service is required**. This is true even if such sale is on a cost-reimbursement basis. x x x As ANPC aptly pointed out, membership fees, assessment dues, and the like are not subject to VAT because in collecting such fees, the club is not selling its service to the members. Conversely, the members are not buying services from the club when dues are paid; hence, there is no economic or commercial activity to speak of as these dues are devoted for the operations/ maintenance of the facilities of the organization. **As such, there could be no "sale, barter or exchange of goods or properties, or sale of a service" to speak of, which would then be subject to VAT under the 1997 NIRC.**

APPEARANCES OF COUNSEL

The Law Firm of Verzosa Gutierrez Nolasco Montenegro and Associates for petitioner.

Office of the Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated July 1, 2016 and the Order[3] dated November 7, 2016 of the Regional Trial Court of Makati City, Branch 134 (RTC), in Special Civil Case No. 14-985, which denied petitioner Association of Non-Profit Clubs, Inc. (ANPC)'s petition[4] for declaratory relief, thereby upholding in full the validity of Revenue Memorandum Circular (RMC) No. 35-2012.[5]

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[1] *Rollo*, pp. 11-78.

[2] *Id*. at 82-89. Penned by Pairing Judge Elpidio R. Calis.

[3] *Id*. at 90. Penned by Acting Presiding Judge Manuel L. See.

[4] Dated September 15, 2014. *Id*. at 95-114.

[5] Entitled "CLARIFYING THE TAXABILITY OF CLUBS ORGANIZED AND OPERATED EXCLUSIVELY FOR PLEASURE, RECREATION, AND OTHER NON-PROFIT PURPOSES" (August 3, 2012). *Id*. at 92-94.

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The Facts

On August 3, 2012, respondent the Bureau of Internal Revenue (BIR) issued RMC No. 35-2012, entitled "Clarifying the Taxability of Clubs Organized and Operated Exclusively for Pleasure, Recreation, and Other Non-Profit Purposes,"[6] which was addressed to all revenue officials, employees, and others concerned for their guidance regarding the income tax and Valued Added Tax (VAT) liability of the said recreational clubs.[7]

On the income tax component, RMC No. 35-2012 states that "**[c]lubs which are organized and operated exclusively for pleasure, recreation, and other non-profit purposes are subject to income tax under the National Internal Revenue Code [(NIRC)] of 1997,**[8] **as amended [(1997 NIRC)].**"[9] The BIR justified the foregoing interpretation based on the following reasons:

> According to the doctrine of *casus omissus pro omisso habendus est*, a person, object, or thing omitted from an enumeration must be held to have been omitted intentionally. The provision in the (1977 Tax Code] which granted income tax exemption to such recreational clubs was omitted in the current list of tax exempt corporations under [the 1997 NIRC], as amended. **Hence, the income of recreational clubs from whatever source, including but not limited to membership fees, assessment dues, rental income, and service fees are subject to income tax**.[10] (Emphasis and underscoring supplied)

Likewise, on the VAT component, RMC No. 35-2012 provides that "**the gross receipts of recreational clubs including but not limited to membership fees, assessment dues, rental income, and service fees are subject to VAT**."[11] As basis, the

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[6] *Id*.

[7] *Id.* at 92.

[8] Republic Act No. 8424, entitled "AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES," otherwise known as the "TAX REFORM ACT OF 1997" (January 1, 1998).

[9] *Rollo*, pp. 92-93; emphasis and underscoring supplied.

[10] *Id.* at 93.

[11] *Id.* at 94; emphasis and underscoring supplied.

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BIR relied on Section 105,[12] Chapter I, Title IV of the 1997 NIRC, which states that even a nonstock, nonprofit private organization or government entity is liable to pay VAT on the sale of goods or services.[13]

On October 25, 2012, ANPC, along with the representatives of its member clubs, invited Atty. Elenita Quimosing (Atty. Quimosing), Chief of Staff, Operations Group of the BIR, to discuss "specifically the effects of the said [C]ircular and to seek clarification and advice from the BIR on how it will affect the operational requirements of each club and their members/ stakeholders."[14] During their meeting, Atty. Quimosing discussed the basis and effects of RMC No. 35-2012, and further suggested that the attendees submit a position paper to the BIR expressing their concerns.[15]

Consequently, ANPC submitted its position paper,[16] requesting "the non-application of RMC [No.] 35-2012 for income tax and VAT liability on membership fees, association dues, and fees of similar nature collected by [the] exclusive membership

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[12] Section 105. *Persons Liable*. — Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

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The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by **any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization** (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

x x x x x x x x x

(Emphasis supplied)

[13] See *Commissioner of Internal Revenue v. Court of Appeals*, 385 Phil. 875 (2000), as cited in RMC No. 35-2012. See also *rollo*, p. 93.

[14] *Rollo*, p. 144.

[15] See *id*. at 83 and 144.

[16] By way of a letter dated November 12, 2012 addressed to Commissioner of lnternal Revenue Kim S. Jacinto-Henares. *Id*. at 143-154.

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clubs from [their] members which are used to defray the expenses of the said clubs."[17] However, despite the lapse of two (2) years, the BIR has not acted upon the request, and all the member clubs of ANPC were subjected to income tax and VAT on all membership fees, assessment dues, and service fees.[18]

Aggrieved, ANPC, on behalf of its club members, filed a petition[19] for declaratory relief before the RTC on September 17, 2014, seeking to declare RMC No. 35-2012 invalid, unjust, oppressive, confiscatory, and in violation of the due process clause of the Constitution.[20] ANPC argued that in issuing RMC No. 35-2012, the BIR acted beyond its rule-making authority in interpreting that payments of membership fees, assessment dues, and service fees are considered as income subject to income tax, as well as a sale of service that is subject to VAT.[21]

For its part, the Office of the Solicitor General (OSG), on behalf of the BIR, sought the dismissal of the petition for ANPC's failure to exhaust all the available administrative remedies. It also argued that RMC No. 35-2012 is a mere amplification of the existing law and the rules and regulations of the BIR on the matter, positing that the said Circular merely explained that by removing recreational clubs from the list of tax exempt entities or corporations, Congress intended to subject them to income tax and VAT under the 1997 NIRC.[22]

The RTC Ruling

In a Decision[23] dated July 1, 2016, the RTC denied the petition for declaratory relief[24] and upheld the validity and constitutionality

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[17] *Id*. at 152.

[18] *Id*. at 99-100.

[19] *Id*. at 95-114.

[20] See *id*. at 100 and 113.

[21] See *id*. at 100-112.

[22] See *id*. at 83-84.

[23] *Id*. at 82-89.

[24] See *id*. at 89.

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of RMC No. 35-2012.[25] On the procedural issue, the RTC found that there was no violation of the doctrine of exhaustion of administrative remedies, since judicial intervention was urgent in light of the impending imposition of taxes on the membership fees and assessment dues paid by the members of the exclusive clubs.[26] As to the substantive issue, the RTC found that given the apparent intent of Congress to subject recreational clubs to taxes, the BIR, being the administrative agency concerned with the implementation of the law, has the power to make such an interpretation through the issuance of RMC No. 35-2012. As an interpretative rule issued well within the powers of the BIR, the same need not be published and neither is a hearing required for its validity.[27]

Undaunted, ANPC sought reconsideration,[28] which the RTC denied in an Order[29] dated November 7, 2016. Raising pure questions of law, ANPC, herein represented by its authorized representative, Ms. Felicidad M. Del Rosario, filed the instant petition for review on *certiorari* directly before the Court.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the RTC erred in upholding in full the validity of RMC No. 35-2012.

The Court's Ruling

The petition is partly meritorious.

I.

The Court first resolves the procedural issues.

In its Comment,[30] the BIR, through the OSG, seeks the dismissal of the present petition on the ground that ANPC violated

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[25] See *id*. at 87.

[26] See *id*. at 85.

[27] See *id*. at 86-87.

[28] The motion for reconsideration was not attached in the *rollo*.

[29] *Rollo*, p. 90.

[30] Dated January 12, 2018. *Id*. at 165-175.

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the doctrine of hierarchy of courts due to its direct resort before the Court.[31] Moreover, it asserts that ANPC violated the doctrine of exhaustion of available administrative remedies, pointing out that ANPC should have first elevated the matter to the Secretary of Finance for review pursuant to Section 4,[32] Title I of the 1997 NIRC.[33]

The contentions are untenable.

First, the Court holds that there was no violation of the doctrine of hierarchy of courts because the present petition for review on *certiorari*, filed pursuant to Section 2 (c), Rule 41 in relation to Rule 45 of the Rules of Court, is the *sole* remedy to appeal a decision of the RTC in cases involving pure questions of law. The doctrine of hierarchy of courts is violated only when relief may be had through multiple fora having concurrent jurisdiction over the case, such as in petitions for *certiorari, mandamus*, and prohibition which are concurrently cognizable either by the Regional Trial Courts, the Court of Appeals, or the Supreme Court. In *Uy v. Contreras*:[34]

> [W]hile it is true that this Court, the Court of Appeals, and the Regional Trial Courts have concurrent original jurisdiction to issue writs of *certiorari, prohibition, mandamus, quo warranto*, and *habeas corpus*, such concurrence does not accord litigants unrestrained freedom of choice of the court to which application therefor may be directed.

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[31] See *id*. at 172-173.

[32] Section 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases*. — The power to **interpret** the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, **subject to review by the Secretary of Finance**.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals. (Emphases supplied)

[33] See *rollo*, pp. 168-172.

[34] G.R. Nos. 111416-17, September 26, 1994, 237 SCRA 167.

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There is a hierarchy of courts determinative of the venue of appeals which should also serve as a general determinant of the proper forum for the application for the extraordinary writs. A becoming regard for this judicial hierarchy by the petitioner and her lawyers ought to have led them to file the petition with the proper Regional Trial Court.[35] (Emphasis and underscoring supplied)

Clearly, the correctness of the BIR's interpretation of the 1997 NIRC under the assailed RMC is a pure question of law,[36] because the same does not involve an examination of the probative value of the evidence presented by the litigants or any of them.[37] Thus, being the only remedy to appeal the RTC's ruling upholding the Circular's validity on a purely legal question, direct resort to this Court, through a Rule 45 petition, was correctly availed by ANPC.

Anent the issue of exhaustion of administrative remedies, the Court likewise holds that the said doctrine was not transgressed.

At the onset, it is apt to point out that RMC No. 35-2012 only clarified the taxability (particularly, income tax and VAT liability) of clubs organized and operated exclusively for pleasure, recreation, and other non-profit purposes based on the BIR's own interpretation of the NIRC provisions on income tax and VAT. Evidently, it was not designed "to implement a primary legislation by providing the details thereof" as in a *legislative rule*; but rather, was intended only to "provide guidelines to the law which the administrative agency is in charge of enforcing,"[38] as the said Circular was, in fact, addressed to "[a]ll [r]evenue [o]fficials, [e]mployees[,] and [o]thers [c]oncerned"[39] to guide

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[35] *Id*. at 170.

[36] See *Calamba Steel Center, Inc. v. Commissioner of Internal Revenue*, 497 Phil. 23, 33 (2005).

[37] See *Republic of the Philippines v. Malabanan*, 646 Phil. 631, 637-638 (2010).

[38] *BPI Leasing Corporation v. Court of Appeals*, 461 Phil. 451, 459 (2003).

[39] *Rollo*, p. 92.

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them in the enforcement of income tax and VAT laws against fees collected by the said clubs.

Given its nature, RMC No. 35-2012 is therefore subject to the administrative review of the Secretary of Finance pursuant to Section 4, Title I of the 1997 NIRC, which provides:

> Section 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* — The power to **interpret** the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, **subject to review by the Secretary of Finance**.
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> x x x x x x x x x
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> (Emphases supplied)

Thus, as dictated by the rule on exhaustion of administrative remedies,[40] the validity of RMC No. 35-2012 should have been first subjected to the review of the Secretary of Finance before ANPC sought judicial recourse with the RTC.

However, as exceptions to this rule, when the issue involved is purely a legal question (as above-explained), or when there are circumstances indicating the urgency of judicial intervention[41] — as in this case where membership fees, assessment dues, and the like of all recreational clubs would be imminently subjected to income tax and VAT — then the doctrine of exhaustion of administrative remedies may be relaxed.

Accordingly, ANPC's recourse to the RTC and now, before this Court are permissible and hence, are not grounds to dismiss

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[40] It is well-settled that "before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail himself of all administrative processes afforded him. Hence, if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought." (*Samar II Electric Cooperative, Inc. v. Seludo, Jr.*, 686 Phil. 786, 796 [2012].)

[41] See *Banco De Oro v. Republic of the Philippines*, 750 Phil. 349, 381-382 (2015).

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this case. That being said, the Court now proceeds to resolve the substantive issue on whether or not RMC No. 35-2012 is valid.

II.

To recount, RMC No. 35-2012 is an interpretative rule issued by the BIR to guide all revenue officials, employees, and others concerned in the enforcement of income tax and VAT laws against clubs organized and operated exclusively for pleasure, recreation, and other non-profit purposes ("recreational clubs" for brevity).

As to its income tax component, RMC No. 35-2012 provides the interpretation that since the old tax exemption previously accorded under Section 27 (h),[42] Chapter III, Title II of Presidential Decree No. 1158, otherwise known as the "National Internal Revenue Code of 1977"[43] (1977 Tax Code), to recreational clubs was deleted in the 1997 NIRC, then **the income of recreational clubs from whatever source, including but not limited to membership fees, assessment dues, rental income, and service fees, is subject to income tax.**

The interpretation is partly correct.

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[44]), the fact that the 1997 NIRC omitted recreational clubs from the list of exempt organizations under the 1977 Tax Code evinces

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[42] Section 27. *Exemptions from tax on corporations.* — The following organizations shall not be taxed under this Title in respect to income received by them as such —

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(h) Club organized and operated exclusively for pleasure, recreation, and other non-profitable purposes, no part of the net income of which inures to the benefit of any private stockholder or member[.]

[43] Entitled "A DECREE TO CONSOLIDATE AND CODIFY ALL THE INTERNAL REVENUE LAWS OF THE PHILIPPINES" (June 3, 1977).

[44] *Rollo*, p. 86.

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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"[45] is now subject to income tax under the provisions of the 1997 NIRC.

However, notwithstanding the correctness of the above-interpretation, **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**, *viz.*:

> The provision in the [1977 Tax Code] which granted income tax exemption to such recreational clubs was omitted in the current list of tax exempt corporations under the [1997 NIRC], as amended. **Hence, the income of recreational clubs from whatever source, including but not limited to membership fees, assessment dues**, rental income, and service fees **[is] subject to income tax**.[46] (Emphases and underscoring supplied)

The distinction between "capital" and "income" is well-settled in our jurisprudence. As held in the early case of *Madrigal v. Rafferty*,[47] "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":

> Income as contrasted with capital or property is to be the test. **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 fund through a period of time is called income. **Capital is wealth, while income is the service of wealth**. (See Fisher, "The Nature of Capital and Income.") The Supreme Court of Georgia;expresses the thought in the following figurative language: "The fact is that property is a tree, income is the fruit; labor is a tree, income the fruit; capital is a tree, income

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[45] Section 32 (A), Chapter VI, Title II of the 1997 NIRC.

[46] *Rollo*, p. 93.

[47] 38 Phil. 414 (1918).

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the fruit." (*Waring vs. City of Savannah* [1878], 60 Ga., 93.) A tax on income is not a tax on property. **"Income," as here used, can be defined as "profits or gains."** (*London County Council vs. Attorney-General* [1901], A. C., 26; 70 L. J. K. B. N. S., 77; 83 L. T. N. S., 605; 49 Week. Rep., 686; 4 Tax Cas., 265. See further Foster's Income Tax, second edition [1915], Chapter IV; Black on Income Taxes, second edition [1915], Chapter VIII; *Gibbons vs. Mahon* [1890], 136 U.S., 549; and *Towne vs. Eisner*, decided by the United States Supreme Court, January 7, 1918.)[48] (Emphases and underscoring supplied)

In *Conwi v. Court of Tax Appeals*,[49] the Court elucidated that "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**. Unless otherwise specified, it means cash or its equivalent. Income can also be thought of as a flow of the fruits of one's labor."[50]

As correctly argued by ANPC, 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.**[51] They represent funds "**held in trust**" by these clubs **to defray their operating and general costs and hence, only constitute infusion of capital**.[52]

Case law provides that in order to constitute "income," there must be realized "gain."[53] Clearly, because of the nature of membership fees and assessment dues as funds inherently dedicated for the maintenance, preservation, and upkeep of the

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[48] *Id.* at 418-419.

[49] G.R. No. L-48532, August 31, 1992, 213 SCRA 83 (1992).

[50] *Id.* at 87-88; emphases supplied.

[51] *Rollo*, p. 68.

[52] See *id.* at 40-42.

[53] *Chamber of Real Estate and Builders' Associations, Inc. v. Romulo*, 628 Phil. 508, 531 (2010).

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clubs' general operations and facilities, nothing is to be gained from their collection. This stands in contrast to the fees received by recreational clubs coming from their income-generating facilities, such as bars, restaurants, and food concessionaires, or from income-generating activities, like the renting out of sports equipment, services, and other accommodations. In these latter examples, regardless of the purpose of the fees' eventual use, gain is already realized from the moment they are collected because capital maintenance, preservation, or upkeep is not their pre-determined purpose. As such, recreational clubs are generally free to use these fees for whatever purpose they desire and thus, considered as unencumbered "fruits" coming from a business transaction.

Further, given these recreational clubs' non-profit nature, membership fees and assessment dues cannot be considered as funds that would represent these clubs' interest or profit from any investment. In fact, these fees are paid by the clubs' members without any expectation of any yield or gain (unlike in stock subscriptions), but only for the above-stated purposes and in order to retain their membership therein.

In fine, *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.**

It is a well-enshrined principle in our jurisdiction that the State cannot impose a tax on capital as it constitutes an unconstitutional confiscation of property. As the Court held in *Chamber of Real Estate and Builders' Associations, Inc. v. Romulo*:[55]

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[54] *Rollo*, p. 93.

[55] *Supra* note 53.

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As a general rule, the power to tax is plenary and unlimited in its range, acknowledging in its very nature no limits, so that the principal check against its abuse is to be found only in the responsibility of the legislature (which imposes the tax) to its constituency who are to pay it. **Nevertheless, it is circumscribed by constitutional limitations.** At the same time, like any other statute, tax legislation carries a presumption of constitutionality.

The constitutional safeguard of due process is embodied in the fiat "[no] person shall be deprived of life, liberty or property without due process of law." In *Sison, Jr. v. Ancheta* [215 Phil. 582 (1984)], we held that the **due process clause may properly be invoked to invalidate, in appropriate cases, a revenue measure when it amounts to a confiscation of property**. But in the same case, we also explained that we will not strike down a revenue measure as unconstitutional (for being violative of the due process clause) on the mere allegation of arbitrariness by the taxpayer. There must be a factual foundation to such an unconstitutional taint. This merely adheres to the authoritative doctrine that, where the due process clause is invoked, considering that it is not a fixed rule but rather a broad standard, there is a need for proof of such persuasive character.

x x x x x x x x x

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. x x x.[56] (Emphases supplied)

In *Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary*,[57] the Court held that "[a]s a matter of power[,] a court, when confronted with an interpretative rule, [such as RMC No. 35-2012,] is free to (i) give the force of law to the rule; (ii) go to the opposite extreme and substitute its judgment; or (iii) give some intermediate degree of authoritative weight to the interpretative rule."[58] Thus, by sweepingly including in RMC No. 35-2012 all membership fees and assessment dues in its classification of "income of recreational clubs from whatever source'' that are "subject to

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[56] *Id.* at 530-531, other citations omitted.

[57] G.R. No. 108524, November 10, 1994, 238 SCRA 63.

[58] *Id.* at 70.

income tax,"[59] the BIR exceeded its rule-making authority. Case law holds that:

> [T]he rule-making power of administrative agencies cannot be extended to amend or expand statutory requirements or to embrace matters not originally encompassed by the law. Administrative regulations should always be in accord with the provisions of the statute they seek to carry into effect, and any resulting inconsistency shall be resolved in favor of the basic law.[60]

Accordingly, the Court hereby declares the said interpretation to be invalid, and in consequence, sets aside the ruling of the RTC.

In the same way, the Court declares as invalid the BIR's interpretation in RMC No. 35-2012 that membership fees, assessment dues, and the like are part of "the gross receipts of recreational clubs" that are "subject to VAT."[61]

It is a basic principle that **before a transaction is imposed VAT, a sale, barter or exchange of goods or properties, or sale of a service is required**.[62] This is true even if such sale is on a cost-reimbursement basis.[63] Section 105, Chapter I, Title IV of the 1997 NIRC reads:

> Section 105. *Persons Liable*.— Any person who, in the course of trade or business, **sells, barters, exchanges, leases goods or properties, renders services**, and any person who **imports goods** shall be **subject to the value-added tax (VAT)** imposed in Sections 106 to 108 of this Code.
>
> The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the **buyer, transferee** or **lessee** of the

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[59] *Rollo*, p. 93.

[60] *CS Garment, Inc. v. Commissioner of Internal Revenue*, 729 Phil. 253, 275 (2014).

[61] *Rollo*, p. 94.

[62] See *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, 649 Phil. 519, 533 (2010).

[63] See *Commissioner of Internal Revenue v. Court of Appeals*, *supra* note 13.

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goods, properties or services. This rule shall likewise apply to existing contracts of **sale or lease of goods, properties or services** at the time of the effectivity of Republic Act No. 7716.

The phrase "*in the course of trade or business*" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it **sells exclusively to members or their guests**), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business. (Emphases supplied)

As ANPC aptly pointed out, membership fees, assessment dues, and the like are not subject to VAT because in collecting such fees, the club is not selling its service to the members. Conversely, the members are not buying services from the club when dues are paid; hence, there is no economic or commercial activity to speak of as these dues are devoted for the operations/maintenance of the facilities of the organization.[64] **As such, there could be no "sale, barter or exchange of goods or properties, or sale of a service" to speak of, which would then be subject to VAT under the 1997 NIRC.**

WHEREFORE, the petition is **GRANTED**. The Decision dated July 1, 2016 and the Order dated November 7, 2016 of the Regional Trial Court of Makati City, Branch 134, in Special Civil Case No. 14-985, are hereby **SET ASIDE**. The Court **DECLARES** that membership fees, assessment dues, and fees of similar nature collected by clubs which are organized and operated exclusively for pleasure, recreation, and other nonprofit purposes do not constitute as: **(*a*)** "the income of recreational clubs from whatever source" that are "subject to income tax"; and **(*b*)** part of the "gross receipts of recreational clubs" that are "subject to [Value Added Tax]." Accordingly, Revenue Memorandum

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[64] *Rollo*, pp. 71-72.

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Circular No. 35-2012 should be interpreted in accordance with this Decision.

SO ORDERED.

Carpio, S.A.J. (Chairperson), Caguioa, Reyes, J. Jr., and *Lazaro-Javier, JJ.,* concur.

SECOND DIVISION

[G.R. No. 229243. June 26, 2019]

MAXIMA P. SACLOLO and TERESITA P. OGATIA, *petitioners, vs.* **ROMEO MARQUITO, MONICO MARQUITO, CLEMENTE MARQUITO, ESTER M. LOYOLA, MARINA M. PRINCILLO, LOURDES MARQUITO and LORNA MARQUITO,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; SALES; EQUITABLE MORTGAGE; WHEN THE PARTIES ENTERED INTO A CONTRACT DENOMINATED AS A CONTRACT OF SALE AND THEIR INTENTION WAS TO SECURE AN EXISTING DEBT BY WAY OF A MORTGAGE, THE CONTRACT SHALL BE CONSIDERED AS AN EQUITABLE MORTGAGE. — In *Spouses Salonga v. Spouses Concepcion*, the Court explained the nature of an equitable mortgage. x x x The provision shall apply to a contract purporting to be an absolute sale. In case of doubt, a contract purporting to be a sale with right to repurchase shall be considered as an equitable mortgage. In a contract of mortgage, the mortgagor merely subjects the property to a lien, but the ownership and possession thereof are retained by him. For the presumption in Article 1602 of the New Civil Code to arise, two requirements must concur: (a) that the parties entered into a contract