Republic of the Philippines
Supreme Court
Manila

EN BANC

THE PHILIPPINE STOCK EXCHANGE, INC., BANKERS ASSOCIATION OF THE PHILIPPINES, PHILIPPINE ASSOCIATION OF SECURITIES BROKERS AND DEALERS, INC., FUND MANAGERS ASSOCIATION OF THE PHILIPPINES, TRUST OFFICERS ASSOCIATION OF THE PHILIPPINES, AND MARMON HOLDINGS, INC., *Petitioners*, *- versus -* **SECRETARY OF FINANCE, COMMISSIONER OF INTERNAL REVENUE, and CHAIRPERSON OF THE SECURITIES AND EXCHANGE COMMISSION,** *Respondents*.	**G.R. No. 213860** Present: GESMUNDO, *C.J.*, LEONEN, CAGUIOA, HERNANDO, LAZARO-JAVIER, INTING, ZALAMEDA, LOPEZ, M. V., GAERLAN, ROSARIO, LOPEZ, J. Y., DIMAAMPAO, MARQUEZ, KHO, JR., and SINGH, *JJ.* Promulgated: July 5, 2022

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DECISION

HERNANDO, *J.*:

This Petition for *Certiorari* and Prohibition[1] was filed by petitioners Philippine Stock Exchange, Inc. (PSE), Bankers Association of the Philippines (BAP), Philippine Association of Securities Brokers and Dealers, Inc. (PASBDI), Fund Managers Association of the Philippines (FMAP), Trust

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1 *Rollo*, pp. 3-61.

Officers Association of the Philippines (TOAP), and Marmon Holdings, Inc. (MHI) to assail the constitutionality of Revenue Regulations No. (RR) 1-2014[2] (RR 1-2014), Revenue Memorandum Circular No. 5-14[3] (RMC 5-2014), and the SEC Memorandum Circular No. 10-2014[4] (SEC MC 10-2014) (collectively, the Questioned Regulations), for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

Factual Antecedents

On December 17, 2013, the Department of Finance (DOF), upon recommendation of the Commissioner of Internal Revenue (CIR), issued RR 1-2014, which amended the provisions of RR 2-1998,[5] as further amended by RR 10-2008,[6] otherwise known as the Consolidated Withholding Tax Regulations. The pertinent provisions of RR 2-1998 and RR 10-2008 read:

RR 2-1998

Section 2.83.3. ***Requirement for income payees list.*** – In lieu of the manually prepared alphabetical list of employees and list of payee's and income payments subject to creditable and final withholding taxes which are required to be attached as integral part of the Annual Return (Form No. 1604), the Withholding Agent may, at its option, submit computer-processed tapes or cassettes or diskettes, provided that the said list has been encoded in accordance with the formats prescribed by Form 1604.

RR 10-2008

Section 2.83.3. ***Requirement for list of payees.*** – In addition to the manually prepared alphabetical list of employees and list of payees and income payments subject to creditable and final withholding taxes which are required to be attached as integral part of the Annual Information Returns (BIR Form No. 1604CF/1604E), Monthly Remittance Returns (BIR Form No. 1601C etc.), the withholding agent may submit soft copy in 3.5-inch floppy diskettes/CD or email: esubmission@bir.gov.ph, containing the said alphalists.

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2 Entitled "AMENDING THE PROVISIONS OF REVENUE REGULATIONS (RR) NO. 2-98, AS FURTHER AMENDED BY RR NO. 10-2008, SPECIFICALLY ON THE SUBMISSION OF ALPHABETICAL LIST OF EMPLOYEES/PAYEES OF INCOME PAYMENTS." Enacted: December 17, 2013

3 Entitled "CLARIFYING THE PROVISIONS OF REVENUE REGULATIONS NO. 1-2014 PERTAINING TO THE SUBMISSION OF ALPHABETICAL LIST OF EMPLOYEES/PAYEES OF INCOME PAYMENTS." Enacted: January 29, 2014.

4 Entitled "GUIDELINES AND DIRECTIVES TO ASSIST ISSUERS OF SECURITIES LISTED AND TRADED IN THE PHILIPPINE STOCK EXCHANGE IN COMPLYING WITH THE REQUIREMENTS OF BIR REVENUE REGULATION NO. 1-2014." Enacted: May 22, 2014.

5 Entitled "IMPLEMENTING REPUBLIC ACT NO. 8424, 'AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED' RELATIVE TO THE WITHHOLDING ON INCOME SUBJECT TO THE EXPANDED WITHHOLDING TAX AND FINAL WITHHOLDING TAX, WITHHOLDING OF INCOME TAX ON COMPENSATION, WITHHOLDING OF CREDITABLE VALUE-ADDED TAX AND OTHER PERCENTAGE TAXES." Enacted: April 17, 1998.

6 Entitled "IMPLEMENTING PERTINENT PROVISIONS OF REPUBLIC ACT NO. 9504, 'AN ACT AMENDING SECTIONS 22, 24, 34, 35, 51, AND 79 OF REPUBLIC ACT NO. 8424, AS AMENDED, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE' RELATIVE TO THE WITHHOLDING OF INCOME TAX ON COMPENSATION AND OTHER CONCERNS." Enacted: July 8, 2008.

However, taxpayers, whose number of employees or income payees are ten (10) or more, are mandatorily required to submit the said lists in 3.5-inch floppy diskettes/CD or email: esubmission@bir.gov.ph, using the existing CSV data file format, together with the manually prepared alphabetical list. In order to comply with this format, the withholding agents shall have the option to use any of the following:

1. Excel format provided under the Revenue Regulations No. 7-2000, as amended, following the technical specifications required by the BIR;

2. Their own extract program that shall meet the technical specifications required by the BIR; or

3. Data Entry Module using Visual FoxPro that will be available upon request or by downloading from the BIR's website http://www.bir.gov.ph with the corresponding job aid.

For those who would choose either option 1 or 2, such taxpayers shall use a validation module developed by the BIR, which can be downloaded from the BIR website.

In any case, the withholding agents are required to save the same to a secondary storage as back up for a period of three (3) years from submission of the diskette, as aforementioned, for future reference.

For withholding agents classified as large taxpayers and excise taxpayers falling within the jurisdiction of the Large Taxpayers Service and/or Large Taxpayers District Office, the Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form No. 1604-CF) and the Annual Information Return of Creditable Income Taxes Withheld (Expanded)/ Income Payments Exempt from Withholding Tax (BIR Form No. 1604-E) shall be submitted to the Large Taxpayers Assistance Division, Large Taxpayers District Offices or Excise Taxpayers Assistance Division, as the case may be. For other withholding agents, the aforesaid annual returns shall be submitted to their respective Revenue District Offices. BIR Form No. 1604-CF shall be submitted on or before January 31 of the succeeding year while BIR Form No. 1604-E shall be filed on or before March 1 of the following year. Only diskettes/CD/email: esubmission@bir.gov.ph readable and virus free files upon submission shall be considered as duly filed "Alphabetical List of Employees/Payees" by the employer. Violation hereof, shall be a ground for the mandatory audit of violator's income tax liabilities (including withholding tax). Diskettes/CDs must be uploaded by the abovementioned offices within fifteen (15) days from receipt.

The manually prepared (hard copy for below 10 employees/payees) alphabetical list of employee shall be filed in triplicate copies (two copies for the BIR) to be stamped "received" by the BIR-Large Taxpayers Assistance Division, Large Taxpayers District Office of the Excise Taxpayers Assistance Division, or the Revenue District Office where the payor/employer is registered as Withholding Agent. Manually filed alphalists must be encoded and uploaded by the abovementioned offices within thirty (30) days from receipt. (Underline & emphasis in original)

Under RR 2-1998, all withholding agents are required to submit a manual alphabetical list (alphalist). RR 2-1998 was amended by RR 10-2008, which provides the general rule that all withholding agents are required to submit manual and digital alphalists. The exception is if the withholding agent has less than 10 employees, in which case, a manual alphalist is then required.

Under RR 1-2014, withholding agents are now required to submit a digital copy of the alphalist of their employees and payees. Although the Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes Withheld on Compensation and Final Withholding Taxes (Form 1604-CF), and the Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax (Form 1604-E), are still required to be filed manually, their attachments or alphalists should now be in digital format. The pertinent provision of RR 1-2014 reads:

> **Section 2.83.3** ***Requirement for list of payees.*** – All withholding agents shall, regardless of the number of employees and payees, whether the employees/payees are exempt or not, submit an alphabetical list of employees and list of payees on income payments subject to creditable and final withholding taxes which are required to be attached as integral part of the Annual Information Returns (BIR Form No. 1604CF/1604E) and Monthly Remittance Returns (BIR Form No. 1601C, etc.), under the following modes:
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> (1) As attachment in the Electronic Filing and Payment System (eFPS);
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> (2) Through Electronic Submission using the BIR's website address at esubmission@bir.gov.ph; and
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> (3) Through Electronic Mail (email) at dedicated BIR addresses using the prescribed CSV data file format, the details of which shall be issued in a separate revenue issuance.
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> In cases where any withholding agent does not have its own internet facility or unavailability of commercial establishments with internet connection within the location of the withholding agent, the alphalist prescribed herein may be electronically mailed (e-mail) thru the e-lounge facility of the nearest revenue district office or revenue region of the BIR.
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> The submission of the herein prescribed alphalist where the income payments and taxes withheld are lumped into one single amount (e.g. "Various employees, "Various payees", "PCD nominees", "Others", etc.) shall not be allowed. The submission thereof, including any alphalist that does not conform with the prescribed format thereby resulting to the unsuccessful upload into the BIR system shall be deemed as not received and shall not qualify as deductible expense for income tax purposes.
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> Accordingly, the manual submission of the alphabetical lists containing less than ten (10) employees/payees by withholding agents under Annual Information Returns BIR Form No. 1604CF and BIR No. 1604E shall be

immediately discontinued beginning January 31, 2014 and March 1, 2014, respectively, and every year thereafter. (Underline & emphasis in original)

To reiterate, the rule under RR 1-2014 is that all withholding agents are required to submit only a digital alphalist. By the express provision of RR 1-2014, the submission of alphalist where the income payments and taxes withheld are lumped into one single amount (*e.g.,* "various employees," "various payees," "PCD nominees," "others," etc.) is not allowed.

On January 29, 2014, the CIR issued RMC 5-2014 clarifying, in a Question and Answer format, the provisions of RR 1-2014 on the submission of the alphalist of employees/payees of income payments. It requires submission of the tax identification number (TIN) and the complete name of the payees, together with the corresponding amount of income and withholding tax.[7]

Then the Securities and Exchange Commission (SEC) followed suit and issued SEC MC 10-2014. It directs the Philippine Depository and Trust Corporation (PDTC) and broker dealers to provide the listed companies or their transfer agents an alphalist of all depository account holders and the total shareholdings in each of the accounts and sub-accounts. The pertinent provisions of the issuance state:

Section 2. ***List of PDTC Accounts and [C]orresponding Shareholdings.*** —

The Philippine Depository and Trust Corporation (PDTC) shall prepare an alphalist of all depository account holders and the total shareholdings in each of the accounts and sub-accounts as of Record Date upon receiving information on a dividend declaration.

PDTC shall provide the Issuer or its authorized Transfer Agent with the alphalist and all the depository account holders with their respective shareholdings as reflected in their depository accounts and sub-accounts, if any, not later than 12:00 noon of the day following such Record Date.

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7 12. Q. In order that the alphalist can be successfully uploaded into the data warehouse of the BIR and considered as duly received by the BIR, what are the requirements that all concerned taxpayers shall strictly observe?
A. All concerned taxpayers shall strictly observe the following requirements in order that their alphalists can be considered as successfully uploaded and duly received by the BIR:

x x x x

g. The Taxpayer Identification Number(s) indicated in the alphalist is/are valid and correspondingly issued by the BIR to the employee(s) or payee(s). Accordingly, the concerned taxpayers are not allowed to submit the alphalist without the corresponding TIN(s) of each of the employees/payees nor to indicate dummy TIN(s) "000-000-000-000" as their respective TIN(s).

h. Specify the complete name of the taxpayer(s)/payee(s) with the corresponding amount of income and withholding tax. Hence, the following word(s) "Various Employees", "Various payees", "PCD nominees" or "Others" and other similar word(s) where the total taxes withheld are lumped into one single amount are not allowed.

Section 3. ***List of Payees and [C]orresponding Shareholdings.*** —

All depository account holders which are registered broker dealers and which hold shares, for the account of their clients or for their own account, and which are payees of dividend declared by the Issuer/Paying Company shall prepare an alphalist showing the total shareholding of each account and sub-account belonging to these payees and the dealer account as of Record Date. In determining the alphalist, the broker dealers shall take into account the Philippine Stock Exchange's (PSE) conventions on transactions effected during cum and ex-dates.

The broker dealers shall also ensure that the account balances are consistent with the respective balances as reflected in the PDTC alphalist of depository account holders and corresponding total shareholdings.

The broker dealer alphalist shall provide the following information. (Please refer to the attached format — **Annex A**):

1. Name of Client/Payee (Last Name, First Name, Middle Name for Individuals, complete name for non-individuals)
2. Tax Identification Number (TIN)
3. Address of Payee
4. Status (Residence/Nationality)
5. Total Shareholding
6. Birth date (for Individuals)/Registration Number (for non-individuals)

The broker dealers shall submit the alphalist certified true and correct by their President and the Head of Settlement Unit in soft and hard copies to the Issuer or its authorized Transfer Agent not later than three (3) days from the Record Date. (Emphasis in original)

Failure to comply with these issuances will result to imposition of administrative and penal sanctions.[8]

Claiming to be adversely affected, petitioners filed the instant Petition for *Certiorari* and Prohibition directly with this Court to question the issuances, raising the following grounds:

A.

RESPONDENTS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN THEY ISSUED THE QUESTIONED REGULATIONS WHICH VIOLATE THE CONSTITUTIONAL RIGHT TO DUE PROCESS OF PETITIONERS AND THEIR CUSTOMERS.

1.

The requirement under the Questioned Regulations for listed companies and broker dealers to disclose the payee of dividend payments is vague, and therefore void, due to the prohibition on the identification of PCD Nominee as the payee.

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[8] Revenue Regulations 1-2014, sec. 3 and SEC Memorandum Circular No. 10-2014, sec. 6.

2.

The requirement under RR 01-14 and RMC 05-14 for listed companies to disclose the payee of dividend payments and the prohibition on the identification of the PCD Nominee as the payee is unreasonable since listed companies, by themselves are not capable of accurately providing the required information.

3.

Respondents Secretary of Finance and Commissioner of Internal Revenue failed to comply with the requirements of notice and hearing prior to the issuance of RR 01-14 and RMC 05-14.

B.

RESPONDENTS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN THEY ISSUED THE QUESTIONED REGULATIONS IN VIOLATION OF THE PETITIONERS' RIGHT TO PRIVACY.

1.

The Questioned Regulations require the disclosure of sensitive personal information regarding an investor to a private third party, not to a government or public authority.

2.

The Questioned Regulations do not provide a mechanism to protect sensitive personal information relating to each disclosed investor.

3.

The Questioned Regulations violate the express provisions of banking laws and regulations.

C.

THE SEC CHAIRPERSON ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN SHE ISSUED SEC MC 10-14, WHICH VIOLATES THE CONSTITUTIONAL PRINCIPLE ON NON-IMPAIRMENT OF CONTRACTS.

D.

RESPONDENTS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN THEY ISSUED THE QUESTIONED REGULATIONS WHICH ARE CONTRARY TO THE STATE POLICIES UNDER THE SRC, THE TAX CODE, AND THE DATA PRIVACY ACT.

E.

THE SEC CHAIRPERSON ACTED WITHOUT JURISDICTION WHEN SHE ISSUED SEC MC 10-14 TO SUPPLEMENT THE PROVISIONS OF RR 01-14.

F.

RESPONDENTS ACTED WITHOUT JURISDICTION WHEN THEY ISSUED THE QUESTIONED REGULATIONS TO AMEND SECTION 43.1 OF THE SRC AND PROHIBIT THE USE OF "PCD NOMINEE" AS THE PAYEE OF THE DIVIDEND PAYMENTS AND SHAREHOLDER OF SCRIPLESS SHARES IN LISTED COMPANIES IN VIOLATION OF THE CONSTITUTIONAL PRINCIPLES OF SEPARATION OF POWERS.[9]

On September 9, 2014, this Court issued a Temporary Restraining Order (TRO) prohibiting respondents from enforcing the questioned regulations.

Our Ruling

The Petition has merit. The Court finds that the questioned regulations are void for being unconstitutional.

Procedural Issue

The Court shall first resolve the procedural issue on petitioners' legal standing to file this suit before delving into the constitutionality of the questioned regulations.

Petitioners have legal standing

At the outset, respondents raise the issue of legal standing of petitioners. They argue that petitioners cannot claim that the questioned regulations violated their right to privacy. Respondents reasoned that the right to privacy belongs to an individual in his private capacity, and not to juridical entities such as petitioners.

Indeed, "[i]t is fundamental in this jurisdiction that any party may only come to court if he has legal standing and a valid cause of action,"[10] thus:

> Standing is a special concern in constitutional law because in some cases suits are brought not by parties who have been personally injured by the operation of law or by official action taken, but by concerned citizens, taxpayers or voters who actually sue in the public interest. Hence the question in standing is whether such parties have 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues

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9 *Rollo*, pp. 20-22.

10 *Bagatsing v. San Juan*, 329 Phil. 8, 10 (1996).

upon which the court so largely depends for illumination of difficult constitutional questions.'[11]

Further:

> Legal standing or *locus standi* is a party's personal and substantial interest in a case such that he has sustained or will sustain direct injury as a result of the governmental act being challenged. It calls for more than just a generalized grievance. The term interest means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. Unless a person's constitutional rights are adversely affected by the statute or ordinance, he has no legal standing.[12]

In particular, petitioners argue that the right to privacy of the dividend payees would be violated when their name and Tax Identification Numbers (TIN) are disclosed in the alphalist. Thus, the question is whether petitioners have the requisite standing to plead for the protection of the right to privacy of their clients.

The Court rules in the affirmative. The case of *White Light Corporation v. City of Manila*[13] (*White Light*) is in point:

> Standing or *locus standi* is the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case. More importantly, the doctrine of standing is built on the principle of separation of powers, sparing as it does unnecessary interference or invalidation by the judicial branch of the actions rendered by its co-equal branches of government.
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> The requirement of standing is a core component of the judicial system derived directly from the Constitution. The constitutional component of standing doctrine incorporates concepts which concededly are not susceptible of precise definition. In this jurisdiction, the extancy of "a direct and personal interest" presents the most obvious cause, as well as the standard test for a petitioner's standing. In a similar vein, the United States Supreme Court reviewed and elaborated on the meaning of the three constitutional standing requirements of injury, causation, and redressability in *Allen v. Wright.*
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> Nonetheless, the general rules on standing admit of several exceptions such as the overbreadth doctrine, taxpayer suits, third party standing and, especially in the Philippines, the doctrine of transcendental importance.
>
> For this particular set of facts, the concept of third party standing as an exception and the overbreadth doctrine are appropriate. In *Powers v. Ohio,* the United States Supreme Court wrote that: "We have recognized the right of litigants to bring actions on behalf of third parties, provided three important criteria are satisfied: the litigant must have suffered an 'injury-in-fact", thus giving him or her a "sufficiently concrete interest" in the outcome of the issue in

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11 Id. at 14, citing *Baker v. Carr*, 369 U.S. 186, 7 L. Ed. 2d 633 (1962).
12 *Jumamil v. Café*, 507 Phil. 455, 465 (2005).
13 596 Phil. 444 (2009).

> dispute; the litigant must have a close relation to the third party; and there must exist some hindrance to the third party's ability to protect his or her own interests." **Herein, it is clear that the business interests of the petitioners are likewise injured by the Ordinance. They rely on the patronage of their customers for their continued viability which appears to be threatened by the enforcement of the Ordinance. The relative silence in constitutional litigation of such special interest groups in our nation such as the American Civil Liberties Union in the United States may also be construed as a hindrance for customers to bring suit.**
>
> American jurisprudence is replete with examples where parties-in-interest were allowed standing to advocate or invoke the fundamental due process or equal protection claims of other persons or classes of persons injured by state action. In *Griswold v. Connecticut,* the United States Supreme Court held that physicians had standing to challenge a reproductive health statute that would penalize them as accessories as well as to plead the constitutional protections available to their patients. The Court held that:
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> > The rights of husband and wife, pressed here, are likely to be diluted or adversely affected unless those rights are considered in a suit involving those who have this kind of confidential relation to them."
>
> An even more analogous example may be found in *Craig v. Boren,* wherein the United States Supreme Court held that a licensed beverage vendor has standing to raise the equal protection claim of a male customer challenging a statutory scheme prohibiting the sale of beer to males under the age of 21 and to females under the age of 18. The United States High Court explained that the vendors had standing "by acting as advocates of the rights of third parties who seek access to their market or function."[14]

Clearly, petitioners have the third-party standing to pursue this suit. PSE is a duly licensed stock exchange with 260 listed companies and 133 active trading participants.[15] The questioned regulations require PSE, as a listed company, to provide information on the payees of its dividend payments.[16] The BAP is composed of banking institutions, which provide services as broker dealers, fund managers and trustees to manage investments made by their clients under the scripless trading structure. The PASBDI is an association of broker dealers. The FMAP is an association of fund managers. The TOAP is an association of trust officers. MHI is a corporation primarily engaged in the business of investing, purchase or otherwise acquiring, owning, holding, using, selling real and personal property, including shares of stocks, bonds, debentures, notes, evidences of indebtedness and other securities.[17] PASBDI, FMAP, TOAP, and MHI claim to be obligated to disclose to the SEC various information pertaining to their clients. Moreover, their members are either subjects or sources of information required under the questioned regulations.

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[14] Id. at 455-457. Emphasis supplied; citations omitted.
[15] *Rollo*, p. 6.
[16] Id. at 9.
[17] Id. at 6-7.

There is no quibble that petitioners' businesses directly rely on the patronage of their investors whose investing activities appear to be directly affected by the assailed issuances. In addition, there is a likelihood that petitioners will suffer an "injury-in-fact" because under the questioned regulations, they will be subject to penal and administrative sanctions in case of noncompliance. This gives them a "sufficiently concrete interest" in the outcome of the issue in dispute. As stated in *White Light*, "the relative silence in constitutional litigation of such special interest groups in our nation such as the American Civil Liberties Union in the United States may also be construed as a hindrance for customers to bring suit."[18]

In fine, the Court finds that petitioners have third-party standing to lodge this suit.

Substantive Issues

Now on the merits.

Stock market transactions and scripless trading

The importance of the stock market and the transactions therein to the country's economy and commercial development cannot simply be brushed aside.[19] The Court in *Abacus Securities Corp. v. Ampil*[20] stated:

> Stock market transactions affect the general public and the national economy. The rise and fall of stock market indices reflect to a considerable degree the state of the economy. Trends in stock prices tend to herald changes in business conditions. Consequently, securities transactions are impressed with public interest, and are thus subject to public regulation. x x x[21]

Given this consequential importance, the State is empowered to regulate stock market transactions. As mentioned by Chief Justice Alexander G. Gesmundo (Chief Justice Gesmundo), an absolutely unrestricted market could be potentially harmful as fraudulent transactions may be perpetrated; on the other hand, too much regulation may discourage investors, including foreign investors, to enter the market due to high costs and burdens of doing business.[22] The Chief Justice noted that "whenever there is a regulation imposed by the State in the commercial aspect of the stock market, the Court should not simply brush aside the issue; rather, such issue must be meticulously examined to determine whether it is in line with the Constitutional principle to recognize the

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18 *White Light Corporation v. City of Manila*, supra note 13 at 456-457.
19 See *Roy III v. Herbosa*, 800 Phil. 459, 524 (2016).
20 518 Phil. 478 (2006).
21 Id. at 482-483.
22 *Concurring Opinion* of Chief Justice Alexander G. Gesmundo, p. 2.

indispensable role of the private sector, encourage private enterprise, and provide incentives to needed investments."[23]

Trading through a broker or a securities intermediary is allowed under Section 43.1 of Republic Act No. 8799,[24] or the Securities Regulation Code (SRC). Brokers are essentially the counterparties to the stock transactions at the stock exchange.[25] They buy and sell stocks on behalf of the principal. As the principals of these brokers are generally undisclosed, brokers are generally personally liable for contracts thus entered into.[26]

The core of this case is the scripless trading system adopted by PSE. The Office of the Solicitor General explained it in this wise:

> Prior to the scripless or uncertificated trading system, a stockholder who wishes to sell his shares of stock covered by a certificate is obliged to physically deliver his stock certificate to his broker, who in turn would deliver the stock certificate and other transfer papers to another broker (representing the buyer of the shares of stock). After the payment is made through the brokers, the buyer would then get the stock certificate, go to the issuing corporation, have the stock certificate cancelled, and get a new stock certificate issued in his name. This process had proven to be cumbersome and not conducive to trade in the United States, resulting in the "Paper Crisis of 1968," where trade was backlogged for months because of the volume of stock certificates that had to be processed.
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> Clearing and settlement practices in trading securities have developed since then.
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> In accordance with international best practices in trading securities, the Philippines instituted a clearing and settlement system to make trading in securities more efficient. This is done through a depository system, which facilitates trading through book-entry (as opposed to actual paper) transfers otherwise known as scripless and uncertificated system.
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> In the current market set-up in the country, an owner of certificates of stocks of listed companies who wishes to participate in the trade market delivers his stock certificate to a broker who enters the details of transfer into the system. The shares are electronically recorded (lodgement) into the broker's account under the name "PCD Nominee." Thereby, the scrip is forwarded to the Registry (transfer agent) where the certificate is cancelled and issued under "PCD Nominee." The deposit of shares is then confirmed in the book of entry of Philippine Depository & Trust Corporation (PDTC) and may now be traded in the market. Considering that shares may be traded (buy and sell) several times in a given day, the Philippine Stock Exchange (PSE) matches the trade such that at the end of a given trade day, a broker may either be a net selling broker or a net buying broker. Once the trade is matched, shares are delivered from the account of the net selling broker to the account of the net buying broker. Thereby, shares are electronically transferred to the buying broker's account at the PDTC. The

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23 Id. citing CONSTITUTION, ART. III, SEC. 20.
24 Entitled "THE SECURITIES REGULATION CODE." Enacted July 19, 2000.
25 *Abacus Securities Corp. v. Ampil*, supra at 495.
26 Id.

> buying client can then uplift the shares and register it under his name in the shares registry. Payment can now be made by net buyer and net sellers can now receive payments.[27]

Notably, the Court mentioned in *Commissioner of Internal Revenue v. Ocier*[28] that:

> In scripless trading, settlement is carried out via BES. Book-entry system or (BES) is a system used to record the ownership of shares. When a trade is done at the PSE, securities are moved via electronic debit and credit of Participant's securities accounts to effect settlement. There will be no need for the physical movement of stock certificate (scrip) between buyer or seller.[29]

The scripless or uncertificated system of trading is an international best practice adopted by the Philippine capital market. The PSE, through its central depository, the PDTC,[30] uses the computerized book-entry system to transfer ownership of securities from one account to another, thus eliminating the need for physical exchange of scrip between buyer and seller.[31] Under the scripless trading system, the securities intermediary, a PCD Nominee, is considered by the listed company as the registered stockholder for the shares of stocks lodged by the brokers and dealers with the PDTC. Consequently, the PCD nominee is the payee of the dividends payment and is the entity listed in the alphalist. As noted by Senior Associate Justice Marvic M.V.F. Leonen (Senior Associate Justice Leonen), the PCD Nominee then forwards the net dividend payments to the brokers, who then distributes them accordingly to their individual investor clients.[32]

With this current model of the market, Senior Associate Justice Leonen pointed out that "there is no direct connection between the listed companies

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27 *Rollo*, pp. 486-487.

28 843 Phil. 573 (2018).

29 Id. at 587 citing a submission of the CIR. Underscoring omitted.

30 Incorporated in 1995, the Philippine Depository & Trust Corp. (PDTC) was previously known as the Philippine Central Depository Inc. (PCD).

> PDTC acts as depository, registry, and/or intermediary of participants for all kinds of securities or financial instruments and provides value-added services such as collateral management for repurchase transactions. It is also a lending agent and collateral manager for Securities Lending and Borrowing transactions and similar activities.
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> PDTC provides safekeeping and settlement services for listed fixed income securities in the Philippine Dealing and Exchange Corp. (PDEx). This includes government securities and corporate debt issues. PDTC supports both broker level and investor level settlement for all PDEx-traded transactions.
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> It is under the dual oversight of the Securities and Exchange Commission (SEC) and the Bangko Sentral ng Pilipinas (BSP), considering the duality of its functions where it performs market services for securities engaged in the market as well as fiduciary sevices while securities are at rest.
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> (*available at* http://www.pds.com.ph/index.html%3Fpage_id=217.html [last visited June 28, 2022]).

31 *Available at* https://www.pseacademy.com.ph/LS/staticpages/id-1309854652920/FAQs.html (last visited June 28, 2022).

32 *Separate Concurring Opinion* of Senior Associate Justice Marvic M.V.F. Leonen, p. 4.

and the investors, not only for efficiency of transactions, but also for the protection of the individual investor or the beneficial owner."[33]

Withholding tax system

The other aspect of the instant controversy is the withholding tax system in this jurisdiction.

Withholding of taxes at source is a procedure for collecting income tax that is sanctioned by Philippine tax laws.[34] It was devised to: (a) provide taxpayers a convenient manner to meet their probable income tax liability; (b) ensure the collection of income tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns; and, (c) improve the government's cash flow.[35] Withholding of taxes results "in administrative savings, prompt and efficient collection of taxes, prevention of delinquencies, and reduction of governmental effort to collect taxes through more complicated means and remedies."[36]

Section 57 of Republic Act No. 8424,[37] or the National Internal Revenue Code of 1997 (Tax Code), as amended,[38] governs the withholding of taxes at source:

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33 Id.

34 *Chamber of Real Estate and Builders' Association, Inc. v. Romulo*, 628 Phil. 508, 535 (2010).

35 Id. at 535-536.

36 Id. at 536.

37 Entitled "AN ACT AMENDING THE NATIONAL INTERNAL REVENUE, AS AMENDED, AND FOR OTHER PURPOSES." Enacted: December 11, 1997.

38 Republic Act No. 10963, An Act Amending Sections 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, and 288; Creating New Sections 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, and 265-A; and Repealing Sections 35, 62, and 89; All Under Republic Act No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, as Amended, and for Other Purposes.

Republic Act No. 11256, An Act to Strengthen the Country's Gross International Reserves, Amending For the Purpose Sections 32 and 151 of the National internal Revenue Code, mandates the exemption from payment of income and excise taxes on the sale of gold to the BSP by registered small scale and accredited small scale miners and traders.

Republic Act No. 11346, An Act Increasing the Excise Tax on Tobacco Products, Imposing Excise Tax on Heated Tobacco Products and Vapor Products, Increasing the Penalties for Violations of Provisions on Articles Subject to Excise Tax, and Earmarking a Portion of the Total Excise Tax Collection from Sugar-Sweetened Beverages, Alcohol, Tobacco, Heated Tobacco and Vapor Products for Universal Health Care, Amending for this Purpose Sections 144, 145, 146, 147, 152, 164, 260, 262, 263, 265, 288, and 289, Repealing Section 288(B) and 288(C), and Creating New Sections 263-A, 265-B, and 288-A of the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, and for Other Purposes.

Republic Act No. 11467, An Act Amending Sections 109, 141, 142, 143, 144, 147, 152, 263, 263-A, 265, and 288-A, and Adding a New Section 290-A to RA 8424, as amended, otherwise known as the National Internal Revenue Code of 1997, and for Other Purposes.

Republic Act No. 11534, An Act Reforming the Corporate Income Tax and Incentives System, Amending for the Purpose Sections 20, 22, 25, 27, 28, 29, 34, 40, 57, 109, 116, 204 and 290 of the National Internal Revenue Code of 1997, as Amended and Creating Therein New Title XIII, and for Other Purposes.

> Sec. 57. *Withholding of Tax at Source.* -
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> (A) *Withholding of Final Tax on Certain Incomes.* - Subject to rules and regulations the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24(B)(1), 24(B)(2), 24(C), 24(D)(1); 25(A)(2), 25(A)(3), 25(B), 25(C), 25(D), 25(E), 27(D)(1), 27(D)(2), 27(D)(3), 27(D)(5), 28 (A)(4), 28(A)(5), 28(A)(7)(a), 28(A)(7)(b), 28(A)(7)(c), 28(B)(1), 28(B)(2), 28(B)(3), 28(B)(4), 28(B)(5)(a), 28(B)(5)(b), 28(B)(5)(c); 33; and 282 of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code.
>
> (B) *Withholding of Creditable Tax at Source.* - The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year: Provided, That, beginning January 1, 2019, the rate of withholding shall not be less than one percent (1%) but not more than fifteen percent (15%) of the income payment.
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There are two kinds of withholding taxes under Section 57: (1) final withholding taxes under paragraph (a), and (2) creditable withholding taxes under paragraph (b). Under both kinds, the payor, acting as a withholding agent, retains a portion of the amount paid to and received by the income payee.[39] In withholding of final taxes, the amount withheld is already the entire tax to be paid for the particular source of income.[40] The tax due therein is already paid, and the income recipient is cleared of tax liability for that payment upon withholding. Examples of income subject to final tax would be certain passive income such as interest, royalties, prizes, as well as cash and property dividends.[41] In withholding of creditable taxes, the amount withheld by the payor can be credited against the income tax liability of the income recipient for the taxable year.[42] Examples would be professional fees, rentals, contractors' fees, as provided in RR 2-1998, and the expanded withholding tax of 1% on goods and 2% on services required to be withheld by top withholding

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39 *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*, G.R. No. 211289, January 14, 2019.
40 Id.
41 NATIONAL INTERNAL REVENUE CODE OF 1997, SEC. 57. See enumeration in paragraph A.
42 *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*, supra.

agents as required by RR 11-2018[43] as amended by RR 31-2020,[44] but originally imposed by RR 12-1994.[45]

In the withholding tax system, the payor of income is a separate entity that acts as a withholding agent on behalf of the government for the collection of taxes. The agent becomes a payee by fiction of law.[46] Its liability is separate and distinct from the taxpayer, as income tax is still imposed on and due from the latter.[47] The agent is not liable for the tax as no wealth flowed into it — it earned no income; the Tax Code only makes the agent personally liable for the tax arising from the breach of its legal duty to withhold, as distinguished from its duty to pay tax, since the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of the Tax Code, compliance with which is imposed on the withholding agent and not upon the taxpayer.[48]

Section 58 then provides for the manner of filing of the returns and payment of taxes withheld. The withholding agent is obligated to file returns and remit the taxes it withheld under Section 57.

To implement these provisions on withholding, the Secretary of Finance promulgated RR 2-1998, which is continuously amended and improved in line with various developments and policy changes. The assailed RR 1-2014 is one of those amendments.

Purpose of RR 1-2014 and the other questioned regulations

As previously mentioned, capital markets and stock trading play an important role in the commercial development of the country; they greatly affect the economy. Thus, there is a need for the State to step in to regulate. Pursuant to this, government through respondents enacted the questioned regulations.

On dividend declarations and withholding of the final tax due therein: Prior to the enactment of RR 1-2014 and the questioned regulations, whenever there is a dividend declaration on the stocks listed with the PSE, the listed company, as withholding agent, reports this taxable event to the BIR and may lump the

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43 Entitled "AMENDING CERTAIN PROVISIONS OF REVENUE REGULATIONS NO. 2-98, AS AMENDED, TO IMPLEMENT FURTHER AMENDMENTS INTRODUCED BY REPUBLIC ACT NO. 10963, OTHERWISE KNOWN AS THE "TAX REFORM FOR ACCELERATION AND INCLUSION (TRAIN)" LAW, RELATIVE TO WITHHOLDING OF INCOME TAX," SEC. 2.57.2 (I)." Enacted: January 31, 2018.

44 Entitled "FURTHER AMENDING THE PERTINENT PROVISIONS OF REVENUE REGULATIONS (RR) NO. 1-2018, AS PREVIOUSLY AMENDED BY RR NO. 7-2019, SPECIFICALLY ON THE CRITERIA FOR IDENTIFYING THE TOP WITHHOLDING AGENTS," sec. 2.57.2 (I). Enacted: November 4, 2020.

45 Entitled "AMENDMENTS TO REVENUE REGULATIONS NO. 6-85, AS AMENDED, OTHERWISE KNOWN AS THE EXPANDED WITHHOLDING TAX REGULATIONS," sec. 1 (N). Enacted: June 27, 1994.

46 *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*, supra, citing *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, 672 Phil. 514, 528-529 (2011).

47 Id.

48 Id.

payees into one account (such as "PCD nominee," "Various Payees," or "Others.").[49] There is no disclosure of the personal information of the investors. The broker then files the required tax return and attachments, as well as remit the tax due. Subsequently, the PCD nominee forwards the net dividend payments to the brokers, who then distribute them accordingly to their investor clients.[50]

Then came RR 1-2014 and the questioned regulations, which brought with them significant changes to the process. The withholding agent now cannot list down PCD Nominees as payees and must disclose all its principals including their personal information in the alphalist whenever there is a dividend declaration.[51] Chief Justice Gesmundo noted that the effect would be the proscription of the practice of non-disclosure of the principal stockholder.[52] Due to the submission of the alphalist now containing information on the stockholders, the BIR will be able to track all the identities and transactions of the stockholders.[53]

Looking into the ultimate purpose of RR 1-2014, the Chief Justice noted that even without the disclosure of the personal information, the BIR is able to collect withholding taxes due from dividend income.[54] Further, the personal information sought by the BIR through RR 1-2014 are already available publicly in the reportorial documents that corporations, especially listed companies, submit to SEC.[55] As the RR 1-2014's purported objectives of efficient collection of withholding taxes and collection of personal information are already rightly met even before its issuance (or even during its suspended enforcement by virtue of this Court's TRO), the Chief Justice posed this question: what is RR 1-2014's ultimate purpose then?[56]

RR 1-2014 states that it is issued for "purposes of ensuring that **information on all income payments paid by employers/payors**, whether or not subject to the withholding tax x x x, are **monitored by and captured in the taxpayer database** of the Bureau of Internal Revenue (BIR), with the end in view of **establishing simulation model, formulating analytical framework for policy analysis, and institutionalizing appropriate enforcement activities**."[57]

For the Court, and as emphasized by the Chief Justice, these objectives are vague and highly subjective.[58]

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49 *Separate Concurring Opinion* of Senior Associate Justice Marvic M.V.F. Leonen, p. 4.
50 Id.
51 *Concurring Opinion* of Chief Justice Alexander G. Gesmundo, p. 3.
52 Id.
53 Id.
54 Id. at 3-4.
55 Id. at 4-5.
56 Id. at 5.
57 Revenue Regulations 1-2014, background. Emphases and underscoring supplied.
58 *Concurring Opinion* of Chief Justice Alexander G. Gesmundo, p. 6.

The issuance of the questioned regulations violated due process

Petitioners allege that the Secretary of Finance and the CIR violated their right to due process when they did not send notice or conduct hearings to deliberate and discuss the provisions and requirements of the questioned regulations. Respondents refute this argument by proffering that the Bureau of Internal Revenue (BIR), in the exercise of its legislative functions, had issued several BIR issuances to amend the reportorial requirements of the payor-corporations, which do not need to comply with the requirement of notice and hearing.

This issue essentially boils down to the characterization of the questioned regulations: specifically whether they are legislative rules or interpretative rules.

The right to due process guaranteed by the Constitution encompasses substantive and procedural due process. Substantive due process pertains to government's denial or restriction on the right to life, liberty, or property; procedural due process pertains to the procedures that the government must follow before it deprives a person of life, liberty, or property.[59] While the right has no exact definition, the standard in determining whether a person was accorded due process is whether the restriction on the person's life, liberty, or property is consistent with fairness, reason, and justice, and free from caprice and arbitrariness.[60] As applied to procedural due process, the question to be asked is whether the person was given sufficient notice and opportunity to be heard.[61] Then applying the concept of procedural process to the administrative issuances in this case, the inquiry pertains to whether the questioned regulations require prior notice and hearing for their validity.

But first, *Republic v. Drugmaker's Laboratories, Inc.*[62] summarizes the different kinds of administrative regulations:

> An administrative regulation may be classified as a legislative rule, an interpretative rule, or a contingent rule. **Legislative rules** are in the nature of subordinate legislation and designed to implement a primary legislation by providing the details thereof. They usually implement existing law, imposing general, extra-statutory obligations pursuant to authority properly delegated by Congress and effect a change in existing law or policy which affects individual rights and obligations. Meanwhile, **interpretative rules** are intended to interpret, clarify or explain existing statutory regulations under which the administrative body operates. Their purpose or objective is merely to construe the statute being

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59 *Manila International Ports Terminal, Inc. v. Philippine Ports Authority*, G.R. Nos. 196199 & 196252, December 7, 2021.

60 Id.

61 Id.

62 728 Phil. 480 (2014).

> administered and purport to do no more than interpret the statute. Simply, they try to say what the statute means and refer to no single person or party in particular but concern all those belonging to the same class which may be covered by the said rules. Finally, **contingent rules** are those issued by an administrative authority based on the existence of certain facts or things upon which the enforcement of the law depends.[63]

Legislative rules are a form of subordinate legislation where the agency is acting in a legislative capacity, supplementing the statute, filling in the details, pursuant to a specific delegation of legislative power.[64] They implement a primary legislation by providing the details thereof.[65] They impose additional obligations pursuant to authority from Congress and affect individual rights and obligations.[66] Interpretative rules, on the other hand, are intended to interpret, clarify, or explain existing statutory regulations under which the administrative body operates.[67] Their purpose or objective is merely to construe the statute being administered and purport to do no more than interpret the statute.[68]

Then, the general rule is that administrative regulations must comply with the requirements of the Administrative Code of 1987[69] on prior notice, hearing, and publication for validity.[70] Section 9, Chapter 2, Book VII of the Code provides for the requirement of notice and hearing when practicable if not required by law:

> Section 9. *Public Participation.* — (1) If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.
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> x x x x

Interpretative rules, however, are an exception from the requirement of public participation, or prior notice and hearing. When an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed.[71] But surely, if the interpretative regulation substantially increases the burden of those governed, public participation and publication are a must, thus:

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63 Id. at 489-490. Citations omitted. Emphases in the original.

64 *Dissenting Opinion* of Associate Justice Regino C. Hermosisima, Jr. in *Commissioner of Internal Revenue v. Court of Appeals*, 329 Phil. 987, 1036 (1996).

65 *Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary*, 308 Phil. 63, 70 (1994).

66 *Republic v. Drugmaker's Laboratories, Inc.*, supra at 489.

67 *Association of International Shipping Lines, Inc. v. Secretary of Finance*, G.R. No. 222239, January 15, 2020.

68 Id.

69 Executive Order No. 292, Entitled "INSTITUTING THE 'ADMINISTRATIVE CODE OF 1987'." Enacted: July 25, 1987.

70 *Republic v. Drugmaker's Laboratories, Inc.*, supra at 490.

71 *Association of International Shipping Lines, Inc. v. Secretary of Finance*, supra.

> Accordingly, an administrative regulation can be construed as simply interpretative or internal in nature, dispensing with the requirement of publication, when its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. When, however, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter, to be duly informed, before that new issuance is given the force and effect of law.[72]

In fine, the gauge on determining if a regulation requires prior notice and hearing is its substance or content. Prior notice and hearing are required if the regulation substantially increases the burden of those governed, notwithstanding its nomenclature—despite the regulation being called or designated as interpretative.

Thus, if the questioned regulations here in this case are legislative rules or substantially increase the burden of those governed, they should have undergone prior notice and hearing (which, in this case, are undisputedly absent) for their validity. If they are interpretative rules, prior notice and hearing are not essential for their validity.

Here, the Court finds that the questioned regulations are not mere interpretative issuances; they are legislative in nature that change, if not increase, the burden of those governed. Notice and hearing are thus required for their validity.

The questioned regulations, particularly SEC MC 10-2014, substantially changed the procedure currently observed by the market participants. The questioned regulations impose a new obligation—that is, the transmittal of the alphalist of payees to the listed companies—on the PDTC, their transfer agents and depository account holders. This obligation did not exist before because the practice then was the reporting of PCD Nominee as the payee in the alphalist. With the questioned regulations, there will be a significant change on how the parties involved, including the investors themselves, will make decisions and act. As aptly pointed out by Senior Associate Justice Leonen and Associate Justice Amy C. Lazaro-Javier (Justice Lazaro-Javier), the questioned regulations upended long established practices and changed a long standing rule in imposing this new burden.[73]

Also, the questioned regulations impose penalties for non-compliance.[74] The withholding agent may be penalized if it reported PCD Nominees in the alphalist, in addition to an invalid submission that may even result to failure to

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72 *DENR Employees Union v. Abad,* G.R. No. 204152, January 19, 2021.

73 *Separate Concurring Opinion* of Senior Associate Justice Marvic M.V.F. Leonen, p. 8. *Concurring Opinion* of Associate Justice Amy C. Lazaro-Javier, p. 8.

74 Revenue Regulations No. 1-2014, sec. 3. SEC Memorandum Circular No. 10-2014, sec. 6.

file the return, which is a completely different matter in itself. On the part of the PDTC and brokers, they may be penalized for failure to provide the listed companies with the information needed in the alphalist.

It may be argued that this new burden is not substantial because the list of payees is available and can easily be submitted to the listed companies as withholding agents, given that the PSE Revised Trading Rules require participants to maintain a record of their clients.[75]

However, it is to be stressed that its submission to the listed companies is not previously required. Submission also means that data previously not available to the listed companies will be made available to them and eventually to the BIR. In this regard, there is a significant change in the expectation of privacy with regard to the data. As pointed out by Senior Associate Justice Leonen, the obligation of providing the list of payees produces the obligation to safekeep the information provided.[76]

Hence, these effects highlight the questioned regulations' imposition of substantial burden.

Justice Lazaro-Javier also aptly stated that the prior conduct of public participation would have afforded the investors the opportunity to decide on whether to continue or withdraw with their investments to avoid the effects of the new regulations.[77]

In fine, the questioned regulations should have undergone notice and hearing prior to their enactment. They imposed new and substantial burdens on those governed. For failure to conduct notice and hearing prior to issuance and publication, the questioned regulations are therefore void.

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75 SEC Memorandum Circular No. 10-2014, Whereas Clause. The clause reads:

> WHEREAS, Article XV paragraph 11 of the Implementing Guidelines of the PSE Revised Trading Rules provides that trading participants must maintain a record of names of all its clients and their corresponding trading account codes. The record shall be kept current, and shall be maintained in the principal office of the TP and when so required by the Capital Markets Integrity Corporation (CMIC) or its successor, the Commission, any judicial, administrative or regulatory body or any person deputized or duly authorized by the Commission in connection with an investigation, examination, inquiry or part of surveillance procedures or in compliance with other pertinent laws and regulations, be made available to CMIC or its successor, SEC, any judicial, administrative or regulatory body or any person duly deputized or authorized by the Commission within the next trading day, unless the period is specified by the requiring authority.

76 *Separate Concurring Opinion* of Senior Associate Justice Marvic M.V.F. Leonen, p. 9.

77 *Concurring Opinion* of Associate Justice Amy C. Lazaro-Javier, p. 9.

The questioned regulations violate the right to privacy

Petitioners argue that their right to privacy over their personal information protected by Republic Act No. 10173,[78] or the Data Privacy Act, is violated. They insist that by requiring broker dealers to divulge personal information of their clients such as TIN, birthdate, and address, the questioned regulations would expose them to criminal penalties under the Data Privacy Act. Respondents, however, insist that there is no violation of the right to privacy and the Data Privacy Act because the collection and forwarding of the information required under the questioned regulations are allowed. Section 4 thereof is clear that information necessary in the performance of regulatory agencies of their constitutionally and statutorily mandated functions are excluded from the scope of that law. Respondents maintain that all withholding agents who received personal information relating to each disclosed investor are covered by the confidentiality rule of the Tax Code and SEC.

The Court finds that that the questioned regulations violate petitioners' right to privacy.

Fundamental in our legal system is the recognition of the right to privacy. The case of *Morfe v. Mutuc*[79] recognized that the right to privacy is embedded in the Constitution's due process clause:

> 4. The due process question touching on an alleged deprivation of liberty as thus resolved goes a long way in disposing of the objections raised by plaintiff that the provision on the periodical submission of a sworn statement of assets and liabilities is violative of the constitutional right to privacy. There is much to be said for this view of Justice Douglas: "Liberty in the constitutional sense must mean more than freedom from unlawful governmental restraint; it must include privacy as well, if it is to be a repository of freedom. The right to be let alone is indeed the beginning of all freedom." As a matter of fact, this right to be let alone is, to quote from Mr. Justice Brandeis "the most comprehensive of rights and the right most valued by civilized men."
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> The concept of liberty would be emasculated if it does not likewise compel respect for his personality as a unique individual whose claim to privacy and interference demands respect. As Laski so very aptly stated: "Man is one among many, obstinately refusing reduction to unity. His separateness, his isolation, are indefeasible; indeed, they are so fundamental that they are the basis on which his civic obligations are built. He cannot abandon the consequences of his isolation, which are, broadly speaking, that his experience is private, and the will built out of that experience personal to himself. If he surrenders his will to others, he surrenders his personality. If his will is set by the will of others, he ceases to be

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78 Entitled "AN ACT PROTECTING INDIVIDUAL PERSONAL INFORMATION IN INFORMATION AND COMMUNICATIONS SYSTEMS IN THE GOVERNMENT AND THE PRIVATE SECTOR, CREATING FOR THIS PURPOSE A NATIONAL PRIVACY COMMISSION, AND FOR OTHER PURPOSES." Enacted: August 15, 2012.

79 130 Phil. 415 (1968).

> master of himself. I cannot believe that a man no longer master of himself is in any real sense free."[80]

The right to privacy or the right to be let alone, in Philippine jurisdiction, is accorded recognition independent from the right to liberty. Thus, it likewise deserves in itself full constitutional protection. Further, at least two more provisions in the Bill of Rights afford protection to the right to privacy: Section 2 on unreasonable searches and seizures, and Section 3 on privacy of communication and correspondence.[81]

As such, regulations that are alleged to be violative of the right to privacy must be subject to strict scrutiny. Under the strict scrutiny test, the State must show that the regulation not only serves a compelling interest, but is also narrowly drawn in order to prevent abuses.[82] *Ople v. Torres*[83] (*Ople*) states:

> *And we now hold that when the integrity of a fundamental right is at stake, this [C]ourt will give the challenged law, administrative order, rule or regulation a stricter scrutiny. It will not do for the authorities to invoke the presumption of regularity in the performance of official duties. Nor is it enough for the authorities to prove that their act is not irrational for a basic right can be diminished, if not defeated, even when the government does not act irrationally. They must satisfactorily show the presence of compelling state interests and that the law, rule, or regulation is narrowly drawn to preclude abuses.* This approach is demanded by the 1987 Constitution whose entire matrix is designed to protect human rights and to prevent authoritarianism. In case of doubt, the least we can do is to lean towards the stance that will not put in danger the rights protected by the Constitution.[84]

On the right to privacy, the case adds:

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80 Id. at 433-434. Citations omitted.

81 See *In the Matter of the Petition for Issuance of Writ of Habeas Corpus of Sabio v. Gordon*, 535 Phil. 687, 715 (2006). Section 2 of the Bill of Rights reads:

> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Section 3 of the Bill of Rights reads:

> Section 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.
>
> (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

82 *Ople v. Torres*, 354 Phil. 948 (1998).

83 Id. at 983.

84 Id. Italicization in the original; citations omitted.

> *In no uncertain terms, we also underscore that the right to privacy does not bar all incursions into individual privacy. The right is not intended to stifle scientific and technological advancements that enhance public service and the common good.* It merely requires that the law be narrowly focused and a compelling interest justify such intrusions. Intrusions into the right must be accompanied by proper safeguards and well-defined standards to prevent unconstitutional invasions. We reiterate that any law or order that invades individual privacy will be subjected by this Court to strict scrutiny.[85]

Ople mandates the application of the strict scrutiny test in approaching government actions that are alleged to be violative of a fundamental right, including the right to privacy. Government bears the burden to show and prove that its action serves a compelling state interest and is narrowly drawn to prevent abuses.

It can be argued that the questioned regulations serve a compelling state interest: the effective and proper collection of taxes. RR 1-2014's stated purpose of ensuring information on all income payments made by payors are monitored and captured in the taxpayer database for "establishing simulation model, formulating analytical framework for policy analysis, and institutionalizing appropriate enforcement activities" may well be considered to be within the BIR's mandate of assessment and collection of national taxes.[86]

However, the Court finds that the second requirement was not met. The questioned regulations were not narrowly drawn to prevent abuses. Respondents failed to present any evidence to show and prove that the questioned regulations were narrowly drawn as the "least restrictive means for effecting the invoked interest."[87] As held in *Ople*, the burden to show and prove that the action is narrowly drawn to prevent abuses is with the State—which, in this case, the State failed. There may be abuses as a result of the enforcement of the questioned regulations: there is no assurance that the information gathered and submitted to the listed companies pursuant to the questioned regulations will be protected, and not be used for any other purposes outside the stated purpose. The investors provided their information to the brokers presumably without the intention of sharing such with any other entity, including the investee companies and the BIR.

The Court agrees with the observation of Senior Associate Justice Leonen that respondents did not claim or show that taxes were improperly collected, or that there was a collection deficit because of lack of more specific disclosure as sought by the questioned regulations.[88] The State must show an active effort in showing the inefficacy of all possible alternatives; this is to assure that the

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85 Id. at 985. Italicization in the original; citations omitted.

86 NATIONAL INTERNAL REVENUE CODE OF 1997, SEC. 2.

87 See *Separate Opinion* of Associate Justice Marvic M.V.F. Leonen in *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City,* 815 Phil. 1067, 1147-1148 (2017).

88 *Separate Concurring Opinion* of Associate Justice Marvic M.V.F. Leonen, p. 12.

chosen course of action is the sole effective means.[89] This can be supported through sound data gathering,[90] which respondents failed to do or show in the instant case.

Thus, the Court sees that the enforcement of the questioned regulations puts the right to privacy of the investors in peril. For this, the questioned regulations must be struck down. In the words of Justice Lazaro-Javier, it is very likely that some of these investors, in entering into investment contracts with listed companies, may have legitimately expected to not be named as payees in alphalists for withholding tax purposes.[91] The questioned regulations breach their zone of privacy that the prior rule has afforded.[92]

In this relation, the Court also finds that the Data Privacy Act is applicable to the questioned regulations.

Section 4 of the Data Privacy Act exempts from its coverage information necessary to carry out public functions:

> Section 4. *Scope*. — This Act applies to the processing of all types of personal information and to any natural and juridical person involved in personal information processing including those personal information controllers and processors who, although not found or established in the Philippines, use equipment that are located in the Philippines, or those who maintain an office, branch or agency in the Philippines subject to the immediately succeeding paragraph: Provided, That the requirements of Section 5 are complied with.
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> This Act does not apply to the following:
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> x x x x
>
> (e) Information necessary in order to carry out the functions of public authority which includes the processing of personal data for the performance by the independent central monetary authority and law enforcement and regulatory agencies of their constitutionally and statutorily mandated functions. Nothing in this Act shall be construed as to have amended or repealed Republic Act No. 1405, otherwise known as the Secrecy of Bank Deposits Act; Republic Act. No 6426, otherwise known as the Foreign Currency Deposit Act; and Republic Act No. 9510, otherwise known as the Credit Information System Act (CISA);
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The creation of a taxpayer database for "establishing simulation model, formulating analytical framework for policy analysis, and institutionalizing appropriate enforcement activities" is purportedly to ensure the effective assessment and collection of national taxes.

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89 See *Separate Opinion* of Associate Justice Marvic M.V.F. Leonen in *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City,* supra at 1148.

90 Id.

91 *Concurring Opinion* of Senior Associate Justice Amy C. Lazaro-Javier, p. 9.

92 Id.

Section 4(e), however, explicitly uses the word "necessary" to describe the information to be used for the performance of functions of public authority in order for the processing to be outside the purview of the law. Retired Senior Associate Justice Estela M. Perlas-Bernabe, during previous deliberations of the Court on the instant case, aptly described the term "necessary" in the provision as "a deliberate incorporation, if not implicit acknowledgment, of the second prong of the strict scrutiny analysis—that is, that the personal data sought by the State must be acquired through 'narrowly tailored' means[,] which are only necessary to accomplish the regulatory agencies' given mandate."[93] The Data Privacy Act can then be viewed as a mode of implementation of the second requirement of the strict scrutiny test. With this, the State cannot just use the exception of performance of mandated functions under the Data Privacy Act to carry out actions that abridge the right to privacy;[94] there must be a showing of necessity.

In this regard, the Court holds that the collection of information pursuant to the questioned regulations is not necessary for the BIR to carry out its functions. To reiterate, there was no showing that there was a problem or inefficacy with the system prior to the issuance of the questioned regulations. Respondents failed to show the aspects or operations under the prior rule that will be improved by the collection of the information. Thus, the requirement of necessity under the provision is not met. As it stands, the prior rule is effective and does not require additional information for proper collection of taxes.

Chief Justice Gesmundo and Senior Associate Justice Leonen also mentioned that the needlessness of the information sought to be collected is highlighted by the stated purpose of RR 1-2014.[95] The information sought are not explicitly stated to be for purposes of tax administration or collection; but for the creation of a taxpayer database to establish a simulation model, formulate an analytical framework for policy analysis, and institutionalize enforcement activities.[96] While creating a tax database may be considered as part of the BIR's function of tax collection, it would still be futile to state that the information sought are necessary for the BIR to effectively and efficiently perform its statutorily mandated functions.[97] Again, up until now, the BIR is able to carry out its functions of tax collection and administration despite the Court's TRO on the questioned regulations.

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93 *Concurring Opinion* of Retired Senior Associate Justice Estela M. Perlas-Bernabe, p. 8.

94 Id.

95 *Concurring Opinion* of Chief Justice Alexander G. Gesmundo. *Separate Concurring Opinion* of Senior Associate Justice Marvic M.V.F. Leonen, pp. 13-14. See Revenue Regulations 1-2014, background.

96 *Concurring Opinion* of Chief Justice Alexander G. Gesmundo. *Separate Concurring Opinion* of Senior Associate Justice Marvic M.V.F. Leonen, pp. 13-14.

97 *Concurring Opinion* of Chief Justice Alexander G. Gesmundo, pp. 5-7. *Separate Concurring Opinion* of Senior Associate Justice Marvic M.V.F. Leonen, pp. 13-14.

Also, respondents failed to take into account Section 13 of the Data Privacy Act on the processing of sensitive personal information. The pertinent provision reads:

> Section 13. *Sensitive Personal Information and Privileged Information.* — The processing of sensitive personal information and privileged information shall be prohibited, except in the following cases:
>
> x x x x
>
> (b) The processing of the same is provided for by existing laws and regulations: Provided, That such regulatory enactments guarantee the protection of the sensitive personal information and the privileged information: Provided, further, That the consent of the data subjects are not required by law or regulation permitting the processing of the sensitive personal information or the privileged information;
>
> x x x x

The information, particularly the TINs of the investors, sought to be collected and provided to the listed companies and eventually the BIR, are without a doubt sensitive personal information. Sensitive personal information includes personal information "[i]ssued by government agencies peculiar to an individual which includes, but is not limited to, social security numbers, previous or current health records, licenses or its denials, suspension or revocation, and tax returns."[98] TINs are issued by the BIR for the facilitation of filing of tax returns and payment of taxes.[99]

Thus, in processing the TINs of investors, the provisions of Section 13(b) should be observed. Section 13(b) requires that the regulatory enactments must guarantee the protection of the sensitive personal information and the privileged information, and that consent is not required by law or regulation.

The questioned regulations failed to include guarantees to protect the sensitive information to be collected. Respondents cannot simply rely on other laws and regulations such as the Tax Code, the SRC, and other issuances regarding this requirement. The Data Privacy Act is clear that it must be the subject issuance itself—not the other laws or regulations—that should provide the guarantee.

In sum, the questioned regulations did not comply with the requirements provided by the Data Privacy Act. The Data Privacy Act is one of the State's measures to enforce the right to privacy. Any noncompliance with the substantive provisions of this law (*i.e.*, those pertaining to processing of information) may well be treated as a violation of the right to privacy.

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98 DATA PRIVACY ACT OF 2012, section 3. IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 10173, KNOWN AS THE "DATA PRIVACY ACT OF 2012," rule 1, sec. 3. Enacted: August 24, 2016.

99 NATIONAL INTERNAL REVENUE CODE OF 1997, SEC. 236.

The SEC Chairperson had no authority to issue SEC MC 10-2014

The Secretary of Finance and the Commissioner of Internal Revenue, in including the prohibition on the use of "PCD Nominee" in RR 1-2014 and RMC 5-2014, acted outside their scope of authority

On the SEC Chairperson's authority, petitioners contend that the power of the SEC to issue rules and regulations should be in accordance with its duty to implement the SRC, and other related corporate laws, and not tax laws and regulations. Petitioners add that SEC MC 10-2014 was issued to supplement, implement and clarify the provision of RR 1-2014, a tax regulation. Respondents defend the questioned regulations as having been issued by competent authorities. They assert that SEC MC 10-2014 was issued pursuant to the SEC's authority under the SRC to assist the BIR and DOF in the implementation of RR 1-2014 and RMC 5-2014.

The Court finds that the SEC Chairperson had no authority to issue SEC MC 10-2014.

Administrative agencies, such as the SEC, possess rule-making powers, among others. "It is the power to make rules and regulations[,] which results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers."[100]

Along with the other requisites of a valid exercise of rule-making power, it is also important that the rules and regulations must be within the scope of authority granted by law to the administrative agency.[101] The rules must affect only matters that are within the jurisdiction or scope of authority of the issuing administrative agency. Otherwise, the rule is invalid.

In *Genuino v. De Lima*,[102] one of the grounds relied upon by the Court in striking down the assailed Department of Justice (DOJ) circular therein is the lack of an enabling law to justify the issuance. The Court held that the

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[100] *Genuino v. De Lima*, 829 Phil. 691, 722 (2018), citing *Holy Spirit Homeowners Association, Inc. v. Secretary Michael Defensor*, 529 Phil. 573, 585 (2006).

[101] Id. at 722-723.

[102] Supra.

provisions of the Administrative Code of 1987[103] relied upon by the DOJ Secretary do not vest the DOJ the authority to issue the assailed circular.[104] The circular is likewise found to be not within the ambit of the inherent power of the executive department to adopt rules and regulations.[105] DOJ had no authority to regulate what is not provided by the pertinent law, making the issuance *ultra vires*.[106]

In *Metro Manila Development Authority v. Viron Transportation Co., Inc.*,[107] the Court held that the executive order issued by the President designating therein petitioner MMDA as the implementing agency of the Greater Manila Transport System Project was *ultra vires* for lack of legal basis.[108] By law, it is the Department of Transportation and Communication (DOTC), not MMDA, that is the primary implementing and administrative entity in the promotion, development, and regulation of networks of transportation.[109] MMDA had no authority to implement a matter that is found to be within DOTC's scope. This lack of legal basis was one of the grounds for the Court to strike down the executive order.

Further, worth noting is the Court's statement in *Smart Communications, Inc. v. National Telecommunications Commission*:[110] "Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by an administrative body, as well as with respect to what fields are subject to regulation by it."[111] Laws provide for the respective fields that an administrative agency is empowered or authorized to regulate and implement.

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103 The provisions of the ADMINISTRATIVE CODE OF 1987 relied upon by respondents in *Genuino* are: Sections 1 and 3, Book IV, Title III, Chapter 1; Section 50, Chapter 11, Book IV; and, Section 7, Chapter 2, Title III, Book IV.

104 *Genuino v. De Lima*, supra at 723-727.

105 Id. at 727-728

106 The Court stated in *Genuino v. De Lima*, supra at 728:

> The DOJ is confined to filling in the gaps and the necessary details in carrying into effect the law as enacted. Without a clear mandate of an existing law, an administrative issuance is ultra vires.
>
> Consistent with the foregoing, there must be an enabling law from which DOJ Circular No. 41 must derive its life. Unfortunately, all of the supposed statutory authorities relied upon by the DOJ did not pass the completeness test and sufficient standard test. The DOJ miserably failed to establish the existence of the enabling law that will justify the issuance of the questioned circular.
>
> That DOJ Circular No. 41 was intended to aid the department in realizing its mandate only begs the question. The purpose, no matter how commendable, will not obliterate the lack of authority of the DOJ to issue the said issuance. Surely, the DOJ must have the best intentions in promulgating DOJ Circular No. 41, but the end will not justify the means. x x x

107 557 Phil. 121 (2007).

108 Id. at 141. See also *Pantaleon v. Metro Manila Development Authority*, G.R. No. 194335, November 17, 2020.

109 Id. at 141-142.

110 456 Phil. 145 (2003).

111 Id. at 156.

From the foregoing, the following conclusion can be made: The relevant law must provide for the scope of authority of the administrative agency. An administrative agency can regulate only what is provided by the enabling law. It also follows that an administrative agency can implement only laws that it is empowered to do so, unless otherwise stated. An administrative agency cannot implement laws that do not cover or pertain to matters of its field, unless otherwise provided. Therefore, administrative issuances touching upon matters outside the scope of authority—including other pieces of legislation—will be considered *ultra vires.*

In the instant case, the SEC seeks to implement tax laws in issuing SEC MC 10-2014. It seeks to enforce compliance with a tax regulation issued by the Secretary of Finance, as stated in one of the Whereas Clauses of the issuance:

> WHEREAS, to assist and ensure that the issuers of registered securities and other market participants concerned comply with the requirements of BIR Revenue Regulation No. 1-2014, the Commission deems it necessary to issue guidelines and directives which would direct the depository, the broker dealers and other depository participants to provide the issuers with the data required by the BIR regulation;

According to the same Whereas Clauses, the SEC derives authority from Rule 30.2 paragraph 9 of the Amended Implementing Rules and Regulations[112] (IRR) of the SRC and Section 5(h) of the SRC in issuing SEC MC 10-2014.[113]

Rule 30.2 paragraph 9 of the IRR of SRC provides:

> SRC RULE 30.2
> Transactions and Responsibilities of Brokers and Dealers
> [formerly, SRC Rules 30.2-1, 2, 3, 4, 5, 6, 7, 8, and 9]
>
> x x x x
>
> 9. Submission of Names of Stockholders, Members, Participants, Clients and Related Information
>
> Every Exchange, clearing agency, Broker Dealer, transfer agent, other self-regulatory organization, and every other person required to register under the Code (hereinafter "registered person") shall immediately report to the Commission and any person deputized and/or duly authorized by the Commission pursuant to Section 5(h) of the Code, the names of their

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[112] Entitled "AMENDED IMPLEMENTING RULES AND REGULATIONS OF THE SECURITIES REGULATION CODE." Enacted: December 30, 2003. These Rules have been further amended in 2015. The 2003 version was the version in effect at the time of promulgation of the questioned regulations.

[113] WHEREAS, the Commission, under SRC Rule 30.2 paragraph 9, has the authority to require every Exchange, clearing agency, broker dealer, transfer agent, other self-regulatory organization or person required to register under the SRC to submit to the Commission and any person deputized and/or duly authorized by the Commission pursuant to Section 5 (h) of the SRC, the names of owners/stockholders, members, participants, clients and other related information in its or his possession, upon order of the Commission, in pursuance of an investigation, examination, official inquiry or as part of a surveillance procedures, and/or in compliance with other pertinent laws;

> owners/stockholders, members, participants, and clients, and other related information in its or his possession, upon order of the Commission, or as required by the rules of a self-regulatory organization in which he is a member or participant, in pursuance of an investigation, examination, official inquiry or as part of a surveillance procedures, and/or in compliance with other pertinent laws.

As can be gleaned, Rule 30.2, paragraph 9 empowers the SEC to order entities (*i.e.,* exchange, clearing agency, broker dealer, transfer agent, registered persons) to report information (as enumerated therein) "in pursuance of an investigation, examination, official inquiry or as part of a surveillance procedures, and/or in compliance with other pertinent laws." And by virtue of Section 5(h)[114] of the SRC, the SEC authorized the listed corporations or their transfer agents to receive the information, which is to be indicated in the alphalist to be filed with the BIR.

The Court cannot subscribe to this action of the SEC. The SEC cannot use its rule-making power to order compliance with a tax regulation that is outside its ambit. It cannot require submission of information for purposes not covered by the provision. Rule 30.2, paragraph 9 specifically enumerates the purposes for which the SEC can require reporting of information: in pursuance of an investigation, examination, official inquiry, or as part of a surveillance procedures, and/or in compliance with other pertinent laws. Compliance with tax laws and regulations is clearly not included.

Indeed, there is this phrase "in compliance with other pertinent laws" in the provision. However, the Court finds that this phrase should be construed to be those laws that provide powers and functions to the SEC. These laws are the SRC, and the Corporation Code (already superseded by the Revised Corporation Code),[115] the Investment Houses Law[116] as amended, the Financing Company Act,[117] among others (Section 5 of the SRC provides for an enumeration). Even RR 1-2014 itself did not empower the SEC to enforce compliance with it. In other words, the phrase "in compliance with other pertinent laws" empowers SEC to require reporting of information in pursuance of compliance only with laws that it is authorized to enforce.

Parenthetically, SRC is one of the several laws that provide for the powers of the SEC. This law is the primary source of SEC's powers and functions as a whole. Its section 5 states:

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114 (h) Enlist the aid and support of and/or deputize any and all enforcement agencies of the Government, civil or military as well as any private institution, corporation, firm, association or person in the implementation of its powers and functions under this Code;

115 BATAS PAMBANSA BLG. 68, Entitled "THE CORPORATION CODE OF THE PHILIPPINES." Enacted: May 1, 1980. Repealed by Republic Act No. 11232, Entitled "AN ACT PROVIDING FOR THE REVISED CORPORATION CODE OF THE PHILIPPINES." Enacted: February 20, 2019.

116 PRESIDENTIAL DECREE NO. 129, Entitled: "GOVERNING THE ESTABLISHMENT, OPERATION AND REGULATION OF INVESTMENT HOUSES." Enacted: February 15, 1973.

117 REPUBLIC ACT NO. 8556, Entitled: "AN ACT AMENDING REPUBLIC ACT NO. 5980, AS AMENDED, OTHERWISE KNOWN AS THE FINANCING COMPANY ACT." Enacted: February 26, 1998.

Section 5. *Powers and Functions of the Commission.* — 5.1. The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:

(a) Have jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the Government;

(b) Formulate policies and recommendations on issues concerning the securities market, advise Congress and other government agencies on all aspects of the securities market and propose legislation and amendments thereto;

(c) Approve, reject, suspend, revoke or require amendments to registration statements, and registration and licensing applications;

(d) Regulate, investigate or supervise the activities of persons to ensure compliance;

(e) Supervise, monitor, suspend or take over the activities of exchanges, clearing agencies and other SROs;

(f) Impose sanctions for the violation of laws and the rules, regulations and orders issued pursuant thereto;

(g) Prepare, approve, amend or repeal rules, regulations and orders, and issue opinions and provide guidance on and supervise compliance with such rules, regulations and orders;

(h) Enlist the aid and support of and/or deputize any and all enforcement agencies of the Government, civil or military as well as any private institution, corporation, firm, association or person in the implementation of its powers and functions under this Code;

(i) Issue cease and desist orders to prevent fraud or injury to the investing public;

(j) Punish for contempt of the Commission, both direct and indirect, in accordance with the pertinent provisions of and penalties prescribed by the Rules of Court;

(k) Compel the officers of any registered corporation or association to call meetings of stockholders or members thereof under its supervision;

(l) Issue subpoena duces tecum and summon witnesses to appear in any proceedings of the Commission and in appropriate cases, order the examination, search and seizure of all documents, papers, files and records, tax returns, and books of accounts of any entity or person under investigation as may be necessary for the proper disposition of the cases before it, subject to the provisions of existing laws;

> (m) Suspend, or revoke, after proper notice and hearing the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law; and
>
> (n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.

Section 5 does not state any reference to enforcing compliance with tax laws and regulations; the law does not authorize the SEC to enforce tax laws and regulations. The Legislature, in enacting the SRC, envisioned having a free, self-regulating market, as well as protecting investors and regulation of securities.[118] For these purposes, Congress designated the SEC in carrying out these policies. The same goes for the other laws that relate to corporation law, securities, and finance such as the Corporation Code (already superseded by the Revised Corporation Code), the Investment Houses Law, the Financing Company Act, among others (as mentioned in Section 5 of SRC). Congress, in enacting these laws, likewise designated SEC in carrying out the policies therein. Nowhere in these laws is it stated that the SEC can enforce tax laws and regulations. Therefore, the SEC cannot do so — it cannot and it has no authority to enforce tax laws and regulations. SEC thus cannot promulgate rules and regulations for the enforcement of tax laws and regulations.

On the other hand, enforcement of tax laws is lodged with the DOF and the BIR. The Tax Code, as amended, authorizes the DOF to promulgate rules for the effective enforcement of the law. It also grants the BIR, through its Commissioner, with power to interpret tax laws. The BIR also assists the DOF in the latter's rule-making function by making recommendations. The pertinent provisions state:

> 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.
>
> x x x x
>
> Section 244. *Authority of Secretary of Finance to Promulgate Rules and Regulations.* - The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.

The Tax Code vested separate and distinct powers on the DOF and the BIR.[119] To carry out their powers under this law, they promulgate various issuances such as revenue regulations, revenue memorandum orders, revenue

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[118] THE SECURITIES REGULATION CODE, SEC. 2.

[119] See *Association of International Shipping Lines, Inc. v. Secretary of Finance*, G.R. No. 222239, January 15, 2020.

memorandum rulings, revenue memorandum circulars, and BIR rulings.[120] In any event, these two agencies are the primary agencies for the enforcement of tax laws.

In sum, the SEC cannot enforce tax laws and regulations. In issuing SEC MC 10-2014, it delved into matters that are outside its authority. Even if the questioned circular provided for matters on the submission of information of investors, which is surely related to securities and the SEC's functions, it furthered a purpose that should have been within the domain of the DOF and the BIR, *i.e.*, withholding of taxes. To add, the revenue issuances did not even seek assistance from the SEC. Therefore, the Court finds SEC MC 10-2014 to be *ultra vires*.

Now, on the authority of the Secretary of Finance and the CIR, petitioners aver that the questioned regulations amended Section 43.1 of the SRC which give listed companies the right to designate a PCD Nominee as the securities intermediary of their uncertificated shares, and the right of a PCD Nominee to be named as the shareholder of the uncertificated shares. Respondents assert

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[120] See *Concurring and Dissenting Opinion* of Associate Justice Amy C. Lazaro-Javier in *Commissioner of Internal Revenue v. Court of Tax Appeals,* G.R. No. 210501, March 15, 2021. The opinion discussed the nature of the various revenue issuances:

> Section 244 of the NIRC authorizes the Secretary of Finance to promulgate all needful rules and regulations for the effective enforcement of the Code. Meanwhile, Section 4 of the NIRC grants the Commissioner of Internal Revenue the exclusive and original power to interpret its provisions. The exercise of these functions may come in the form of Revenue Regulations, Revenue Memorandum Orders, Revenue Memorandum Rulings, Revenue Memorandum Circulars, and BIR Rulings, viz.:
>
> > Revenue Regulations (RRs) are issuances signed by the Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, that specify, prescribe or define rules and regulations for the effective enforcement of the provisions of the National Internal Revenue Code (NIRC) and related statutes.
> >
> > Revenue Memorandum Orders (RMOs) are issuances that provide directives or instructions; prescribe guidelines; and outline processes, operations, activities, workflows, methods and procedures necessary in the implementation of stated policies, goals, objectives, plans and programs of the Bureau in all areas of operations, except auditing.
> >
> > Revenue Memorandum Rulings (RMRs) are rulings, opinions and interpretations of the Commissioner of Internal Revenue with respect to the provisions of the Tax Code and other tax laws, as applied to a specific set of facts, with or without established precedents, and which the Commissioner may issue from time to time for the purpose of providing taxpayers guidance on the tax consequences in specific situations. BIR Rulings, therefore, cannot contravene duly issued RMRs; otherwise, the Rulings are null and void ab initio.
> >
> > Revenue Memorandum Circular (RMCs) are issuances that publish pertinent and applicable portions, as well as amplifications, of laws, rules, regulations and precedents issued by the BIR and other agencies/offices.
> >
> > BIR Rulings are the official position of the Bureau to queries raised by taxpayers and other stakeholders relative to clarification and interpretation of tax laws.

that the requirement under the questioned regulations to submit an alphalist of payees on income payments is merely a reportorial requirement that precisely recognizes and is based upon the scripless trading system provided for under Section 43.1 of the SRC, and the manner of payment of cash dividends as provided under PCD Rules.

The Court finds that the DOF in issuing RR 1-2014, and the BIR in coming up with RMC 5-2014, acted outside their scope of authority, for the same reasons that SEC MC 10-2014 is unconstitutional. DOF and BIR delved into matters that are outside taxation—the use of PCD Nominees or securities intermediaries.

To reiterate, the DOF and the BIR are the primary agencies responsible for the enforcement of tax laws. The DOF is authorized to promulgate rules for the effective enforcement of the Tax Code; while the BIR recommends and is granted with the power to interpret tax laws.[121] The Tax Code, in turn, does not govern matters involving securities, aside from the taxation aspect. Nothing in the Tax Code states that the DOF, in implementing tax laws, and the BIR may regulate the operation of exchanges and investor relations.

In prohibiting the use of PCD Nominees as payees in the alphalist for withholding of taxes, the DOF and the BIR essentially probed into a field that is outside taxation. It is a field under securities and is within the ambit of the SEC. The DOF and BIR cannot regulate, much less prohibit, the use of PCD Nominees; only the SEC can regulate the same pursuant to its functions provided by law,[122] which must be in line with purposes authorized by law and within its field of function.

Further, the use of uncertificated shares and the resulting designation of PCD Nominees are allowed by the SRC:

> Section 43. *Uncertificated Securities.* — Notwithstanding Section 63 of the Corporation Code of the Philippines:
>
> 43.1. A corporation whose securities are registered pursuant to this Code or listed on a securities Exchange may:
>
> (a) If so resolved by its Board of Directors and agreed by a shareholder, investor or securities intermediary, issue shares to, or record the transfer of some or all of its shares into the name of said shareholders, investors or, securities intermediary in the form of uncertificated securities. The use of uncertificated securities in these circumstances shall be without prejudice to the rights of the securities intermediary subsequently to require the corporation to issue a certificate in respect of any shares recorded in its name; and

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[121] NATIONAL INTERNAL REVENUE CODE OF 1997, SEC. 4 AND 244.

[122] THE SECURITIES REGULATION CODE, SEC. 40. REVISED CORPORATION CODE, SEC. 62.

> (b) If so provided in its articles of incorporation and by-laws, issue all of the shares of a particular class in the form of uncertificated securities and subject to a condition that investors may not require the corporation to issue a certificate in respect of any shares recorded in their name.
>
> 43.2. The Commission by rule may allow other corporations to provide in their articles of incorporation and by-laws for the use of uncertificated securities.
>
> 43.3. Transfers of securities, including an uncertificated securities, may be validly made and consummated by appropriate book-entries in the securities accounts maintained by securities intermediaries, or in the stock and transfer book held by the corporation or the stock transfer agent and such bookkeeping entries shall be binding on the parties to the transfer. A transfer under this subsection has the effect of the delivery of a security in bearer form or duly indorsed in blank representing the quantity or amount of security or right transferred, including the unrestricted negotiability of that security by reason of such delivery. However, transfer of uncertificated shares shall only be valid, so far as the corporation is concerned, when a transfer is recorded in the books of the corporation so as to show the names of the parties to the transfer and the number of shares transferred.

The SRC does not particularly provide that the designation of securities intermediaries and PCD Nominees is not allowed for tax purposes. Hence, the DOF in effect prohibited (albeit for tax purposes) the use of something that is allowed by law. Evidently then, RR 1-2014 and the companion RMC 5-2014 contravened an existing law. Jurisprudence states that administrative rules and regulations must not contravene the Constitution and other laws.[123]

Similar with the preceding discussion regarding SEC, the DOF, in the exercise of its powers under the Tax Code, and the BIR cannot regulate matters pertaining to securities. In issuing RR 1-2014 and RMC 5-2014, the DOF and BIR delved upon matters that are outside the authority provided by law. Regulation of securities and investment relationships are within the ambit of the SEC. For this reason, the Court finds RR 1-2014 and RMC 5-2014 to be *ultra vires* as well.

The requirement for the disclosure of payees of dividend payments is clear and unequivocal

Petitioners maintain that the requirement for listed companies and broker dealers to disclose the payee of dividend payments is vague and therefore void due to the prohibition on the identification of PCD Nominee as payee. They argue that because the submission of the alphalist where the income payments and taxes withheld are lumped into one single amount is expressly prohibited under RR 1-2014, the listed companies and broker dealers are placed in a predicament on who should be identified as the payee of dividend payments due

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123 *Pantaleon v. Metro Manila Development Authority*, supra note 108.

on uncertificated shares in the alphalist of the listed company concerned. As a result, petitioners are compelled to speculate which among the following should be considered as payee: broker dealers who are PDTC participants and who caused the lodgement of the shares under the name of PCD Nominee, broker dealers' clients/investors, or another person falling under the agency or trust arrangements or institutional investors. Petitioners express concern that by abiding with RR 1-2014, they run the risk of incurring administrative and criminal liabilities under the Tax Code and the SRC.

Respondents justify the questioned regulations as clear and not impossible to comply with in that they require that the alphalist must indicate the taxpayer's name with the corresponding TIN, as the lumping of payees into one account such as "PCD nominee," "Various Payees," or "Others" will result in the unsuccessful uploading of the alphalist into the BIR database.

Notwithstanding the Court's disposition on the issues of due process, right to privacy, and the agencies' authority to enact the questioned regulations, the Court shall nonetheless resolve this issue.

The provision of RR 1-2014 in question reads:

> The submission of the herein prescribed alphalist where the income payments and taxes withheld are lumped into one single amount (e.g. "Various employees", "Various payees", "PCD nominees", "Others", etc.) shall not be allowed.

The provision is clear and unequivocal. The use of PCD Nominees will no longer be allowed. Conversely, the payee of the dividend payments or the beneficial owners should be disclosed. The Court applies the cardinal rule in statutory construction that when the law is clear, there is no room for interpretation, only application.

The purported impossibility of complying with the provision is more apparent than real. Scripless trading was implemented to eliminate the tedious paper work related to stock certificates. While the Court acknowledges that with the current structure, the scrips are lodged in the name of the PCD Nominee, this does not foreclose the possibility of divulging the beneficial owners of the securities. The Rules of the Philippine Central Depository has placed necessary safeguards to protect the beneficial owners, who are the parties to which the beneficial title, as against the legal or registered title, over the securities belong.[124]

Verily, beneficial owners are not meant to be hidden. Stock brokers and dealers are tasked with the duty to keep a separate book of their clients, the beneficial owners, to account for the dividends to be received. The Court thus

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[124] See THE RULES OF THE PHILIPPINE CENTRAL DEPOSITORY, rules 2.5.3, 3.2.4.4, 3.2.4.5, and 3.3.3.2.

cannot subscribe to petitioners' assertion that it is impossible to comply with the questioned regulation because, before they lodge securities into the PCD system, they must have had the necessary information of the clients beforehand.

Also, SEC MC 10-2014 made it clear that, upon receiving information on a dividend declaration, the PDTC or the broker-dealers shall prepare an alphalist of all account holders as of Record Date, to be forwarded to the listed company.[125] The circular defines Record Date as "the date on which the company looks at its record to see who the shareholders of the company are who will be entitled to dividend."[126] After a dividend declaration, the shareholders as of this date are entitled to the dividends to be paid out. Thus, contrary to petitioners' claim, it is possible to identify who the payees will be.

No violation of the Bank Secrecy Law, including the Foreign Currency Deposit Act; no undue expansion of the powers of the Commissioner of Internal Revenue to inquire on bank accounts

Petitioners aver that the questioned regulations also violate the General Banking Law, the Manual of Regulations for Banks, and the Bank Secrecy Law. Respondents counter that investment in securities does not belong to the scope of "deposit" and cannot be covered by the confidentiality rule under the Bank Secrecy Law.

Again, the Court will resolve this issue notwithstanding the unconstitutionality of the questioned regulations as already disposed.

Section 2 of Republic Act No. 1405,[127] or the Bank Secrecy Law, provides that all deposits of whatever nature in banks or banking institutions in the Philippines, and investments in government bonds are absolutely confidential in nature. Republic Act No. 3591[128] or the Philippine Deposit Insurance

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[125] SEC MEMORANDUM CIRCULAR 10-2014, SEC. 2-3.

[126] Id. at sec. 1(6).

[127] Entitled "AN ACT PROHIBITING DISCLOSURE OF OR INQUIRY INTO, DEPOSITS WITH ANY BANKING INSTITUTION AND PROVIDING PENALTY THEREFOR." Enacted: September 9, 1955. Section 2 reads:

> Section 2. All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation.

[128] Entitled "AN ACT ESTABLISHING THE PHILIPPINE DEPOSIT INSURANCE CORPORATION, DEFINING ITS POWERS AND DUTIES AND FOR OTHER PURPOSES." Enacted: June 22, 1963.

Corporation (PDIC) Charter, as amended,[129] provides for the definition of deposit and the exclusions from deposit insurance coverage, such as investment products:

> SECTION 7. Section 4 of the same Act is accordingly renumbered as Section 5, and is hereby amended to read as follows:
>
> DEFINITION OF TERMS
>
> SEC. 5. As used in this Act. —
>
> x x x x
>
> (g) The term deposit means the unpaid balance of money or its equivalent received by a bank in the usual course of business and for which it has given or is obliged to give credit to a commercial, checking, savings, time or thrift account, evidenced by a passbook, certificate of deposit, or other evidence of deposit issued in accordance with Bangko Sentral ng Pilipinas rules and regulations and other applicable laws, together with such other obligations of a bank, which, consistent with banking usage and practices, the Board of Directors shall determine and prescribe by regulations to be deposit liabilities of the bank: Provided, That any obligation of a bank which is payable at the office of the bank located outside of the Philippines shall not be a deposit for any of the purposes of this Act or included as part of the total deposits or of insured deposit: Provided, further, That subject to the approval of the Board of Directors, any insured bank which is incorporated under the laws of the Philippines which maintains a branch outside the Philippines may elect to include for insurance its deposit obligations payable only at such branch.
>
> The Corporation shall not pay deposit insurance for the following accounts or transactions:
>
> **(1) Investment products such as bonds and securities, trust accounts, and other similar instruments;**
>
> x x x x

Thus, investments in securities covered by scripless trading are not covered by the confidentiality rule under the Bank Secrecy Law.

The Court also delves into the implications of the revenue issuances on secrecy of bank deposits and the related powers of the CIR to inquire on bank accounts. In this regard, Associate Justice Rodil V. Zalameda (Justice Zalameda) submits that the revenue issuances violate the Bank Secrecy Law and the Foreign Currency Deposit Act[130] (FCDA) because it becomes possible to derive the balance of the deposit based on the amount of interest income

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[129] REPUBLIC ACT NO. 10846, Entitled "AN ACT ENHANCING THE RESOLUTION AND LIQUIDATION FRAMEWORK FOR BANKS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 3591, AS AMENDED, AND OTHER RELATED LAWS." Enacted: May 23, 2016.

[130] REPUBLIC ACT NO. 6426, Entitled "AN ACT INSTITUTING A FOREIGN CURRENCY DEPOSIT SYSTEM IN THE PHILIPPINES, AND FOR OTHER PURPOSES." Enacted: April 4, 1972.

reported for each payee-depositor in the alphalist.[131] Consequently, the revenue issuances also expand the CIR's authority to inquire on bank deposits under the Tax Code.[132]

The Court takes a different route from Justice Zalameda. The revenue issuances do not violate nor circumvent the Bank Secrecy Law and the FCDA. RMC 5-2014 provides for the specific information to be provided regarding payees of income: TIN, complete name, amount of income, and withholding tax.[133]

First, the regulations do not require the reporting of the basis of the income; that is, for this particular instance, the basis of the interest income—the amount of the deposit. Thus, on its face, there is no violation of the Bank Secrecy Law.

Second, it is very close to impossible to derive the balance of the deposit from the reported interest income, resulting to a circumvention of the law.

There are many factors at play here. The *Bangko Sentral ng Pilipinas* (BSP) allows banks to customize their deposit product offerings based on the needs of the identified market, as long as they adopt the minimum key features of a basic deposit account as provided by the regulator.[134] In this relation, the Manual of Regulations for Banks (MORB), issued by the BSP, provides that banks are required to disclose information on interest computation and payments regarding the deposit products they offer:

> **262 DISCLOSURE OF EFFECTIVE RATES OF INTERESTS**
>
> Banks are required to disclose to depositors the following information on interest computation and payments:
>
> a. Type/kind of deposit;
> b. Nominal rate of interest and period covered;
> c. Manner of interest payment, i.e., whether credited in advance or otherwise;
> d. Basis of interest payment, i.e., whether based on average daily balance compounded quarterly or otherwise;
> e. Effective rate of interest expressed as a simple annual rate, on the basis of the information above given and indicating the formula used to arrive at the effective rate of interest; and
> f. Illustration of basis of computing interest on a hypothetical deposit account.[135]

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131 *Revised Reflections* of Associate Justice Rodil V. Zalameda, p. 10-11.
132 Id.
133 REVENUE MEMORANDUM CIRCULAR NO. 5-2014, ITEM 12.
134 MANUAL OF REGULATIONS FOR BANKS, sec. 213 (updated as of December 2018). *Available at* https://www.bsp.gov.ph/Regulations/MORB/2018_MORB.pdf (last accessed June 28, 2022).
135 MANUAL OF REGULATIONS FOR BANKS, sec. 263 (updated as of December 2018). *Available at* https://www.bsp.gov.ph/Regulations/MORB/2018_MORB.pdf (last accessed June 28, 2022).

Banks determine the features of the deposit products they offer provided there is full disclosure to the depositors. It is safe to state that banks differ on the features they incorporate on their deposit products as part of competition. This differentiation already complicates the process of deriving the amount of deposit from the information in the alphalist.

Also, worth keeping in mind is that the information provided in the MORB (as enumerated above) are not disclosed in the alphalist for withholding tax purposes.[136] These information are necessary to successfully derive the deposit balance; it would be impossible or extremely difficult to derive the deposit balance just by examining the alphalist of interest income payees.

The interest rates used—even if fixed—are not disclosed in the alphalist. Even if the rates that banks set are publicly available, there is a need to inquire with the specific despositary bank or even look into the specific contract between the depositor and the bank to know the applicable interest rate for that depositor.

Even so, it is not a simple work back by dividing the amount of interest income with the interest rate to arrive at the balance. One will also need to determine the basis of interest payment for that specific investor—whether average daily balance of the deposit is used by the bank or not. The same goes for the type of deposit (*e.g.,* demand deposit, savings deposit, time deposit, among others), as well as the movement (*e.g.,* deposits, withdrawals, transfers) of the particular account within the taxable period. These other data affect the computation of the interest to be earned by the depositor. Thus, these pieces of information are necessary to harness a successful derivation of the balance of the deposit. But again, these are not available in the alphalist. One will need to inquire deeply with the bank and the depositor to get hold of these.

Therefore, the revenue issuances, in requiring banks to report in the alphalist the names of depositors and the interest income they earn do not violate nor circumvent the Bank Secrecy Law and the FCDA. In any event, even if the necessary pieces of information are available, it would be difficult as well to ascertain if the derived amount is indeed the correct balance of the deposit without inquiring with the bank or the depositors themselves.

Resultantly, as there is no unauthorized or illegal disclosure of bank account balances, it follows that, in requiring the submission of payees, the CIR's authority to inquire on bank deposits as provided by law is not unduly expanded.

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[136] REVENUE MEMORANDUM CIRCULAR NO. 5-2014, ITEM 12.

No impairment of contracts.

Petitioners also argue that SEC MC 10-2014 violates the constitutional principle of non-impairment of contracts by imposing upon depository participants, broker dealers, trustees, fund managers, and other investor agents the obligation to disclose information protected under confidentiality agreements.

In *Goldenway Merchandising Corporation v. Equitable PCI Bank*,[137] the Court elucidated on the principle of non-impairment of contracts, thus:

> The purpose of the non-impairment clause of the Constitution is to safeguard the integrity of contracts against unwarranted interference by the State. As a rule, contracts should not be tampered with by subsequent laws that would change or modify the rights and obligations of the parties. Impairment is anything that diminishes the efficacy of the contract. There is an impairment if a subsequent law changes the terms of a contract between the parties, imposes new conditions, dispenses with those agreed upon or withdraws remedies for the enforcement of the rights of parties.[138]

Aside from the reality that petitioners failed to cite which contracts are potentially impaired by the questioned regulations, the submission of the alphalist, and the prohibition on the lumping under one account the various payees do not divest petitioners of their rights under their supposed existing contracts. The questioned regulations implement the existing provisions of the Tax Code on withholding taxes, such as Section 58(c)[139] which deals with the filing of the annual information return. The submission of the alphalist had long been inscribed in various issuances of the BIR. Hence, the non-impairment clause does not apply to laws or rules which are already existing.

Final Word.

In fine, the Court declares all assailed issuances—RR 1-2014, RMC 5-2014, and SEC MC 10-2014—void for being unconstitutional.

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137 706 Phil. 427 (2013).

138 Id. at 437-438.

139 (C) *Annual Information Return.* – Every withholding agent required to deduct and withhold taxes under Section 57 shall submit to the Commissioner an annual information return containing the list of payees and income payments, amount of taxes withheld from each payee and such other pertinent information as may be required by the Commissioner. In the case of final withholding taxes, the return shall be filed on or before January 31 of the succeeding year, and for creditable withholding taxes, not later than March 1 of the year following the year for which the annual report is being submitted. This return, if made and filed in accordance with the rules and regulations approved by the Secretary of Finance, upon recommendation of the Commissioner, shall be sufficient compliance with the requirements of Section 68 of this Title in respect to the income payments.

The Court understands that the emerging trend now leans toward disclosure of beneficial ownership information.[140] However, policy and legislation on taxation, specifically on withholding of taxes, in place at the time of issuance of the questioned regulations are yet to lean toward disclosure of beneficial ownership information. Surely, the administrative agencies concerned may set their sights on that trend—as what respondents have done in issuing the questioned regulations; however, they should have done so in compliance with the Constitution, laws, and jurisprudence.

With regard to the economic repercussions, the Court cannot inquire into the wisdom of the policies adopted by the DOF, BIR, and the SEC. The most that it can do is to make inquiries on the State actions pursuant to the strict scrutiny test.[141]

Indeed, taxes are the lifeblood of the State. Despite being one of the inherent powers of the State, the power to tax is not plenary;[142] it is circumscribed by constitutional limitations.[143] Thus, the State, in exercising this power, shall observe the constitutionally guaranteed rights of those governed. Otherwise, the Court, when called upon, will not hesitate to perform its duty despite the good intentions and objectives pushed by the agencies.

WHEREFORE, the Petition for *Certiorari* and Prohibition is **GRANTED.** Revenue Regulations No. 1-2014, Revenue Memorandum Circular No. 5-2014, and Securities and Exchange Commission Memorandum Circular No. 10-14 are **STRUCK DOWN** for being **UNCONSTITUTIONAL.** The Temporary Restraining Order issued by this Court on September 9, 2014 is **MADE PERMANENT.**

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[140] The SEC released Memorandum Circular No. 17 in November 2018 (SEC MEMORANDUM CIRCULAR NO. 17-18, REVISION OF THE GENERAL INFORMATION SHEET [GIS] TO INCLUDE BENEFICIAL OWNERSHIP INFORMATION), which requires domestic stock and non-stock corporations to include beneficial ownership information in their General Information Sheets (GIS) effective January 1, 2019. Its implementation was initially deferred by the SEC until July 30, 2019 (SEC Notice, Deferment of Implementation of SEC Memorandum Circular No. 17, Series of 2018, June 28, 2019). Subsequently, the SEC issued SEC MC 15-19 (SEC Memorandum Circular No. 15-19, Amendment of SEC Memorandum Circular No. 17, Series of 2018 on the Revision of the General Information Sheet [GIS] to Include Beneficial Ownership Information) that further revised SEC MC 17-18. It defines beneficial owner as "any natural person(s) who ultimately own(s) or control(s) or exercise(s) ultimate effective control over the corporation," including "natural person(s) who actually own or control the corporation as distinguished from the legal owners as defined herein" (Id. at sec. 2.1) The Beneficial Ownership Declaration page must contain the beneficial owner's complete name, residential address, nationality, tax identification number and percentage of ownership. The SEC also issued SEC MC 30-20 requiring foreign corporations to disclose beneficial ownership information in their GIS (SEC Memorandum Circular No. 30-20, Revision of the General Information Sheet [GIS] of Foreign Corporations to Include Beneficial Ownership Information). The requirement of disclosing beneficial ownership declaration was imposed pursuant to the SEC's mandate to assist in the implementation of the Anti-Money Laundering Act and the Terrorist Financing Prevention and Suppression Act.

[141] See *Ople v. Torres,* supra note 82 at 983.

[142] *Estoconing v. People*, G.R. No. 231298, October 7, 2020.

[143] Id., citing *Chamber of Real Estate and Builders' Association, Inc. v. Romulo*, supra note 34 at 530.

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

See separate concurring opinion

ALEXANDER G. GESMUNDO
Chief Justice

See separate concurring opinion:

MARVIC M. V. F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

P/s. See Concurrence & Dissent

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ALEXANDER G. GESMUNDO
Chief Justice