Republic of the Philippines
Supreme Court
Manila

EN BANC

SAINT WEALTH LTD., as represented by DAVID BUENAVENTURA & ANG LAW OFFICES,
Petitioner,

-versus-

BUREAU OF INTERNAL REVENUE, herein represented by HON. CAESAR R. DULAY, in his capacity as COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE, and JOHN DOES and JANE DOES, as persons acting for, in behalf, or under the authority of respondents,
Respondents.
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G.R. No. 252965

MARCO POLO ENTERPRISES LIMITED, MG UNIVERSAL LINK LIMITED, OG GLOBAL ACCESS LIMITED, PRIDE FORTUNE LIMITED, VIP GLOBAL SOLUTIONS LIMITED, AG INTERPACIFIC RESOURCES LIMITED, WANFANG TECHNOLOGY MANAGEMENT LTD., IMPERIAL CHOICE LIMITED, BESTBETINNET LIMITED, RIESLING CAPITAL LIMITED, GOLDEN DRAGON EMPIRE LTD., ORIENTAL GAME LIMITED, MOST SUCCESS INTERNATIONAL GROUP LIMITED, and HIGH ZONE CAPITAL INVESTMENT GROUP LIMITED,
Petitioners,

G.R. No. 254102

Present:

GESMUNDO, *C.J.*,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,* *and*
MARQUEZ, *JJ.*

* On official leave.

-versus-

THE SECRETARY OF FINANCE, in the person of CARLOS G. DOMINGUEZ III and THE COMMISSIONER OF INTERNAL REVENUE in the person of CAESAR R. DULAY,
Respondents.

Promulgated:
December 7, 2021

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DECISION

GAERLAN, *J.*:

These are consolidated petitions for *certiorari* and prohibition with urgent prayer for the issuance of a temporary restraining order (TRO) and/or preliminary injunction (*Consolidated Petitions*),[1] seeking to annul and set aside: (1) Section 11(f) and (g) of Republic Act (R.A.) No. 11494 (**Bayanihan 2 Law**); (2) Revenue Regulation (RR) No. 30-2020 (**RR No. 30-2020**) of the Department of Finance (DOF) and the Bureau of Internal Revenue (BIR); (3) Revenue Memorandum Circular (RMC) No. 64-2020 (**RMC No. 64-2020**) of the BIR; (4) **RMC No. 102-2017** of the BIR; and (5) **RMC No. 78-2018** of the BIR (the *Assailed Tax Issuances).*

The Antecedents

In 1983, Presidential Decree No. 1869 (PAGCOR Charter) was enacted, consolidating all laws relative to the franchise and powers of the Philippine Amusement and Gaming Corporation (PAGCOR).[2] Under Section 10 of the PAGCOR Charter, PAGCOR is granted rights, privileges, and authority to operate and license gambling casinos, gaming clubs, and other similar recreation or amusement places within the territorial jurisdiction of the Philippines.[3]

From 2016, the Philippines began regulating online gaming hubs, specifically the Philippine Offshore Gaming Operators (POGOs). Thus, on September 1, 2016, the PAGCOR issued the Rules and Regulations for Philippine Offshore Gaming Operations (POGO Rules and Regulations).[4]

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1 *Rollo* (G.R. No. 252965), pp. 3-54; *Rollo* (G.R. No. 254102), pp 3-119.
2 *Rollo* (G.R. No. 252965), p. 16.
3 *Rollo* (G.R. No. 254102), p. 22.
4 Id.

The POGO Rules and Regulations defines **offshore gaming** as "the offering by a licensee of PAGCOR authorized online games of chance via the internet using a network and software or program, exclusively to offshore authorized players excluding Filipinos abroad, who have registered and established an online gaming account with the licensee."[5] Moreover, the POGO Rules and Regulations explains that offshore gaming has three components:

> b.1. prize consisting of money or something else of value which can be won under the rules of the game.
>
> b.2. a player who:
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> b.2.a being located outside of the Philippines and not a Filipino citizen, enters the game remotely or takes any step in the game by means of a communication device capable of accessing an electronic communication network such as the internet.
>
> b.2.b gives or undertakes to give, a monetary payment or other valuable consideration to enter in the course of, or for, the game; and
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> b.3. the winning of a prize is decided by chance.[6]

The POGO Rules and Regulations further provides that POGOs must register with PAGCOR. Upon registration, the POGO is given an Offshore Gaming License (OGL). Entities who may be given an OGL are either: (1) **Philippine-based operators**; or (2) **offshore-based operators**. Philippine-based operators are corporations organized in the Philippines which will either conduct offshore gaming operations themselves or engage the services of PAGCOR-accredited service providers. Meanwhile, offshore-based operators are corporations organized in any foreign country which will engage the services of PAGCOR-accredited local gaming agents and/or service providers for its offshore gaming operations.[7]

POGO licensees are likewise required to pay several monthly regulatory fees. Thus, from these regulatory fees alone, PAGCOR is able to generate billions of pesos in revenues.

On December 27, 2017, the BIR issued **RMC No. 102-2017**, entitled "*Taxation of Taxpayers Engaged in Philippine Offshore Gaming*

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5 POGO RULES AND REGULATIONS, Section 4(b).
6 Id.
7 Id., Section 6; *Rollo* (G.R. No. 254102), p. 23.

Operations," which recognized that online activity is sufficient to constitute doing business in the Philippines, and clarified the taxability of POGOs. Under RMC No. 102-2017, POGOs may either be classified as *Licensees* (Philippine-based or offshore-based) or *Other Entities* (such as local gaming agents and other service providers).

Further, RMC No. 102-2017 outlines the tax treatments for *Licensees* and *Other Entities,* to wit:

> a) The entire gross gaming receipts/earnings or the agreed or pre-determined minimum monthly revenues/income from Gaming Operations under existing rules, whichever is higher, shall be subject to a franchise tax of five percent (5%), in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description. This income is therefore exempt from any kind of tax, income or otherwise, as well as fees, charges or levies of whatever nature, whether national or local.
>
> b) Income from Other Related Services income from non-gaming operations) shall be subject to normal income tax, value-added tax and other applicable taxes, as may be deemed appropriate. The 5% franchise tax in lieu of all taxes shall not apply.
>
> c) A Licensee deriving income from both gaming operations and from other related services shall be subject to 5% franchise tax on its gaming revenues and normal income tax, value-added tax and other applicable taxes on its non-gaming revenues.
>
> d) An Other Entity, specifically including the gaming agent, Service Provider and Gaming Support Provider, who is also a POGO Licensee shall be taxed 5% Franchise tax on its gaming activities and subject to the normal tax rate and other appropriate taxes on its non-gaming operations. An Other Entity, who is not a POGO Licensee, deriving or earning only Income from Other Related Services or from non-gaming operations shall be subject to normal income tax, value-added tax and other applicable taxes on its entire revenues.
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> e) Income payments made by POGO Licensees or any other business entity licensed or authorized by PAGCOR for all their purchases of goods and services shall [be] subject to withholding taxes as may be appropriate and applicable.
>
> f) Compensation, fees, commissions or any other form of renumeration as a result of services rendered to POGO licensees or any other business entity licensed by PAGCOR shall be subject to applicable withholding taxes under existing revenue laws and regulations.
>
> g) Purchases (local or imported) and sale (local or international) of goods (tangible or intangible) or services shall be subject to existing tax laws and revenue issuances, as may be applicable.

Thus, under RMC No. 102-2017, *Licensees* must pay a **five percent (5%) franchise tax**, in lieu of all other taxes, for their income arising from their **gaming operations**. Such franchise tax is based on their **entire gross gaming revenues**. Meanwhile, for income arising from **non-gaming operations**, *Licensees* must pay normal income tax, value-added tax (VAT), and other applicable taxes.[8]

On the other hand, *Other Entities,* who must also be registered with PAGCOR, are subject to five percent (5%) franchise tax for income arising from gaming operations, and normal income tax, VAT, and other applicable taxes for income arising from non-gaming operations. *Other Entities* deriving income solely from non-gaming operations shall be liable to pay normal income tax, VAT, and other applicable taxes.[9]

Thereafter, to implement RMC No. 102-2017, the BIR issued **RMC No. 78-2018** dated September 7, 2018, entitled "*Registration Requirements of Philippine Offshore Gaming Operators and Its Accredited Service Providers*," which reiterated that online activity is sufficient to do business in the Philippines and considered POGOs as "Resident Foreign Corporation Engaged in Business in the Philippines." As such, **RMC No. 78-2018**, requires all offshore-based and Philippine-based POGO licensees to register with the BIR.[10]

The COVID-19 Pandemic

At the start of 2020, the COVID-19 pandemic hit the Philippines, which brought about the closure of several business establishments and industries. Sometime in mid-2020, the Philippines began relaxing community quarantine restrictions, and the government started allowing some industries to operate, including POGOs. Thus, on May 7, 2020, the BIR issued **RMC No. 46-2020**, entitled "*Guidelines & Requirements for POGO Licensees and Service Providers in the Application of a BIR Clearance for the Resumption of Operations*." Under RMC No. 46-2020, POGOs must comply with the following conditions and submit the following documents before they can resume their operations:

A. Conditions

1. Registered with the concerned Revenue District Office (RDO) having jurisdiction over the place of business;

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8 REVENUE MEMORANDUM CIRCULAR NO. 102-2017, paragraph IV(2).

9 Id.

10 REVENUE MEMORANDUM CIRCULAR NO. 78-2018, paragraph B.

2. Submit copies of 2019 & First Quarter of 2020 Franchise Tax Quarterly returns and proof of payments;

3. Remitted and paid the withholding taxes due from the months of January to April, 2020;

4. Submission of a notarized undertaking to pay all tax arrears for prior years;

5. Failure to comply with any of the above will result in the denial of the issuance of a BIR Clearance for resumption of operations.

B. Documentary Requirements

1. Copy of Application for Registration of Corporations, et al. duly received by the concerned RDO (BIR Form No. 1903) or BIR Certificate of Registration (COR), if already registered;

2. Copies of Franchise Tax Returns (BIR Form No. 2553) for the taxable quarters of 2019 and 1st quarter of 2020 together with proof of payments;

3. Copies of Monthly Remittance Form for Income Taxes Withheld (BIR Form Nos. 1601-C and 0619-E and F), Quarterly Remittance Return of Income Taxes Withheld (BIR Form 1601-EQ and FQ) or Payment Form (BIR Form No. 0605) for January to April, 2020; and

4. Notarized Undertaking to pay all tax arrears for prior years.

On June 24, 2020, the BIR issued **RMC No. 64-2020**, revising RMC 46-2020, as follows:

A. Conditions

1. Registered with the concerned Revenue District Office (RDO) having jurisdiction over the place of business;

2. Payment of Franchise Tax and submit proof of payments;

3. Remitted and paid the withholding taxes, if applicable;

4. Submission of a notarized undertaking to pay tax arrears; and

5. Failure to comply with any of the above will result in the denial of the issuance of a BIR Clearance for resumption of operations.

B. Documentary Requirements

1. Copy of Application for Registration of Corporations, et al. duly received by the concerned RDO (BIR Form No. 1903) or BIR Certificate of Registration (COR), if already registered;

> 2. Copies of Franchise Tax Returns (BIR Form No. 2553) together with proof of payments;
>
> 3. Copies of Monthly Remittance Form for Income Taxes Withheld (BIR Form Nos. 1601-C and 0619-E and F), Quarterly Remittance Return of Income Taxes Withheld (BIR Form 1601-EQ and FQ) or Payment Form (BIR Form No. 0605) for January to April, 2020; and
>
> 4. Notarized Undertaking to pay tax arrears.

On September 11, 2020, the Bayanihan 2 Law, entitled "*An Act Providing for COVID-19 Response and Recovery Interventions and Providing Mechanisms to Accelerate the Recovery and Bolster the Resiliency of the Philippine Economy, Providing Funds Therefor, and For Other Purposes,*" was enacted as an emergency response law to address the COVID-19 pandemic. Section 11 of the Bayanihan 2 Law outlines the sources of funding for the COVID-19 measures to be undertaken by the government.[11] Among others, Section 11 mentions a **five percent (5%) franchise tax** based on the **gross bets or turnovers** earned by POGOs:

> SECTION 11. *Sources of Funding.* — The enumerated subsidy and stimulus measures, as well as all other measures to address the COVID-19 pandemic shall be funded from the following:
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> x x x x
>
> (f) Amounts derived from the **five percent (5%) franchise tax on the gross bets or turnovers or the agreed pre-determined minimum monthly revenues from gaming operations, whichever is higher**, earned by offshore gaming licensees, including gaming operators, gaming agents, services-providers and gaming support providers;
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> (g) Income tax, VAT, and other applicable taxes on income from non-gaming operations earned by offshore gaming licensees, operators, agents, service providers and support providers.
>
> The tax shall be computed on the peso equivalent of the foreign currency used, based on the prevailing official exchange rate at the time of payment, otherwise the same shall be considered as a fraudulent act constituting under declaration of taxable receipts or income, and shall be subject to interests, fines and penalties under Sections 248(B), 249(B), 253, and 255 of the National Internal Revenue Code of the Philippines.
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> After two (2) years or upon a determination that the threat of COVID-19 has been successfully contained or abated, whichever comes first, **the revenues derived from franchise taxes on gross bets or turnovers under paragraph (f) and income from non-gaming**

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11 *Rollo* (G.R. No. 254102), p. 28.

> **operations under paragraph (g) shall continue to be collected and shall accrue to the General Fund of the Government**. The BIR shall implement closure orders against offshore gaming licensees, operators, agents, service providers and support providers who fail to pay the taxes due, and such entities shall cease to operate.[12] (Emphasis supplied)

To implement Section 11(f) and (g) of the Bayanihan 2 Law, the BIR and the DOF issued **RR No. 30-2020** dated September 30, 2020, which provides:

> Section 3. Sources of Funding for the Subsidy, Stimulus Measures, and Other Measures to address the COVID-19 Pandemic. –
>
> a. **Franchise Tax at the rate of five percent (5%)** imposed on the **gross bets or turnovers**, or the agreed pre-determined minimum monthly revenues from gaming operations, whichever is higher, earned by offshore gaming licensees, including gaming operators, gaming agent, service providers and gaming support providers.
>
> b. **Income Tax, Value-Added Tax, and other applicable taxes imposed on income from Non-Gaming Operations** earned by offshore gaming licensees, including gaming operators, gaming agent, service providers and gaming support providers.
>
> The above taxes shall be computed on the peso equivalent of the foreign currency used and based on the prevailing official exchange rate at the time of payment.

The Saint Wealth Petition

On August 24, 2020, Saint Wealth Ltd. (Saint Wealth), an offshore-based POGO licensee, filed a *Petition for Certiorari and Prohibition [With Application for a Temporary Restraining Order and/or Writ of Preliminary Injunction]* (the *Saint Wealth Petition*), assailing the constitutionality of **RMC No. 64-2020**, and praying for the issuance of a TRO and/or writ of preliminary injunction to enjoin the enforcement of the same.

According to Saint Wealth, RMC No. 64-2020 should be invalidated based on the following arguments:

First, RMC No. 64-2020 violates Saint Wealth's constitutional right to due process because when the BIR issued RMC No. 64-2020, in relation to RMC No. 102-2017, the BIR arrogated upon itself the power to determine the classification and taxability of POGOs, notwithstanding the absence of any

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12 BAYANIHAN 2 LAW, Section 11.

tax law passed by Congress.[13] Therefore, the issuance of RMC No. 64-2020 and RMC No. 102-2017, with respect to the imposition of franchise tax on off-shore based POGO licensees, is an invalid exercise of quasi-legislative powers on the part of the BIR, and consequently, is a violation of POGO licensees' constitutional right to due process.[14]

Second, RMC No. 64-2020 violates the equal protection clause. Under RMC No. 64-2020, Saint Wealth, an offshore-based POGO licensee, is treated as if it is similarly situated with Philippine-based casino providers.[15] However, there exists a reasonable classification between offshore-based POGO licensees and Philippine-based entities that justifies a difference in treatment:

1. There is a substantial distinction between Philippine-based entities and offshore-based POGO licensees because the former performs services within the Philippines, while the latter performs services outside of the Philippines. Hence, the former is subject to tax for income from services rendered within the Philippines, while the latter is not subject to tax for its income derived from services performed abroad.

2. The classification is germane to the purpose of RMC 64-2020, because its purpose is to regulate POGO licensees and operators which are within the taxing authority of the BIR. Thus, only those entities which are within the taxing authority of the BIR may be subjected to the BIR's regulations.

3. The distinction is not limited to existing conditions only because the distinction is based on established principles in taxation with regard to classifying taxable entities.

4. The distinction applies equally to all members of the same class. The distinction between Philippine-based entities and offshore-based POGO licensees is equally applicable to the members of each class.[16]

Considering that a reasonable classification exists between Saint Wealth, an offshore-based POGO licensee, and Philippine-based operators, the BIR should treat them differently and should not impose similar tax liabilities on these different classes of entities.[17]

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13 *Rollo* (G.R. No. 252965), pp. 26-27.
14 Id. at 32.
15 Id. at 33-36.
16 Id. at 35.
17 Id. at 36.

Third, RMC No. 64-2020 violates the fundamental principle of situs of taxation. Saint Wealth is a non-resident foreign corporation. Under Philippine tax laws, specifically the National Internal Revenue Code (NIRC), non-resident foreign corporations are only liable to pay taxes on income received from sources within the Philippines. However, Saint Wealth's income is derived from sources outside the Philippines since all of its operations are located abroad. Therefore, it should not be subjected to any Philippine tax.[18]

Fourth, RMC No. 64-2020 violates the rule on uniformity of taxation. Since offshore-based POGO licensees are differently situated from Philippine-based casino providers, offshore-based POGO licensees, including Saint Wealth, should be taxed differently. Moreover, RMC No. 64-2020 likewise violates the rule on uniformity of taxation because it treats differently offshore-based POGO licensees from other foreign corporations which are not engaged in trade or business in the Philippines. RMC No. 64-2020 imposes several tax liabilities, including taxes on income derived from sources abroad, upon offshore-based POGO licensees, while other foreign corporations are not being imposed with such taxes.[19]

Meanwhile, as regards Saint Wealth's prayer for the issuance of injunctive relief, Saint Wealth alleged that all the requisites for the issuance of such relief are present because: (1) the issuance of RMC No. 64-2020 violates its right to due process and equal protection, and RMC No. 64-2020 likewise violates the principles of situs and uniformity of taxation; (2) there is an urgent need for injunctive relief to prevent the BIR from unduly collecting taxes from Saint Wealth; and (3) there is no other ordinary, speedy, or adequate remedy to prevent the infliction of irreparable injury, except for the issuance of a TRO and/or a writ of preliminary injunction.[20]

The Marco Polo Petition

On November 19, 2020, offshore-based POGO licensees, namely: (1) Marco Polo Enterprises Limited; (2) MG Universal Link Limited; (3) OG Global Access Limited; (4) Pride Fortune Limited; (5) VIP Global Solutions Limited: (6) AG Interpacific Resources Limited; (7) Wanfang Technology Management Ltd.; (8) Imperial Choice Limited; (9) Bestbetinnet Limited; (10) Riesling Capital Limited; (11) Golden Dragon Empire Ltd.; (12) Oriental Game Limited; (13) Most Success International Group Limited; and (14) High Zone Capital Investment Group Limited (collectively referred to as *Marco Polo* petitioners) filed a *Petition for Certiorari and Prohibition (With Application for Temporary Restraining Order/Writ of Preliminary Injunction)*

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18 Id. at 36-38.
19 Id. at 38-40.
20 Id. at 45.

(the *Marco Polo Petition),* assailing the constitutionality of Section 11(f) and (g) of the Bayanihan 2 Law, RR No. 30-2020, RMC No. 102-2017, and RMC No. 78-2018.

The *Marco Polo Petition* argued the following:

First, Section 11(f) and (g) of the Bayanihan 2 Law are unconstitutional for being riders. They are violative of Article VI, Section 26(1) of the 1987 Constitution because they go beyond and are not germane to the subject matter of the Bayanihan 2 Law:[21]

> The subject matter of the Bayanihan 2 Law is the implementation of COVID-19 relief measures. It is not a tax measure. However, Section 11(f) and (g) of the said law impose new taxes upon POGOs, which cannot be found in any other legislation. Moreover, the Bayanihan 2 Law is a temporary relief measure. However, under the said law, the collections under Section 11(f) and (g) shall subsist beyond the effectivity of the Bayanihan 2 Law, and even after the COVID-19 pandemic is successfully contained. Clearly, therefore, Section 11(f) and (g) of the Bayanihan 2 Law go beyond the subject matter of the law.[22]
>
> Furthermore, Section 11(f) and (g) of the Bayanihan 2 Law are not germane to the purpose of the law. Again, the Bayanihan 2 Law is a temporary pandemic relief measure. Thus, there is no logical connection between the perpetual tax imposition under Section 11(f) and (g) to the purpose of the law which is to provide a temporary pandemic relief measure.[23]

Second, Section 11(f) of the Bayanihan 2 Law violates substantive due process, and is arbitrary and confiscatory:[24]

> The concept of a tax based on gross bets or turnover of POGO licensees was introduced for the first time in the Bayanihan 2 Law, pursuant to a last minute change during the Bicameral Conference Committee meeting. As a result of such change, POGO licensees are now being subjected to tax, not only on their earnings, receipts, or income, but even on the winnings that they pay out to patrons.[25]

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21 *Rollo* (G.R. No. 254102), pp. 31-39.
22 Id. at 32-33.
23 Id. at 33.
24 Id. at 39-41.
25 Id. at 39-40.

> Clearly, it is arbitrary and confiscatory to tax POGO licensees on the basis of gross bets or turnover because these do not equate to earnings, income, or wealth flowing to the POGO licensees. Such rule likewise violates the Constitutional mandate that the rule of taxation shall be uniform, and equitable, and that Congress shall evolve a progressive system of taxation.[26]

Third, Section 11(f) of the Bayanihan 2 Law is repugnant to substantive due process because it whimsically disregards the principle of territoriality in taxation:[27]

> Section 11(f) of the Bayanihan 2 Law is unconstitutional because it taxes an activity that does not take place in the Philippines. Under the POGO Rules and Regulations, the activity which generates gaming revenue or income for offshore-based POGO licensees is the game of chance or offshore gaming. This is because income is generated only when patrons access the gaming website, place bets, and then lose their bets. Therefore, the situs of income derived from offshore gaming is the place where such game is played. Notably, the PAGCOR expressly prohibits POGO licensees from the following activities: (1) allowing their gaming websites to be accessed within Philippine territory; (2) allowing the placing of bets within Philippine territory; (3) allowing the paying of winnings within the Philippine territory; and (4) allowing Filipino citizens, wherever located, and foreign nationals while in the Philippines, from accessing their games through their websites. From the foregoing, it is clear that the income from offshore gaming operations are from sources outside the Philippine jurisdiction because the activity that produces the income occurs abroad – the online gaming websites are operated and accessed abroad, the bets are placed abroad, and the winnings are paid abroad.[28]

Fourth, Section 11(f) of the Bayanihan 2 Law violates the equal protection clause:[29]

> The Bayanihan 2 Law violates the equal protection clause for the following reasons: (1) it is the only statute that taxes a business entity even for its losses (taxing turnover); and (2) it is the only statute that taxes foreign corporations for income earned

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26 Id. at 40-41.
27 Id. at 41-46.
28 Id. at 41-44.
29 Id. at 46-50.

> abroad. Thus, only offshore-based POGO licensees are subjected to the type of tax treatment imposed under Section 11(f) of the Bayanihan 2 Law.[30]
>
> Moreover, the requirements for a valid classification under the equal protection clause are not met. There is no substantial distinction between offshore-based POGO licensees and other gaming businesses to justify taxing POGO licensees based on **gross bets or turnover** when other similar gaming business (such as casinos operating in the Philippines and licensed by PAGCOR) are only subjected to a five percent (5%) franchise tax based on **gross gaming revenues**. Gross gaming revenue is the total sum received **less** the total of all sums paid out as winnings to casino players. There is likewise no substantial distinction between offshore-based POGO licensees and other foreign corporations to justify the tax treatment of taxing POGO licensees even for income derived abroad. Finally, the discrimination against POGO licensees is not germane to the purpose of the law because such discrimination has no logical connection to the purpose of the Bayanihan 2 Law, which, again, is only a temporary pandemic relief measure.[31]

Fifth, Section 11(g) of the Bayanihan 2 Law is also unconstitutional because it whimsically disregards the principle of territoriality in taxation. Similar to Section 11(f) of the Bayanihan 2 Law, Section 11(g) also violates the principle of territoriality in taxation because it taxes "non-gaming" income of offshore-based POGO licensees derived from sources abroad. Section 11(g) likewise disregards the destination principle because it imposes VAT on goods and services which are consumed outside the territory of the Philippines.[32]

Sixth, Section 11(g) of the Bayanihan 2 Law likewise violates the equal protection clause. There is no substantial distinction or justification to treat offshore-based POGO licensees differently and to tax them on income from sources abroad when other foreign corporations are only taxed on income derived from sources within the Philippines. There is likewise no substantial distinction or justification to charge offshore-based POGO licensees with VAT for their sale of goods and services destined for abroad. Further, the discrimination against offshore-based POGO licensees is not germane to the purpose of the Bayanihan 2 Law because such discrimination has no relation to the law's purpose as a COVID-19 temporary relief measure.[33]

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30 Id. at 46.
31 Id. at 46-49.
32 Id. at 50-51.
33 Id. at 51.

Seventh, since Section 11(f) and (g) of the Bayanihan 2 Law are unconstitutional, RMC No. 30-2020 is also unconstitutional because it has no statutory basis and/or mandate of any existing law.[34]

Eighth, RMC No. 102-2017 is likewise void for having no statutory basis:[35]

> RMC No. 102-2017 was issued purportedly to clarify the taxability of POGOs. It then imposed a franchise tax of five percent (5%) on the gross gaming revenues of POGOs, including offshore-based POGO licensees. However, prior to the Bayanihan 2 Law, there was no statute which imposed taxes on the gaming revenue of offshore-based POGOs.[36]
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> Apparently, in issuing RMC No. 102-2017, the BIR based the imposition of the five percent (5%) franchise tax on gross gaming revenues on the PAGCOR Charter. However, the PAGCOR Charter grants PAGCOR and its contractees (licensees) operating within the territorial jurisdiction of the Philippines an exemption from all national and local fees and taxes in exchange for the payment of the five percent (5%) franchise tax. The PAGCOR Charter does not authorize the collection of any new tax whatsoever. It cannot be a source of a new tax on offshore gaming done online, and outside the jurisdiction of the Philippines. Considering that there is no law which allows for the taxation of foreign-sourced income of foreign corporations, including offshore-based POGO licensees, RMC No. 102-2017 has no legal basis, and therefore, must be struck down and declared void.[37]

Ninth, RMC No. 102-2017 is confiscatory and violates the equal protection clause. Similar to the provisions of the Bayanihan 2 Law, RMC No. 102-2017 discriminates against offshore-based POGO licensees, making them the only foreign corporations subject to taxes for income abroad, therefore, violating the principle of territoriality. There is also no substantial distinction or justification to treat offshore-based POGO licensees differently and tax them on income from sources abroad when other foreign corporations are not subjected to the same.[38]

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34 Id. at 51-52.
35 Id. at 52-55.
36 Id. at 54.
37 Id. at 54-55.
38 Id. at 55.

Tenth, RMC No. 78-2018, which imposed registration requirements pursuant to the taxes imposed under RMC No. 102-2017, is void for having been issued without statutory basis and/or for being unconstitutional. Since RMC No. 102-2017 is unconstitutional and void, it follows that RMC No. 78-2018, which imposes registration requirements to enforce RMC No. 102-2017, is likewise unconstitutional and void.[39]

The *Marco Polo Petition* likewise prayed for the issuance of a TRO and/or writ of preliminary injunction.[40] In support of its application for the issuance of a TRO and/or writ of preliminary injunction, the *Marco Polo Petition* made the following arguments:

1. The *Marco Polo* petitioners have a clear and unmistakable right against deprivation of property without due process of law.[41]

2. Section 11(f) and (g) of the Bayanihan 2 Law and the *Assailed Tax Issuances* directly and specifically target offshore-based POGO licensees such as the *Marco Polo* petitioners. The imposition of the taxes in question would amount to a deprivation of their property without due process of law, and is a material and substantial invasion of their constitutional rights.[42]

3. There is an extreme urgency for the issuance of injunctive relief because if the same is not issued, the *Marco Polo* petitioners would bleed financially because of illegal and oppressive taxes.[43]

4. The *Marco Polo* petitioners will suffer irreparable injury if injunctive relief is not granted. If they are forced to cease operations, either because of closure orders or because they cannot afford to pay the illegal and oppressive taxes, their business reputations will be tarnished, and they will lose their clientele who may decide to patronize other operators permanently.[44]

Issuance of the TRO

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39 Id. at 56.
40 Id. at 60.
41 Id. at 57-58.
42 Id. at 58.
43 Id.
44 Id. at 57-58.

On January 5, 2021, a TRO[45] was issued in favor of the *Marco Polo* petitioners. The TRO enjoined the implementation of: (1) Section 11(f) and (g) of the Bayanihan 2 Law; (2) RR No. 30-2020; (3) RMC No. 102-2017; and (4) RMC No. 78-2018.

Respondents' Consolidated Comment

On January 15, 2021, the DOF Secretary and the BIR Commissioner (respondents), through the Office of the Solicitor General (OSG), filed their *Consolidated Comment*[46] to the *Consolidated Petitions.*

In the *Consolidated Comment,* the respondents raised several procedural and substantive issues.

With regard to the procedural issues, the respondents argued that the *Consolidated Petitions* did not present an actual justiciable controversy. Moreover, the respondents contended that resort to a petition for *certiorari* and prohibition was improper, and a facial challenge is not permitted to assail the provisions of the Bayanihan 2 Law and the BIR issuances. Finally, the respondents alleged that the *Consolidated Petitions* violated the doctrine of hierarchy of courts, and exhaustion of administrative remedies.[47]

Meanwhile, for the substantive issues, the respondents argued the following:

First, Section 11(f) and (g) of the Bayanihan 2 Law does not violate the "one subject, one title rule" under Article VI of the Constitution:

> Section 26(1), Article VI of the Constitution requires that "[e]very bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof." Such requirement is satisfied if all the parts of the statute are related, and are germane to the subject matter expressed in the title, or as long as they are not inconsistent with the general subject and title of the law.[48]
>
> The full title of the Bayanihan 2 Law provides: "*An Act Providing for COVID-19 Response and Recovery Interventions and Providing Mechanisms to Accelerate the Recovery and*

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45 Id. at 211-215.
46 *Rollo* (G.R. No. 252965), pp. 101-176.
47 Id. at 117-129.
48 Id. at 130.

Bolster the Resiliency of the Philippine Economy, ***Providing Funds Therefor,*** *And For Other Purposes.*" The phrase "***Providing Funds Therefor***" shows that Section 11 of the said law, which enumerates the **existing sources of funding** for COVID-19 relief measures, is germane to the purpose of the law. Furthermore, Section 11(f) and (g) of the Bayanihan 2 Law do not impose new taxes because as early as 2017 and pursuant to RMC 102-2017, revenues derived by POGO operators have been subject to a five percent (5%) franchise tax.[49]

Clearly, Section 11(f) and (g) of the Bayanihan 2 Law are not riders but are valid sources of funds, the identification of which is germane to the subject and purpose of the law. As such, the Bayanihan 2 Law did not impose any new tax, but merely allowed **the realignment of collections from already existing taxes.**[50]

Second, Section 11(f) and (g) of the Bayanihan 2 Law, as well as the *Assailed Tax Issuances*, do not violate the petitioners' right to due process:[51]

Section 11(f) and (g) of the Bayanihan 2 Law are valid and constitutional. The collection of franchise tax under the said law does not violate the principle of territoriality in taxation because what is being collected is a tax not based on income, but rather, on the exercise of a privilege. Since such franchise tax partakes of the nature of an excise tax, the situs of taxation is the place where the privilege is exercised, regardless of the place where the services are performed, or where the products are delivered.[52]

RR No. 30-2020, which implements Section 11(f) and (g) of the Bayanihan 2 Law, is valid, and enjoys the presumption that the legislature intended to enact a valid, sensible, and just law. Furthermore, it bears emphasis that the NIRC empowers the DOF Secretary to promulgate revenue regulations to ensure effective enforcement of tax laws. Considering that RR No. 30-2020 was issued by the proper authority (the DOF Secretary and the BIR), and in accordance with a valid statute enacted by Congress, the same enjoys the presumption of validity.[53]

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49 Id. at 132-134.
50 Id. at 129-134.
51 Id. at 135-143.
52 Id. at 136-137.
53 Id. at 138-139.

> RMC No. 102-2017 has statutory basis. It was issued by the BIR in accordance with the PAGCOR Charter, which imposes a five percent (5%) franchise tax on the gross gaming revenues of businesses engaged in gambling operations under the mantle of PAGCOR. Clearly, the tax mentioned in RMC No. 102-2017 is not a new tax.[54]
>
> RMC No. 78-2018 and RMC No. 64-2020, which impose requirements for POGO registration and BIR clearance, are valid. Again, these issuances did not impose new taxes on POGO licensees. They merely provide for guidelines for registration and application for a BIR Clearance in connection with their resumption of operations. Notably, the act of providing guidelines is within the powers of the BIR as the administrative body tasked to enforce tax laws, and administrative issuances. Hence, RMC No. 78-2018 and RMC No. 64-2020 have in their favor the presumption of legality.[55]

Third, Section 11(f) and (g) of the Bayanihan 2 Law, as well as the *Assailed Tax Issuances*, do not violate the equal protection clause.[56] There exists a reasonable classification between offshore-based POGO licensees and other foreign corporations that justifies the difference in treatment under the Bayanihan 2 Law:

1. Not all foreign corporations are engaged in offshore gaming, and not all foreign corporations are required to obtain a license from PAGCOR before they could operate. Moreover, with the recognition that online activity is sufficient to constitute doing business in the Philippines, foreign corporations engaged in offshore gaming are regarded as resident foreign corporations engaged in business in the Philippines. Clearly, substantial distinctions exist between foreign corporations engaged in offshore gaming, and foreign corporations.[57]

2. The classification is germane to the purpose of the law since Section 11(f) and (g) of the Bayanihan 2 Law are mechanisms to accelerate the recovery of the Philippine economy.[58]

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54 Id. at 140.
55 Id. at 142-143.
56 Id. at 143-155.
57 Id. at 146-147.
58 Id. at 147.

3. The classification applies equally to all members of the same class – all foreign corporations granted with an OGL.[59]

4. The classification is not limited to existing conditions since the Bayanihan 2 Law itself provides for the collection of taxes under Section 11(f) and (g) even after the COVID-19 pandemic is successfully contained.[60]

For the same reasons, RMC No. 102-2017, RMC No. 78-2018 and RMC No. 64-2020 do not violate the equal protection clause because there are valid classifications and distinctions to justify the difference in treatment between POGO licensees and other corporations.

Fourth, the tax impositions on POGO licensees do not violate the principles of situs and uniformity of taxation:[61]

The principle of situs of taxation only applies to income taxation. Clearly, such principle does not apply in the imposition of franchise tax – the tax imposed upon POGO licensees. Hence, in imposing franchise tax on POGO licensees, the location or the situs of their income is immaterial, because what is being taxed is the exercise of their rights and privileges granted to them by the government.[62]

Nevertheless, assuming *arguendo* that the principle of situs of taxation applies, the revenues of POGOs are still subject to tax as they are considered income within the Philippines. The income-producing activity of POGOs is its entire gaming operations, which consist of operating the software, taking bets, provision of gaming, provision of services, and streaming of the games. Such gaming operations, or parts of it, are done in the Philippines. Thus, the revenues derived from these activities are taxable in the Philippine jurisdiction.[63]

Moreover, offshore-based POGO licensees are considered resident foreign corporations, and as such, they are taxable in the Philippines. Based on the Opinion of the Office of the General Counsel of the Securities and Exchange Commission (SEC), the setting up of game servers in the Philippines by a foreign corporation is considered as "doing business" in the Philippines.

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59 Id. at 147-148.
60 Id. at 148.
61 Id. at 155-165.
62 Id. at 155-159.
63 Id. at 159.

> According to the SEC, since these game servers will be in continued operations while being physically present in the Philippines, the foreign corporation which set up these servers are considered to be engaged in activities which imply a continuity of commercial dealings in the Philippines.[64]
>
> Meanwhile, as regards the income tax and VAT imposed upon revenues from non-gaming operations, these non-gaming operations are services performed in the Philippines. Thus, these are subject to normal income tax, VAT, and other applicable taxes under the NIRC.[65]
>
> With respect to the principle of uniformity of taxation, the taxes imposed upon POGO licensees are uniform because they are imposed on all POGOs wherever they operate. Uniformity of taxation simply requires that all subjects or objects of taxation, similarly situated, are to be treated alike.[66]

In the *Consolidated Comment,* the respondents likewise moved for the reconsideration of the issuance of the TRO. The respondents argued that the requisites for the issuance of a TRO were not met because:

1. The petitioners failed to show that they have a clear legal right as there is no violation of the "one subject, one title," due process, and equal protection clauses of the Constitution.[67]

2. The petitioners failed to prove the element of grave and irreparable injury. The injury or damage sought to be prevented is not irreparable and is actually capable of pecuniary estimation. Moreover, the petitioners have other remedies such as tax refund or tax credit under the NIRC.[68]

3. The petitioners failed to show extreme necessity for the issuance of injunctive relief.[69]

Legislative Developments During the Pendency of the Case

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64 Id. at 159-160.
65 Id. at 160.
66 Id. at 163.
67 Id. at 168.
68 Id. at 170.
69 Id.

On September 22, 2021, President Rodrigo Duterte signed R.A. No. 11590, entitled "*An Act Taxing Philippine Offshore Gaming Operations, Amending for the Purpose Sections 22, 25, 27, 28, 106, 108, and Adding New Sections 125-A and 288-G of the National Internal Revenue Code of 1997, As Amended, And For Other Purposes.*"

R.A. No. 11590 categorically classifies POGO licensees, whether Philippine-based or offshore-based as corporations "engaged in doing business in the Philippines."[70] R.A. No. 11590 likewise imposes a **five percent (5%) gaming tax** on the income of POGOs derived from their gaming operations.[71] Such gaming tax is based on the entire gross gaming revenue or receipts or the agreed predetermined minimum monthly revenue, whichever is higher:

> Section 125-A. *Gaming Tax on Services Rendered by Offshore Gaming Licensees.* – Any provision of existing laws, rules or regulations to the contrary notwithstanding, the entire gross gaming revenue or receipts or the agreed predetermined minimum monthly revenue or receipts from gaming, whichever is higher, shall be levied, assessed, and collected **a gaming tax equivalent to five percent (5%), in lieu of all other direct and indirect internal revenue taxes and local taxes, with respect to gaming income** x x x. (Emphasis supplied)

As regards income derived from non-gaming operations, R.A. No. 11590 imposes a 25% income tax on Philippine-based POGOs for their income derived from sources within and without the Philippines.[72] On the other hand, for offshore-based POGO licensees, they are subject to 25% income tax for their income only from sources **within** the Philippines:[73]

> Sec. 28. *Rates of Income Tax on Foreign Corporations.* –
>
> x x x x
>
> (7) *Offshore Gaming Licensees.* – The provisions of existing special or general laws to the contrary notwithstanding, the **non-gaming revenues derived within the Philippines of foreign-based offshore gaming licensees** as defined and duly licensed by the Philippine Amusement and Gaming Corporation or any special economic zone authority or tourism zone authority or freeport authority shall be subject to an income tax equivalent to twenty-five percent (25%) of the taxable income derived during each taxable year. (Emphasis supplied)

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70 See REPUBLIC ACT NO. 11590, Section 2.
71 Id., Section 8.
72 Id., Section 4.
73 Id., Section 5.

Finally, with respect to the imposition of VAT, R.A. No. 11590 provides that sales of goods and properties to POGOs, as well as services rendered to POGOs by service providers, shall be subject to zero percent (0%) rate.[74]

The Issues

This Court is tasked to tackle the following pivotal issues: (1) whether offshore-based POGO licensees are liable to pay a five percent (5%) franchise tax for income derived from their gaming operations; and (2) whether offshore-based POGO licensees are liable to pay income tax, VAT, and other applicable taxes for income derived from their non-gaming operations.

Our Ruling

The *Consolidated Petitions* are meritorious.

Prefatorily, it is worthy to note that the *Consolidated Petitions* appear to have been rendered moot by the enactment of R.A. No. 11590, which categorically imposes the following taxes on offshore-based POGO licensees, such as the petitioners:

1. Five percent (5%) gaming tax on all income derived from gaming operations; and

2. Twenty-Five percent (25%) income tax on income derived from non-gaming operations from sources within the Philippines.

R.A. No. 11590 similarly states that all laws, rules and regulations, including the Bayanihan 2 Law, which are contrary to or inconsistent with any provision of the same are repealed and modified accordingly.[75]

In *Jacinto-Henares v. St. Paul College of Makati*,[76] this Court explained the principle of mootness in this wise:

> A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the

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74 Id., Sections 6 and 7.
75 Id., Section 13.
76 807 Phil. 133 (2017).

> case or a declaration on the issue would be of no practical value or use. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness.[77] (Citations omitted)

With the enactment of R.A. No. 11590, a supervening event has transpired which directly addressed the pivotal issues raised in the *Consolidated Petitions* because a valid law has been passed clarifying the taxability of POGOs, including offshore-based POGO licensees, and imposing the applicable taxes thereon.

Nevertheless, this Court finds it imperative to resolve the instant case vis-à-vis the petitioners' tax liabilities prior to the passage of R.A. No. 11590, and to discuss the substantive issues raised by the petitioners. As succinctly held in *David v. Macapagal-Arroyo*,[78] this Court may still decide a case, which is otherwise moot and academic, when constitutional issues raised require the formulation of controlling principles to guide the bench, the bar, and the public:

> The "moot and academic" principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: *first*, **there is a grave violation of the Constitution**; *second*, the exceptional character of the situation and the **paramount public interest is involved**; *third*, when **constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public**; and *fourth*, the case is **capable of repetition yet evading review**.[79] (Emphasis supplied; citations omitted)

Here, the petitioners raise, among others, genuine issues on the constitutionality of Section 11(f) and (g) of the Bayanihan 2 Law. Thus, this Court is impelled to consider and resolve the *Consolidated Petitions* to provide guidance as to the tax liabilities of offshore-based POGO licensees, including the petitioners, prior to the passage of R.A. No. 11590.

The PAGCOR Charter Imposes a Franchise Tax upon its Licensees on Revenues Derived from Gaming Operations, and Income Tax, VAT, and Other Applicable Taxes on Revenues Derived from Non-Gaming Operations.

Under Section 13(2)(a) of the PAGCOR Charter, PAGCOR is exempt from the payment of any and all taxes on its income derived from gaming

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77 Id. at 140-141.
78 522 Phil. 705 (2006).
79 Id. at 754.

operations, except for a five percent (5%) franchise tax on its gross revenues or earning:

> SECTION 13. Exemptions. –
>
> x x x x
>
> (2) Income and other taxes. — (a) Franchise Holder: **No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise.** Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority. (Emphasis and underscoring supplied)

Such exemption extends to PAGCOR's licensees pursuant to Section 13(2)(b) of the PAGCOR Charter, which provides:

> (b) Others: The **exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise** and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator. (Emphasis and underscoring supplied)

Considering the above-cited provisions, this Court clarified in *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue* (*Bloomberry*),[80] that PAGCOR's tax privilege of paying only a five percent (5%) franchise tax for income generated from its gaming operations, in lieu of all other taxes, **inures to the benefit of PAGCOR's licensees**:

> As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, ***shall inure to the benefit of and extend to*** corporation(s), association(s), agency(ies), or individual(s) with whom the PAGCOR or operator has any contractual

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80 792 Phil. 751 (2016).

> relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, **so it must be that all *contractees and licensees* of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.**
>
> x x x x
>
> Plainly, too, **upon payment of the 5% franchise tax**, petitioner's **income from its gaming operations of gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools, defined within the purview of the aforesaid section, is not subject to corporate income tax.**[81] (Emphasis and underscoring supplied)

Clearly, both law and jurisprudence mandate that PAGCOR's licensees are only liable to pay a five percent (5%) franchise tax for income derived from its gaming operations. However, a plain reading of the PAGCOR Charter and the ruling in *Bloomberry* shows that the liability of paying the five percent (5%) franchise tax only applies to PAGCOR's licensees which are connected to the **operations of casinos and other related amusement places**.

Stated differently, the payment of this five percent (5%) franchise tax only applies to PAGCOR licensees which operate casinos and other related amusement places, and excludes those licensees who derive profit from other means, such as POGOs. Thus, POGOs, including offshore-based POGO licensees, are not taxed under the PAGCOR Charter.

Prior to the Bayanihan 2 Law, there is No Law which Imposes a Five Percent (5%) Franchise Tax on POGO Licensees.

To recall, in 2017, the BIR issued RMC No. 102-2017, which is the first issuance which dealt with the taxability of POGOs. RMC No. 102-2017 imposed, among others, a five percent (5%) franchise tax upon the gross gaming revenues derived from gaming operations of POGOs. Supposedly, such franchise tax is based on the PAGCOR Charter and settled jurisprudence.

However, as stated above, the franchise tax liability of PAGCOR licensees **only applies to those which operate casinos and other related amusement places**. It is undeniable that POGOs do not fall within the contemplation of licensees who operate casinos and other related amusement places. The PAGCOR Charter is clear, and when a law is clear, there is no room for any interpretation.

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81 Id. at 767-768.

Moreover, as aptly observed by Senior Associate Justice Estela Perlas-Bernabe (Justice Perlas-Bernabe), when the PAGCOR Charter was enacted, offshore gaming was not yet in existence. Thus, the PAGCOR Charter could not have contemplated virtual gaming websites as "casinos and other related amusement places" mentioned under Section 13(2)(b) thereof. Consequently, the PAGCOR Charter cannot be said to have been the basis for imposing tax on POGO Licensees.[82]

Simply then, when RMC No. 102-2017 was issued, there was **no law imposing any franchise tax on POGOs**. Thus, RMC No. 102-2017 is invalid, insofar as it imposed franchise taxes on POGOS, because it was passed without any statutory basis.

Likewise, as pointed out by Associate Justice Alfredo Benjamin Caguioa (Justice Caguioa),[83] RMC No. 102-2017 is likewise invalid and unconstitutional because it effectively amended the PAGCOR Charter when it imposed taxes on entities not taxed under the law. It must be emphasized that the State's inherent power to tax is exclusively vested in Congress.[84] Without such imprimatur from Congress, the BIR cannot arrogate upon itself the authority to impose taxes, especially because "[t]he rule is that a tax is never presumed and there must be clear language in the law imposing the tax. Any doubt whether a person, article or activity is taxable is resolved against taxation."[85]

Moreover, the BIR cannot enlarge or go beyond the provisions of the law it administers. As held in *Purisima v. Lazatin* (*Purisima*):[86]

> *RR 2-2012 is unconstitutional.*
>
> According to the respondents, the power to enact, amend, or repeal laws belong exclusively to Congress. In passing RR 2-2012, petitioners illegally amended the law - a power solely vested on the Legislature.
>
> We agree with the respondents.
>
> The power of the petitioners to interpret tax laws is not absolute. **The rule is that regulations may not enlarge, alter, restrict, or otherwise go beyond the provisions of the law they administer; administrators and implementors cannot engraft additional requirements not contemplated by the legislature.**

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82 Concurring and Dissenting Opinion, Senior Associate Justice Perlas-Bernabe, p. 18.

83 Justice Caguioa's *Comments,* p. 2.

84 *Film Development Council of the Philippines v. Colon Heritage Realty Corporation,* 760 Phil. 519, 535 (2015); *Purisima v. Lazatin,* 801 Phil. 395, 426 (2016).

85 *Light Rail Transit Authority v. Quezon City,* G.R. No. 221626, October 9, 2019.

86 Supra note 84 at 425-426.

> It is worthy to note that RR 2-2012 **does not even refer to a specific Tax Code provision it wishes to implement**. *While it purportedly establishes mere administration measures for the collection of VAT and excise tax on the importation of petroleum and petroleum products, not once did it mention the pertinent chapters of the Tax Code on VAT and excise tax.* (Emphasis supplied; citations omitted)

Indeed, the ruling in *Purisima* applies squarely in this case. The BIR encroached upon the authority reserved exclusively for Congress when it issued RMC No. 102-2017 and imposed a five percent (5%) franchise tax upon POGOs when the PAGCOR Charter itself does not tax POGOs. RMC No. 102-2017 likewise failed to indicate which provisions of the PAGCOR Charter it was implementing when it imposed the franchise tax. Accordingly, **RMC No. 102-2017, and consequently, RMC No. 78-2018, insofar as they imposed franchise taxes on POGOS, are invalid and unconstitutional for being issued without any statutory basis and for encroaching upon legislative power to enact tax laws.**

The BIR can only Impose Income Tax Upon Income Derived from the Philippines; VAT can only be Imposed for Services and Goods Consumed in the Philippines.

Apart from franchise tax, RMC No. 102-2017 likewise imposed income tax, VAT, and other applicable taxes on offshore-based POGO licensees upon their income derived from non-gaming operations or other related services.

"Income from Other Related Services" is defined by RMC No. 102-2017 as "income or earning realized or derived not from gaming operations but from such other necessary and related services, shows, and entertainment."[87]

At this juncture, it is vital to recall that the principle of taxation is an inherent attribute of sovereignty. As stated by Justice Perlas-Bernabe, taxation emanates from **necessity**,[88] and is grounded on a **mutually advantageous relationship between the State and those it governs**; every person surrenders a portion of their income for the running of the government, and the government in turn, provides tangible and intangible benefits to serve and protect those within its jurisdiction.[89] Similarly, Associate Justice Japar B. Dimaampao (Justice Dimaampao) cited the principle of **equality in taxation**,

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87 RMC No. 102-2017, paragraph IV(1)(b).

88 Concurring and Dissenting Opinion, Senior Associate Justice Perlas-Bernabe, p. 9. *Phil. Guaranty Co., Inc. v. Commissioner of Internal Revenue,* 121 Phil. 755, 760 (1965).

89 *Id.; Commissioner of Internal Reveue v. Algue, Inc.,* 241 Phil. 829, 836 (1988).

which states that the subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities; that is, **in proportion to the revenue which they respectively enjoy under the protection of the state.**[90]

Thus, it is within the context of whether or not POGOs, particularly offshore-based POGO licensees, enjoy the protection of the State that this Court must determine whether the Philippines may impose taxes upon them.

To resolve this query, it is vital to understand the services performed by offshore-based POGO licensees to determine how they operate and how they derive revenues.

Under the POGO Rules and Regulations, POGOs are entities which provide and participate in offshore gaming services. As stated above, **offshore gaming** refers to "the offering by a licensee of PAGCOR authorized online games of chance via the Internet using a network and software or program, exclusively to offshore authorized players excluding Filipinos abroad, who have registered and established an online gaming account with the licensee."[91] Offshore gaming has three components:

> b.1.) prize consisting of money or something else of value which can be won under the rules of the game;
>
> b.2.) a player who:
>
> > b.2.a.) being located outside of the Philippines and not a Filipino citizen, enters the game remotely or takes any step in the game by means of a communication device capable of accessing an electronic communication network such as the internet.
> >
> > b.2.b.) gives or undertakes to give, a monetary payment or other valuable consideration to enter in the course of, or for, the game; and
>
> b.3.) the winning of a prize is decided by chance.[92]

All these three components do not involve and are not performed within the Philippine territory. None of these components likewise deals with Filipino citizens. To reiterate, the placing of bets occurs outside the

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90 Justice Dimaampao's *Reflections,* p. 1; Smith, Adam, "*The Wealth of Nations,*" Bantam Classic (2003).
91 POGO RULES AND REGULATIONS, Section 4(b).
92 Id.

Philippines; the players must not be Filipino citizens, or within the Philippines; and the payment of the prize also occurs outside of the Philippines.

Given the above, the only point of contact of an offshore-based POGO licensee to the Philippines is that it is required, pursuant to its OGL, to engage the services of PAGCOR-accredited local gaming agents and service providers for its offshore gaming operations.[93] **These service providers are separate and distinct entities from the offshore-based POGO licensees.** Simply put, the only transaction entered into by these offshore-based POGO licensees are the service contracts with these service providers located in the Philippines.

Because of the supposed continuing presence (through transacting with service providers) of offshore-based POGO licensees in the Philippines, the BIR has categorized offshore-based POGO licensees as **resident foreign corporations**. Notably, R.A. No. 11590 likewise classifies all POGO licensees, including offshore-based POGO licensees as corporations "engaged in doing business in the Philippines." Nevertheless, the NIRC provides that foreign corporations are only taxed for income derived in the Philippines:

> **SEC. 23.** ***General Principles of Income Taxation in the Philippines.*** - Except when otherwise provided in this Code:
>
> x x x x
>
> (f) A foreign corporation, whether engaged or not in trade or business in the Philippines, is taxable only on **income derived from sources within the Philippines**. (Emphasis supplied)

In fact, R.A. No. 11590 likewise categorically provides that offshore-based POGO licensees are only liable to pay income tax **for income derived within the Philippines**.

As mentioned by Justice Perlas-Bernabe, Section 42(A)[94] of the NIRC provides the guidelines in determining what income is derived from sources within the Philippines, while Section 42(C)[95] thereof identifies what income

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93 *See* PAGCOR Manual, p. 2.

94 Section 42(A) of the NIRC provides:
Section 42. **Income from Sources Within the Philippines.** –
(A) Gross Income From From Sources Within the Philippines. – The following items of gross income shall be treated as gross income from sources within the Philippines:
x x x x
(3) Services. – Compensation for labor or personal services **performed in the Philippines[.]** (Emphasis supplied)

95 Section 42(C) of the NIRC provides:
Section 42. Income from Sources Within the Philippines. –

is sourced without. In explaining the concept of "source" vis-à-vis taxation, this Court stated in *Manila Gas Corporation v. Collector of Internal Revenue*:[96] "[t]he word 'source' conveys only one idea, that of origin, and the origin of the income was the Philippines." Thus, the test is to determine if the income **originated from the Philippines**.[97]

A reading of Section 42(A) and (C) of the NIRC makes it clear that for income derived from the sale of services, the focal point is where the **actual performance of the service occurs**. In this regard, the seminal case of *Commissioner of Internal Revenue v. British Overseas Airways Corporation (BOAC)*[98] is instructive to understand the precise aspect of the activity which triggers the taxable event, *viz.*:

> The source of an income is the property, activity or service that produced the income. **For the source of income to be considered as coming from the Philippines, it is sufficient that the income is derived from activity within the Philippines. In BOAC's case, the sale of tickets in the Philippines is the activity that produces the income. The tickets exchanged hands here and payments for fares were also made here in Philippine currency. The situs of the source of payments is the Philippines. The flow of wealth proceeded from, and occurred within, Philippine territory, enjoying the protection accorded by the Philippine government. In consideration of such protection, the flow of wealth should share the burden of supporting the government.**
>
> x x x x
>
> BOAC, however, would impress upon this Court that income derived from transportation is income for services, with the result that **the place where the services are rendered determines the source**; and since BOAC's service of transportation is performed outside the Philippines, the income derived is from sources without the Philippines and, therefore, not taxable under our income tax laws. The Tax Court upholds that stand in the joint Decision under review.
>
> The absence of flight operations to and from the Philippines is not determinative of the source of income or the situs of income taxation. Admittedly, BOAC was an off-line international airline at the time pertinent to this case. **The test of taxability is the "source"; and the source of an income is that activity x x x which produced the income.** Unquestionably, the passage documentations in these cases were sold in the Philippines and the revenue therefrom was derived from a business activity

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x x x x

(C) Gross Income From Sources Without the Philippines. – The following items of gross income shall be treated as income from sources without the Philippines:

x x x x

(3) Compensation for labor or personal **services performed without the Philippines[.]** (Emphasis supplied)

96 62 Phil. 895, 901 (1936).

97 Concurring and Dissenting Opinion, Senior Associate Justice Perlas-Bernabe, p. 10.

98 233 Phil. 406 (1987).

> regularly pursued within the Philippines. And even if the BOAC tickets sold covered the "transport of passengers and cargo to and from foreign cities," **it cannot alter the fact that income from the sale of tickets was derived from the Philippines. The word "source" conveys one essential idea, that of origin, and the origin of the income herein is the Philippines.**[99] (Emphasis supplied; citations omitted)

Thus, as observed by Justice Perlas-Bernabe, in *BOAC,* the Court held that, while the actual transportation would occur outside the Philippines, the sale of tickets in the Philippines already constituted a taxable activity.[100] In this regard, in *Commissioner of Internal Revenue v. Baier-Nickel (Baier-Nickel)*,[101] this Court expounded on its ruling in *BOAC,* and clarified that the "source" of income is not determined by where income is disbursed or physically received, but rather, where the business activity that produced such income is actually conducted:

> Both the petitioner and respondent cited the case of *Commissioner of Internal Revenue v. British Overseas Airways Corporation* in support of their arguments, but the correct interpretation of the said case favors the theory of respondent that **it is the *situs* of the activity that determines whether such income is taxable in the Philippines**. The conflict between the majority and the dissenting opinion in the said case has nothing to do with the underlying principle of the law on sourcing of income. In fact, both applied the case of *Alexander Howden & Co., Ltd. v. Collector of Internal Revenue. The divergence in opinion centered on whether the sale of tickets in the Philippines is to be construed as the "activity" that produced the income, as viewed by the majority, or merely the physical source of the income, as ratiocinated by Justice Florentino P. Feliciano in his dissent. The majority, through Justice Ameurfina Melencio-Herrera, as ponente*, interpreted the sale of tickets as a business activity that gave rise to the income of BOAC. **Petitioner cannot therefore invoke said case to support its view that source of income is the physical source of the money earned. If such was the interpretation of the majority, the Court would have simply stated that source of income is not the business activity of BOAC but the place where the person or entity disbursing the income is located or where BOAC physically received the same. But such was not the import of the ruling of the Court**. It even explained in detail the business activity undertaken by BOAC in the Philippines to pinpoint the taxable activity and to justify its conclusion that BOAC is subject to Philippine income taxation. x x x.
>
> x x x x
>
> The Court reiterates the rule **that "source of income" relates to the property, activity or service that produced the income**. With respect to rendition of labor or personal service, as in the instant case, it is the place where the labor or service was performed that determines the source of the

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99 Id. at 422-424.

100 Concurring and Dissenting Opinion, Senior Associate Justice Perlas-Bernabe, pp. 10-11.

101 531 Phil. 480 (2006).

> income. There is therefore no merit in petitioner's interpretation which equates source of income in labor or personal service with the residence of the payor or the place of payment of the income.[102] (Emphasis supplied)

Applying the rulings of *BOAC* and *Baier-Nickel* to the instant case, it appears that offshore-based POGO licensees derive **no income from the sources within the Philippines** because the "activity" which produces income occurs and is located outside the territory of the Philippines. Indeed, the flow of wealth or the income-generating activity – the placing of bets less the amount of payout – transpires outside the Philippines.

Pertinently, apart from the disquisitions found in *BOAC* and *Baier-Nickel,* Justice Dimaampao also observed the necessity to discuss the other jurisprudential tests to ascertain whether a resident foreign corporation is "doing" or "engaging in" or "transacting" business in the Philippines, to determine the taxability of POGOs, particularly offshore-based POGO licensees, within the jurisdiction of the Philippines.[103] These jurisprudential tests are as follows:

1. Substance Test;[104]
2. Contract Test;[105]
3. Intention Test;[106] and
4. Actual Performance Test.[107]

Substance Test – the true test in determining whether a foreign corporation is transacting business "seems to be whether [it] is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another."[108] As noted by Justice Dimaampao, the ***Substance Test*** implies a **continuity of commercial dealings and arrangements**, and contemplates, to the extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose of its organization.[109]

Contract Test - transactions entered into by a foreign corporation which constitute an **isolated transaction** and are not a series of commercial dealings which signify an intent on the part of such corporation to do business

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102 Id. at 491-493.
103 Justice Dimaampao's *Reflections,* p. 3.
104 *Id.; The Mentholatum Co., Inc. v. Mangaliman,* 72 Phil. 524, 528 (1941).
105 *Id.; Pacific Vegetable Oil Corporation v. Singzon,* 96 Phil. 986 (1955).
106 *Id.; Eriks Pte. Ltd., v. Court of Appeals,* 335 Phil. 229, 239 (1997).
107 *Id.; B. Van Zuiden Bros., Ltd. v. GTVL Manufacturing Industries, Inc.,* 551 Phil. 231, 237 (2007).
108 *The Mentholatum Co., Inc. v. Mangaliman,* supra note 104 at 528.
109 Justice Dimaampao's *Reflections,* pp. 3-4.

in the Philippines, does not fall under the category of "doing business." Thus, as stressed by Justice Dimaampao, **isolated transactions** by a foreign corporation do **not** constitute engaging in business in the Philippines.[110]

Intention Test – what is determinative of "doing business" is not really the number or the quantity of the transactions, but the intention of the entity to continue the body of its business in the country. The number and quantity are merely evidence of such intention. The phrase "*isolated transaction*" has a definite and fixed meaning, *i.e.,* a transaction or series of transactions set apart from the common business of a foreign enterprise in the sense that no intention to engage in a progressive pursuit of the purpose and object of the business organization. As such, Justice Dimaampao noted in his *Reflections* that under the ***Intention Test,*** the question of whether a foreign corporation is "doing business" does not necessarily depend upon the frequency of its transactions, but more upon the **nature and character of the transactions**.

Actual Performance Test – an essential condition to be considered as "doing business" in the Philippines is the **actual performance of specific commercial acts within the territory of the Philippines**, because, as aptly pointed out by Justice Dimaampao in his *Reflections,* the Philippines has no jurisdiction over commercial acts performed in foreign territories.

Applying these jurisprudential tests, as well as the discussion of what constitutes doing business under Section 3(d) of the Foreign Investments Act of 1991 (FIA),[111] it is abundantly clear that the POGOs, particularly offshore-based POGO licensees, are **not doing, engaging in, nor transacting business in the Philippines**. As emphasized by Justice Dimaampao: *first,* the activities of offshore-based POGO licensees do not fall under Section 3(d) of the FIA; *second,* offshore-based POGO licensees only have a **limited** presence in the Philippines; and *third,* the transactions of offshore-based POGO licensees not performed in the Philippines are beyond our jurisdiction.[112]

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110 Id. at 4.

111 Section 3(d) of the FIA provides:
Section 3. *Definitions.*- As used in this Act:
x x x x
d) The phrase "**doing business**" shall include soliciting orders, service contracts, opening offices, whether called "liaison" offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization: *Provided, however*, **That the phrase "doing business" shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business**, and/or the **exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account[.]** (Emphasis supplied)

112 Justice Dimaampao's *Reflections,* p. 5.

In view of all the foregoing, and to answer the query above, it is apparent that POGOs, particularly offshore-based POGO licensees, do not enjoy any protection from the State. To be clear, the very nature of their operations and the limited presence of offshore-based POGO licensees in the Philippines negate the concept of "doing business" in the Philippines; and therefore, POGOs, particularly offshore-based POGO licensees cannot be taxed here.

Relevantly, while the application of the aforementioned jurisprudential tests, including the rulings in *BOAC* and *Baier-Nickel,* and the provisions of the FIA, lead to the inescapable conclusion that POGOs, particularly offshore-based POGO licensees, cannot be subjected to tax in the Philippine jurisdiction, it must be borne in mind that the foregoing were promulgated and enacted during a time when businesses require **physical presence** within a State to provide certain services. As observed by both Justice Perlas-Bernabe and Justice Dimaampao, with the proliferation of digital and online commerce, it becomes more complicated and less straightforward to determine where the activity which produces income occurs, as when the transaction is conducted over the internet.[113]

Thus, this Court finds it crucial to add a discussion with respect to the challenges of taxing the "digital economy" as suggested by Justice Perlas-Bernabe.[114]

Justice Perlas-Bernabe explained that according to the Organization for Economic Cooperation and Development (OECD), the digital economy brought about the emergence of new business models which may "quickly cause existing businesses to become obsolete."[115] From a tax perspective, the digital economy likewise poses several challenges because of the following key features:

- Mobility, with respect to *(i)* the *intangibles* on which the digital economy relies heavily, *(ii) users*, and *(iii) business functions* as a consequence of the decreased need for local personnel to perform certain functions as well as the flexibility in many cases to choose the location of servers and other resources.

- Reliance on data, including in particular the use of so-called "big data".

- Network effects, understood with reference to user participation, integration and synergies.

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113 Concurring and Dissenting Opinion, Senior Associate Justice Perlas-Bernabe, p. 12; Justice Dimaampao's *Reflections,* p. 5.

114 Id. at 13.

115 *See* OECD (2014), *Addressing the Tax Challenges of the Digital Economy*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, p. 73; *available at* https://doi.org/10.1787/9789264218789-en.

- Use of multi-sided business models in which the two sides of the market may be in different jurisdictions.

- Tendency toward monopoly or oligopoly in certain business models relying heavily on network effects.

- Volatility due to low barriers to entry and rapidly evolving technology.[116]

To illustrate, the mobility of users in the digital economy allows them to: (1) carry on commercial activities remotely across borders; and (2) use of virtual private networks (VPNs) or proxy servers that could mask the location of where the digital transaction actually occurs.[117] Meanwhile, with respect to the mobility of business functions, the digital economy allows entities to coordinate activities across several territories in one central point while being geographically removed from both the location where the business operations are carried out and where the suppliers or customers are serviced.[118]

Thus, as observed by Justice Perlas-Bernabe, the complexity of the digital economy could allow businesses to avoid a taxable presence or escape taxation anywhere by simply working around local laws and outdated conceptions of permanent establishments. As stated by the OECD:

> *5.2.1.1 Avoiding a taxable presence*
>
> In many digital economy business models, a non-resident company may interact with customers in a country remotely through a website or other digital means (e.g. an application on a mobile device) without maintaining a physical presence in the country. Increasing reliance on automated processes may further decrease reliance on local physical presence. The domestic laws of most countries require some degree of physical presence before business profits are subject to taxation. In addition, under Articles 5 and 7 of the OECD Model Tax Convention, a company is subject to tax on its business profits in a country of which it is a non-resident only if it has a permanent establishment (PE) in that country. Accordingly, such non-resident company may not be subject to tax in the country in which it has customers.
>
> Companies in many industries have customers in a country without a PE in that country, communicating with those customers via phone, mail, and fax and through independent agents. That ability to maintain some level of business connection within a country without being subject to tax on business profits earned from sources within that country is the result of

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116 *See* OECD (2014), *Addressing the Tax Challenges of the Digital Economy*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, p. 84; *available at* https://doi.org/10.1787/9789264218789-en.

117 *See* OECD (2014), *Addressing the Tax Challenges of the Digital Economy*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, p. 85; *available at* https://doi.org/10.1787/9789264218789-en.

118 Id.

> particular policy choices reflected in domestic laws and relevant double tax treaties, and is not in and of itself a BEPS issue. However, while the ability of a company to earn revenue from customers in a country without having a PE in that country is not unique to digital businesses, it is available at a greater scale in the digital economy than was previously the case. Where this ability, coupled with strategies that eliminate taxation in the State of residence, results in such revenue not being taxed anywhere, BEPS concerns are raised. In addition, under some circumstances, tax in a market jurisdiction can be artificially avoided by fragmenting operations among multiple group entities in order to qualify for the exceptions to PE status for preparatory and auxiliary activities, or by otherwise ensuring that each location through which business is conducted falls below the PE threshold. Structures of this type raise BEPS concerns.[119]

To combat this, the OECD offers several proposals, such as revising treaty terms on Permanent Establishments, and implementing better domestic foreign corporation rules among countries.[120]

However, as mentioned by Justice Perlas-Bernabe, to which this Court concurs, until such time as existing tax treaties and tax laws are revised and revisited to account for the digital economy, this Court must apply the laws as they currently are. **Since, as explained above, no income is derived from sources within the Philippines, offshore-based POGO licensees cannot be subjected to income tax.**

All things considered, RMC No. 102-2017, and consequently, RMC No. 78-2018, should be struck down, insofar as they imposed income tax and other applicable taxes upon offshore-based POGO licensees, notwithstanding the fact that offshore-based POGO licensees do not derive any income from sources within the Philippines.

Section 11(f) and (g) of the Bayanihan 2 Law are Unconstitutional for Being Riders.

The title of the Bayanihan 2 Law reads: "*An Act Providing for Covid-19 Response and Recovery Interventions and Providing Mechanisms to Accelerate the Recovery and Bolster the Resiliency of the Philippine Economy,* ***Providing Funds Therefor****, and For Other Purposes.*" Meanwhile, Section 11 thereof lists the sources of funding to address the COVID-19 pandemic, which includes, among others, the following:

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119 *See* OECD (2014), *Addressing the Tax Challenges of the Digital Economy*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, p. 102; *available at* https://doi.org/10.1787/9789264218789-en.

120 *See* OECD (2014), *Addressing the Tax Challenges of the Digital Economy*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, pp. 112-121; *available at* https://doi.org/10.1787/9789264218789-en.

> SECTION 11. *Sources of Funding.* — The enumerated subsidy and stimulus measures, as well as all other measures to address the COVID-19 pandemic shall be funded from the following:
>
> x x x x
>
> (f) Amounts derived from the **five percent (5%) franchise tax on the gross bets or turnovers or the agreed pre-determined minimum monthly revenues from gaming operations, whichever is higher**, earned by offshore gaming licensees, including gaming operators, gaming agents, services-providers and gaming support providers;
>
> (g) Income tax, VAT, and other applicable taxes on income from non-gaming operations earned by offshore gaming licensees, operators, agents, service providers and support providers.
>
> The tax shall be computed on the peso equivalent of the foreign currency used, based on the prevailing official exchange rate at the time of payment, otherwise the same shall be considered as a fraudulent act constituting underdeclaration of taxable receipts or income, and shall be subject to interests, fines and penalties under Sections 248(B), 249(B), 253, and 255 of the National Internal Revenue Code of the Philippines.
>
> After two (2) years or upon a determination that the threat of COVID-19 has been successfully contained or abated, whichever comes first, **the revenues derived from franchise taxes on gross bets or turnovers under paragraph (f) and income from non-gaming operations under paragraph (g) shall continue to be collected and shall accrue to the General Fund of the Government**. The BIR shall implement closure orders against offshore gaming licensees, operators, agents, service providers and support providers who fail to pay the taxes due, and such entities shall cease to operate.[121] (Emphasis supplied)

To determine whether certain provisions are riders, it is vital to understand the rationale behind its prohibition. Such proscription against riders was explained by this Court in *Fariñas v. Executive Secretary*,[122] thus:

> Section 26(1), Article VI of the Constitution provides:
>
> SEC. 26(1). Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof.
>
> The proscription is aimed against the evils of the so-called omnibus bills and log-rolling legislation as well as surreptitious and/or unconsidered encroaches. The provision merely calls for **all parts of an act relating to its subject finding expression in its title**.

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121 BAYANIHAN 2 LAW, Section 11.
122 463 Phil. 179 (2003).

> To determine whether there has been compliance with the constitutional requirement that the subject of an act shall be expressed in its title, the Court laid down the rule that —
>
> Constitutional provisions relating to the subject matter and titles of statutes should not be so narrowly construed as to cripple or impede the power of legislation. The requirement that the subject of an act shall be expressed in its title should receive a reasonable and not a technical construction. **It is sufficient if the title be comprehensive enough reasonably to include the general object which a statute seeks to effect, without expressing each and every end and means necessary or convenient for the accomplishing of that object**. Mere details need not be set forth. The title need not be an abstract or index of the Act.[123] (Emphasis supplied; citations omitted)

Similarly, and as observed by Justice Perlas-Bernabe,[124] in *Atitiw v. Zamora*,[125] this Court elucidated that the rationale for the prohibition against riders is to prevent hodge-podge or log-rolling legislation, and to ensure that all provisions of a statute have some reasonable relation to the subject matter as expressed in the title thereof:

> The rationale against inserting a rider in an appropriations bill under the specific appropriation clause embodied in Section 25(2), Article VI of the Constitution is similar to that of the "one subject in the title clause provided in Section 26(1) also of Article VI, which directs that **every provision in a bill must be germane or has some reasonable relation to the subject matter as expressed in the title thereof. The unity of the subject matter of a bill is mandatory in order to prevent hodge-podge or log-rolling legislation, to avoid surprise or fraud upon the legislature, and to fairly appraise the people of the subjects of legislation that are being considered.**[126] (Emphasis supplied; citation omitted)

Following such jurisprudential guides, it is evident that all provisions of a law must be germane to the purpose of the law, and contemplated by the title thereof.

Here, the respondents admit that the Bayanihan 2 Law is **not a tax measure**. Simply stated, the Bayanihan 2 Law was not enacted to impose new taxes in order to address the COVID-19 pandemic. In fact, and as pointed out by Justice Perlas-Bernabe,[127] the proponents of House Bill No. 6953 and Senate Bill No. 1564, the precursors of the Bayanihan 2 Law, all characterized

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123 Id. at 198.
124 Concurring and Dissenting Opinion, Senior Associate Justice Perlas-Bernabe, pp. 2-3.
125 508 Phil. 321 (2005).
126 Id. at 335.
127 Concurring and Dissenting Opinion, Senior Associate Justice Perlas-Bernabe, p. 3.

the same as "socioeconomic relief efforts,"[128] a "stopgap measure,"[129] or a "stimulus bill."[130]

While the title of the law contains the phrase "providing funds therefor," it must be emphasized that all other provisions relating to sources of funding under Section 11, except for Section 11(f) and (g), are already existing taxes. The Bayanihan 2 Law merely realigns these already existing sources of funding and funnels it to be used for COVID-19 relief measures.

However, as expounded above, before the passage of the Bayanihan 2 Law, there was no law in effect which imposes franchise taxes upon offshore-based POGO licensees. Similarly, there was also no statutory basis to impose income tax and VAT upon offshore-based POGO licensees before the enactment of the Bayanihan 2 Law. This means that the Bayanihan 2 Law, specifically Section 11(f) and (g), appear to introduce new tax impositions.

Such conclusion is likewise supported by the fact that, unlike the other provisions under Section 11 of the Bayanihan 2 Law that are temporary in nature, Section 11(f) and (g) thereof were intended to outlive the December 19, 2020 expiration date of the Bayanihan 2 Law, *viz.*:

> After two (2) years or upon a determination that the threat of COVID-19 has been successfully contained or abated, whichever comes first, the revenues derived from franchise taxes on gross bets or turnovers under paragraph (f) and income from non-gaming operations under paragraph (g) **shall continue to be collected and shall accrue to the General Fund of the Government**. The BIR shall implement closure orders against offshore gaming licensees, operators, agents, service providers and support providers who fail to pay the taxes due, and such entities shall cease to operate. (Emphasis supplied)

Indeed, and as emphasized by Justice Perlas-Bernabe,[131] if all sources of funding under Section 11 of the Bayanihan 2 Law are already existing taxes, there would be no need to specify that the collections thereof after the COVID-19 pandemic has been thwarted would accrue to the General Fund of the Government. The logical implication of this statement, therefore, is that prior to the Bayanihan 2 Law, there was no statute which imposed the same taxes as found in Section 11(f) and (g) of the Bayanihan 2 Law; and consequently, the foregoing provisions are new tax measures.

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128 See Sponsorship Remarks of Deputy Speaker Villafuerte, House of Representatives Journal No. 59, June 1-5, 2020, p. 101.

129 See Interpellation of Representative Abante, House of Representatives Records, August 5, 2020, p. 45.

130 Id. at 46; see *also* Interpellations of Senator Recto, Senate Journal No. 67, June 1, 2020, p. 614.

131 Concurring and Dissenting Opinion, Senior Associate Justice Perlas-Bernabe, p. 5.

Thus, this Court is convinced that Section11(f) and (g) of the Bayanihan 2 Law are not germane to the purpose of the law, and therefore, violates the "one subject, one title rule" of the Constitution. The imposition of new taxes, camouflaged as part of a long list of existing taxes, cannot be contemplated as an integral part of a temporary COVID-19 relief measure. Invariably, Section 11(f) and (g) of the Bayanihan 2 Law are unconstitutional, in so far as it imposes **new taxes** on POGO licensees.

On this score alone, the *Consolidated Petitions* must be granted. Section 11(f) and (g) of the Bayanihan 2 Law are unconstitutional. Consequently, the *Assailed Tax Issuances,* specifically RR No. 30-2020 and RMC No. 64-2020, which merely implement Section 11(f) and (g) of the Bayanihan 2 Law, are likewise invalid for having no legal basis.

All in all, before the enactment of R.A. No. 11590, there is no valid law which imposes taxes upon POGOs, including offshore-based POGO licensees. However, this Court deems it proper to emphasize that R.A. No. 11590 **cannot be applied retroactively**.[132] Thus, POGOs, including offshore-based POGO licensees such as the petitioners, cannot be made liable for taxes prior to the enactment and effectivity of R.A. No. 11590.

WHEREFORE, premises considered, the *Petition for Certiorari and Prohibition [With Application for a Temporary Restraining Order and/or Writ of Preliminary Injunction]* dated August 20, 2020 in G.R. No. 252965 and the *Petition for Certiorari and Prohibition (With Application for Temporary Restraining Order/Writ of Preliminary Injunction)* dated November 17, 2020 in G.R. No. 254102 are **GRANTED**. Section 11(f) and (g) of Republic Act No. 11494, Revenue Regulation No. 30-2020; Revenue Memorandum Circular No. 64-2020; Revenue Memorandum Circular No. 102-2017; and Revenue Memorandum Circular No. 78-2018, in so far as they impose franchise tax, income tax, and other applicable taxes upon offshore-based POGO licensees are declared **NULL** and **VOID** for being contrary to the Constitution and other relevant laws.

SO ORDERED.

SAMUEL H. GAERLAN
Associate Justice

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132 CIVIL CODE, Article 4.

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

Please see Concurring & Dissenting Opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

I dissent. See separate opinion.

MARVIC M.V.F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

Pls. see Dissenting Opinion

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

(On official leave)
JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice