EN BANC

G.R. No. 199802 ***(Congressman Hermilando I. Mandanas, Mayor Efren B. Diona, Mayor Antonio Aurelio, Kagawad Mario Ilagan, Barangay Chair Perlito Manalo, Barangay Chair Medel Medrano, Barangay Kagawad Cris Ramos, Barangay Kagawad Elisa D. Balbago, and Atty. Jose Malvar Villegas vs. Executive Secretary Paquito Ochoa; Secretary Cesar Purisima, Department of Finance; Secretary Florencio H. Abad, Department of Budget and Management; Commissioner Kim Jacinto-Henares, Bureau of Internal Revenue; and National Treasurer Roberto Tan, Bureau of Treasury)***

G.R. No. 208488 ***(Honorable Enrique T. Garcia, Jr., in his personal and official capacity as Representative of the 2nd District of the Province of Bataan vs. Honorable Paquito N. Ochoa, Executive Secretary; Honorable Cesar V. Purisima, Secretary, Department of Finance; Honorable Florencio H. Abad, Secretary, Department of Budget and Management; Honorable Kim Jacinto-Henares, Commissioner, Bureau of Internal Revenue; and Honorable Rozzanno Rufino B. Biazon, Commissioner, Bureau of Customs)***

Promulgated:

July 3, 2018

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SEPARATE OPINION

VELASCO, JR., *J.*:

Nature of the Case

In these consolidated cases before the Court, petitioners question the manner by which budgetary appropriations are made in favor of local government units (LGUs). At the core, petitioners seek clarification on whether or not respondents had been gravely abusing their discretion in excluding certain tax collections in determining the base amount for computing the just share in the national taxes LGUs are entitled to.

The Facts

G.R. No. 199802 for Certiorari, Prohibition, and Mandamus, with Prayer for Preliminary Injunction and/or Temporary Restraining Order

Section 284 of Republic Act No. (RA) 7160, otherwise known as the Local Government Code (LGC), allocates 40% of national internal revenue tax collections to LGUs. The provision pertinently reads:

> **Section 284.** *Allotment of Internal Revenue Taxes.* - Local government units shall have a share in the **national internal revenue taxes** based on the collection of the third fiscal year preceding the current fiscal year as follows:
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> (a) On the first year of the effectivity of this Code, thirty percent (30%);
> (b) On the second year, thirty-five percent (35%); and
> (c) On the third year and thereafter, forty percent (40%).
>
> Provided, That in the event that the national government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga", to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of **national internal revenue taxes** of the third fiscal year preceding the current fiscal year: Provided, further, That in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%) internal revenue allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services. (emphasis added)

Petitioners, local elective government officials from the province of Batangas, allege that the mandated base under Section 284 is not being observed as some tax collections are allegedly being unlawfully withheld by the national government and excluded from distribution to the LGUs.

In particular, petitioners pray that respondents include the (a) Value-Added Tax (VAT), (b) Excise Tax, and (c) Documentary Stamp Tax (DST) collections of the Bureau of Customs (BOC) in computing the base amount. Through letters addressed to petitioner Hermilando I. Mandanas (Mandanas), then congressman of the second district of Batangas, and dated September 12, 2011[1] and November 18, 2011,[2] BOC Commissioners Angelito A. Alvarez and Rozanno Rufino B. Biazon, respectively, attested to the amount of VAT, Excise Tax, and DST collections of the BOC from 1989-2009:

	Collections in Millions		**Collections**
Year	**VAT**	**Excise Tax**	**DST**
1989	10,069	174	2,176,550.03
1990	12,854	254	2,002,011.93
1991	11,675	147	2,007,871.48

[1] *Rollo*, p. 46.
[2] Id. at 48.

1992	13,982	296	1,992,401.92
1993	21,413	299	46,880,825.83
1994	21,293	186	179,411,238.68
1995	28,901	579	210,359,504.10
1996	35,008	1,171	41,328,214.50
1997	42,484	1,896	77,856,280.28
1998	31,980	1,193	47,281,003.31
1999	36,632	1,397	81,496,945.00
2000	42,257	2,277	51,469,598.00
2001	47,247	5,691	45,393,853.25
2002	49,383	9,970	43,413,415.00
2003	52,663	11,753	89,191,480.00
2004	58,883	16,997	45,154,928.00
2005	68,813	14,599	47,440,326.00
2006	111,869	10,759	48,747,783.00
2007	129,023	13,385	48,945,260.00
2008	156,330	15,509	65,646,588.00
2009	133,907	17,917	56,068,698.00

Petitioners proffer that these monies were collected by the BOC as an agent of the Bureau of Internal Revenue (BIR), pursuant to Section 12 of RA 8424, otherwise known as the National Internal Revenue Code (NIRC).[3] As such, these formed part of the national internal revenue tax collections that ought to have been shared in by all LGUs. Per petitioners' calculation, the LGUs were deprived of their just share in the collections in the amount of P498,854,388,154.93.

Petitioner Mandanas then began writing to various government agencies, including the Department of Finance (DOF), Department of Budget and Management (DBM), and the BIR, to seek support for his position that the enumerated BOC collections be included in the distribution to LGUs. He likewise implored then president Benigno Simeon Aquino III to include the amount he arrived at as part of the 2012 budget.

Unfortunately, all of petitioner Mandanas' efforts were in vain and RA 10155 or the 2012 General Appropriations Act was signed into law. The amounts he considered as arrears of the national government to the LGUs were not recognized as valid obligations. Hence, Mandanas and his co-petitioners lodged the instant recourse praying for the following relief:

PRAYER

> WHEREFORE, PREMISES CONSIDERED, it is most respectfully prayed of the Honorable Court that:
>
> 1. Upon filing of this petition, a temporary restraining order be issued enjoining the Respondents from unlawfully releasing, disbursing and/or using the amount of SIXTY BILLION AND SEVEN HUNDRED FIFTY MILLION (P60.75) that is included in the capital outlays of the

[3] Now amended by Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion Law.

departments or agencies of the national government as that sum belongs to the LGUs as a part of their internal revenue shares based on the NIRT collections of the BOC in 2009 but, to emphasize, has been excluded from the IRAs for the LGUs appropriated in the 2012 GAA.

2. After notice & hearing, a preliminary injunction be issued.

3. And by way of judgment -

a) To set aside as unconstitutional and illegal the misappropriation, misallocation and misuse of P60.75 billion belonging to the LGUs but which is embodied in the new appropriations of the 2012 GAA for the use of national government departments and/or agencies;

b) Make the preliminary injunction permanent;

c) Compel the Respondents to cause the automatic release in of the LGUs' IRAs as provided in the 2012 GAA, including the SIXTY BILLION SEVEN HUNDRED FIFTY MILLION (P60,750,000,000.00) PESOS from the 2009 NIRT collections of the BOC; and

d) Compel Respondents to recognize and release the unpaid IRAs due to the LGUs from BOC collections of NIRT from 1992 to 2011, which is placed at FOUR HUNDRED THIRTY EIGHT BILLION, ONE HUNDRED THREE MILLION, NINE HUNDRED SIXTY THOUSAND, SIX HUNDRED SEVENTY FIVE PESOS AND SEVENTY-THREE CENTAVOS (P438,103,960,675.73) which, when added to the SIXTY BILLION SEVEN HUNDRED FIFTY MILLION coming from 2009 collections of the BOC referred to in letter (c) above, would total FOUR HUNDRED NINETY EIGHT BILLION EIGHT HUNDRED FIFTY FOUR MILLION, THREE HUDNRED EIGHTY-EIGHT THOUSAND, ONE HUNDRED FIFTY FOUR PESOS AND NINETY-THREE CENTAVOS (P498,854,388,154.93). This latter amount, to repeat, is the total unreleased IRA due to the LGUs from [1989]-2012.

Other reliefs just and equitable under the premises are likewise prayed for.

The case was filed against erstwhile Executive Secretary Paquito N. Ochoa, Secretary of Finance Cesar Purisima, Budget Secretary Florencio H. Abad, Commissioner of Internal Revenue Kim Jacinto-Henares, and National Treasurer Roberto Tan.

G.R. No. 208488 for Mandamus

Enrique T. Garcia (Garcia), then congressional representative for the second district of Bataan, likewise filed a petition for certiorari against the same respondents in G.R. No. 199802, except that Customs Commissioner Rozanno Rufino B. Biazon was impleaded as party respondent instead of National Treasurer Roberto Tan. In his petition, Garcia assails what he

perceives as the continuing failure of the national government to allocate to the LGUs what is due them under the Constitution.

Specifically, Garcia asserts that Section 284 of RA 7160 is constitutionally infirm since it limits the basis for the computation of the LGU allocations only to national internal revenue taxes, contrary to the mandate of Article X, Section 6 of the Constitution, *viz*:

> SECTION 6. Local government units shall have a just share, as determined by law, in the **national taxes** which shall be automatically released to them. (emphasis added)

The insertion of the phrase "internal revenue" in Section 284 of RA 7160, according to Garcia, is patently unconstitutional. As a consequence of this infirmity, the LGUs had been receiving far less than what the Constitution mandates. Garcia thus seeks intervention from the Court to nullify the phrase "internal revenue" in the provision. He argues that LGUs should share in all forms of "national taxes," not just in those enumerated under Section 21 of the NIRC.

Moreover, Garcia contends that even assuming *arguendo* that the phrase "internal revenue" under Section 284 of RA 7160 passes the test of constitutionality, the various deductions and the exclusions therefrom find no legal basis. On this point, Garcia directs the Court's attention to the formula utilized in determining the total internal revenue allocation for the LGUs from 2009-2011. He noted that the reduced tax base, from "national taxes" to "national internal revenue taxes," was further subjected to several deductions, namely:

1. Sections 9 and 15, Article IX of RA 9054 regarding the allocation of internal revenue taxes collected by cities and provinces in the Autonomous Region in Muslim Mindanao (ARMM);

2. Section 287 of the NIRC in relation to Section 290[4] of RA 7160 regarding theshare of LGUs in the excise tax collections on mineral products;

3. Section 6 of RA 6631 and Section 8 of RA 6632 on the franchise taxes from the operation of the Manila Jockey Club and Philippine Racing Club race tracks;

4. Remittances of VAT collections under RA 7643;

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[4] **Section 290.** *Amount of Share of Local Government Units.* - Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges, including related surcharges, interests, or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

5. Sections 8 and 12 of RA 7227, as amended by RA 9400, regarding the share of affected LGUs on the sale and conversion of former military bases;

6. RA 7171 and Section 289 of the NIRC on the share of LGUs to the Excise Tax collections from the manufacture of Virginia tobacco products

7. Section 8 of RA 8240, as now provided in Section 288 of the NIRC, on the allocation of incremental revenues from excise taxes;

8. The share of the Commission on Audit (COA) on the NIRT as provided for in Section 24(3) of Presidential Decree No. 1445 in relation to Section 284 of the NIRC

He additionally insists that all tax collections of the BOC were unlawfully excluded in determining the tax base. Since Section 21 of the NIRC expressly includes VAT and excise taxes in the enumeration of national internal revenue taxes, all collections for these accounts, regardless of whether it was collected by the BOC or directly by the BIR, should have been included in the computation.

Garcia therefore prays that respondents be directed to perform the following:

a) Compute the IRA of the LGUs on the basis of the national tax collections, including all the tax collections of the BIR and the BOC;

b) Desist from deduction from the national tax collections any tax, item, or amount that is not authorized by law to be deducted for the purpose of computing the IRA;

c) Submit a details computation of the IRA from 1995-2014 and determine therefrom the IRA shortfall; and

d) Distribute the IRA shortfall to the LGUs.

Respondents' Comments

Speaking through the Office of the Solicitor General (OSG), respondents reasoned out that Congress has the full and broad discretion to determine the base and the rate the LGUs are entitled to in the national taxes. This is based on the language of Article X, Section 6 of the Constitution itself, which states that the just share of the LGUs in the national taxes shall be determined by law. And in the exercise of its prerogative, Congress limited the base for the allocation to LGUs to "national internal revenue taxes," to the exclusion of customs duties and taxes from foreign sources.

According to respondents, the determination of what constitutes "just share" for the LGUs is a decision reached by the legislative in the collective wisdom of its members. The Court should then observe judicial deference and employ an attitude of non-interference in this case involving policy directions in the exercise of the power of the purse. Otherwise, the Court would be engaging in judicial legislation, forbidden under the principle of separation of powers.

Garcia's enumeration of so-called deductions from the national internal revenue taxes is justified, so respondents claim. They cite the basic tenet in statutory construction that when statutes are *in pari materia*, or cover the same specific or particular subject matter, or have the same purpose or object, they should be construed together. Here, the executive branch merely interpreted the special laws in consonance with the NIRC and the LGC.

Under Section 283 of the NIRC, which is a later law than the LGC and a special law specifically on the disposition of national internal revenue taxes, collections that are already earmarked or otherwise specially disposed of by law will *not* accrue to the National Treasury. The provision reads:

> **SEC. 283. Disposition of National Internal Revenue.** - National internal revenue collected and not applied as herein above provided or otherwise specially disposed of by law shall accrue to the National Treasury and shall be available for the general purposes of the Government, with the exception of the amounts set apart by way of allotment as provided for under Republic Act No. 7160, otherwise known as the Local Government Code of 1991.

Respondents posit that the amounts pertaining to the enumeration that Garcia coined as unlawful deductions are examples of those accounts that do not accrue to the National Treasury from where the shares of the LGUs will be carved out. The balance of the National Treasury, after deducting the shares of the LGUs, shall be available for the general purposes of the government.

Respondents also add that correlative to the BOC's duty to assess and collect taxes on imported items is its duty to turn over its collections of the National Treasury. For instance, out of every P265.00 collected by the BOC as DST, only P15.00 is reported as BIR collection, while the remaining P250.00 is credited to the collections of the BOC. Thus, when the BIR determines the allocations to the LGUs on the basis of certified data on its own collections, pursuant to Article 378 of the Implementing Rules and Regulations of RA 7160,[5] only P15.00 of every P265.00 DST collection of the BOC would be subject to distribution to the LGUs. There is then a distinction between the VAT, DST, and Excise Tax collections of the BOC

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[5] Article 378. Allotment of Internal Revenue Taxes. The total annual internal revenue allotments (IRAs) due the LGUs shall be determined on the basis of collections from national internal revenue taxes actually realized as certified by the BIR during the third fiscal year preceding the current fiscal year: x x x

and the BIR, and that not all BOC collections are reflected on the data of the BIR.

Lastly, it is argued that Mandamus does not lie to compel the exercise of the power of the purse. A judicial writ cannot order the appropriation of public funds since such power is an exclusive legislative prerogative that cannot be interfered with. Likewise, to award backpay for the allegedly withheld IRA from prior years, from 1989-2012, in the amount of P498,854,388,154.93 as prayed for by Mandanas, will effectively dislocate the budgets then intended for salaries, operational expenses, and development programs in the year of 2012.

The Issues

The issues in this case can be restated in the following wise:

I. Whether or not the VAT, DST, and Excise Tax collections of the BOC should form part of the base amount for computing the just share of the LGUs in the national taxes.

II. Whether or not the LGUs are entitled to a just share in the tariff and customs duties collected by the BOC.

III. Whether or not the respondents had illegally been withholding amounts from the LGUs through the special laws enumerated in the Garcia petition.

IV. Whether or not the LGUs may still collect from the national government the arrears from the alleged errors in computing the national tax allocations.

Discussion

I vote to partially grant the petitions.

The tax collections of the BOC should be included in determining the basis for allocation to the LGUs

a. The VAT, DST, and Excise Tax collections of the BOC are National Internal Revenue Taxes

To recall, Mandanas and his cohorts have no qualm over the constitutionality of Section 284 of RA 7160. They merely seek to include the VAT, DST, and Excise Tax collections of the BOC in determining the base for the LGUs' rightful share in the national taxes.

I find the contention tenable.

Pertinently, Section 21 of the NIRC reads:

> **Section 21.** *Sources of Revenue.* - The following taxes, fees and charges are **deemed to be national internal revenue taxes**:
> (a) Income tax;
> (b) Estate and donor's taxes;
> **(c) Value-added tax;**
> (d) Other percentage taxes;
> **(e) Excise taxes;**
> **(f) Documentary stamp taxes;** and
> (g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue. (emphasis added)

Clear as crystal is that VAT, DSTs, and Excise Taxes are within the enumeration of national internal revenue taxes under Section 21 of the NIRC. When Section 284 of the LGC then declared that all LGUs shall be entitled to 40% of the "national internal revenue taxes," collections for these forms of taxes are necessarily included in the computation.

VAT, DSTs, and Excise Taxes do not lose their character as national internal revenue taxes simply because they are not reported as collections of the BIR, and neither on the ground that they are collected by the BOC. This is so since Section 12(A) of the NIRC is categorical that the BOC merely acts as an agent of the BIR in collecting these taxes:

> **Section 12.** *Agents and Deputies for Collection of National Internal Revenue Taxes.* - The following are hereby constituted agents of the Commissioner:
>
> > (a) The Commissioner of Customs and his subordinates with respect to the collection of national internal revenue taxes on imported goods;
>
> x x x x

The details of the agency relation between the BIR, as principal, and the BOC, as agent, are explicated in the succeeding sections of the NIRC. In concrete, Sections 107[6] and 129[7] are general provisions on the imposition of VAT and Excise Taxes on imported goods. On the other hand, Section 131

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[6] **Section 107.** *Value-Added Tax on Importation of Goods.* -
(A) *In General.* - There shall be levied, assessed and collected on every importation of goods a value-added tax equivalent to ten percent (10%) based on the total value used by the Bureau of Customs in determining tariff and customs duties plus customs duties, excise taxes, if any, and other charges, such tax to be paid by the importer prior to the release of such goods from customs custody: Provided, That where the customs duties are determined on the basis of the quantity or volume of the goods, the value-added tax shall be based on the landed cost plus excise taxes, if any.
x x x x

[7] **Section 129.** *Goods subject to Excise Taxes.* - Excise taxes apply to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.
x x x x

of the NIRC specifically directs the taxpayer to pay his excise tax liabilities on imported goods to the BOC, and Section 4.107-1(B) of Revenue Regulation 16-2005 provides that VAT on the imported goods should be settled before they can be removed from customs custody, *viz*:

> **Section 131.** *Payment of Excise Taxes on Importer Articles.* -
>
> (A) Persons Liable. - Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.
>
> x x x x
>
> **Sec. 4.107-1. VAT on Importation of Goods**
>
> x x x x
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> **(b) Applicability and payment** – The rates prescribed under Sec. 107 (A) of the [NIRC] shall be applicable to all importations withdrawn from customs custody.
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> **The VAT on the importation shall be paid by the importer prior to the release of such goods from customs custody.** (emphasis and words on brackets added)

As far as the authority of the BOC to collect DSTs is concerned, this finds legal basis under Section 188 of the NIRC:

> **Section 188.** *Stamp Tax on Certificates.* - On each certificate of damages or otherwise, and on every certificate or document issued by any customs officer, marine surveyor, or other person acting as such, and on each certificate issued by a notary public, and on each certificate of any description required by law or by rules or regulations of a public office, or which is issued for the purpose of giving information, or establishing proof of a fact, and not otherwise specified herein, there shall be collected a documentary stamp tax of Fifteen pesos (P15.00).

All these provisions strengthen Mandanas' position that the VAT, DSTs, and Excise Taxes collected by the BOC partake the nature of national internal revenue taxes under Section 21 of the NIRC. Though collected by the BOC, these taxes are nevertheless impositions under the NIRC that should be included in the base amount of the revenue allocation to the LGUs. It matters not who collects the items of national income. Neither Article X, Section 6 of the Constitution nor Section 284 of RA 7160 requires that the national collections be credited to the BIR. For what is controlling is that they accrue to the account of the National Treasury.

b. Section 284 of RA 7160 is unconstitutional insofar as it limits the allotment base to national internal revenue taxes; Tariff and Customs duties are national taxes

Anent G.R. No. 208488, I concur with the argument of petitioner Garcia that abidance with the constitutional mandate constrains the Court to declare the recurring phrase "internal revenue" in Section 284 of RA 7160 as unconstitutional.

A cardinal rule in statutory construction is that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[8] This is what is known as the plain-meaning rule. It is expressed in the maxim, *index animi sermo*, or speech is the index of intention. Furthermore, there is the maxim *verba legis non est recedendum*, or from the words of a statute there should be no departure.[9]

Here, Article X, Section 6 of the 1987 Constitution is clear and categorical that Local Government Units (LGUs) shall have a share in the country's *national taxes*. For Congress to grant them anything less would then trench on the provision. Unfortunately, this is what Section 284 of RA 7160, as currently worded, accomplishes.

The contested phrase is unduly restrictive, nay unconstitutional, for it limits the share of the LGUs to national *internal revenue* taxes. It effectively excludes other forms of national taxes than those specified in Section 21 of the NIRC. Conspicuously absent in the enumeration is the duties imposed on internationally sourced goods under Presidential Decree No. (PD) 1464, otherwise known as the Tariff and Customs Code of 1978, which consolidated and codified the tariff and customs law in the Philippines.[10] There is no cogent reason to segregate the tax collections of the BOC pursuant to the NIRC from those in implementation of other legal edicts. Customs duties form part of the country's national taxes and should, therefore, be included in the basis for determining the LGU's aliquot share in the pie.

The concept of customs duties has been explicated in the case of *Garcia v. Executive Secretary*,[11] viz:

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[8] *Bolos v. Bolos*, G.R. No. 186400, October 20, 2010.

[9] Id.

[10] *See also* RA 8752 or the Anti-Dumping Act of 1999, which provides the rules for "Anti-Dumping Duties"; RA 8800, or the "Safeguard Measures Act," which provides the rules on Safeguard Duties; RA 8751 on Countervailing Duty.

[11] G.R. No. 101273 July 3, 1992.

> *"[C]ustoms duties"* **is "the name given to *taxes on the importation and exportation of commodities*, the tariff or tax assessed upon merchandise imported from, or exported to, a foreign country."** The levying of customs duties on imported goods may have in some measure the effect of protecting local industries — where such local industries actually exist and are producing comparable goods. Simultaneously, however, **the very same customs duties inevitably have the effect of producing governmental revenues**. Customs duties like internal revenue taxes are rarely, if ever, designed to achieve one policy objective only. Most commonly, **customs duties, which constitute taxes in the sense of exactions the proceeds of which become public funds** — have either or both the generation of revenue and the regulation of economic or social activity as their moving purposes and frequently, it is very difficult to say which, in a particular instance, is the dominant or principal objective. In the instant case, since the Philippines in fact produces ten (10) to fifteen percent (15%) of the crude oil consumed here, the imposition of increased tariff rates and a special duty on imported crude oil and imported oil products may be seen to have *some* "protective" impact upon indigenous oil production. For the effective, price of imported crude oil and oil products is increased. At the same time, it cannot be gainsaid that substantial revenues for the government are raised by the imposition of such increased tariff rates or special duty. (emphasis added)

"Tariff" refers to the system or principle of imposing duties on the importation of foreign merchandise.[12] Thus, embodied in the Tariff and Customs Code is the list or schedule of articles on which a duty is imposed upon their importation, with the rates at which they are taxed. Meanwhile, clear from the above excerpt is that these customs duties are *taxes* levied on imports. It is collected by the customs authorities of a country not only to protect domestic industries from more efficient or predatory competitors abroad, but also to raise state revenues.

All taxes are classifiable as either national or local. A tax imposition is considered local if it is levied by an LGU pursuant to its revenue-generating power under Article X, Section 5 of the Constitution and Section 18 of RA 7160.[13] On the other hand, national taxes, by definition, are imposed by the national government through congressional enactment. Among these tax measures signed into law is RA No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA), which was signed into law on May 30, 2016, amending PD 1464.

Significantly, while local governments were granted by the Constitution the power to tax, such grant is circumscribed by "guidelines

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[12] <https://thelawdictionary.org/tariff/> last accessed May 16, 2018.

[13] Sec. 18. *Power to Generate and Apply Resources.* Local government units shall have the power and authority to establish an organization that shall be responsible for the efficient and effective implementation of their development plans, program objectives and priorities; to create their own sources of revenue and to levy taxes, fees, and charges which shall accrue exclusively for their use and disposition and which shall be retained by them; to have a just share in national taxes which shall be automatically and directly released to them without need of further action;

and limitations as the Congress may provide." Article X, Section 5 of the 1987 Constitution reads:

> SECTION 5. **Each local government unit shall have the power to create its own sources of revenues** and to levy taxes, fees, and charges subject **to such guidelines and limitations as the Congress may provide**, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments

In line with this, the LGC expressly excludes from the ambit of local taxation the imposition of tariff and customs duties. Section 133 of the LGC pertinently provides:

> Sec. 133. **Common Limitations on the Taxing Powers of Local Government Units.** - Unless otherwise provided herein, **the exercise of the taxing powers of provinces, cities, municipalities, and Barangays shall not extend to the levy of the following:**
>
> x x x x
>
> (d) **Customs duties**, registration fees of vessels, wharfage on wharves, tonnage dues and all other kinds of customs fees, charges and dues except wharfage on wharves constructed and maintained by the local government unit concerned;
>
> (e) **Taxes, fees, charges and other impositions upon goods carried into or out of, or passing through, the territorial jurisdictions of local governments** in the guise of charges for wharfage, tolls for bridges or otherwise, or other taxes in any form whatever upon such goods or merchandise.

The limits on local taxation and thus the exclusion therefrom of customs duties and tariff was recognized by the Supreme Court when it ruled in *Petron Corp. v. Tiangco*[14] that:

> **Congress has the constitutional authority to impose limitations on the power to tax of local government units,** and **Section 133 of the LGC is one such limitation**. Indeed, the provision is the explicit statutory impediment to the enjoyment of absolute taxing power by local government units, not to mention the reality that such power is a delegated power.

In *Palma Development Corp. v. Municipality of Malangas*,[15] the Court more particularly said:

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[14] 574 Phil. 620, 639 (2008); See also *Palma Development Corp. v. Municipality of Malangas*, 459 Phil. 1042 (2003); *Batangas City v. Pilipinas Shell Petroleum Corp.*, G.R. No. 187631, July 8, 2015; *First Philippine Industrial Corp. v. Court of Appeals*, 360 Phil. 852 (1998); *City of Davao v. Regional Trial Court* , 504 Phil. 543 (2005); *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181 (2006); *Philippine Fisheries Development Authority v. Central Board of Assessment Appeals*, 653 Phil. 328 (2010).

[15] 459 Phil. 1042 (2003).

> Section 133(e) of RA No. 7160 prohibits the imposition, in the guise of wharfage, of fees — as well as all other taxes or charges in any form whatsoever — on goods or merchandise. It is therefore irrelevant if the fees imposed are actually for police surveillance on the goods, because any other form of imposition on goods passing through the territorial jurisdiction of the municipality is clearly prohibited by Section 133(e).

In sum, by the principle of exclusion provided by Section 133 of the LGC, no customs duties and/or tariffs can be considered local taxes; all customs duties and tariffs can only be imposed by the Congress and, as such, they can only be national taxes.

Ubi lex non distinguit nec nos distingui redebemus. When the law does not distinguish, neither must we distinguish.[16] To reiterate, Article X, Section 6 of the Constitution mandates that the LGUs shall share in the *national taxes*, without distinction. It can even be inferred from the deliberations of the framers that they intended Article X, Section 6 to be mandatory, *viz*:[17]

> MR. RODRIGO. I am not an expert on taxation, so I just want to know. Even a municipality levies taxes. Does the province have a share?
>
> MR. SUAREZ. May I state that I have the same question, so I would like to join Commissioner Rodrigo in that inquiry.
>
> MR. RODRIGO. I ask so because if a municipality levies taxes, it is impossible for the province to share in those taxes.
>
> MR. NOLLEDO. I am not aware of any rule that says so but I know that even the province has also the power to levy taxes.
>
> MR. RODRIGO. That is correct. But is it then the purpose of this amendment that taxes imposed by a municipality should be exclusively for that municipality and that the province may not share at all in the taxes? Is that the purpose of the amendment?
>
> MR. NOLLEDO. I think the question should be directed to the proponent.
>
> MR. DAVIDE. Even under the Committee's wording, it would clearly appear that if a municipality levies a particular tax, the province is not entitled to a share for the reason that the province itself, as a separate governmental unit, may collect and levy taxes for itself.
>
> **MR. NOLLEDO. Besides, the national government shall share national taxes with the province.**
>
> MR. RODRIGO. But if we approve that amendment, the national government may not share in the taxes levied by the province?
>
> **MR. DAVIDE. The national government may impose its own national taxes. The concept here is that the national government must share**

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[16] *Amores v. HRET*, G.R. No. 189600, June 29, 2010.

[17] Record of the Constitutional Commission, Vol. III, pp. 478-479.

> **these national taxes with the other local government units. That is the second paragraph of the original section 9, now section 12, beginning from lines 29-30.**
>
> **MR. RODRIGO. Do I get then that if the national government imposes taxes, local government units share in those taxes?**
>
> **MR. DAVIDE. Yes, the local government shares in the national taxes.**
>
> MR. RODRIGO. But if the local government imposes local taxes, the national government may not share?
>
> MR. DAVIDE. That is correct because that is precisely to emphasize the local autonomy of the unit.
>
> MR. NOLLEDO. That has been the practice.

For Congress to have excluded, as they continue to exclude, certain items of national tax, such as tariff and customs duties, from the amount to be distributed to the LGUs is then a glaring contravention of our fundamental law. The alleged basis for the exclusion, the phrase "internal revenue" under Section 284 of the LGC, should therefore be declared as unconstitutional.

The school of thought adopted by the respondents is that the phrase "as determined by law" appearing in Article X, Section 6 of the Constitution authorizes Congress to determine the inclusions and exclusions from the national taxes before determining the amount the LGUs would be entitled to. Thus, it is this authority that was exercised by the legislative when it limited the allocation of LGUs to national *internal revenue* taxes. Regrettably, I cannot join respondents in their construction of the statute.

Article X, Section 6 of the Constitution had already been interpreted in *ACORD v. Zamora (ACORD)*[18] in the following manner:

> Moreover, there is merit in the argument of the intervenor Province of Batangas that, if indeed the framers intended to allow the enactment of statutes making the release of IRA conditional instead of automatic, then Article X, Section 6 of the Constitution would have been worded differently. Instead of reading Local government units shall have a just share, *as determined by law*, in the national taxes which shall be automatically released to them (italics supplied), it would have read as follows, so the Province of Batangas posits:
>
> > Local government units shall have a just share, *as determined by law*, in the national taxes which shall be [automatically] released to them *as provided by law*, or,
> >
> > Local government units shall have a just share in the national taxes which shall be [automatically] released to them *as provided by law*, or

[18] G.R. No. 144256, June 8, 2005.

> Local government units shall have a just share, *as determined by law*, in the national taxes which shall be automatically released to them *subject to exceptions Congress may provide*.
>
> Since, under Article X, Section 6 of the Constitution, **only the just share of local governments is qualified by the words as determined by law**, and not the release thereof, the plain implication is that Congress is not authorized by the Constitution to hinder or impede the automatic release of the IRA. (emphasis added)

As further held in *ACORD*, the provision, when parsed, mandates that (1) the LGUs shall have a just share in the national taxes; (2) the just share shall be determined by law; and (3) the just share shall be automatically released to the LGUs. And guilty of reiteration, "under Article X, Section 6 of the Constitution, **only the just share of local governments is qualified by the words as determined by law**."[19] This ruling resulted in the nullification of appropriation items XXXVII and LIV Special Provisions 1 and 4 of the General Appropriations Act of 2000 insofar as they set a *condition sine qua non* for the release of Internal Revenue Allotment to LGUs to the tune of ₱10 Billion.

Similarly, we too must be conscious here of the phraseology of Article X, Section 6 of the 1987 Constitution. As couched, the phrase *"as determined by law"* follows and, therefore, qualifies *"just share"*; it cannot be construed as qualifying the succeeding phrase *"in the national taxes."* Hence, the *ponencia* is correct in ruling that the determination of what constitutes *"just share"* is within the province of legislative powers. But what Congress is only allowed to determine is the aliquot share that the LGUs are entitled to. They are not authorized to modify the base amount of the budget to be distributed. To insist that the proper interpretation of the provision is that *"the just share of LGUs in the national taxes shall be determined by law"* is tantamount to a revision of the Constitution and a blatant disregard to the specific order and wording of the provision, as crafted by its framers.

Constitutional considerations on the allocation to LGUs

The Constitution cannot be supplanted through ordinary legislative fiat. Any limitation on the allocation of wealth to the LGUs guaranteed by the fundamental law must likewise be embodied in the Constitution itself. Thus, instead of looking to RA 7160 in determining the scope of the base amount for allotment, due attention must be given to Article X, Section 7 and Article VI, Section 29(3) of the Constitution:

> SECTION 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth

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[19] Id.

> within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.
>
> x x x x
>
> SECTION 29. x x x
>
> (3) All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government.

With the foregoing in mind, we are now poised to gauge whether or not the items identified by petitioner Garcia are in fact unlawful deductions or exclusions from the LGUs' share in the national taxes:

1. Sections 9 and 15, Article IX of RA 9054[20] regarding the allocation of internal revenue taxes collected by cities and provinces in the ARMM;

Section 9 of RA 9054 provides for the sharing of government taxes collected from LGUs in the ARMM in the following manner: 35% to the province or city, 35% to the regional government, and 30% to the national government. The provision likewise empowers the province and city concerned to automatically retain its share and remit the shares of the regional government and the national government to their respective treasurers. Meanwhile Section 15 of RA 9054 allocates 50% of the VAT collections from the ARMM exclusively to the region and its constituencies.

The above provisions do not violate Section 6, Article X of the Constitution. Instead, this is a clear application of the Constitutional provision that empowers Congress to determine the *just share* that LGUs are entitled to receive. For while the taxes mentioned in Sections 9 and 15 of the Constitution are in the nature of national taxes, the LGUs are already receiving their *just* share thereon. Receiving their *just* share does not mean receiving a share that is equal with everyone else's. This is evident from RA 7160 which expressly provides that the share of an LGU is dependent on its

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[20] **Section 9.** Sharing of Internal Revenue, Natural Resources Taxes, Fees and Charges. - The collections of a province or city from national internal revenue taxes, fees and charges, and taxes imposed on natural resources, shall be distributed as follows:

(a)Thirty-five percent (35%) to the province or city;

(b)Thirty-five percent (35%) to the regional government; and

(c)Thirty percent (30%) to the central government or national government.

x x x x

SECTION 15. *Collection and Sharing of Internal Revenue Taxes.—*

x x x x

Fifty percent (50%) of the share of the central government or national government of the yearly incremental revenue from tax collections under sections 106 (value-added tax on sales of goods or properties), 108 (value-added tax on sale of services and use or lease of properties) and 116 (tax on persons exempt from value-added tax) of the National Internal Revenue Code (NIRC) shall be shared by the Regional Government and the local government units within the area of autonomy as follows:

x x x x

population and land area—considerations that prevent any two LGU from sharing equally from the pie.

To clarify, the determination of what constitutes an LGU's just share in the national taxes is not restricted to Section 284 of RA 7160. The 40% share under the provision merely sets the general rule. And as will later be discussed, exceptions abound in statutes such as RA 9054.

Moreover, there is justification for allocating the lion's share in the tax collections from the ARMM to LGUs within the region themselves, rather than allowing *all* LGUs to share thereon in equal footing.

The creation of autonomous regions is in compliance with the constitutional directive under Article X, Sections 18 and 19[21] to address the concerned regions' continuous struggle for self-rule and self-determination. The grant to the autonomous region of a larger share in the collections is simply an incident to this grant of autonomy. To give meaning to their autonomous status, their financial and political dependence on the national government is reduced. Allocating them a larger share of the national taxes collected from their own territory allows not only for the expeditious delivery of basic services, but for them to be more self-sufficient and self-reliant. In a way, it can also be considered as a special purpose fund.

Thus, there is no constitutional violation in allocating 50% of the VAT collections from the ARMM to the LGUs within the region, leaving only 50% to the central government and to the other LGUs. There is nothing illegal in the ARMM's retention of 70% of the national taxes collected therein, limiting the amount of national tax to be included in the base amount for distribution to the LGUs to 30%.

2. Section 287[22] of the NIRC in relation to Section 290[23] of RA 7160 regarding the share of LGUs in the excise tax collections on mineral products;

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[21] Section 18. The Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of nominees from multisectoral bodies. The organic act shall define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units. The organic acts shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws.

The creation of the autonomous region shall be effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region.

Section 19. The first Congress elected under this Constitution shall, within eighteen months from the time of organization of both Houses, pass the organic acts for the autonomous regions in Muslim Mindanao and the Cordilleras.

[22] **SEC. 287. Shares of Local Government Units in the Proceeds from the Development and Utilization of the National Wealth.** - Local Government units shall have an equitable share in the proceeds derived from the utilization and development of the national wealth, within their respective areas, including sharing the same with the inhabitants by way of direct benefits.

(A) Amount of Share of Local Government Units. - Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from excise taxes on mineral products, royalties, and

The questioned provisions grant a 40% share in the tax collections from the exploitation and development of national wealth to the LGUs under whose territorial jurisdiction such exploitation and development occur. Such preferential allocation, in addition to their national tax allotment, cannot be deemed violative of Article X, Section 6 of the Constitution for it is in pursuance of Article X, Section 7 earlier quoted.

The exclusion of the other LGUs from sharing in the said 40% had been justified by the Constitutional Commission in the following wise:

> MR. OPLE. Madam President, the issue has to do with Section 8 on page 2 of Committee Report No. 21:
>
> > Local taxes shall belong exclusively to local governments and they shall likewise be entitled to share in the proceeds of the exploitation and development of the national wealth within their respective areas.
>
> Just to cite specific examples. In the case of timberland within the area of jurisdiction of the Province of Quirino or the Province of Aurora, we feel that the local governments ought to share in whatever revenues are generated from this particular natural resource which is also considered a national resource in a proportion to be determined by Congress. This may mean sharing not with the local government but with the local population. The geothermal plant in the Macban, Makiling-Banahaw area in Laguna, the Tiwi Geothermal Plant in Albay, there is a sense in which the people in these areas, hosting the physical facility based on the resources found under the ground in their area which are considered national wealth, should participate in terms of reasonable rebates on the cost of power that they pay. This is true of the Maria Cristina area in Central Mindanao, for example. May I point out that in the previous government, this has always been a very nettlesome subject of Cabinet debates. Are the people in the locality, where God chose to locate His bounty, not entitled to some reasonable modest sharing of this with the national government? Why should the national government claim all the revenues arising from them? And the usual reply of the technocrats at that time is that there must be uniform treatment of all citizens regardless of where God's gifts are

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such other taxes, fees or charges, including related surcharges, interests or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

(B) Share of the Local Governments from Any Government Agency or Government-owned or -Controlled Corporation. - Local Government Units shall have a share, based on the preceding fiscal year, from the proceeds derived by any government agency or government-owned or controlled corporation engaged in the utilization and development of the national wealth based on the following formula, whichever will produce a higher share for the local government unit:

(1) One percent (1%) of the gross sales or receipts of the preceding calendar year, or

(2) Forty percent (40%) of the excise taxes on mineral products, royalties, and such other taxes, fees or charges, including related surcharges, interests or fines the government agency or government-owned or -controlled corporations would have paid if it were not otherwise exempt.

[23] **Section 290.** *Amount of Share of Local Government Units.* - Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges, including related surcharges, interests, or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

> located, whether below the ground or above the ground. This, of course, has led to popular disenchantment. In Albay, for example, the government then promised a 20-percent rebate in power because of the contributions of the Tiwi plant to the Luzon grid. Although this was ordered, I remember that the Ministry of Finance, together with the National Power Corporation, refused to implement it. There is a bigger economic principle behind this, the principle of equity. If God chose to locate the great rivers and sources of hydroelectric power in Iligan, in Central Mindanao, for example, or in the Cordillera, why should the national government impose fuel adjustment taxes in order to cancel out the comparative advantage given to the people in these localities through these resources? So, it is in that sense that under Section 8, the local populations, if not the local governments, should have a share of whatever national proceeds may be realized from this natural wealth of the nation located within their jurisdictions.[24]

As can be gleaned from the discussion, the additional allocation under Article X, Section 7 is granted by reason of equity. It is given to the host LGUs for bearing the brunt of the exploitation of their territory, and is also a form of incentivizing the introduction of developments in their locality. And from the language of Article X, Section 7 itself, it is not limited to tax collections from mineral products and mining operations, but extends to taxes, fees or charges from all forms of exploitation and development of national wealth. This includes the cited establishment and operation of geothermal and hydrothermal plants in Macban, Makiling-Banahaw area in Laguna, in Tiwi, Albay, and in Iligan City, as well as the extraction of petroleum and natural gasses.

Respondents did not then err in setting aside 40% of the gross collection of taxes on utilization and development of the national wealth to the host LGU. Meanwhile, all LGUs and the national government shall share in the remaining 60% of the tax collections, satisfying the constitutional mandate that all LGUs shall receive their just share in the national taxes, albeit at a lesser amount.

3. Section 6 of RA 6631[25] and Section 8 of RA 6632[26] on the franchise taxes from the operation of the Manila Jockey Club and Philippine Racing Club race tracks;

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[24] Record of the Constitutional Committee, Vol. 3, p. 178.

[25] **SECTION 6.** In consideration of the franchise and rights herein granted to the Manila Jockey Club, Inc., the grantee shall pay into the national Treasury a franchise tax equal to twenty-five per centum (25%) of its gross earnings from the horse races authorized to be held under this franchise which is equivalent to the eight and one-half per centum (8½%) of the total wager funds or gross receipts on the sale of betting tickets during the racing day as mentioned in Section four hereof, allotted as follows: a) National Government, five per centum (5%); b) the city or municipality where the race track is located, five per centum (5%); c) Philippine Charity Sweepstakes Office, seven per centum (7%); d) Philippine Anti-Tuberculosis Society, six per centum (6%); and e) White Cross, two per centum (2%). The said tax shall be paid monthly and shall be in lieu of any and all taxes, except the income tax of any kind, nature and description levied, established or collected by any authority whether barrio, municipality, city, provincial or national, now or in the future, on its properties, whether real or personal, and profits, from which taxes the grantee is hereby expressly excepted.

[26] **SECTION 8.** In consideration of the franchise and rights herein granted to the Philippine Racing Club, Inc., the grantee shall pay into the National Treasury a franchise tax equal to twenty-five per centum (25%) of its gross earnings from the horse races authorized to be held under this franchise which is

The cited provisions relate to the automatic allocation of a 5% share in the 25% franchise tax—collected from 8.5% and 8.25% of the wager funds from the operations of the Manila Jockey Club and Philippine Racing Club, Inc., respectively—to the city or municipality where the race track is located.

This is another example of an allocation by Congress to certain LGUs, on top of their share in the 40% of national taxes under Section 284 of RA 7160. Similar to the situation of the LGUs in the ARMM, the host cities and municipalities in RA 6631 and 6632 enjoy the 5% as part and parcel of their *just share* in the national taxes. To reiterate, the just share of LGUs, as determined by law, need not be uniform for all units. It is within the wisdom of Congress to determine the extent of the shares in the national taxes that the LGUs will be accorded

Anent the remaining 20% of the franchise taxes, Sections 6 and 8 of RA 6631 and 6632, respectively, reveals that this had already been earmarked for special purposes. Under the distribution, only 5% of the franchise tax shall accrue to the national government, which will then be subject to distribution to LGUs. The rest of the apportionments of the 25% franchise taxes collected under RA 6631 and RA 6632—five percent (5%) to the host municipality, seven percent (7%) to the Philippine Charity Sweepstakes Office, six percent (6%) to the Anti-Tuberculosis Society, and two percent (2%) to the White Cross—are special purpose funds, which shall not be distributed to all LGUs.

It must be noted that RA 6631 and 6632 had been amended by RA 8407[27] and 7953,[28] respectively. The Court hereby takes judicial notice of its salient provisions, including the imposition of Documentary Stamp Taxes at the rate of ten centavos (PhP 0.10) for every peso cost of each horse racing ticket,[29] and of the ten percent (10%) taxes on winnings and prizes.[30] These are national

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equivalent to the eight and one fourth per centum (8¼%) of the total wager funds or gross receipts on the sale of betting tickets during the racing day as mentioned in Section six hereof, allotted as follows: a) National Government, five per centum (5%); the Municipality of Makati, five per centum (5%); b) Philippine Charity Sweepstakes Office, seven per centum (7%); c) Philippine Anti-Tuberculosis Society, six per centum (6%); and d) White Cross, two per centum (2%). The said tax shall be paid monthly and shall be in lieu of any and all taxes, except the income tax, of any kind, nature and description levied, established or collected by any authority whether barrio, municipality, city, provincial or national, on its properties, whether real or personal, from which taxes the grantee is hereby expressly exempted.

[27] AN ACT AMENDING REPUBLIC ACT NUMBERED SIXTY-SIX HUNDRED THIRTY-ONE ENTITLED "AN ACT GRANTING MANILA JOCKEY CLUB, INC., A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A RACETRACK FOR HORSE RACING IN THE CITY OF MANILA OR ANY PLACE WITHIN THE PROVINCES OF BULACAN, CAVITE OR RIZAL" AND EXTENDING THE SAID FRANCHISE BY TWENTY-FIVE YEARS (25) FROM THE EXPIRATION OF THE TERM THEREOF.

[28] AN ACT AMENDING REPUBLIC ACT NUMBERED SIXTY-SIX HUNDRED THIRTY-TWO ENTITLED 'AN ACT GRANTING THE PHILIPPINE RACING CLUB, INC., A FRANCHISE TO OPERATE AND MAINTAIN A RACE TRACK FOR HORSE RACING IN THE PROVINCE OF RIZAL', AND EXTENDING THE SAID FRANCHISE BY TWENTY-FIVE YEARS FROM THE EXPIRATION OF THE TERM THEREOF.

[29] Section 8 of RA 7953, and Section 11 of RA 8407.

[30] Section 10 of RA 7953, and Section 13 of RA 8407.

taxes included in the enumeration of Section 21 of the NIRC. Thus, the LGUs shall share on the collections thereon.

4. Sharing of VAT collections under RA 7643;

RA 7643 amended Section 282 of the NIRC to read thusly:

> **SEC. 282.** *Disposition of national internal revenue.*— x x x
>
> x x x x
>
> In addition to the internal revenue allotment as provided for in the preceding paragraph, fifty percent (50%) of the national taxes collected under Sections 100, 102, 112, 113, and 114 of this Code in excess of the increase in collections for the immediately preceding year shall be distributed as follows: (a) Twenty percent (20%) shall accrue to the city or municipality where such taxes are collected and shall be allocated in accordance with Section 150 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991; and (b) Eighty percent (80%) shall accrue to the National Government.

Notably, the 20%-80% allocation in favor of the national government is lesser than the 40% allocation under Section 284 of the LGC. This does not contravene Article X, Section 6 of the Constitution, however, for it merely sets the just share that LGUs are entitled to in the particular account. There being a special percentage allocation for these incremental taxes, respondents can then properly exclude them in computing the base amount for the national tax allocations to the LGUs.

5. Sections 8[31] and 12[32] of RA 7227, as amended by RA 9400, regarding the share of affected LGUs on the sale and conversion of former military bases;

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[31] **Section 8.** Funding Scheme:

The President is hereby authorized to sell the above lands, in whole or in part, which are hereby declared alienable and disposable pursuant to the provisions of existing laws and regulations governing sales of government properties x x x The proceeds from any sale, after deducting all expenses related to the sale, of portions of Metro Manila military camps as authorized under this Act, shall be used for the following purposes with their corresponding percent shares of proceeds:

(1) Thirty-two and five-tenths percent (32.5%) To finance the transfer of the AFP military camps and the construction of new camps, the self-reliance and modernization program of the AFP, the concessional and long-term housing loan assistance and livelihood assistance to AFP officers and enlisted men and their families, and the rehabilitation and expansion of the AFP'S medical facilities;

(2) Fifty percent (50%) To finance the conversion and the commercial uses of the Clark and Subic military reservations and their extensions;

(3) Five Percent (5%) To finance the concessional and long-term housing loan assistance for the homeless of Metro Manila, Olongapo City, Angeles City and other affected municipalities contiguous to the base areas as mandated herein; and

(4) The balance shall accrue and be remitted to the National Treasury to be appropriated thereafter by Congress for the sole purpose of financing programs and projects vital for the economic upliftment 0f the Filipino people.

Provided That in the case of Fort Bonifacio, two and five tenths percent (2.5%) of the proceeds thereof in equal shares shall each go to the Municipalities of Makati, Taguig, and Pateros: Provided further That in no case shall farmers affected be denied due compensation.

x x x x

[32] **Section 12.** Subic Special Economic Zone. x x x

x x x x

Section 8 of RA 7227 authorizes the President, through the Bases Conversion Development Authority, to sell former military bases. It likewise mandates that the LGUs of Makati, Taguig, and Pateros shall be entitled to a 2.5% share in the disposition of converted properties in Fort Bonifacio.

Meanwhile, Section 12 of RA 7227, as amended, imposes a 5% collection on gross income to be paid by all business enterprises within the Subic Special Economic Zone. Of the imposition, 3% shall be remitted to the National Government. The remaining 2% shall be remitted to the SBMA but will be distributed to the LGUs affected by the declaration of the economic zone, namely: the City of Olongapo and the municipalities of Subic, San Antonio, San Marcelino and Castillejos of the Province of Zambales; and the municipalities of Morong, Hermosa and Dinalupihan of the Province of Bataan. The distribution shall be based on population (50%), land mass (25%), and equal sharing (25%).

Invoking Article X, Section 6 of the Constitution, petitioner Garcia questions the provisos granting special allocations and prays that the same be included in the pool of national taxes to be distributed to all LGUs.

The argument lacks merit.

To reiterate, Article X, Section 6 of the Constitution guarantees that LGUs shall have a just share, as determined by law, in the *national taxes*. The proceeds from the sale of converted bases and the percentage collection from income, though governmental revenue, are *not* in the form of tax collections. To be sure, businesses and enterprises in the economic zone are *tax exempt* and the fees being charged the enterprises are *in lieu of paying taxes*. Section 12(C) categorically states: "x x x no national and local taxes shall be imposed within the Subic Special Economic Zone." As non-tax items, these revenues do not fall within the concept of national tax within the ambit of Article X, Section 6 of the Constitution, and the LGUs cannot then reasonably claim entitlement to a share thereon.

6. RA 7171 and Section 289[33] of the NIRC on the share of LGUs in the Excise Tax collections from the manufacture of Virginia tobacco products;

"(c)The provision of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed within the Subic Special Economic Zone. In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all business enterprises within the Subic Special Economic Zone and shall be remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the Subic Bay Metropolitan Authority (SBMA) for distribution to the local government units affected by the declaration of and contiguous to the zone, namely: the City of Olongapo and the municipalities of Subic, San Antonio, San Marcelino and Castillejos of the Province of Zambales; and the municipalities of Morong, Hermosa and Dinalupihan of the Province of Bataan, on the basis of population (50%), land mass (25%), and equal sharing (25%).

[33] **Section 289.** *Special Financial Support to Beneficiary Provinces Producing Virginia Tobacco.* - The financial support given by the National Government for the beneficiary provinces shall be constituted and collected from the proceeds of fifteen percent (15%) of the excise taxes on locally manufactured Virginia-type of cigarettes.

Petitioner next calls for the inclusion of the 15% collections on the excise taxes from the manufacture of Virginia tobacco products in determining the allocation base. Under Section 289 of the NIRA, the 15% being requested currently accrues to the Virginia tobacco-producing provinces, pro-rated based on their level of production.

This is another exercise by Congress of its authority to determine the *just share* in the national taxes that LGUs are entitled to. In this case, the tobacco producing provinces are provided incentives for their economic contribution, and financial assistance for the tobacco farmers.

Additionally, Excise Tax collections from the manufacture of Virginia tobacco products form part of a special fund for special purposes, within the contemplation of Article VI, Section 29(3) of the Constitution. In the same way, the Court in *Osmeña v. Orbos*[34] held that the oil price stabilization fund was a special fund segregated from the general fund and placed as it were in a trust account. And in *Gaston v. Republic Planters Bank*,[35] We ruled that the stabilization fees collected from sugar millers, planters, and producers were for a special purpose: to finance the growth and development of the sugar industry.

The special purposes, in this case, are embodied in Sections 1 and 2 of RA 7171 in the following wise:

> SECTION 1. Declaration of Policy - It is hereby declared to be the policy of the government to extend special support to the farmers of the Virginia tobacco-producing provinces inasmuch as these farmers are the nucleus of the Virginia tobacco industry which generates a sizeable income, in terms of excise taxes from locally manufactured Virginia-type cigarettes and customs duties on imported blending tobacco, for the National Government. For the reason stated, it is hereby further declared that the **special support for these provinces shall be in terms of financial assistance for developmental projects to be implemented by the local governments of the provinces concerned.**
>
> SECTION 2. Objective - The special support to the Virginia tobacco-producing provinces shall be utilized to advance the self-reliance of the tobacco farmers through:

The funds allotted shall be divided among the beneficiary provinces pro-rata according to the volume of Virginia tobacco production.

x x x x

The Secretary of Budget and Management is hereby directed to retain annually the said funds equivalent to fifteen percent (15%) of excise taxes on locally manufactured Virginia type cigarettes to be remitted to the beneficiary provinces qualified under R.A. No. 7171.

The provision of existing laws to the contrary notwithstanding, the fifteen percent (15%) share from government revenues mentioned in R.A. No. 7171 and due to the Virginia tobacco-producing provinces shall be directly remitted to the provinces concerned.

x x x x.

[34] G.R. No. 99886, March 31, 1993.

[35] G.R. No. L-77194, March 15, 1988.

> a. **Cooperative projects that will enhance better quality of products, increase productivity, guarantee the market and as a whole increase farmer's income;**
> b. **Livelihood projects particularly the development of alternative farming systems to enhance farmers income;**
> c. **Agro-industrial projects that will enable tobacco farmers in the Virginia tobacco producing provinces to be involved in the management and subsequent ownership of these projects such as post-harvest and secondary processing like cigarette manufacturing and by-product utilization; and**
> d. **Infrastructure projects such as farm-to-market roads.**(emphasis added)

The Excise Tax collections from the manufacture of Virginia tobacco earmarked for these programs were then validly placed in an account separate from the collections for other national tax items. The balance shall not be transferrable to the general funds of the government, from where the shares of the LGUs are sourced, unless the purposes for which the special fund was created have been fulfilled or abandoned. Absent any showing that said special purpose no longer exists, respondents committed no error in excluding 15% of Excise Tax collections on Virginia tobacco products from the distribution of national wealth to the LGUs.

To be sure, RA 10351[36] introduced an amendment to Section 288 of the NIRC on the allocation of excise taxes from tobacco products, to wit:

> (C) Incremental Revenues from the Excise Tax on Alcohol and Tobacco Products. –
>
> **After deducting the allocations under Republic Act Nos. 7171 and 8240**, eighty percent (80%) of the remaining balance of the incremental revenue derived from this Act shall be allocated for the universal health care under the National Health Insurance Program, the attainment of the millennium development goals and health awareness programs; **and twenty percent (20%) shall be allocated nationwide, based on political and district subdivisions, for medical assistance and health enhancement facilities program, the annual requirements of which shall be determined by the Department of Health (DOH).**

Thus, only 20% of the balance, after deducting the 15% of incremental excise tax allocation to the Virginia tobacco growers, shall form part of the base amount for determining the LGUs' share under Section 284 of the LGC, the 80% having been specially allocated for a special purpose.

7. Section 8 of RA 8240,[37] as now provided in Section 288 of the NIRC;

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[36] AN ACT RESTRUCTURING THE EXCISE TAX ON ALCOHOL AND TOBACCO PRODUCTS BY AMENDING SECTIONS 141, 142, 143, 144, 145, 8, 131 AND 288 OF REPUBLIC ACT NO. 8424. OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED BY REPUBLIC ACT NO. 9334, AND FOR OTHER PURPOSES.

[37] SEC. 8. Fifteen percent (15%) of the incremental revenue collected from the excise tax on tobacco products under this Act shall be allocated and divided among the provinces producing burley and

Section 288 of the NIRC, on the allocation of the incremental revenue from excise tax collections on tobacco products, deserves the same treatment as the earlier-discussed Excise Tax collections from the manufacture of Virginia tobacco. The pertinent provision reads:

> **Section 288.** *Disposition of Incremental Revenues.* –
>
> x x x x
>
> (B) Incremental Revenues from Republic Act No. 8240. - Fifteen percent (15%) of the incremental revenue collected from the excise tax on tobacco products under R.A. No. 8240 shall be allocated and divided among the provinces producing burley and native tobacco in accordance with the volume of tobacco leaf production. **The fund shall be exclusively utilized for programs in pursuit of the following objectives:**
>
> > **(1) Cooperative projects that will enhance better quality of agricultural products and increase income and productivity of farmers;**
> >
> > **(2) Livelihood projects, particularly the development of alternative farming system to enhance farmer's income; and**
> >
> > **(3) Agro-industrial projects that will enable tobacco farmers to be involved in the management and subsequent ownership of projects, such as post-harvest and secondary processing like cigarette manufacturing and by-product utilization.**

The directive that the funds be exclusively utilized for the enumerated programs places the provision on par with Section 289 of the NIRC, in relation to RA 7171, as discussed in the preceding section. Both partake of special purpose funds that cannot be disbursed for any obligation other than those for which they are intended. Respondents then likewise correctly excluded from the computation base this 15% incremental excise tax collections for a special purpose account. But just like the case of the Excise Taxes on Virginia tobacco products, 80% of the remainder will accrue to a special purpose fund, leaving only 20% of the remainder for distribution to the LGUs. This is in view of the amendment introduced by RA 10351.

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native tobacco in accordance with the volume of tobacco leaf production. The fund shall be exclusively utilized for programs in pursuit of the following objectives:

(a) Cooperative projects that will enhance better quality of agricultural products and increase income and productivity of farmers;

(b) Livelihood projects particularly the development of alternative farming system to enhance farmer's income;

(c) Agro-industrial projects that will enable tobacco farmers to be involved in the management and subsequent ownership of projects such as post-harvest and secondary processing like cigarette manufacturing and by-product utilization.

The Department of Budget and Management in consultation with the Oversight Committee created hereunder shall issue the corresponding rules and regulations governing the allocation and disbursement of this fund.

8. The share of the Commission on Audit (COA) on the NIRT as provided for in Section 24(3) of Presidential Decree No. 1445 in relation to Section 284 of the NIRC;

Section 284 of the NIRC reads:

> **Section 284.** *Allotment for the Commission on Audit.* - One-half of one percent (1/2 of 1%) of the collections from the national internal revenue taxes not otherwise accruing to special accounts in the general fund of the national government **shall accrue to the Commission on Audit as a fee for auditing services rendered to local government units,** excluding maintenance, equipment, and other operating expenses as provided for in Section 21 of Presidential Decree No. 898. (emphasis added)

Evidently, the provision does not diminish the base amount of national taxes that LGUs are to share from. It merely apportions half of 1% of national tax collections to the COA as compensation for its auditing services. This is not an illegal exclusion, but a recognition of the COA's right to fiscal autonomy under Article IX-A, Section 5 of the Constitution.[38] Thus, there is no clash nor conflict between the 40% allocation to LGUs under RA 7160 and the ½ of 1% allocation to COA under Section 285.

In sum, only (a) 50% of the VAT collections from the ARMM, (b) 30% of all other national tax collections from the ARMM, (c) 60% of the national tax collections from the exploitation and development of national wealth, (d) 5% of the 25% franchise taxes from the 8.5% and 8.25% of the total wager funds of the Manila Jockey Club and Philippine Racing Club, Inc., and (e) 20% of the 85% of the incremental revenue from excise taxes on Virginia, burley and native tobacco products shall be included in the computation of the base amount of the 40% allotment. The remainders are allocated to beneficiary LGUs determined by law as part of their just share in the national taxes. Other special purpose funds shall likewise be excluded.

Further, incremental taxes shall be disposed of in consonance with Section 282 of the NIRC, as amended. The sales proceeds from the disposition of former military bases pursuant to RA 7227, on the other hand, are excluded since these are non-tax items to which LGUs are not constitutionally entitled to a share. There is also no impropriety in allocating ½ of 1% of tax collections to the COA as compensation for auditing fees.

The 40% share of the LGUs in the national taxes must be released upon proper appropriation; the allocation cannot be reduced without first amending Section 284 of the LGC

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[38] **SECTION 5.** The Commission shall enjoy fiscal autonomy. Their approved annual appropriations shall be automatically and regularly released.

Pursuant to Article VI, Section 29 of the Constitution, "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law." This highlights the requirement of an appropriation law, the annual General Appropriations Act (GAA), despite the "automatic release" clause under Article X, Section 6, and places LGUs on par with Constitutional Commissions and agencies that are granted fiscal autonomy.

Guilty of reiteration, Article X, Section 6 of the Constitution declared that the LGUs are entitled to their just share in the national taxes, without distinction as to the type of national tax being collected. Thus, while Congress has the exclusive power of the purse, it cannot validly exclude from its appropriation to the LGUs the national tax collections of the BOC that are remitted to the national coffers. Otherwise stated, the base for national tax allotments is not limited to national internal revenue taxes under Section 21 of the NIRC, as amended, collected by the BIR, but also includes the Tariff and Customs Duties collected by the BOC, including the VAT, Excise Taxes and DST collected thereon.

The national government could have misconstrued the application of Section 6, Article X of the Constitution in not giving to the LGUs what is due the latter. True, Congress may enact statutes to set what constitutes the just share of the LGUs, so long as the LGUs remain to share in *all* national taxes. But lest it be forgotten, the percentage allocation to the LGUs need not be uniform across all forms of national taxes. Thus, while Section 284 of RA 7160 establishes a 40% share of the LGUs in the national taxes, this is only the general rule that is subject to exceptions, as explicated in the preceding discussion.

Absent any law amending Section 284 of the LGC, the 40% general allotment to the LGUs can only be reduced under the following circumstance:

> x x x That in the event that the national government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga", to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) x x x

The yearly enactment of a general appropriations law cannot be deemed as the amendatory statutes that would permit Congress to lower, disregard, and circumvent the 40% threshold. For though an appropriation act is a piece of legislature, it cannot modify Section 284 of the LGC, which is a substantive law, by simply appropriating to the LGUs an amount lower than 40%. The appropriation of a lower amount should not be understood as

the creation of an exception to Section 284 of the LGC, but should be considered as an inappropriate provision.

Article VI, Section 25(2) of the Constitution[39] deems a provision inappropriate if it does not relate specifically to some particular item of appropriation. The concept, however, was expanded in *PHILCONSA v. Enriquez*,[40] wherein the Court taught that *"included in the category of 'inappropriate provisions' are unconstitutional provisions and provisions which are intended to amend other laws, because clearly these kind of laws have no place in an appropriations bill."* Thus Congress cannot introduce arbitrary figures as the budgetary allocation to the LGUs in the guise of amending the 40% threshold in Section 284 of the LGC.

To hold otherwise would bestow Congress unbridled license to enact in the GAA any manner of allocation to the LGUs that it wants, rendering illusory the 40% statutory percentage under Section 284. It would allow for no fixed expectation on the part of the LGUs as to the share they will receive, for it could range from .01-100%, depending on either the whim or wisdom of Congress. Under this setup, Congress might dangle the modification of the percentage share as a stick or carrot before the LGUs for the latter to toe the line. In turn, this would provide basis to fear that LGUs would be beholden to Congress by increasing or decreasing allocations as a form of discipline.

This would run contrary to the constitutional provision on local autonomy, and the spirit of the LGC. Perhaps the reason there is clamor for federalism is precisely because the allocations to LGUs had not been sufficient to finance basic services to local communities, which predicament might be addressed by broadening the allocation base up to what the Constitution provides. Therefore, the Court should uphold the lofty idea behind the LGC—that of empowering the LGUs and making them self-reliant by ensuring that they receive what is due them, amounting to 40% of national tax collections.

The computation of the 40% allocation base shall be based on the collections from the third fiscal year preceding the current fiscal year, as certified by the BIR and the BOC to the DBM as remittances to the National Treasury. The DBM shall then use said amount certified by the BIR and the BOC in determining the base amount which shall be incorporated in the budget proposal for submission to Congress. Upon enactment of the appropriations act, the national tax allotment the LGUs are entitled to shall

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[39] Section 25.

x x x x

(2) No provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein. Any such provision or enactment shall be limited in its operation to the appropriation to which it relates.

[40] G.R. No. 113105, August 19, 1994.

be automatically released to them by the DBM within 5 days after the end of each quarter, in accordance with Section 286 of RA 7160.[41]

The Operative Fact Doctrine prevents the LGUs from collecting the arrears sought after; the Court's ruling herein can only be prospectively applied

Notwithstanding the postulation that the phrase *"internal revenue"* in Section 284 of the LGC and, consequently, its embodiment in the appropriation laws are unconstitutional, it is respectfully submitted that the prayer for the award of arrears should nevertheless be denied.

Article 7 of the Civil Code states that *"When the courts declared a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern."* The provision sets the general rule that an unconstitutional law is void and therefore produces no rights, imposes no duties and affords no protection.[42]

However, the doctrine of operative fact is a recognized exception. Under the doctrine, the law is declared as unconstitutional but the effects of the unconstitutional law, prior to its declaration of nullity, may be left undisturbed as a matter of equity and fair play.[43] The Court acknowledges that an unconstitutional law may have consequences which cannot always be ignored and that the past cannot always be erased by a new judicial declaration.[44] The doctrine is applicable when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law.[45]

In this case, the proposed nullification of the phrase *"internal revenue"* in Section 284 of RA 7160 would have served as the basis for the recovery of the LGUs' just share in the tariff and customs duties collected by the BOC that were illegally withheld from 1991-2012. However, this entitlement to a share in the tariff collections would have been further compounded by the LGU's alleged P500-billion share, more or less, in the VAT, Excise Tax, and DST collections of the BOC. These arrears would be too cumbersome for the government to shoulder, which only had a budget of

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[41] **Section 286.** *Automatic Release of Shares.* -

(a) The share of each local government unit shall be released, without need of any further action, directly to the provincial, city, municipal or barangay treasurer, as the case may be, on a quarterly basis within five (5) days after the end of each quarter, and which shall not be subject to any lien or holdback that may be imposed by the national government for whatever purpose.

(b) Nothing in this Chapter shall be understood to diminish the share of local government units under existing laws.

[42] G.R. No. 79732, November 8, 1993.

[43] *League of Cities of the Philippines v. Commission on Elections,* G.R. No. 176951, August 24, 2010.

[44] *Planters Products, Inc. v. Fertiphil Corporation,* G.R. No. 166006, 14 March 2008.

[45] *League of Cities of the Philippines v. Commission on Elections,* G.R. No. 176951, August 24, 2010.

P1.8 Trillion in 2012.[46] Thus, while petitioners request that the LGU's can still recover the arrears of the national, it is submitted that this is no longer feasible. This would prove too much for the government's strained budget to meet, unless paid out on installment or in a staggered basis.

The operative fact doctrine allows for the prospective application of the outcome of this case and justifies the denial of petitioners' claim for arrears. As held in Commissioner of *Internal Revenue v. San Roque Power Corporation*[47] that:

> x x x for the operative fact doctrine to apply, there must be a "legislative or executive measure," meaning a law or executive issuance, that is invalidated by the court. From the passage of such law or promulgation of such executive issuance until its invalidation by the court, **the effects of the law or executive issuance, when relied upon by the public in good faith, may have to be recognized as valid**. (emphasis added)

This was echoed in *Araullo v. Aquino (Araullo)*[48] wherein the Court held that the operative fact doctrine can be applied to government programs, activities, and projects that can no longer be undone, and whose beneficiaries relied in good faith on the validity of the disbursement acceleration program (DAP). In that case, the Court also agreed to extend to the proponents and implementors of the DAP the benefit of the doctrine of operative fact because they had nothing to do at all with the adoption of the invalid acts and practices. To quote:

> As a general rule, the nullification of an unconstitutional law or act carries with it the illegality of its effects. However, in cases where nullification of the effects will result in inequity and injustice, the operative fact doctrine may apply. In so ruling, the Court has essentially recognized the impact on the beneficiaries and the country as a whole if its ruling would pave the way for the nullification of the ₱144.378 Billions worth of infrastructure projects, social and economic services funded through the DAP. Bearing in mind the disastrous impact of nullifying these projects by virtue alone of the invalidation of certain acts and practices under the DAP, the Court has upheld the efficacy of such DAP-funded projects by applying the operative fact doctrine. For this reason, we cannot sustain the Motion for Partial Reconsideration of the petitioners in G.R. No. 209442.

Taking our cue from *Araullo*, it is then beyond quibbling that no amount of bad faith can be attributed to the respondents herein. They merely followed established practice in government, which in turn was based on the plain reading of how Section 284 of the LGC. As couched, the provision seemingly allowed limiting the share of the LGUs to the national internal revenue taxes under Section 21 of the NIRC.

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[46] See Republic Act No. 10155.
[47] G.R. No. 187485, October 8, 2013.
[48] G.R. No. 209287, February 3, 2015.

Moreover, it is imprecise to state that respondents illegally withheld monies from the LGUs. For the monies that should have been shared with the LGUs were nevertheless disbursed via the pertinent appropriation laws. Applying the presumption of regularity accorded to government officials, it may be presumed that the amount of P498,854,388,154.93 being claimed was utilized to finance government projects just the same, and ended up redounding not to the benefit of a particular LGU, but to the public-at-large. No badge of bad faith therefore obtained in the actuations of respondents. Consequently, the operative fact doctrine can properly be applied.

Increased national tax allotments may cure economic imbalance

As a final word, it cannot be gainsaid that this ruling of the Court granting a bigger piece of the national taxes to the LGUs will undoubtedly be an effective strategy and positive approach in addressing the sad plight of poor or underdeveloped LGUs that yearn to loosen the ostensible grip of imperial Manila over its supposed co-equals, *imperium in imperio*.

This ruling is timely since we are now in the midst of amending or revising the 1987 Constitution, with the avowed goal to "address the economic imbalance" through "transfer or sharing of the powers and resources of the government."[49] Encapsulated in the proposed Constitution is the "bayanihan federalism" anchored on the principles of "working together" and "cooperative competition or coopetition."[50] Our own brand of federalism may just work given its presidential-federal form of government that is "uniquely Filipino" that is tailor-fit to the Filipino nation. The well-crafted proposal will undergo exhaustive scrutiny and intense debate both in and out of the halls of Congress. Whatever may be the outcome of the debates and the decision of Congress and the Filipino people will hopefully be for the betterment of the country.

In the meantime, we must continue to explore readily available means to address the imbalance suffered by the LGUs. Indeed, there is sufficient room in our Constitution to expand the authority of the LGUs, there being no constitutional proscription against further devolving powers and decentralizing governance in their favor. On the contrary, this is what our laws prescribe. Article X, Section 3 of the Constitution state:

> **Section 3. The Congress shall enact a local government code** which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, **allocate among the different local government units their powers, responsibilities, and resources**, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials,

[49] Ding Generoso, April 19, 2018, PTV news – AB.
[50] Id.

> **and all other matters relating to the organization and operation of the local units**.

By constitutional fiat, Congress has within its arsenal ample mandate to enact laws to grant and allocate among the different LGUs more powers, responsibilities and resources through the amendment of RA 7160 or the Local Government Code of 1991. And increasing the wealth and resources of the component LGUs is but one of the veritable measures to concretize the concept of local autonomy under Article X of the 1987 Constitution possibly without resorting to radical changes in our political frameworks.

If it is the sincere goal of the national government to provide ample financial resources to the LGUs, then it can consider amending Section 284 of RA 7160 and even increase the national tax allotment (formerly IRA) to more than 40% of national taxes. Scrutiny should be made, however, of the percentage by which the national tax allotment is being distributed to among the different LGUs. For instance, Congress may consider balancing Section 285 of RA 7160 by adjusting the 23% share of the 145 cities vis-à-vis the percentage allocation of 1,478 municipalities now pegged at 34%. There are currently too few cities taking up too much share. This notwithstanding that cities, unlike many of the underperforming municipalities, are more progressive and financially viable because of the higher taxes they collect from people and business activities in their respective territories.

Congress may also decentralize and devolve more powers and duties to the LGUs or deregulate some activities or processes to entitle said LGUs more elbow room to successfully attain their programs and projects in harmony with national development programs. It has the supremacy in the enactment of laws that will define any aspect of organization and operation of the LGUs to make it more efficient and financially stable with special focus on the amplification of the taxing powers of said government units. Ergo, if Congress is so minded to reinforce the powers of the LGUs, it can, within the confines of the present Constitution, transfer or share any power of the national government to said local governments.

Moreover, Article VII, Section 17 of the Constitution makes the President the Chief of the Executive branch of Government, thus:

> **Section 17.** The President shall have control of all the executive departments, bureaus and offices. He shall ensure that laws be faithfully executed.

In the same token, Section 1, Chapter III of the Administrative Code of 1987 provides that the executive power shall be vested in the President of the Philippines. The President is the head of the executive branch of government having full control of all executive departments, bureaus and

offices.[51] Part and parcel of the President's ordinance power is the issuance of executive or administrative that tend to decentralize or devolve certain powers and functions belonging to the executive departments, bureaus, and offices to the LGUs, unless otherwise provided by law.

The President may also order the DBM to review and evaluate the current formula for computation of the national tax allotment. At present, DBM relies mainly on two (2) factors in determining the allotments of provinces, municipalities and cities—50% percent based on population, 25% for land area and 25% for equal sharing. For barangays, it is 60% based on population and 40% for equal sharing. A view has been advanced that the shares of a province, city or municipality should be based on the classification of LGUs under Executive Order No. 249 dated July 25, 1987 determined from the average annual income of the LGU and not mainly on population and land area which are not accurate factors. It was put forward that the shares of LGUs in the NTA shall be in **inverse proportion** to their classification. A bigger share shall be granted to the 6th class municipality and a lower share to a 1st class municipality. At present, Senate Bill No. 2664 is pending which intends to rationalize the income classification of LGUs. We leave it to Congress or the President to resolve this issue, hopefully for a fairer sharing scheme that fully benefit the poor and disadvantaged provinces and municipalities.

Lastly, the President has the power of general supervision over local governments under Article X, Section 4 of the Constitution, *viz*:

> **Section 4.** The President of the **Philippines shall exercise general supervision over local governments.** Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays, shall ensure that the acts of their component units are within the scope of their prescribed powers and functions. (emphasis added)

He can, therefore, support, guide, or even hand-hold the LGUs that are financially distressed or politically ineffective via the regional and provincial officials of the executive departments or bureaus. In short, the President can transfer or share executive powers through decentralization or devolution without need of a fresh mandate under a new constitution.

From the foregoing, the perceived ills brought about by a unitary system of government may after all be readily remediable through congressional and executive interventions through the concepts of decentralization and devolution of powers to the LGUs. In the meantime that the leaders of the public and private sectors are busy dissecting and analyzing the proposed Bayanihan Federalism or, more importantly, resolving the issue of whether a charter amendment is indeed necessary, it

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[51] Section 17 of Article VII of the 1987 Constitution and section 1, Chapter 1, Title 1, Book III of the Administrative Code.

may be prudent to consider whether the government can make do of its present powers and mandate to attain the goal of bringing progress to our poor and depressed local government units. After all, the present constitution may be ample enough to straighten out the "economic imbalance" and does not require fixing.

I, therefore, vote to **PARTIALLY GRANT** the instant petitions. In particular, I concur with the following dispositions:

1. The phrase "internal revenue" appearing in Section 284 of RA 7160 is declared **UNCONSTITUTIONAL** and is hereby **DELETED**.

    a. The Section 284, as modified, shall read as follows:

    > **Section 284.** *Allotment of ~~Internal Revenue~~ Taxes.* - Local government units shall have a share in the national internal revenue taxes based on the collection of the third fiscal year preceding the current fiscal year as follows:
    >
    > (a) On the first year of the effectivity of this Code, thirty percent (30%);
    >
    > (b) On the second year, thirty-five percent (35%); and
    >
    > (c) On the third year and thereafter, forty percent (40%).
    >
    > Provided, That in the event that the national government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga", to make the necessary adjustments in the ~~internal revenue~~ allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of national ~~internal revenue~~ taxes of the third fiscal year preceding the current fiscal year: Provided, further, That in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%) ~~internal revenue~~ allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services.

    b. The phrase "internal revenue" shall likewise be **DELETED** from the related sections of RA 7160, particularly Sections 285, 287, and 290, which shall now read:

    > **Section 285.** *Allocation to Local Government Units.* - The share of local government units in the ~~internal revenue~~ allotment shall be collected in the following manner:

(a) Provinces - Twenty-three percent (23%);
(b) Cities - Twenty-three percent (23%);
(c) Municipalities - Thirty-four percent (34%); and
(d) Barangays - Twenty percent (20%)

Provided, however, That the share of each province, city, and municipality shall be determined on the basis of the following formula:

(a) Population - Fifty percent (50%);
(b) Land Area - Twenty-five percent (25%); and
(c) Equal sharing - Twenty-five percent (25%)

Provided, further, That the share of each barangay with a population of not less than one hundred (100) inhabitants shall not be less than Eighty thousand (P80,000.00) per annum chargeable against the twenty percent (20%) share of the barangay from the ~~internal revenue~~ allotment, and the balance to be allocated on the basis of the following formula:

(a) On the first year of the effectivity of this Code:
    (1) Population - Forty percent (40%); and
    (2) Equal sharing - Sixty percent (60%)
(b) On the second year:
    (1) Population - Fifty percent (50%); and
    (2) Equal sharing - Fifty percent (50%)
(c) On the third year and thereafter:
    (1) Population - Sixty percent (60%); and
    (2) Equal sharing - Forty percent (40%).

Provided, finally, That the financial requirements of barangays created by local government units after the effectivity of this Code shall be the responsibility of the local government unit concerned.

x x x x

Section 287. *Local Development Projects.* - Each local government unit shall appropriate in its annual budget no less than twenty percent (20%) of its annual internal revenue allotment for development projects. Copies of the development plans of local government units shall be furnished the Department of Interior and Local Government.

x x x x

Section 290. *Amount of Share of Local Government Units.* - Local government units shall, in addition to the ~~internal revenue~~ allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges, including related surcharges, interests, or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

c. Articles 378, 379, 380, 382, 409, 461, and other related provisions in the Implementing Rules and Regulations of RA 7160 are hereby likewise **MODIFIED** to reflect deletion of the phrase "internal revenue."

d. Henceforth, any mention of "IRA" in RA 7160 and its Implementing Rules and Regulations shall hereinafter be understood as pertaining to the national tax allotment of a local government unit;

2. Respondents are hereby **DIRECTED** to include all forms of national tax collections, other than those accruing to special purpose funds and special allotments for the utilization and development of national wealth, in the subsequent computations for the base amount of just share the Local Government Units are entitled to. The base for national tax allotments shall include, but shall not be limited to:

a. National Internal Revenue Taxes under Section 21 of the National Internal Revenue Code, as amended, collected by the Bureau of Internal Revenue and its deputized agents, including Value-Added Taxes, Excise Taxes, and Documentary Stamp Taxes collected by the Bureau of Customs;

b. Tariff and Customs Duties collected by the Bureau of Customs;

c. Fifty percent (50%) of the Value-Added Tax collections from the Autonomous Region in Muslim Mindanao (ARMM), and thirty percent (30%) of all other national tax collections from the ARMM.

The remaining fifty percent (50%) of the Value-Added Taxes and seventy (70%) of the other national taxes collected in the ARMM shall be the exclusive share of the region pursuant to Sections 9 and 15 of RA 9054;

d. Sixty percent (60%) of the national tax collections from the exploitation and development of national wealth.

The remaining forty (40%) will validly exclusively accrue to the host Local Government Unit pursuant to Section 290 of RA 7160;

e. Five percent (5%) of the twenty-five percent (25%) franchise taxes collected from eight and a half percent

(8.5%) and eight and one fourth percent (8.25%) of the total wager funds of the Manila Jockey Club and Philippine Racing Club, Inc. pursuant to Sections 6 and 8 of RA 6631 and 6632, respectively.

The remaining twenty percent (20%) shall be divided as follows (5%) to the host municipality, seven percent (7%) to the Philippine Charity Sweepstakes Office, six percent (6%) to the Anti-Tuberculosis Society, and two percent (2%) to the White Cross;

f. Twenty percent (20%) of the eighty-five (85%) of the Excise Tax collections from Virginia, burley, and native tobacco products.

The fist fifteen percent (15%) shall accrue to the tobacco producing units pursuant to RA No. 7171 and 8240. Eighty percent (80%) of the remainder shall be segregated as special purpose funds under RA 10351;

3. In addition, the Court further **DECLARES** that:

a. The apportionment of incremental taxes - twenty percent (20%) to the city or municipality where the tax is collected and eighty percent (80%) to the national government of fifty percent (50%) of incremental tax collections - under Section 282 of the National Internal Revenue Code, as amended by Republic Act No. 7643, is **VALID** and shall be observed;

b. Sections 8 and 12 of RA 7227 are hereby declared **VALID.** The proceeds from the sale of military bases converted to alienable lands thereunder are **EXCLUDED** from the computation of the national tax allocations of the Local Government Units since these are sales proceeds, not tax collections;

c. The one-half of one percent (1/2%) of national tax collections as the auditing fee of the Commission on Audit under Section 24(3) of Presidential Decree No. 1445 shall not be deducted prior to the computation of the forty percent (40%) share of the Local Government Units in the national taxes; and

d. Other special purpose funds are likewise **EXCLUDED** from the computation of the national tax allotment base.

4. The Bureau of Internal Revenue and Bureau of Customs are hereby **ORDERED** to certify to the Department of Budget and

Management all their collections and remittances of National Taxes;

5. The Court's formula in this case for determining the base amount for computing the share of the Local Government Units shall have **PROSPECTIVE APPLICATION** from finality of this decision in view of the operative fact doctrine. Thus, petitioners' claims of arrears from the national government for the unlawful exclusions from the base amount are hereby **DENIED**.

6. Finally, once the General Appropriations Act for the succeeding year is enacted, the national tax allotments of the Local Government Units shall **AUTOMATICALLY** and **DIRECTLY** be released, without need of any further action, to the provincial, city, municipal, or *barangay* treasurer, as the case may be, on a quarterly basis but not beyond five (5) days after the end of each quarter. The Department of Budget and Management is hereby **ORDERED** to strictly comply with Article X, Section 6 of the Constitution and Section 286 of the Local Government Code, operationalized by Article 383 of the Implementing Rules and Regulations of RA 7160.

PRESBITERO J. VELASCO, JR.
Associate Justice