

FILIPINAS LIFE ASSURANCE COMPANY, PETITIONER, VS. THE COURT OF TAX APPEALS AND THE COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.

G. R. No. 21258. October 31, 1967

Ponente: CASTRO, J.

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CASTRO, J.:

The issue posed in this appeal is whether domestic and resident foreign life insurance companies are entitled to return only 25 per cent of their income from dividends under the 1957 amendment of section 24 of the National Internal Revenue Code, the pertinent provisions of which read as follows:

"SEC. 24. Rate of Tax on Corporation. — (A) In general there shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding taxable year from all sources by every corporation organized in, or existing under the laws of the Philippines, no matter how created or organized, but not including duly registered general copartnership (compañías colectivas). domestic insurance companies and foreign life insurance companies doing business in the Philippines, a tax upon such income equal to the sum of the following:

"Twenty per centum upon the amount by which such total net income does not exceed one hundred thousand pesos; and

"Twenty-eight per centum upon the amount by which such total net income exceeds one hundred thousand pesos; and a like tax shall be levied, assessed, collected and paid annually upon the total net income received in the preceding taxable year from all sources within the Philippines by every corporation organized, authorized or existing under the laws of any foreign country: . . . And Provided, further, That in the case of dividends received by a domestic or resident foreign corporation from a domestic corporation liable to tax under this Chapter or from a domestic corporation engaged in a new and necessary industry, as defined under Republic Act Numbered Nine hundred and one, only twenty-five per centum thereof shall be returnable for purposes of the tax imposed by this section.

"(B) Rate of Tax on Life Insurance Companies.— There shall be levied, assessed, collected and paid annually from every insurance company organized in or existing under the laws of the Philippines, or foreign life insurance company authorized to carry on business in the Philippines, but not including purely cooperative companies or associations as defined in section two hundred and fifty-five of this Code, on the total investment income received by such company during the preceding taxable year from interest, dividends and rents from all sources whether from or within the Philippines, a tax of six and one-half per centum upon such income: Provided, however, That foreign life insurance companies not doing business in the Philippines shall, on any investment income received by them from the Philippines, be subject to tax as any other foreign corporation. . .
."

The Court of Tax Appeals ruled that life insurance companies should report in full their income from dividends because, while they are treated in subsection (B), the proviso regarding dividend exclusion is found in subsection

(A) which treats of corporations in general. The petitioner appealed to this Court, contending, on the basis of the history of the proviso, that the benefits of dividend exclusion are available to all domestic and resident foreign corporations regardless of the business in which they may be engaged.

We agree with the petitioner.

The petitioner is a domestic life insurance company.

On March 1.8, 1959, it filed an income tax return for 1958 showing the following data:

"GROSS INCOME

From interest

P5,186.44

From dividends

57,105.29

TOTAL GROSS INCOME

P62,202.36

TOTAL DEDUCTIONS

10,317.47

P51,974.89

"Net income

"Tax assessable:

Life Insurance Companies

P3,378.00

TOTAL TAX DUE

P3,378.00"

Later, however, it filed an amended return, as follows:

"GROSS INCOME

From interest

P 5,186.44

From dividends

15,242.55

TOTAL GROSS INCOME

P20,186.44

TOTAL DEDUCTIONS

10,317.47

"Net income

P10,111.52

"Tax assessable:

Life Insurance Companies

P657.00

TOTAL TAX DUE**P657.00"**

This was accompanied with a claim for the refund of P2,721 representing the difference between P3,378, which the petitioner had paid as income tax under its original return, and P657, which it now averred was the correct amount due from it. The difference is due to the fact that, whereas in its original income tax return the petitioner reported in full its income from dividends amounting to P57,105.29,[1] in its amended return it reported only 25 per cent, or P15,242.55,[2] of the dividends from domestic corporations.

The claim for refund was filed with the respondent Commissioner of Internal Revenue but, as he had not been heard from, the petitioner, to avoid prescription of its action, took the matter to the Court of Tax Appeals. The Tax Court, with two members voting and another one reserving his vote, upheld the propriety of the action against the claim of the respondent that it was filed prematurely. It however denied the claim of the petitioner for refund on the ground that the proviso allowing the return of only 25 per cent of the income from dividends is found in subsection (A) of section 24 of the National Internal Revenue Code, while life insurance companies are dealt with in another subsection, although of the same section. The Tax Court's ratio decidendi reads:

"As a general rule of statutory construction a proviso is deemed to apply only to the immediately preceding clause or provision. Where, as in the case at bar, there is no clear legislative intention to apply it to the subclause or provision (Section 24 [B] we are constrained to interpret the proviso as affecting only the preceding clause or provision, (See Collector, et al. vs. Servando de los Angeles, et al., 101 Phil., 1026), Consequently, we are of the opinion that the proviso relative to the returnability of only 25% of such dividends applies only to corporations organized in or existing under the laws of the Philippines . . . but not including duly registered copartnerships (compañías colectivas), domestic life insurance companies and foreign life insurance companies doing business in the Philippines."

But a purely syntactical approach is hardly a safe guide to the meaning of a statute. The position of a proviso, for instance, although possessed of considerable influence, is not necessarily controlling. The proviso may apply to sections or portions thereof which follow it or even to the entire statute.[3] Position, after all, cannot override intention, in the ascertainment of which the legislative history of a statute is extremely more important.[4]

A resort to legislative history should prove particularly helpful in the case of section 24 of the Code as this section has gone through a miscellany of amendments, with the result that its basic outlines are now only vaguely discernible. From a one-paragraph section it has grown into a multi-paragraph one, with lengthy sentences qualified at every turn by exceptions and provisos. The readability expert[5] who once complained of a provision of the U.S. Internal Revenue Code as a "nightmare" of a writing, would be at a loss for words to describe section 24 of our Code.

The following table shows the changes which section 24 has undergone at each of the eight different stages of its amendment,

CORPORATE INCOME TAX: A COMPARATIVE TABLE OF AMENDMENTS[6]

(1) As originally enacted on June 15, 1939:

SEC. 24. Rate of tax on corporations.— There shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding taxable year from all sources by every corporation organized in, or existing under the laws of the Philippines, no matter how created or organized, but not including duly registered general copartnerships (compañías colectivas), a tax of eight per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the

preceding taxable year from all sources within the Philippines by every corporation organized, authorized, or existing under the laws of any foreign country: Provided, however, That in the case of dividends received by a domestic or resident foreign corporation from a domestic corporation liable to tax under this Chapter, only twenty-five per centum thereof shall be returnable for purposes of the tax imposed by this section.

(2) As amended by Republic Act 82, I Laws & Res. 250 (1946):

SEC. 24. Rate of tax on corporations. — There shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding taxable year from all sources by every corporation organized in, or existing under the laws of the Philippines, no matter how created or organized, but not including duly registered general copartnerships (compañías colectivas), a tax of TWELVE per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding taxable year from all sources within the Philippines by every corporation organized authorized, or existing under the laws of any foreign country: Provided, however, THAT BUILDING AND LOAN ASSOCIATIONS OPERATING AS SUCH IN ACCORDANCE WITH SECTIONS ONE HUNDRED SEVENTY-ONE TO ONE HUNDRED NINETY OF THE CORPORATION LAW, AS AMENDED, SHALL PAY A TAX OF SIX PER CENTUM ON THEIR TOTAL NET INCOME: AND PROVIDED, FURTHER, That in the case of dividends received by a domestic or resident foreign corporation from a domestic corporation liable to tax under this Chapter, only twenty-five per centum thereof shall be returnable for purposes of the tax imposed by this section.

(3) As amended by Republic Act 590, 5 Laws & Res. 687 (1950);

SEC. 24. Rate of tax on corporations.[7]— There shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding taxable year from all sources by every corporation organized in, or existing under the laws of the Philippines, no matter how created or organized, but not including duly registered general copartnerships (compañías colectivas), a tax [of] SIXTEEN per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding taxable year from all sources within the Philippines by every corporation organized, authorized, or existing under the laws of any foreign country: Provided, however, That Building and Loan Associations operating as such in accordance with sections one hundred and seventy-one to one hundred and ninety of the Corporation Law, as amended, shall pay a tax of NINE per centum on their total net income: And Provided, further, That in the case of dividends received by a domestic or resident foreign corporation from a domestic corporation liable to tax under this Chapter, only twenty-five per centum thereof shall be returnable for purposes of the tax imposed by this section.

(4) As amended by Republic Act 600, 6 Laws & Res. 27 (1951):

SEC. 24. Rate of tax on corporations. — There shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding taxable year from all sources by every corporation organized in, or existing under the laws of the Philippines, no matter how created or organized, but not including duly registered general copartnerships (compañías colectivas), a tax UPON SUCH INCOME EQUAL TO THE SUM OF THE FOLLOWING:

TWENTY PER CENTUM UPON THE AMOUNT BY WHICH SUCH TOTAL NET INCOME DOES NOT EXCEED ONE HUNDRED THOUSAND PESOS; AND

TWENTY-EIGHT PER CENTUM UPON THE AMOUNT BY WHICH SUCH TOTAL NET INCOME EXCEEDS ONE HUNDRED THOUSAND PESOS; and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding taxable year from all sources within the Philippines by every corporation organized, authorized, or existing under the laws of any foreign country: Provided, however, That Building and Loan Associations operating as such in accordance with sections one hundred and seventy-one to one hundred and ninety of the Corporation Law, AS WELL AS PRIVATE

EDUCATIONAL INSTITUTIONS, shall pay a tax of TWELVE per centum, AND TEN PER CENTUM, RESPECTIVELY, on their total net income: And Provided, further, That in the case of dividends received by a domestic or resident foreign corporation from a domestic corporation liable to tax under this Chapter, only twenty-five per centum thereof shall be returnable for purposes of the tax imposed by this section.

(5) As amended by Republic Act 1148, 9 Laws & Res. 275(1954):

SEC. 24. Rate of tax on corporations.— There shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding taxable year from all sources by every corporation organized in, or existing under the laws of the Philippines, no matter how created or organized, but not including duly registered general co-partnerships (compañías colectivas), a tax upon such income equal to the sum of the following:

Twenty per centum upon the amount by which such total net income does not exceed one hundred thousand pesos; and

Twenty-eight per centum upon the amount by which such total net income exceeds one hundred thousand pesos; and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding taxable year from all sources within the Philippines by every corporation organized, authorized, or existing under the laws of any foreign country: Provided, That Building and Loan Associations operating as such in accordance with sections one hundred and seventy-one to one hundred and ninety of the Corporation Law, as amended, as well as private educational institutions, shall pay a tax of twelve per centum and ten per centum, respectively, on their total net income. And Provided, further, That in the case of dividends received by a domestic or resident foreign corporation from a domestic corporation liable to tax under this Chapter or FROM A DOMESTIC CORPORATION ENGAGED IN NEW AND NECESSARY INDUSTRY AS DEFINED UNDER REPUBLIC ACT NUMBERED NINE HUNDRED AND ONE, only twenty-five per centum thereof shall be returnable for purposes of the tax imposed by this Section,

(6) As amended by Republic Act 1855, 12 Laws & Res. 354 (1957V)

SEC. 24, Rate of Tax on Corporation. —(A)[8] IN GENERAL there shall be levied, (assessed), collected, and paid annually upon the total net income received in the preceding taxable year from all sources by every corporation organized, or existing under the laws of the Philippines, no matter how created or organized, but not including duly registered general co-partnerships (compañías colectivas), DOMESTIC LIFE INSURANCE COMPANIES AND FOREIGN LIFE INSURANCE COMPANIES DOING BUSINESS IN THE PHILIPPINES, a tax upon such income equal to the sum of the following:

Twenty per centum upon the amount by which such total net income does not exceed one hundred thousand pesos; and

Twenty-eight per centum upon the amount by which such total net income exceeds one hundred thousand pesos; and a like tax shall be levied, [assessed] collected and paid annually upon the total net income received in the preceding taxable year from all sources within the Philippines by every corporation organized, authorized or existing under the laws of any foreign country: Provided, however, That Building and Loan Associations operating as such in accordance with sections one hundred and seventy-one to one hundred and ninety of the Corporation Law, as amended, as well as private educational institutions, shall pay a tax of twelve per centum and ten per centum, respectively, on their total net income: And Provided, further, That in the case of dividends received by a domestic or resident foreign corporation from a domestic corporation liable to tax under this Chapter or from a domestic corporation engaged in a new and necessary industry, as defined under Republic Act Numbered Nine hundred and one, only twenty-five per centum thereof shall be returnable for purposes of the tax imposed by this section.[9]

(B) RATE OF TAX ON LIFE INSURANCE COMPANIES. — THERE SHALL BE LEVIED, ASSESSED,

COLLECTED AND PAID ANNUALLY FROM EVERY INSURANCE COMPANY ORGANIZED IN OR EXISTING UNDER THE LAWS OF THE PHILIPPINES, OR FOREIGN LIFE INSURANCE COMPANY AUTHORIZED TO CARRY ON BUSINESS IN THE PHILIPPINES, BUT NOT INCLUDING PURELY COOPERATIVE COMPANIES OR ASSOCIATIONS AS DEFINED IN SECTION TWO HUNDRED FIFTY-FIVE OF THIS CODE, ON THE TOTAL INVESTMENT INCOME RECEIVED BY SUCH COMPANY DURING THE PRECEDING TAXABLE YEAR FROM INTEREST, DIVIDENDS AND RENTS FROM ALL SOURCES WHETHER FROM OR WITHOUT THE PHILIPPINES, A TAX OF SIX AND ONE-HALF PER CENTUM UPON SUCH INCOME: PROVIDED, HOWEVER, THAT FOREIGN LIFE INSURANCE COMPANIES NOT DOING BUSINESS IN THE PHILIPPINES SHALL, ON ANY INVESTMENT INCOME RECEIVED BY THEM FROM THE PHILIPPINES, BE SUBJECT TO TAX AS ANY OTHER FOREIGN CORPORATION.

THE TOTAL NET INVESTMENT INCOME OF DOMESTIC LIFE INSURANCE COMPANIES IS THE GROSS INVESTMENT INCOME RECEIVED DURING THE TAXABLE YEAR FROM RENTS, DIVIDENDS, AND INTEREST LESS DEDUCTIONS FOR REAL ESTATE EXPENSES' DEPRECIATION, INTEREST PAID WITHIN THE TAXABLE YEAR ON ITS INDEBTEDNESS, EXCEPT ON INDEBTEDNESS INCURRED TO PURCHASE OR CARRY OBLIGATION THE INTEREST UPON WHICH IS WHOLLY EXEMPT FROM TAXATION UNDER EXISTING LAWS, AND SUCH INVESTMENT EXPENSES PAID DURING THE TAXABLE YEAR AS ARE ORDINARY AND NECESSARY IN THE CONDUCT OF THE INVESTMENTS: AND THE TOTAL NET INVESTMENT INCOME OF FOREIGN LIFE INSURANCE COMPANIES DOING BUSINESS IN THE PHILIPPINES IS THAT PORTION OF THEIR GROSS WORLD INVESTMENT INCOME WHICH BEARS THE SAME RATIO TO SUCH INCOME AS THEIR TOTAL PHILIPPINE RESERVE BEARS TO THEIR TOTAL WORLD RESERVE LESS THAT PORTION OF THEIR TOTAL WORLD INVESTMENT EXPENSES WHICH BEARS THE SAME RATIO TO SUCH EXPENSES AS THEIR TOTAL PHILIPPINE INVESTMENT INCOME BEARS TO THEIR TOTAL WORLD INVESTMENT INCOME.

(7) As amended by Republic Act 2343, 14 Laws & Res, 423 (1959):

SEC. 24. Rate of tax on corporations. — (a) TAX ON DOMESTIC CORPORATIONS. — In general there shall be levied, collected, and paid annually upon the total net income received in the preceding taxable year from all sources by every corporation organized in, or existing under the laws of the Philippines, no matter how created or organized, but not including duly registered general co-partnerships (*compañías colectivas*), domestic life insurance companies and foreign life insurance companies doing business in the Philippines, a tax upon such income equal to the sum of the following:

TWENTY-TWO per centum upon the amount by which such total net income does not exceed one hundred thousand pesos; and

THIRTY per centum upon the amount by which such total net income exceeds one hundred thousand pesos; and a like tax shall be levied, collected, and paid annually upon the total net income received in the preceding taxable year from all sources within the Philippines by every corporation organized, authorized, or existing under the laws of any foreign country: Provided, however, That building and loan associations operating as such in accordance with sections one hundred and seventy-one to one hundred and ninety of the Corporation Law, as amended, as well as private educational institutions, shall pay a tax of twelve per centum and ten per centum, respectively, on their total net income: And Provided, further, That in the case of dividends received by a domestic or resident foreign corporation from a domestic corporation liable to tax under this Chapter or from a domestic corporation engaged in a new and necessary industry, as defined under Republic Act Numbered Nine hundred and one, only twenty-five per centum thereof shall be returnable for purposes of the tax imposed by this section.

(b) TAX ON FOREIGN CORPORATIONS. — (I) NON-RESIDENT CORPORATIONS. — THERE SHALL

BE LEVIED, COLLECTED AND PAID FOR EACH TAXABLE YEAR, IN LIEU OF THE TAX IMPOSED BY THE PRECEDING PARAGRAPH, UPON THE AMOUNT RECEIVED BY EVERY FOREIGN CORPORATION NOT ENGAGED IN TRADE OR BUSINESS WITHIN THE PHILIPPINES, FROM ALL SOURCES WITHIN THE PHILIPPINES, AS INTEREST, DIVIDENDS, RENTS, SALARIES, WAGES, PREMIUMS, ANNUITIES, COMPENSATIONS, REMUNERATIONS, EMOLUMENTS, OR OTHER FIXED OR DETERMINABLE ANNUAL OR PERIODICAL GAINS, PROFITS, AND INCOME, A TAX EQUAL TO THIRTY PER CENTUM OF SUCH AMOUNT.

(2) RESIDENT CORPORATIONS. — A FOREIGN CORPORATION ENGAGED IN TRADE OR BUSINESS WITHIN THE PHILIPPINES (EXCEPT FOREIGN LIFE INSURANCE COMPANIES) SHALL BE TAXABLE AS PROVIDED IN SECTION (a) OF THIS SECTION.

(c) Rate of tax on life insurance companies. — There shall be levied, assessed,[10] collected and paid annually from every life insurance company organized in or existing under the laws of the Philippines, or foreign life insurance company authorized to carry on business in the Philippines but not including purely cooperative companies or associations as defined in section two hundred fifty-five of this Code, on the total investment income received by such company during the preceding taxable year from interest, dividends, and rents from all sources, whether from or without the Philippines, a tax of six and one-half per centum upon such income: Provided, however, That foreign life insurance companies not doing business in the Philippines shall, on any investment income received by them from the Philippines, be subject to tax as any other foreign corporation.

The total net investment income of domestic life insurance companies is the gross investment income received during the taxable year from rents, dividends, and interest less deductions for real estate expenses, depreciation, interest paid within the taxable year on its indebtedness, except on indebtedness incurred to purchase or carry obligation the interest upon which is wholly exempt from taxation under existing laws, and such investment expenses paid during the taxable year as are ordinary and necessary in the conduct of the investments; and the total net investment income of foreign life insurance companies doing business in the Philippines is that portion of their gross world investment income which bears the same ratio to such income as their total Philippine reserve bears to their total world reserve less that portion of their total world investment expenses which bear the same ratio to such expenses as their total Philippine investment income bears to their total world investment income.

(8) As amended by Republic Act 3825, 60 O.G. 780 (1963):

SEC. 24. Rate of tax on corporations. — (a) Tax on domestic corporations. — In general there shall be levied, collected, and paid annually upon the total net income received in the preceding taxable year from all sources by every corporation organized in, or existing under the laws of the Philippines, no matter how created or organized, but not including duly registered general copartnerships (*compañías colectivas*), domestic life insurance companies and foreign life insurance companies doing business in the Philippines, a tax upon such income equal to the sum of the following:

Twenty-two per centum upon the amount by which such total net income does not exceed one hundred thousand pesos; and

Thirty per centum upon the amount by which such total net income exceeds one hundred thousand pesos; and a like tax shall be levied, collected, and paid annually upon the total net income received in the preceding taxable year from all sources within the Philippines by every corporation organized, authorized, or existing under the laws of any foreign country: Provided, however, That building and loan associations operating as such in accordance with sections one hundred and seventy-one to one hundred and ninety of the Corporation Law, as amended, as well as private educational institutions, shall pay a tax of twelve per centum and ten per centum, respectively, on their total net income: And Provided, further, That in the case of dividends received by a domestic or resident foreign corporation from a domestic corporation liable to tax under this Chapter or from a domestic corporation engaged in a new and necessary industry, as defined under Republic Act Numbered Nine

hundred and one, only twenty-five per centum, thereof shall be returnable for purposes of the tax imposed by this section.

(b) Tax on foreign corporations. — (I) Non-resident corporations. — There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by the preceding paragraph, upon the amount received by every foreign corporations not engaged in trade or business within the Philippines, from all sources within the Philippines, as interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, a tax equal to thirty per centum of such amount: PROVIDED, HOWEVER, THAT PREMIUMS SHALL NOT INCLUDE REINSURANCE PREMIUMS.

(2) Resident corporations. — A foreign corporation engaged in trade or business within the Philippines (except foreign life insurance companies) shall be taxable as provided in subsection (a) of this section.

(c) Rate of tax on life insurance companies. There shall be levied, assessed, collected and paid annually from every life insurance company organized or existing under the laws of the Philippines, or foreign life insurance company authorized to carry on business in the Philippines but not including purely cooperative companies or associations as defined in section two hundred fifty-five of this Code, on the total investment income received by such company during the preceding taxable year from interest, dividends, and rents from all sources, whether from or without the Philippines, a tax of six and one-half per centum upon such income: Provided, however, That foreign life insurance companies not doing business in the Philippines shall, on any investment income received by them from the Philippines be subject to tax as any other foreign corporation.

The total net investment income of domestic life insurance companies is the gross investment income received during the taxable year from rents, dividends, and interest less deductions for real estate expenses, depreciation, interest paid within the taxable year on its indebtedness, except on indebtedness incurred to purchase or carry obligation the interest upon which is wholly exempt from taxation under existing laws, and such investment expenses paid during the taxable year as are ordinary and necessary in the conduct of the investments; and the total net investment income of foreign life insurance companies doing business in the Philippines is that portion of their gross world investment income which bears the same ratio to such income as their total Philippine reserve bears to their total world reserve less that portion of their total world investment expenses which bear the same ratio to such expenses as their total Philippine investment income bears to their total world investment income,

(9) As amended by Republic Act 3841, 60 O.G. 1095 (1963):

SEC. 24. Rate of tax on corporations. — (a) Tax on domestic corporations. — In general there shall be levied, collected, and paid annually upon the total net income received in the preceding taxable year from all sources of every corporation organized in, or existing under the laws of the Philippines, no matter how created or organized, but not including duly registered general copartnership (*compañías colectivas*), domestic life insurance companies and foreign life insurance companies doing business in the Philippines, a tax upon such income equal to the sum of the following:

Twenty-two per centum upon the amount by which such total net income does not exceed one hundred thousand pesos; and

Thirty per centum upon the amount by which such total net income exceeds one hundred thousand pesos; and a like tax shall be levied, collected, and paid annually upon the total net income received in the preceding taxable year from all sources within the Philippines by every corporation organized, authorized, or existing under the laws of any foreign country: Provided, however, That building and loan associations operating as such in accordance with sections one hundred and seventy-one to one hundred and ninety of the Corporation Law, as amended, as well as private educational institutions, shall pay a tax of twelve per centum, and ten per centum, respectively, on

their total net income: And, Provided, further, That in the case of dividends received by a domestic or resident foreign corporation from domestic corporation liable to tax under this Chapter or from a domestic corporation engaged in a new and necessary industry, as defined under Republic Act Numbered Nine hundred and one,[12] only twenty-five per centum thereof shall be returnable for purposes of the tax imposed by this section.

(b) Tax on foreign corporations. — (1) Non-resident corporation. — There shall be levied, collected and paid for each taxable year, in lieu of the tax imposed by the preceding paragraph, upon the amount received by every foreign corporation not engaged in trade or business within the Philippines, from all sources within the Philippines as interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical OR CASUAL gains, profits and income, AND CAPITAL GAINS, a tax equal to thirty per centum of such amount: Provided, however, That premiums shall not include reinsurance premiums.

(2) Resident corporations. — A foreign corporation engaged in trade or business within the Philippines (except foreign life insurance companies) shall be taxable as provided in subsection (a) of this section.

(c) Rate of tax on life insurance companies. — There shall be levied, assessed, collected and paid annually from every life insurance company organized in or existing under the laws of the Philippines, or foreign life insurance company authorized to carry on business in the Philippines but not including purely cooperative companies or associations as defined in section two hundred fifty-five of this Code, on the total investment income received by such company during the preceding taxable year from interest, dividends, and rents from all sources, whether from or without the Philippines, a tax of six and one-half per centum upon such income: Provided, however, That foreign life insurance companies not doing business in the Philippines shall, on any investment income received by them from the Philippines, be subject to tax as any other foreign corporation.

The total net investment income of domestic life insurance companies is the gross investment income received during the taxable year from rents, dividends, and interest less deductions for real estate expenses, depreciation, interest paid within the taxable year on its indebtedness, except on indebtedness incurred to purchase or carry obligation the interest upon which is wholly exempt from taxation under existing laws, and such investment expenses paid during the taxable year as are ordinary and necessary in the conduct of the investments; and the total net investment income of foreign life insurance companies doing business in the Philippines is that portion of their gross world investment income which bears the same ratio to such income as their total Philippine reserve bears to their total world reserve less that portion of their total world investment expenses which bear the same ratio to such expenses as their total Philippine investment income bears to their total world investment income.

It will thus be seen that dividend exclusion has always been a dominant feature of corporate income tax. It is a device for reducing extra or double taxation of distributed earnings. Since a corporation cannot deduct from its gross income the amount of dividends distributed to its corporation-shareholders during the taxable year, any distributed earnings are necessarily taxed twice: initially at the corporate level when they are included in the corporation's taxable income, and again, at the corporation-shareholder level when they are received as dividend. Thus, without exclusion the successive taxation of the dividend as it passes from corporation to corporation would result in repeated taxation of the same income and would leave very little for the ultimate individual shareholder. At the same time the decision to tax a part (e.g., 25 per cent) of such dividends reflects the policy of discouraging complicated corporate structures as well as corporate divisions in the form of parent-subsidary arrangements adopted to achieve a lower effective corporate income tax rate.[14]

Until 1957 there had been no question that the proviso on dividend exclusion applied to all domestic and resident foreign life insurance companies. The question arose when, by virtue of Republic Act 1855 (1957), the original

provisions of section 24, with slight modifications, were made sub-section (A), while a new sub-section (B), entitled "Rate of Tax on Life Insurance Companies," was added. The result is that the proviso on dividend exclusion now appears to qualify only a part of section 24, making it doubtful whether after 1957 the income from dividends of domestic and resident foreign life insurance companies still enjoys exemption, although, as noted in passing,[15] the proviso continues to speak of "the tax imposed by this section" (not sub-section).

However, a review of the circumstances which prompted the amendment of section 24 in 1957 shows no intention to withdraw from life insurance companies the exemption which theretofore had been enjoyed by them along with non-life insurance companies. To be sure, the 1957 amendment was intended for a two-fold purpose: first, to change the tax base from premium income to investment income, and, second, to lower the tax on life insurance companies, in order to encourage their growth as well as their investment in the development of the national economy.

Prior to 1957, life insurance companies were required, for income tax purposes, to include premium receipts in gross income. It became generally recognized, however, that the inclusion of premium receipts in the gross taxable income of life insurance companies was unsound because premium receipts do not constitute income in the sense of gain or profit. They are really savings deposits of the individual policyholders, a large portion of which goes directly to reserve funds required by law for the payment of their claims for death benefits, cash surrender values and maturity values. Therefore, to tax an insurance company on account of these "deposits" or "savings" is actually to tax the policyholder for being provident. What constitutes true income for a life insurance company is rather its investment income from interest, dividends and rents.[16]

Besides, the premiums which a life insurance company receives are already subject to a tax of 3 per cent under section 255 of the Code. To require their inclusion in gross income for purposes of section 24 is to subject them to double taxation.[17]

The rate of tax was lowered in recognition of the fact that a life insurance company derives profit from its investment income only to the extent that such income exceeds the rate of interest at which the reserve must be maintained.[18]

In sum, as the then Congressman Ferdinand Marcos described the bill which became Republic Act 1855, "It is a bill which places [life] insurance companies in the same class as other companies. And the rate is lower than in ordinary companies because it is six and one half per cent." [19]

If the purpose of the 1957 amendment was to place life insurance companies at par with other companies by taxing them on their true income, then the legislature could not have intended to withdraw from them a privilege which they had then been enjoying in common with non-life insurance companies. Indeed, by no rule of logic can the decision to exclude premium receipts from gross income be considered a decision to include all of dividend income in gross income.

Nor could it have been the intention of the legislature to discriminate against domestic life insurance companies in favor of resident foreign corporations engaged in other business. And yet this is just the implication of the interpretation urged on us by the respondents. For, indeed, to require life insurance companies to report in full their income from dividends would be not only to treat them differently from other companies, contrary to the first aim of the amendment, but also to impose on them a tax burden heavier than that imposed on resident foreign companies not engaged in life insurance. Thus, following the interpretation of the respondents, a resident foreign corporation with an income of P100,000 from dividends would be required to return only 25 per cent of it, or P25,000, the tax on which would be P5,000 (20% under Republic Act 1855). In contrast, a domestic life insurance company, required to report all its income from dividends, would have to pay a tax of P6,500 (6-½%), or P1,500

more, despite the fact that the rate of tax on it is much lower. It seems rather clear that these discriminatory and lop-sided results could not have been intended by Congress.

That Congress intended to accord preferential tax treatment to domestic and resident foreign life insurance companies is abundantly clear not only from the history of the 1957 amendment but also from the Comparative Table (supra) which shows that while the rate of tax on corporations in general has been raised, that on domestic and resident foreign life insurance companies has remained at 6-½ per cent — the lowest among those imposed on various types of corporations.

The truth is that section 24 has undergone amendments through a process which, in Cardozo's phrase,[20] is no more intellectual than the use of paste pot and scissors. Consequently, reliance cannot be placed on its grammatical construction in order to arrive at its meaning. As the Comparative Table shows, after the amendment of section 24 in 1957, sub-section (A) thereof did not have a title, compared to sub-section (B), entitled "Rate of Tax on Life Insurance Companies" which was added. It took another amendment in 1959 to correct the deficiency, only to commit another error. Thus while the word "assessed" was deleted from sub-section (a) in consequence of the adoption of the "pay-as-you-file" system, the same word has remained in sub-section (c) even to this date. Again, within the same year, 1963, section 24 was amended twice but in the process more errors were committed. For while Republic Act 3841 was passed ostensibly to add certain words overlooked in the amendment of the section by Republic Act 3825, the proviso on reinsurance Premium (which was the reason for the enactment of Republic Act 3825) was inadvertently omitted in the text of section 24 (b)(1).

The reference to domestic and resident foreign life insurance companies in the excepting clause of sub-section (a) is even more awkward because the exception relates to the coverage of the entire section 24 and not simply to a subsection thereof. Thus, registered general copartnerships are excepted from the coverage of section 24 because they are not subject to tax as an entity. By express provision of section 26 of the Code persons doing business as a general copartnership duly registered in the mercantile registry are subject to income tax "only in their individual capacity." On the other hand, by including domestic and resident foreign life insurance companies in the excepting clause it was never the intention to exempt them from the payment of corporate income tax, which is the subject of section 24 as a whole. Furthermore, the exclusion of registered general copartnerships from the coverage of section 24 is justified because by statutory definition they are not anyway considered "corporations." On the other hand, life insurance companies are deemed "corporations" for purposes of the Code.[21]

Thus, the haphazard amendment of section 24 by several legislative acts - as a result of which the proviso on dividend exclusion is now found in sub-section (a) — makes reliance on its grammatical construction highly unsafe and unsound in arriving at its meaning.[22] Since nothing in the history of the 1957 amendment or in the rationale of dividend exclusion indicates the contrary, we hold that domestic and resident foreign life insurance companies are entitled to the benefits of dividend exclusion, the position of the proviso allowing it notwithstanding.

Accordingly, the decision appealed from is reversed, and the respondent Commissioner of Internal Revenue is ordered to refund to the petitioner company the amount of P2,721 as excess income tax for 1958. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Bengzon, J.P., Zaldivar, Sanchez, Angeles and Fernando, JJ., concur.

Decision appealed from is reversed.

[1]The break down is as follows:

Hongkong, Shanghai Bank

P 518,57

Chartered Bank

427 .12

Credit Corp. of the Phil.

700.00

Phil, Long Distance Tel, Co.

3,375,00

San Miguel Brewery

15,379.20

Lombard Insurance Co.

342.40

Bank of P. I.

2,880.00

Goodrich International

25,000.00

Bacnotan Cement

4,832,00

Acceptance & Investment Corp.

3,651.00

P57,105.29

[2]The computation is as follows:

Foreign:

Hongkong, Shanghai Bank

P 518.27

Chartered Bank

427.12

Lombard Insurance Co.

342.40

P1,288.09

Local:

Credit Corp. of the Phil.

700.00

Phil. Long Distance Tel. Co.

3,375.00

San Miguel Brewery

15,379.20

Bank of P.I.

2,880.00

Goodrich International

25,000.00

Bacnotan Cement

4,832.63

Acceptance & Investment Corp.

3,651.00

25% of

P 55.817.83

P13.954.46

P15,242.55

[3] E. Crawford, *The Construction of Statutes*, sec. 297, 606-607 (1940).

[4] I. J. Mertens, *The Law of Federal Income Taxation*, sec. 3.26 at 59 (3 ed. 1962 [hereinafter cited as Martens]).

[5] R. Flesch, *The Art of Readability* 112 (1948).

[6] Material deleted by subsequent amendment is shown in brackets while that added or substituted is indicated by entire words in capital letters.

[7] The tax rate increases in Republic Act 600, while originally applicable only to income received from January 1, 1951 to December 31, 1953 (sec. 3), were successively extended up to December 1957 by Republic Acts 868, 1056 and 1291 until they were made permanent by Republic Act 1505.

[8] Note that sub-section (A) has no title.

[9] Note that the proviso still speaks of "the tax imposed in this section" despite the fact that it appears to qualify only sub-section (A). The phraseology has been retained in subsequent amendments of section 24.

[10] Note the failure to delete the word "assessed" from sub-section (c).

[11] Note the failure to delete the word "assessed" even in subsequent amendments.

[12] The tax exemption granted by Republic Act 901 expired on December 31, 1962. Sec 1.

[13] The proviso "Provided, however, That premiums shall not include reinsurance premiums," which was inserted in section 24(b)(1) by Republic Act 3825 is not in the text of section 24 as amended by Republic Act 3841, but the omission appears to be due to oversight as the purpose of the latest amendment was to include capital gains (and not reinsurance premiums also) in gross income of foreign non-resident corporations.

[14] See Harvard Law School, *World Tax Series: Taxation in the United States* secs. 9/2.3-2.4, at 618-620 (1963).

[15] *Supra*, note 9.

[16] See Explanatory Note, H.R. 5816, 3d Cong., 3d Sess., 3 Cong. Rec. 2716 (1956); see also Tax Note, 43 A.B.A.J. 542 (1957),

These were the same arguments that led to the 1921 amendment of the U.S. Internal Revenue Code. As Mertens writes:

"The inclusion of premium receipts in the gross taxable income of life insurance companies was recognized as

'one of the faultiest parts of the income tax act.'

"From the policyholders' point of view, life insurance constitutes a combination of insurance and investment; and therefore life insurance premiums, unlike premiums paid for other forms of insurance, constitutes in large part, contributions to capital.

"In recommending a new basis for the taxation of life insurance companies, a Treasury Department official stated to the Senate Finance Committee in 1921:

'It has been suggested — and I think it is obviously sound — that the only true basis of income of a life insurance company is its investment income - interest, dividends, and rents which it receives. The premium payments it gets are a good deal like a bank deposit. When it takes them over it creates an obligation such as the obligation of a bank to return a deposit when it is called for,'

"Since 1921, life insurance companies have been taxed upon their investment income from interest, dividends and rents (and since 1955, royalties) less deductions designed to exempt from the tax that part of this income which the companies must apply to their policy obligations and less deductions for taxes, expenses and depreciation incidental to their investments and investment income. .."8 Mertens, *supra*, note 4, sec. 44.01, at 3-5 (2d ed. 1957).

[17] Explanatory Note, H.R. 5816, *supra* note 17.

[18] See 8 Mertens, *supra*, note 4, sec. 44.17, at 29-30 (2d.1957).

[19] 3 Cong. Rec. 2786 (1956).

[20] Benjamin Cardozo, *The Growth of the Law*, 13-14 (1924).

[21] Nat. Int Rev. Code sec 84(b).

[22] Cf. U.P. Law Center, Draft Administrative Code sees. 12,210, 12.212-12.213 (1967).

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