

## SECOND DIVISION

**[ G.R. Nos. 210689-90, November 22, 2017 ]**

**PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), PETITIONER, V. THE COMMISSIONER OF INTERNAL REVENUE AND THE HEAD REVENUE EXECUTIVE ASSISTANT, LARGE TAXPAYER SERVICE, IN THEIR OFFICIAL CAPACITIES AS OFFICERS OF THE BUREAU OF INTERNAL REVENUE, RESPONDENTS.**

**[G.R. Nos. 210704 & 210725, November 22, 2017]**

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, V. PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), RESPONDENT.**

### D E C I S I O N

**CAGUIOA, J:**

Before the Court are consolidated petitions for review under Rule 45 of the Rules of Court. The Philippine Amusement and Gaming Corporation (PAGCOR) is the petitioner in G.R. Nos. 210689-90 while the Commissioner of Internal Revenue (CIR) is the petitioner in G.R. Nos. 210704 & 210725. Both petitioners assail the Decision<sup>[1]</sup> dated July 23, 2013 and Resolution<sup>[2]</sup> dated December 18, 2013 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case Nos. 868 and 869<sup>[3]</sup>. The CTA *En Banc* dismissed the separate petitions for review filed by the CIR and PAGCOR, and affirmed the September 5, 2011 Decision<sup>[4]</sup> and January 24, 2012 Resolution<sup>[5]</sup> of the CTA First Division in C.T.A. Case No. 7976.

#### The Facts

PAGCOR is a duly created government instrumentality by virtue of Presidential Decree (PD) No. 1869,<sup>[6]</sup> issued on July 11, 1983. <sup>[7]</sup> Under the said decree, specifically in Section 10, Title IV thereof, PAGCOR's franchise includes the "rights, privilege and authority to operate and maintain gambling casinos, clubs, and other recreation or amusement places, sports, gaming pools, i.e. basketball, football, lotteries, etc. whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines." Likewise, it is legally empowered to "do and perform such other acts directly related to the efficient and successful operation and conduct of games of chance in accordance with existing laws and decrees."<sup>[8]</sup> It also has regulatory powers over "[a]ll persons primarily engaged in gambling, together with their allied business."<sup>[9]</sup>

Moreover, Section 13(2) of PD No. 1869 provides that "[n]o 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 [PAGCOR]; nor shall any form of tax or charge attach in any way to the earnings of [PAGCOR], except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by [PAGCOR] 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."

Section 14(5) of PD No. 1869 also states that PAGCOR "is authorized to operate such necessary and related services, shows and entertainment;" and "[a]ny income that may be realized from these related services shall not be included as part of the income of [PAGCOR] for the purpose of applying the franchise tax, but the same shall be considered as a separate income of the [PAGCOR] and shall be subject to income tax."

On January 1, 1998, Republic Act (RA) No. 8424<sup>[10]</sup> or the National Internal Revenue Code of 1997 (1997 NIRC) took effect wherein PAGCOR, under Section 27(C) thereof, was included among the government-owned or -controlled corporations (GOCCs) exempt from the payment of income tax, to wit:

#### CHAPTER IV - *Tax on Corporations*

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

x x x x

(C) *Government-owned or -Controlled Corporations, Agencies or Instrumentalities.* — The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, **except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PIDC), the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Amusement and Gaming Corporation (PAGCOR)**, shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity. (Emphasis and underscoring supplied)

Subsequently, on July 1, 2005, RA No. 9337<sup>[11]</sup> amended Section 27(C) of the 1997 NIRC, by removing PAGCOR from the list of the GOCCs exempt from payment of income tax.

On June 20, 2007, RA No. 9487<sup>[12]</sup> was enacted extending PAGCOR's franchise under PD No. 1869 for another period of 25 years, renewable for another 25 years.

On July 14, 2008, PAGCOR received a letter dated July 2, 2008 from the Head of Revenue Executive Assistant (HREA) of the Large Taxpayers Service, Bureau of Internal Revenue (BIR), requesting for an informal conference on the results of an investigation regarding all its internal revenue tax liabilities for the taxable years 2005 and 2006.<sup>[13]</sup>

On August 11, 2008, PAGCOR received from the CIR a Preliminary Assessment Notice dated July 29, 2008 on its alleged deficiency income tax, Value-Added Tax (VAT), Fringe Benefit Tax (FBT), and documentary stamp tax for taxable years 2005 and 2006.<sup>[14]</sup>

On February 3, 2009, PAGCOR received from the CIR a Formal Letter of Demand, with attached Assessment Notices all dated December 9, 2008, but only for deficiency income tax, VAT and FBT, inclusive of charges, interest and compromise penalties for taxable years 2005 and 2006, in the aggregate amount of P5,927,542,547.76, broken down as follows<sup>[15]</sup>:

Taxable Year 2005

Particulars	Basic Tax	Surcharge	Interest	Compromise	Total Income Tax
Income Tax	P 98,856,851.52	P 24,714,212.88	P 53,680,624.58	P 25,000.00	P 177,276,688.98
VAT	837,606,020.73	209,401,505.18	491,548,519.56	25,000.00	1,538,581,045.48
FBT	32,297,128.28	8,074,282.07	18,953,547.61	25,000.00	59,349,957.96
<b>Totals</b>	<b>P968,760,000.53<sup>[16]</sup></b>	<b>P242,190,000.13<sup>[17]</sup></b>	<b>P564,182,691.75</b>	<b>P 75,000.00</b>	<b>P1,775,207,692.42<sup>[18]</sup></b>

Taxable Year 2006

Particulars	Basic Tax	Surcharge	Interest	Compromise	Total Income Tax
Income Tax	P 889,270,123.21	P222,317,530.80	P305,031,834.04	P 25,000.00	P1,416,644,488.06
VAT	1,665,267,061.23	416,316,765.31	644,207,422.04	25,000.00	2,725,816,248.58
FBT	6,017,119.97	1,504,279.99	2,327,718.74	25,000.00	9,874,118.70
<b>Totals</b>	<b>P2,560,554,304.41</b>	<b>P640,138,576.10<sup>[19]</sup></b>	<b>P951,566,974.82</b>	<b>P 75,000.00</b>	<b>P4,152,334,855.34<sup>[20]</sup></b>

On March 3, 2009, PAGCOR filed a letter-protest dated February 16, 2009, addressed to the CIR.<sup>[21]</sup>

On September 29, 2009, PAGCOR filed a petition for review with the CTA, alleging inaction on the part of the CIR.<sup>[22]</sup>

On December 10, 2009, the CIR filed an Answer raising the following arguments, *inter alia*: (a) that PAGCOR is subject to ordinary corporate income tax; (b) that as an ordinary corporate taxpayer, PAGCOR is liable for payment of VAT on its income from casino operations and related services pursuant to the provisions of RA No. 7716<sup>[23]</sup> or the Expanded VAT Law; (c) that PAGCOR is liable for FBT under Section 33 of the 1997 NIRC in relation to Revenue Regulation (RR) No. 3-98; and, (d) that PAGCOR was duly assessed and informed of its deficiency tax liabilities for taxable years 2005 and 2006.<sup>[24]</sup>

During the pre-trial conference on April 30, 2010, the parties submitted the case for decision without presentation of evidence on agreement that there are no factual issues involved and only legal issues are left for determination of the court. In view thereof and as prayed for, the parties were granted a period of thirty (30) days from receipt of the Pre-trial Order dated July 21, 2010, within which to file their respective memoranda.<sup>[25]</sup>

On September 5, 2011, the CTA Division rendered a Decision,<sup>[26]</sup> the dispositive portion of which reads:

**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the assessments representing deficiency VAT, as well as the surcharges, interests, and compromise penalties imposed thereon, in the aggregate amount of P4,264,397,294.06 for taxable years 2005 and 2006, are hereby **CANCELLED** and **SET ASIDE**.

However, the assessments for deficiency income tax and Fringe Benefit Tax (FBT) for taxable years 2005 and 2006 are hereby **AFFIRMED** with **MODIFICATIONS**. The compromise penalties are cancelled in the absence of mutual agreement between the parties. Accordingly, [PAGCOR] is hereby **ORDERED** to **PAY** [the CIR] the following basic deficiency income tax and FBT for taxable years 2005 and 2006, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended:

	CY 2005	CY 2006	TOTAL
<b>INCOME TAX</b>			
Basic	P 98,856,851.52	P 889,270,123.21	P 988,126,974.73
Surcharge	24,714,212.88	222,317,530.80	247,031,743.68
<b>Subtotal</b>	<b>P 123,571,064.40</b>	<b>P 1,111,587,654.01</b>	<b>P 1,235,158,718.41</b>
<b>FBT</b>			
Basic	P 32,297,128.28	P 6,017,119.97	P 38,314,248.25
Surcharge	8,074,282.07	1,504,279.99	9,578,562.06
<b>Subtotal</b>	<b>P 40,371,410.35</b>	<b>P 7,521,399.96</b>	<b>P 47,892,810.31</b>
<b>TOTAL DEFICIENCY TAX</b>	<b>P 163,942,474.75</b>	<b>P 1,119,109,053.97</b>	<b>P 1,283,051,528.72</b>

In addition, [PAGCOR] shall pay deficiency interest at the rate of twenty percent (20%) *per annum* on the following basic deficiency income taxes and FBT computed from the dates indicated herein until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

	CY 2005	CY 2006
<b>Income Tax</b>	P 98,856,851.52	P 889,270,123.21
Computed from	April 15, 2006	April 15, 2007
<b>FBT</b>	P 32,297,128.28	P 6,017,119.97

[PAGCOR] is also liable to pay delinquency interest at the rate of twenty percent (20%) *per annum* on the accrued deficiency interest which was due for payment on December 31, 2008 and on the following total deficiency taxes, computed from December 31, 2008 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended:

	CY 2005	CY 2006	TOTAL
<b>INCOME TAX</b>	P 123,571,064.40	P 1,111,587,654.01	P 1,235,158,718.41
<b>FBT</b>	40,371,410.35	7,521,399.96	47,892,810.31
<b>TOTAL DEFICIENCY TAX</b>	<b>P 163,942,474.75</b>	<b>P 1,119,109,053.97</b>	<b>P 1,283,051,528.72</b>

**SO ORDERED.**<sup>[27]</sup>

The CTA Division held that PAGCOR is exempt from VAT pursuant to Section 7(k) of RA No. 9337 in relation to PD No. 1869, which grants PAGCOR a blanket exemption from taxes with no distinction on whether the taxes are direct or indirect.<sup>[28]</sup>

However, with respect to the assessments for deficiency income tax, the CTA Division ruled that when RA No. 9337 took effect, PAGCOR was deleted from the list and ceased to be among those GOCCs exempt from paying income tax on their taxable income.<sup>[29]</sup> In other words, RA No. 9337 effectively withdrew the income tax exemption granted to PAGCOR under its charter.<sup>[30]</sup>

As regards the assessments for deficiency withholding tax on fringe benefits, the CTA Division ruled that the government's cause of action against PAGCOR is not for the collection of income tax but for the enforcement of the withholding tax provisions of the 1997 NIRC, and the compliance imposed upon PAGCOR as the withholding agent.<sup>[31]</sup> The CTA Division found that PAGCOR admitted that it provided car plan benefits to its executives during taxable years 2005 and 2006 but it did not present any evidence to prove that said car plan benefits were required by the nature of or necessary to its business.<sup>[32]</sup> Thus, pursuant to Section 33 of the 1997 NIRC, as amended, PAGCOR, as the employer-withholding agent, has the obligation to withhold the fringe benefit taxes due thereon; and non-compliance with said obligation renders it personally liable for the tax arising from the breach of a legal duty.<sup>[33]</sup>

In a Resolution<sup>[34]</sup> dated January 24, 2012, the CTA Division denied the parties' respective motions for partial reconsideration for lack of merit.

PAGCOR filed an appeal to the CTA *En Banc* maintaining that its casino and other related operations are not subject to taxes. The case was docketed as CTA EB Case No. 869.<sup>[35]</sup> The CIR also filed an appeal to the CTA *En Banc* insisting on PAGCOR's liability for deficiency VAT. The case was docketed as CTA EB Case No. 868.<sup>[36]</sup>

In the consolidated Decision<sup>[37]</sup> dated July 23, 2013, the CTA *En Banc* dismissed both appeals for lack of merit and affirmed the September 5, 2011 Decision and January 24, 2012 Resolution of the CTA Division.<sup>[38]</sup>

The parties' respective Motions for Partial Reconsideration<sup>[39]</sup> of the said Decision was denied by the CTA *En Banc* in the Resolution<sup>[40]</sup> dated December 18, 2013.

Hence, the instant consolidated petitions.<sup>[41]</sup>

PAGCOR, in its petition for review, docketed as G.R. Nos. 210689-90, submits the following issues for resolution:

x x x WHETHER THE CTA *EN BANC* SERIOUSLY ERRED IN FAILING TO CONSIDER THAT PAG[C]OR UNDER P.D. 1869, AS AMENDED BY R.A. 9487, IS LIABLE ONLY FOR THE 5% FRANCHISE TAX WHICH IS 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.

x x x WHETHER THE CTA *EN BANC* GRAVELY ERRED WHEN IT FAILED TO CONSIDER THAT PAGCOR'S EXEMPTION FROM INCOME TAX AND FBT UNDER ITS CHARTER WAS NOT AMENDED OR REPEALED BY RA 8424 AND R.A. 9337.

x x x ASSUMING THAT PAGCOR'S EXEMPTION FROM ALL FORMS AND KINDS OF TAXES PROVIDED UNDER SECTION 13 OF P.D. 1869, WAS AMENDED OR REPEALED BY R.A. 8424 AND R.A. 9337, WHETHER THE CTA *EN BANC* STILL SERIOUSLY ERRED WHEN IT FAILED TO CONSIDER THAT BY VIRTUE OF THE ENACTMENT OF R.A. 9487, PAGCOR'S AMENDED CHARTER, IT RESTORED THE RIGHTS, PRIVILEGES AND AUTHORITY GRANTED AND/OR ENJOYED BY IT UNDER P.D. 1869 BEFORE THE ENACTMENT OF R.A. 8424 AND R.A. 9337.

x x x WHETHER, THE CTA *EN BANC* ERRED WHEN IT DECLARED PAGCOR LIABLE FOR THE FBT AS A WITHHOLDING AGENT CONSIDERING THAT SUCH IMPOSITION OF LIABILITY VIOLATES PAGCOR'S RIGHT TO DUE PROCESS SINCE THE FBT WAS ASSESSED AGAINST IT AS A FINAL DIRECT TAX AS EMPLOYER AND NOT AS A WITHHOLDING TAX AGENT.

x x x WHETHER THE CTA *EN BANC* ERRED WHEN IT FAILED TO CONSIDER THAT, EVEN ASSUMING THAT PAGCOR IS NOT EXEMPT FROM FBT UNDER ITS CHARTER, THE CAR PLAN BENEFIT EXTENDED TO PAGCOR'S OFFICERS WAS NECESSARY IN THE CONDUCT OF ITS BUSINESS AND ACTUALLY INURED TO ITS BENEFIT. IN SUCH CASE, SUCH BENEFIT IS NOT COVERED BY THE FBT.

x x x ASSUMING THAT PAGCOR IS LIABLE FOR THE ALLEGED DEFICIENCIES IN INCOME TAX AND FBT TAX PAYMENTS, WHETHER THE CTA *EN BANC* ERRED WHEN IT FAILED TO CONSIDER THAT PAGCOR IS ONLY LIABLE FOR THE AMOUNT

EQUIVALENT TO THE BASIC TAX EXCLUDING SURCHARGES, DEFICIENCY INTEREST AND DELINQUENCY INTEREST, AND OTHER SIMILAR CHARGES AND/OR PENALTIES.<sup>[42]</sup>

PAGCOR claims that, under its Charter, it is liable only for the 5% franchise tax which is in lieu of all kinds of national and local taxes, levies, fees or assessments; and said tax privilege was not amended or repealed by RA No. 9337.<sup>[43]</sup> It further argues that assuming said tax exemption was amended/repealed by RA No. 8424 and RA No. 9337, RA No. 9487, which extended PAGCOR's franchise to another 25 years, restored its rights, privileges and authority granted and/or enjoyed under PD No. 1869.<sup>[44]</sup>

PAGCOR also asserts that it is not liable for the FBT as withholding agent.<sup>[45]</sup> According to PAGCOR, the CTA allegedly failed to consider that the car plan extended to PAGCOR's officers inured to its benefit and is required or necessary in the conduct of its business.<sup>[46]</sup> PAGCOR further claims that even assuming that it is subject to deficiency FBT, it is only liable for the basic tax excluding surcharges and interests, on the ground of good faith and honest belief that it is exempt from income tax and FBT.<sup>[47]</sup>

In its Comment,<sup>[48]</sup> the CIR, through the Office of the Solicitor General (OSG), counters that PAGCOR is no longer exempt from the payment of income taxes because its income tax exemption has been effectively withdrawn by the amendments to the 1997 NIRC introduced by RA No. 9337.<sup>[49]</sup>

On the other hand, the CIR's petition for review, docketed as G.R. Nos. 210704 and 210725, raises the sole issue of whether or not PAGCOR is exempt from the payment of VAT.<sup>[50]</sup> The CIR insists that under the 1997 NIRC, as amended, all franchise holders are liable for the payment of VAT, except those listed under Section 119<sup>[51]</sup> of the same Code. Since PAGCOR is not among the franchise holders listed as exempt from the imposition of VAT, it stands to reason that PAGCOR is liable for VAT as an ordinary corporate taxpayer.<sup>[52]</sup>

In its Comment,<sup>[53]</sup> PAGCOR reiterates that it is only liable for the 5% franchise tax, which is in lieu of all kinds of national or local taxes, levies or imposition, including VAT, based on the provisions of PD No. 1869, which were not amended, modified or repealed by RA No. 9337.<sup>[54]</sup>

### The Court's Ruling

#### **G.R. Nos. 210689-90**

The Court finds PAGCOR's petition partly meritorious.

*PAGCOR is liable for corporate income tax only on its income derived from other related services.*

In *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue*,<sup>[55]</sup> the Court *En Banc* declared valid and constitutional Section 1 of RA No. 9337, which excluded PAGCOR from the list of GOCCs exempt from corporate income tax. The Court *En Banc* looked into the records of the Bicameral Conference Meeting dated April 18, 2005, and found that the legislative intent of the omission or removal of PAGCOR from said list was to require PAGCOR to pay the corporate income tax.

PAGCOR sought clarification of the Court's Decision in the aforementioned case on account of the CIR's issuance of Revenue Memorandum Circular (RMC) No. 33-2013 which stated, among others, that PAGCOR's income from operations and licensing of gambling casinos and gaming clubs and other related operations are subject to both corporate income tax under the 1997 NIRC, as amended, and franchise tax pursuant to Section 13(2)(a) of PD No. 1869; while PAGCOR's other income that are not connected with its gaming operations are subject to corporate income tax under the 1997 NIRC, as amended.<sup>[56]</sup>

Treating PAGCOR's motion as a new petition, the Court *En Banc* rendered a Decision upholding PAGCOR's contention that its income from gaming operations is subject only to 5% franchise tax under PD No. 1869, as amended; while its income from other related services is subject to corporate income tax pursuant to PD No. 1869, as amended, in relation to RA No. 9337. The Court *En Banc* clarified that RA No. 9337 did not repeal the tax privilege granted to PAGCOR under PD No. 1869, with respect to its income from gaming operations. What RA No. 9337 withdrew was PAGCOR's exemption from corporate income tax on its income derived from other related services, previously granted under Section 27(C) of RA No. 8424. The Court *En Banc* explained:

After a thorough study of the arguments and points raised by the parties, and in accordance with our Decision dated March 15, 2011, we sustain [PAGCOR's] contention that its income from gaming operations is subject only to five percent (5%) franchise tax under P.D. 1869, as amended, while its income from other related services is subject to corporate income tax pursuant to P.D. 1869, as amended, as well as R.A. No. 9337. This is demonstrable.

**First.** Under P.D. 1869, as amended, [PAGCOR] is subject to income tax only with respect to its operation of related services. Accordingly, the income tax exemption ordained under Section 27(c) of R.A. No. 8424 clearly pertains only to [PAGCOR's] income from operation of related services. Such income tax exemption could not have been applicable to [PAGCOR's] income from gaming operations as it is already exempt therefrom under P.D. 1869, as amended, to wit:

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.

Indeed, the grant of tax exemption or the withdrawal thereof assumes that the person or entity involved is subject to tax. This is the most sound and logical interpretation because [PAGCOR] could not have been exempted from paying taxes which it was not liable to pay in the first place. This is clear from the wordings of P.D. 1869, as amended, imposing a franchise tax of five percent (5%) on its gross revenue or earnings derived by [PAGCOR] from its operation under the Franchise *in lieu* of all taxes of any kind or form, as well as fees, charges or levies of whatever nature, which necessarily include corporate income tax.

In other words, there was no need for Congress to grant tax exemption to [PAGCOR] with respect to its income from gaming operations as the same is already exempted from all taxes of any kind or form, income or otherwise, whether national or local, under its Charter, save only for the five percent (5%) franchise tax. The exemption attached to the income from gaming operations exists independently from the enactment of R.A. No. 8424. To adopt an assumption otherwise would be downright ridiculous, if not deleterious, since [PAGCOR] would be in a worse position if the exemption was granted (then withdrawn) than when it was not granted at all in the first place.

Moreover, as may be gathered from the legislative records of the Bicameral Conference Meeting of the Committee on Ways and Means dated October 27, 1997, the exemption of [PAGCOR] from the payment of corporate income tax was due to the acquiescence of the Committee on Ways and Means to the request of [PAGCOR] that it be exempt from such tax. Based on the foregoing, it would be absurd for [PAGCOR] to seek exemption from income tax on its gaming operations when under its Charter, it is already exempted from paying the same.

**Second.** Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.

As we see it, there is no conflict between P.D. 1869, as amended, and R.A. No. 9337. The former lays down the taxes imposable upon [PAGCOR], as follows: (1) *a five percent (5%) franchise tax* of the gross revenues or earnings derived from its operations conducted under the Franchise, which shall be due and payable *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; (2) *income tax* for income realized from other necessary and related services, shows and entertainment of [PAGCOR]. With the enactment of R.A. No. 9337, which withdrew the income tax exemption under R.A. No. 8424, petitioner's tax liability on income from other related services was merely reinstated.

It cannot be gainsaid, therefore, that the nature of taxes imposable is well defined for each kind of activity or operation. There is no inconsistency between the statutes; and in fact, they complement each other.

**Third.** Even assuming that an inconsistency exists, P.D. 1869, as amended, which expressly provides the tax treatment of [PAGCOR's] income prevails over R.A. No. 9337, which is a general law. It is a canon of statutory construction that a special law prevails over a general law — regardless of their dates of passage — and the special is to be considered as remaining an exception to the general. The *rationale* is:

Why a special law prevails over a general law has been put by the Court as follows:

x x x x

x x x The Legislature consider and make provision for all the circumstances of the particular case.

***The Legislature having specially considered all of the facts and circumstances in the particular case in granting a special charter, it will not be considered that the Legislature, by adopting a general law containing provisions repugnant to the provisions of the charter, and without making any mention of its intention to amend or modify the charter, intended to amend, repeal, or modify the special act.*** (Lewis vs. Cook County, 74 Ill. App., 151; Philippine Railway Co. vs. Nolting, 34 Phil., 401.)

Where a general law is enacted to regulate an industry, it is common for individual franchises subsequently granted to restate the rights and privileges already mentioned in the general law, or to amend the later law, as may be needed, to conform to the general law. However, if no provision or amendment is stated in the franchise to effect the provisions of the general law, it cannot be said that the same is the intent of the lawmakers, for repeal of laws by implication is not favored.

In this regard, we agree with [PAGCOR] that if the lawmakers had intended to withdraw [PAGCOR's] tax exemption of its gaming income, then Section 13(2)(a) of P.D. 1869 should have been amended expressly in R.A. No. 9487, or the same, at the very least, should have been mentioned in the repealing clause of R.A. No. 9337. However, the repealing clause never mentioned [PAGCOR's] Charter as one of the laws being repealed. On the other hand, the repeal of other special laws, namely, Section 13 of R.A. No. 6395 as well as Section 6, fifth paragraph of R.A. No. 9136, is categorically provided under Section 24(a) (b) of R.A. No. 9337, to wit:

SEC. 24. *Repealing Clause.* — The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:

- (A) **Section 13 of R.A. No. 6395 on the exemption from value-added tax of the National Power Corporation (NPC);**
- (B) **Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sales of generated power by generation companies; and**
- (C) All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly.

When [PAGCOR's] franchise was extended on June 20, 2007 without revoking or withdrawing its tax exemption, it effectively reinstated and reiterated all of [PAGCOR's] rights, privileges and authority granted under its Charter. Otherwise, Congress would have painstakingly enumerated the rights and privileges that it wants to withdraw, given that a franchise is a legislative grant of a special privilege to a person. Thus, the extension of [PAGCOR's] franchise