

JOHN BARRY T. TAYAM, PETITIONER, VS. HON. RALPH G. RECTO, IN HIS CAPACITY AS SECRETARY OF FINANCE; HON. FRANCIS JOSEPH G. ESCUDERO, IN HIS CAPACITY AS SENATE PRESIDENT; AND HON....

G.R. No. 280898, April 22, 2026

Ponente: LAZARO-JAVIER, J.

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LAZARO-JAVIER, J.:

The Case

This Petition for Certiorari and Prohibition[1] assails the constitutionality of Republic Act No. 12079 or "An Act Creating a VAT Refund Mechanism for Non-Resident Tourists, Adding a New Section 112-A to the National Internal Revenue Code of 1997, as amended, for the Purpose," for allegedly violating Article VI, Section 28(1)[2] of the Constitution.

Antecedents

On March 6, 2023, House Bill No. 7292 titled "An Act Creating a VAT Refund Mechanism for Non-Resident Tourists, adding for the purpose a New Section 112-A to the National Internal Revenue Code, as amended" was approved on third reading by the House of Representatives.[3]

On March 7, 2023, House Bill No. 7292 was sent to the Senate for its concurrence. It was then referred to the Senate Committee on Ways and Means.[4]

On September 23, 2024, the Senate approved on third reading its own version of the bill pertaining to the value-added tax (VAT) refund mechanism for foreign tourists, Senate Bill No. 2415.[5]

On September 26, 2024, the House of Representatives adopted Senate Bill No. 2415 as an amendment to the chamber's counterpart measure, House Bill No. 7292. Hence, the creation of a Bicameral Conference Committee was deemed no longer necessary.[6]

On December 9, 2024, Republic Act No. 12079 providing VAT refund for foreign tourists was signed into law.[7] It inserted a new section under Title IV, Chapter I of the National Internal Revenue Code[8] designated as Section 112-A. It essentially grants VAT refund for foreign tourists under certain conditions, viz.:

SEC. 112-A. VAT Refund for Tourists. –

(a) A tourist shall be eligible for a VAT refund on locally purchased goods if the following requisites are present:(1) The goods are purchased in person by the tourist in duly accredited stores;

(2) Such goods are taken out of the Philippines by the tourist within sixty (60) days from the date of purchase; and

(3) The value of goods purchased per transaction is equivalent to at least Three thousand pesos (P3,000.00): Provided, That such threshold shall be subject to review and adjustment every three (3) years by the Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, taking into consideration the

Consumer Price Index (CPI) as published by the Philippine Statistics Authority (PSA).

(b) The Department of Finance shall engage the services of one (1) or more reputable, globally recognized, and experienced VAT refund operators to provide end-to-end solutions to the government for the establishment and operation of a VAT refund system for tourists.

(c) The refund under this section may be made either electronically or in cash.

(d) The amount necessary for the VAT refund system for tourists under this Code shall be charged against the special account in the General Fund as provided under Section 106 of this Code.

For purposes of this section, the term "tourist" means a non-resident foreign passport holder.[9]

On March 24, 2025, the Implementing Rules and Regulations (IRR) of Republic Act No. 12079 was signed by former Department of Finance (DOF) Secretary Ralph G. Recto (Secretary Recto), Bureau of Customs (BOC) Commissioner Bienvenido Y. Rubio, and Bureau of Internal Revenue (BIR) Deputy Commissioner Marissa O. Cabrerros.[10]

Section 4 of the IRR provides the requirements for VAT refund, viz.:

Section 4. Requisites for Availment. – A tourist shall be eligible to receive a refund of the VAT paid on purchased goods if the following requirements are met: a. The goods are purchased in person by the tourist from duly accredited stores;

b. The goods are physically taken out of the Philippines by the tourist as accompanied baggage, within sixty (60) days from the date of purchase; and

c. The value of the goods purchased per single transaction is equivalent to at least Three Thousand Pesos (P3,000.00) covered by a single invoice: Provided, That the amount shall be adjusted using the cumulative inflation for the past three (3) years as published by the Philippine Statistics Authority (PSA).

Filipinos with dual citizenship shall be eligible to avail [of] a VAT refund if they use their foreign passport in entering and exiting the Philippines and they fall under the definition of "tourist" in this IRR.

Sales to citizens and residents of the Philippines, and foreign nationals residing in the country (e.g., diplomats, consular officers, expatriates, and VAT-exempt foreign nationals) are not eligible for VAT refund.

A "tourist" is defined as a non-resident foreign passport holder who visits the Philippines. The term "non-resident," on the other hand, pertains to an individual who is a mere transient or sojourner who comes to the Philippines for a definite purpose which in its nature may be promptly accomplished.[11]

Further, Section 5 of the IRR enumerates the eligible goods for VAT refund:

Section 5. Eligible Goods. – The VAT refund shall only apply to retail and tangible goods, such as clothing, apparel, electronics, gadgets, jewelry, accessories, souvenirs, food or non-food consumables, and other goods intended for personal use.

The following are not qualified for the VAT refund under this IRR:

- Goods in commercial quantity;
- Goods to be consumed fully or partially in the Philippines;
- Goods purchased from e-marketplaces and other digital or online stores; and
- Services, such as transportation, accommodation, or other hospitality services.

The IRR directs the DOF to engage the services of reputable and internationally-recognized VAT refund operators. The VAT refund may be processed electronically or in cash in line with tax reforms supporting the ease of doing business.

The law was passed with the aim of "encouraging higher spending among tourists to stimulate economic growth" and to create "an opportunity to promote the Philippines' unique craftsmanship of indigenous products in communities near focal tourist destinations." [12] Secretary Recto, in his speech at the ceremonial signing of the IRR, emphasized that through this measure, the Philippines will reap almost double the economic returns. [13]

The Present Petition

Petitioner John Barry T. Tayam (Tayam) now seeks to nullify Republic Act No. 12079 on the ground that the VAT refund for non-resident foreign tourists allegedly violated the constitutional right to equal protection of the law as the measure excluded Filipino, citizens and residents from eligibility for VAT refund. [14] He cited scenarios where there is a supposed potential for legal conflicts and confusion under the assailed law:

92.1. Non-citizen residents or foreign nationals with long-term or work visas; permanent residents, aliens employed for over two years who reside in the Philippines, they pay VAT on purchases but are not eligible for refunds, which reserves VAT refunds for non-resident foreign passport holders only.

92.2. Filipino citizens living or working abroad (non-resident citizens) who hold a Philippine passport but visit the Philippines, they pay VAT on local purchases and are also ineligible for refunds, since they enter as citizens, not as "non-resident foreign passport holders." [15]

He adds that this violates the Constitutional command that taxation must be uniform, equitable, and progressive as it "creates a tax benefit for one group while excluding similarly situated consumers." [16]

Too, Tayam asserts that the government could actually lose significant amount of money from VAT refund claimed by foreign tourists. According to Tayam's analysis, for every PHP 3,000.00 spent by a tourist on goods with VAT, the maximum refund is PHP 321.43. If around 6 million tourists—the average number of tourists visiting the Philippines annually—claim the maximum VAT refund of PHP 321.43, a potential loss of approximately PHP 1.93 billion annually will be incurred. [17]

In its Comment [18] dated October 16, 2025, the State, through the Office of the Solicitor General ripostes:

First, Tayam has no legal standing to file the instant case, as there is no showing that the grant of VAT refund under Republic Act No. 12079 to non-resident tourists would result in illegal disbursement of public funds. What is refunded is simply the amount of VAT that was initially paid upon purchase of the goods. Hence, there was no disbursement of public funds. [19]

Second, the petition does not present a justiciable controversy since Tayam's alleged payment of VAT over his purchase of consumable goods is a valid tax imposed by law. [20]

Third, Republic Act No. 12079 conforms to the destination principle and cross-border doctrine on VAT transactions. [21]

Fourth, there is no violation of the equal protection clause as the classification between non-resident tourists and local tourists rests on substantial distinctions. [22]

Lastly, Republic Act No. 12079 was enacted to enable the Philippines to compete with countries that have similar programs providing VAT refund to foreign tourists. Too, it is viewed as a measure to increase the country's foreign exchange. Towards that end, local tourists and foreign tourists do not belong in the same class. [23]

Issues

First. Are the requisites for the exercise of the Court's expanded power of judicial review present?

Second. Is Republic Act No. 12079 unconstitutional?

Our Ruling

All the requisites for judicial review are present

Section 1, Article VIII of the Constitution vests the Judiciary the expanded power of judicial review, viz.:

SECTION 1. The power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Emphasis supplied)

The Court, however, does not have unfettered authority to take cognizance of just any and every claim of constitutional violation. It is settled that the power of judicial review is limited by four exacting requisites, viz.: (a) there must be an actual case or controversy; (b) the petitioners must possess locus standi; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the *lis mota* of the case.[24]

Since the existence of the third and fourth requisites were not disputed, we focus on the first and second requisites.

a. There is an actual case or controversy

The requisite of actual case or controversy exists when there is a conflict of legal rights or an assertion of opposite legal claims between the parties that is susceptible or ripe for judicial resolution as distinguished from a hypothetical or abstract difference or dispute.[25]

"In other words, there must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence." [26] There must be a definite and concrete dispute touching on the legal relations of the parties who have adverse legal interests. The reason is that the issue ceases to be justiciable when a controversy becomes moot and academic; otherwise, the court would engage in rendering an advisory opinion on what the law would be upon a hypothetical state of facts.[27]

Here, a legal dispute exists since Tayam seeks to nullify Republic Act No. 12079 on the ground that this statutory exclusion violates the equal protection clause and the constitutional command that taxation must be uniform and equitable. On this score, he asserts that the law creates a tax benefit for one group while excluding similarly situated consumers. On the other hand, the State maintains that the VAT payment on local purchases is a valid tax imposed by law. It further posits that Republic Act No. 12079 conforms to VAT principles and that the classification between non-resident tourists and local consumers rests on substantial distinctions.

Duterte v. House of Representatives,[28] citing Tañada v. Angara,[29] reaffirmed the principle that "[w]here an

action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the [J]udiciary to settle the dispute."^[30] By the mere enactment of the questioned law or the approval of the challenged action, the dispute is said to have ripened into a judicial controversy even without any other overt act.

The erudite Associate Justice Alfredo Benjamin S. Caguioa stressed that the Court is not being asked to render an advisory opinion on a hypothetical state of facts. It is being asked to determine whether a law enacted by Congress transgresses constitutional boundaries.

As Associate Justice Japar B. Dimaampao astutely observed, by granting a tax benefit, a refund of VAT only to non-resident foreign tourists, Republic Act No. 12079 differentiates between classes of persons (non-residents vs. residents/citizens). This creates an immediate impression that non-resident tourists receive preferential treatment not afforded to Filipino residents or other taxpayers who pay the same VAT on consumption of goods in the Philippines. Given that VAT should supposedly be imposed uniformly on consumption and applies to all purchasers regardless of nationality or residency, the effectivity of a law that gives special treatment to a group of consumers—at least as theorized by Tayam—would already satisfy the requisite of actual case or controversy.

Thus, where a law is challenged for being repugnant to the Constitution, and the parties assert opposing legal claims arising from its operation, an actual case or controversy plainly exists. In keeping with the Court's constitutional mandate to uphold the supremacy of the Constitution, it therefore behooves the Court to resolve the present controversy.

b. Tayam has legal standing to assail Republic Act No. 12079

Section 2, Rule 3 of the Rules of Court provides that a real party in interest is one "who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit."

Locus standi or legal standing is defined as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. To have legal standing, therefore, a suitor must show that he or she has sustained or will sustain a "direct injury" as a result of a government action, or have a "material interest" in the issue affected by the challenged official act.^[31]

Rooted in the principle of separation of powers, the Court, in *Falcis III v. Civil Registrar General*,^[32] clarified that the requirement of legal standing should still be applied even if the suit is of public character. It means that this requirement equally applies to non-traditional suitors such as taxpayers, legislators, or concerned citizens. They must still claim some kind of injury-in-fact or concrete interest in the outcome of the dispute, viz.:

The requirement of direct injury guarantees that the party who brings suit has such personal stake in the outcome of the controversy and, in effect, assures "that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."

The requirements of legal standing and the recently discussed actual case and controversy are both "built on the principle of separation of powers, sparing as it does unnecessary interference or invalidation by the judicial branch of the actions rendered by its co-equal branches of government." In addition, economic reasons justify the rule. Thus: A lesser but not insignificant reason for screening the standing of persons who desire to litigate constitutional issues is economic in character. Given the sparseness of our resources, the capacity of courts to render efficient judicial service to our people is severely limited. For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render

themselves ineffective dispensers of justice. To be sure, this is an evil that clearly confronts our [J]udiciary today.

Standing in private suits requires that actions be prosecuted or defended in the name of the real party-in-interest, interest being "material interest or an interest in issue to be affected by the decree or judgment of the case[,] [not just] mere curiosity about the question involved." Whether a suit is public or private, the parties must have "a present substantial interest," not a "mere expectancy or a future, contingent, subordinate, or consequential interest." Those who bring the suit must possess their own right to the relief sought.[33] (Emphasis supplied)

In *Falcis III*, We emphasized that anticipation of harm is not tantamount to a direct injury.[34]

Here, Tayam, as the party excluded from the statutory benefit, i.e. entitlement to the VAT refund, has sustained direct injury from the perceived unfair classification under Republic Act No. 12079.

As Associate Justice Alfredo Benjamin S. Caguioa aptly noted, the injury Tayam asserts lies in the differential legal treatment mandated by statute itself. This is neither imagined nor superficial. The exclusion operates immediately upon the law's effectivity, and the asserted harm lies in the denial of equal treatment under a statutory classification alleged to be constitutionally infirm.

At any rate, the rule on locus standi yields to the liberal policy adopted by the Court. It is a well-settled rule that the requirement of locus standi is a matter of procedure which can be relaxed when public interest so requires, such as when the matter is of transcendental importance, of overarching significance to society, or of paramount public interest.[35] In such cases, the Court justifies the necessity for relaxation of procedural niceties in view of the perceived "imminence and clarity of the threat to fundamental constitutional rights" which therefore warrants invocation of relief from the Court.

In *Chavez v. Gonzales*,[36] We held:

But as early as half a century ago, we have already held that where serious constitutional questions are involved, "the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside if we must, technicalities of procedure. Subsequently, this Court has repeatedly and consistently refused to wield procedural barriers as impediments to its addressing and resolving serious legal questions that greatly impact on public interest, in keeping with the Court's duty under the 1987 Constitution to determine whether or not other branches of government have kept themselves within the limits of the Constitution and the laws and that they have, not abused the discretion given to them.

Thus, in line with the liberal policy of this Court on locus standi when a case involves an issue of overarching significance to our society, we therefore brush aside technicalities of procedure and take cognizance of this petition, seeing as it involves a challenge to the most exalted of all the civil rights, the freedom of expression.[37]

Considering the far-reaching implications of the assailed statute on the country's tax system and its potential impact on the consuming public and the national treasury, the Court finds sufficient basis to relax the strict application of the rule on locus standi. The petition raises serious constitutional questions involving the validity of a tax statute and the alleged violation of the equal protection clause arising from the grant of a fiscal privilege to a specific class of persons. These issues are imbued with transcendental importance as they bear upon the exercise of the State's taxing power, the protection of constitutional guarantees, and the potential impact of the assailed measure on the public coffers and the consuming public at large. In such instances, procedural technicalities must yield to the Court's duty to determine whether the political branches have acted within the bounds of the Constitution. Accordingly, the Court takes cognizance of the present petition and proceeds to resolve the substantive issues raised.

Republic Act No. 12079, does not violate Section 28(1), Article VI and the equal protection clause under Section 1, Article III of the Constitution

Section 28(1), Article VI of the Constitution provides:

The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.

"Equality and uniformity in taxation simply mean that all taxable articles or kinds of property of the same class shall be taxed at the same rate. The taxing power has the authority to make reasonable and natural classifications for purposes of taxation." [38]

Indubitably, the allegations of unfairness in treatment between foreign tourists and Filipino citizens have nothing to do with the principles of equality and uniformity under the principle of taxation. If at all, Tayam essentially invokes the equal protection clause under Section 1, Article III of the Constitution.

The guaranty of equal protection of the laws though is not a guaranty of equality in the application of the laws upon all citizens of the State. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman, and child should be affected alike by a statute. Equality of operation of statutes does not mean the indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that are different. It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate. [39]

In other words, the right to equal protection of the law is not absolute, but subject to reasonable classification. If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from another. [40] As aptly ordained in *Victoriano v. Elizalde Rope Workers Union*: [41]

The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences; that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.

In the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion. It is not necessary that the classification be based on scientific or marked differences of things or in their relation. Neither is it necessary that the classification be made with mathematical nicety. Hence legislative classification may in many cases properly rest on narrow distinctions, for the equal protection guaranty does not preclude the legislature from recognizing degrees of evil or harm, and legislation is addressed to evils as they may appear. [42] (Citations omitted)

A reasonable classification: (1) must rest on substantial distinctions; (2) must be germane to the purposes of the law; (3) must not be limited to existing conditions only; and (4) must apply equally to all members of the same

class.[43]

Here, Republic Act No. 12079 grants VAT exemption to foreign tourists to boost the country's tourism and encourage them to patronize our local products. In her sponsorship speech, Congresswoman Mikaela Suansing narrated the objective of the law and the factual circumstances that led to its sponsorship per House Bill No. 7292, viz.:

Mr. Speaker and my esteemed colleagues good evening. Today, as your Vice Chairperson of the Committee on Ways and Means, it is my privilege to sponsor Committee Report No. 330 or House Bill No. 7292, which establishes a VAT refund mechanism for non-resident tourists.

As we open our borders to visitors after enduring the COVID-19 pandemic, our government has been focusing on boosting our economy and recovering from losses. Economic activities derived from tourism were badly diminished due to lockdowns and travel restrictions. Before the pandemic, the Department of Tourism estimated that the total annual expenditures of tourists amounted to P482 billion. However, this shrank by 55.5 percent during the pandemic, going as low as P215 billion by December 2022.

Fortunately, the DOT Tourist Arrival Data reported an increase in annual inbound travelers, from only 141,098 in 2021 to 2,025,413 in 2022. In 2023, the Department of Tourism targets to welcome 4.8 million foreign tourists. Through this proposed VAT refund for tourists, we seek to stimulate tourism and trade by providing incentives to tourists, thereby making the country competitive against our neighboring peer countries and boosting the profitability of local businesses. With the proposed VAT refund, we expect a 13 percent increase in tourist arrivals, translating to an additional 624,000 tourists every year.

Moreover, we project that the VAT refund for tourists could increase tourist spending by P20.81 billion in its first full year of implementation alone. Taking into consideration the VAT revenue to be foregone, we expect that net increase in tourism revenues from implementing the VAT Refund Program to amount to P5.2 billion per year. That is net of all of forgone revenues.[44]

Verily, the law does not discriminate against Filipino citizens. The primary goal of the State to boost tourism can only be realized if certain privileges are granted to foreign tourists. Nothing more.

Accordingly, this policy is based on the nature of VAT as a tax on consumption. As a general rule, the VAT system uses the destination principle as a basis for the jurisdictional reach of the tax. Goods and services are taxed only in the country where they are consumed. This is the reason why exports are zero-rated under the National Internal Revenue Code, while imports are taxed.[45]

Here, the goods subject of the VAT refund are "taken out of the Philippines by the tourist within 60 days from the date of purchase." It simply means that the goods are meant to be consumed outside the Philippines. If goods are to be consumed fully or partially in the Philippines, the destination principle dictates that it must be taxed here. This is embodied in Section 5 of the IRR which outlines the rules as to the eligible goods in relation to the VAT refund scheme, viz.:

Section 5. Eligible Goods. – The VAT refund shall only apply to retail and tangible goods, such as clothing, apparel, electronics, gadgets, jewelry, accessories, souvenirs, food or non-food consumables, and other goods intended for personal use.

The following are not qualified for the VAT refund under this IRR:

- a. Goods in commercial quantity;

- b. Goods to be consumed fully or partially in the Philippines;

- c. Goods purchased from e-marketplaces and other digital or online stores; and

- d. Services, such as transportation, accommodation, or other hospitality services.

Associate Justice Maria Filomena D. Singh eloquently discussed how the perceived disparity and supposed "unfair" classification between foreigners and Filipino citizens were all in accordance with the nature of how the VAT system works.

The quoted Section 5 of the IRR supports the view that a tourist is only eligible for the VAT refund if the consumption of eligible goods happens outside the Philippines. It likewise provides for a temporal limitation that ensures that the eligible goods purchased by a tourist will have to be brought out of the country, i.e., such goods are taken out of the Philippines by the tourist within 60 days from the date of purchase; otherwise, no VAT refund will be granted to the tourist.

There is no merit to Tayam's argument that foreigners who hold long-term visas, such as work or retirement visas, who may be allowed to stay in the Philippines for longer periods, will be at a disadvantage as compared to tourists who stay in the Philippines for much shorter periods. These foreigners who are allowed to stay for a much longer period in the Philippines may still avail of the VAT refund for as long they have no residence in the Philippines, and they take the goods out of the country within 60 days from the date of the purchase and consume it somewhere else. Otherwise, it is only logical to conclude that these foreigners who stay for longer periods in the Philippines will be able to fully or partially consume in the country the eligible goods they purchased here.

Likewise, it is unreasonable to hold that Filipinos living or working abroad will also be at a disadvantage when they visit the Philippines if they used their Philippine passports. These individuals are, by the mere fact that they hold Philippine passports, remain to be citizens of the Philippines. Simply, they cannot be considered "foreign tourists" in their own country—their legal tie to the Philippines remains full and intact, as compared to a tourist who visits the country for a short period of time and for limited purposes. Whether these Filipinos take out the eligible goods they purchased within 60 days is immaterial because their Philippine citizenship allows them to stay in the Philippines for as long as they like; they cannot be deported anywhere else because this country remains to be their home. Thus, they will be able to fully or partially consume the eligible goods here.

Lastly, the Court takes judicial notice that the concept of VAT refund for foreign tourists is a well-established international practice. The Philippines is among the last few countries in Asia to adopt such a system.

Our Asian neighbors, Indonesia, Malaysia, Singapore, Thailand, Vietnam, China, and Japan, have long implemented this VAT refund mechanism for foreign tourists. Even countries that are members of the European Union have enforced similar VAT refund systems for foreign tourists.[46]

Therefore, a mere difference in treatment, without more, does not violate the equal protection clause. Granting VAT refund to foreign tourists was not arbitrarily done. It is a policy decision based on legitimate state interests, i.e., the need to remain competitive as a global tourist destination. In fine, foreign tourists may be granted privileges and benefits that are not extended to Filipino citizens, so long as these distinctions are based on reasonable and justifiable classifications, as in here.

ACCORDINGLY, the Petition is DISMISSED. Republic Act No. 12079 is declared NOT UNCONSTITUTIONAL.

SO ORDERED.

Gesmundo, C.J., Caguioa, Hernando, Inting, Zalameda, Gaerlan, Rosario, Dimaampao, Marquez, Kho, Jr., and Villanueva, JJ., concur.

Leonen, SAJ., see separate opinion.

Lopez[*], J., on leave.

Singh, J., see concurring opinion.

[*] On leave.

[1] Rollo, pp. 3-37.

[2] CONST., article VI, sec. 28. (1) The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.

[3] Legislative Digital Resources, available at <https://ldr.senate.gov.ph/bills/house-bill-no-7292-19th-congress> (last accessed on August 26, 2025).

[4] Legislative Digital Resources, available at <https://ldr.senate.gov.ph/bills/house-bill-no-7292-19th-congress> (last accessed on August 26, 2025).

[5] Senate of the Philippines, VAT Refund Mechanism for Non-Resident Tourists, available at https://legacy.senate.gov.ph/lis/bill_res.aspx?congress=19&q=SBN-2415 (last accessed on August 26, 2025).

[6] Senate of the Philippines. VAT Refund Mechanism for Non-Resident Tourists, available at https://legacy.senate.gov.ph/lis/bill_res.aspx?congress=19&q=SBN-2415 (last accessed on August 26, 2025).

[7] Presidential Communications Office. PBBM signs law an VAT refund program for non-resident tourists, available at https://pco.gov.ph/news_releases/pbbm-signs-law-on-vat-refund-program-for-non-resident-tourists/ (last accessed on August 16, 2025)

[8] TAX CODE (1998).

[9] Republic Act No. 12079 (2024), sec. 1.

[10] Department of Finance, PH is now VAT-free for foreign tourists, available at <https://www.dof.gov.ph/ph-is-now-vat-free-for-foreign-tourists/> (last accessed on August 10, 2025)

[11] Implementing Rules and Regulations of Republic Act No. 12079 (2024), sec. 3(g).

[12] Presidential Communications Office PBBM signs law on VAT refund program for non-resident tourists, available at https://pco.gov.ph/news_releases/pbbm-signs-law-on-vat-refund-program-for-non-resident-tourists/ (last accessed on August 16, 2025)

[13] Department of Finance. PH is now VAT-free for foreign tourists, available at [https://www.dof.gov.ph/ph-is-now-vat-free-for-foreign-tourists/#:~:text=12079%2C%20or%20the%20VAT%20Refund,\(BOC\)%20Commissioner%20Bienvenido%20Y.](https://www.dof.gov.ph/ph-is-now-vat-free-for-foreign-tourists/#:~:text=12079%2C%20or%20the%20VAT%20Refund,(BOC)%20Commissioner%20Bienvenido%20Y.) (last accessed on August 16, 2025).

[14] Rollo, p. 25.

[15] Id.

[16] Id.

[17] Id. at 27.

[18] Id. at 70-96.

[19] Id. at 73-77.

[20] Id. at 77-79.

[21] Id. at 79-80.

[22] Id. at 80-83.

[23] Id. at 83-93.

[24] *Ifurung v. Carpio Morales*, 831 Phil. 135, 152 (2018) [Per J. Martires, En Banc].

[25] *Lim Bio Hian v. Lim Eng Tian*, 823 Phil. 12, 16-17 (2018) [Per J. Martires, Third Division].

[26] *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1090 (2017) [Per J. Perlas-Bernabe, En Banc].

[27] *Lim Bio Hian v. Lim Eng Tian*, 823 Phil. 12, 17 (2018) [Per J. Martires, Third Division].

[28] G.R. No. 278353, July 25, 2025 [Per SAJ. Leonen, En Banc].

[29] 338 Phil. 546, 574 (1997) [Per J. Panganiban, First Division].

[30] *Duterte v. House of Representatives*, G.R. No. 278353, July 25, 2025 [Per SAJ Leonen, En Banc], at 27. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[31] *Ching v. Bonachita-Ricablanca*, 887 Phil. 979, 992 (2020) [Per J. Delos Santos, Second Division].

[32] 861 Phil. 388 (2019) [Per J. Leonen, En Banc].

[33] Id. at 531-532.

[34] Id. at 535.

[35] *Pimentel III v. Atty. Matula*, G.R. Nos. 274778, 275405, & 276233, December 3, 2025 [Per J. Lazaro-Javier, En Banc] at 44. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[36] 569 Phil. 155 (2008) [Per C.J. Puno, En Banc].

[37] Id. at 193-194.

[38] *Kapatiran Ng Mga Naglilingkod Sa Pamahalaan Ng Pilipinas, Inc. v. Hon. Tan*, 246 Phil. 380, 389-390 (1988) [Per J. Padilla, En Banc], citing *City of Baguio v. De Leon*, 134 Phil. 912, 919-920 (1968) [Per J. Fernando].

[39] *Victoriano v. Elizalde Rope Workers Union*, 158 Phil. 60, 86-87 (1974) [Per J. Zaldivar, En Banc].

[40] *Tiu v. Court of Appeals*, 361 Phil. 229, 241 (1999) [Per J. Panganiban, En Banc].

[41] 158 Phil. 60 (1974) [Per J. Zaldivar, En Banc].

[42] Id. at 87-88.

[43] *Sameer Overseas Placement Agency, Inc. v. Cabiles*, 740 Phil. 403, 435 (2014) [Per J. Leonen, En Banc].

[44] Vol. 5 Record, House, 19[th] Congress, 1[st] Regular Session (February 28, 2023).

[45] *Maibarara Geothermal, Inc. v. Commissioner of Internal Revenue*, 925 Phil. 859, 864 (2022) [Per J. Lopez, J., Second Division].

[46] VAT – Value Added Tax, available at https://europa.eu/youreurope/citizens/consumers/shopping/vat/index_en.htm (last accessed on August 23, 2025).

SEPARATE CONCURRING AND DISSENTING OPINION

LEONEN, SAJ.:

It is my view that the petition should be dismissed outright due to lack of justiciable controversy. Furthermore, it is undisputable that petitioner lacks legal standing to assail the constitutionality of the law on Value-Added Tax (VAT) Refund for Tourist or Republic Act No. 12079. Even if we ease the rule on legal standing, this Court must conscientiously exercise its discretion in allowing legal personality in cases imbued with constitutional issues.

Parties who come before this Court alleging violations of their constitutional rights of unconstitutionality of government actions must have the capability to shape the issues they raise and resources to move their cases forward.[1] Beyond the act of filing a petition, they must be able to responsibly articulate their arguments, substantiate their allegations and withstand the proceedings before this Court. Only then should this Court be liberal in allowing legal standing. "Judicial wisdom is, in large part, the art of discerning when courts choose not to exercise their perceived competencies." [2]

I

Article VIII, Section 5(1) of the Constitution provides for this Court's "original jurisdiction over... petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus." However, despite the propriety of the procedural vehicle employed, jurisdiction in itself will not merit a ruling on constitutionality of an assailed law, as it is justiciability which decides whether this Court may adjudicate the constitutional issues brought before it.[3] Thus, this Court passes upon the constitutionality of a law or executive act if it is "directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned." [4] This justiciability requirement is linked with the principle of separation of powers and prevents the judiciary against unnecessary intrusion on the powers of the other branches of government.[5]

This Court shall follow the dictates of the constitutional policy of avoidance, and satisfy itself of the presence of requisites for judicial review, before it determines the constitutionality of a government act.[6] Thus, the following requirements for justiciability must be met: "first, there must be an actual case or controversy; second, petitioners must possess locus standi; third, the question of constitutionality must be raised at the earliest opportunity; and fourth, the resolution of the question is unavoidably necessary to the decision of the case itself." [7]

Of most significant among the justiciability requirements is the actual case or controversy requirement embodied in Article VIII, Section 1 of the 1987 Constitution, which states that "[j]udicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable."

An actual case or controversy exists when there is "a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution" [8] as emphasized in *Information Technology Foundation of the Philippines v. Commission on Elections*: [9]

"[F]or a court to exercise its power of adjudication, there must be an actual case or controversy—one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice. ...[C]ourts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging." The controversy must be justiciable—definite and concrete, touching on the legal relations of parties having adverse legal interests. In other words, the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other; that is, it must concern a real and not a merely theoretical question or issue. There ought to be an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.[10] (Emphasis supplied, citations omitted)

Because of the presumption of constitutionality of legislative enactments, the Court mediates to allocate constitutional boundaries only to determine conflicting claims and establish for the parties, in an actual controversy, their rights after full opportunity of arguments by the parties, thus:

[W]hen the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution. Even then, this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Narrowed as its function is in this manner, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.[11] (Emphasis supplied)

Thus, an actual case or controversy exists when: (a) there are actual facts to enable courts to intelligently adjudicate the issues; or (b) there is a clear and convincing showing of a contrariety of legal rights.[12]

Actual facts must exist and be clearly demonstrated for the courts to determine whether there has been a breach of constitutional text, thus:

Even the expanded jurisdiction of this Court under Article VIII, Section 1 does not provide license to provide advisory opinions. An advisory opinion is one where the factual setting is conjectural or hypothetical. In such cases, the conflict will not have sufficient concreteness or adversariness so as to constrain the discretion of this Court. After all, legal arguments from concretely lived facts are chosen narrowly by the parties. Those who bring theoretical cases will have no such limits. They can argue up to the level of absurdity. They will bind the future parties who may have more motives to choose specific legal arguments. In other words, for there to be a real conflict between the parties, there must exist actual facts from which courts can properly determine whether there has been a breach of constitutional text.[13] (Emphasis supplied)

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*,^[14] this Court ruled that petitioners failed to present actual case or controversy upon finding that petitioners' allegations of abuse were not based on real events.^[15] Also, in *Republic of the Philippines v. Herminio Harry Roque*,^[16] this Court found the petition lacking actual justiciable controversy for failure of the parties to show "how they are left to sustain or are in immediate danger to sustain some direct injury"^[17] because of the enforcement of the law. In *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*,^[18] this Court found no actual facts to declare Department Order No. 118-12 and Memorandum Circular No. 2012-001 unconstitutional, because the allegations were unsupported by actual facts and founded on mere speculations.^[19]

Despite, however, the absence of actual facts, an actual case or controversy can still exist when there is a clear and convincing showing of a contrariety of legal rights.^[20] As explained in *Calleja v. Executive Secretary*:^[21]

An actual case or controversy exists when there is a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. The issues presented must be definite and concrete, touching on the legal relations of parties having adverse interests. There must be a contrariety of legal rights that can be interpreted and enforced on the basis of

existing law and jurisprudence.[22] (Citations omitted)

A party asserting a contrariety of legal rights must show that the law is so contrary to their rights that there is no other interpretation, but that there is a factual breach of right or that the provision be declared unconstitutional:

Thus, in asserting a contrariety of legal rights, merely alleging an incongruence of rights between the parties is not enough. The party availing of the remedy must demonstrate that the law is so contrary to their rights that there is no interpretation other than that there is a factual breach of rights. No demonstrable contrariety of legal rights exists when there are possible ways to interpret the provision of a statute, regulation, or ordinance that will save its constitutionality. In other words, the party must show that the only possible way to interpret the provision is one that is unconstitutional. Moreover, the party must show that the case cannot be legally settled until the constitutional issue is resolved, that is, that it is the very *lis mota* of the case, and therefore, ripe for adjudication.[23] (Citation omitted)

Constitutional challenges on a law based on either: (a) existence of facts showing actual breach; or (b) a demonstrable contrariety of legal rights are considered "as applied" challenges.[24] In an "as applied" challenge, courts determine the existence of an actual case by reviewing the facts and allegations of unconstitutionality as applied to a party.[25] A party claiming violation of constitutional right can raise any constitutional ground; such as absence of due process, lack of fair notice, lack of ascertainable standards, overbreadth, or vagueness, so long as the party asserts violation of one's own rights.[26]

Exceptionally, however, without need of alleging a factual breach or contrariety of legal rights, a party may still challenge a provision's constitutionality through a facial challenge.[27] While an "as applied" challenge "considers only extant facts affecting real litigant",[28] a facial challenge involves "an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities." [29] A facial challenge is considered as a narrow exception to the general rule that there must be an actual case or controversy before the court exercises judicial review:

Indeed, "on its face" invalidation of statutes results in striking them down entirely on the ground that they might be applied to parties not before the Court whose activities are constitutionally protected. It constitutes a departure from the case and controversy requirement of the Constitution and permits decisions to be made without concrete factual settings and in sterile abstract contexts.[30] (Citations omitted)

This Court established three exceptional circumstances when a facial review of the law may be allowed due to the looming threat of violations on constitutional rights:

First, in cases involving freedom of expression and its cognates, a facial challenge of a law may be allowed. This contemplates cases where a law: (1) exerts prior restraint on free speech; and (2) is overbroad, creating a chilling effect on free speech. Thus, where no chilling effect is alleged, courts should exercise judicial restraint.

Thus, in *Calleja*, despite the absence of actual facts, a facial review of the law was permitted because the petitioners sufficiently raised "concerns regarding the freedom of speech, expression, and its cognate rights."

....

Second, judicial review is also proper, despite no actual facts, when a violation of fundamental rights is involved—one so egregious or so imminent that judicial restraint would mean that such fundamental rights would be violated. In *Parcon-Song v. Parcon*, this Court explained: The violation must be so demonstrably and urgently egregious that it outweighs a reasonable policy of deference in such specific instance. The facts constituting that violation must either be uncontested or established on trial. The basis for ruling on the constitutional issue must also be clearly alleged and traversed by the parties. Otherwise, this Court will not

take cognizance of the constitutional issue, let alone rule on it.

"Egregiousness" pertains to how prevalent such violations of fundamental rights would be. They should be so widespread that virtually any citizen, properly situated, could raise the issue. An example of a law with such wide coverage was ruled upon in *Samahan ng mga Progresibong Kabataan v. Quezon City*, which reviewed curfew ordinances issued by the local governments of Quezon City, Manila, and Navotas.

. . . .

Third, judicial review is proper, despite no actual facts, when it involves a constitutional provision invoking emergency or urgent measures, and such review can potentially be rendered moot by the transitoriness of the emergency. Thus, the questioned action would be capable of repetition, yet because of the transitoriness of the emergency involved, would evade judicial review and not allow any relief. Under such circumstances, this Court may provide controlling doctrine over the provision.[31] (Emphasis supplied, citations omitted)

A facial challenge should be used "only as a last resort"[32] and only when the requisites for its applicability are sufficiently established, such as to avert the chilling effect on protected speech, in cases of egregious violation of fundamental rights, and in violation of constitutional provisions on emergency measures.[33] If these conditions are not adequately met, parties raising constitutional issues must establish the existence of actual facts or contrariety of rights to prove that there exists an actual justiciable controversy.[34]

In the present case, petitioner seeks, judicial review of the constitutionality of the law on VAT Refund for Tourist or Republic Act No. 12079 claiming that "certain provisions of the Act are possibly inconsistent with constitutional principles or that raises issues of legal interpretation that require clarification by Judiciary Branch." [35] Petitioner further states that "[g]iven the significance of the legal questions at hand and their potential impact on both domestic law and international tourism, the petitioner seeks judicial determination to ensure that the provisions of the stated Republic Act adhere to the principles of justice and legality." [36] He claims that "as a Filipino resident and taxpayer, [he] believes this policy is unjust" and the law "has the potential to cause irreversible harm unless corrected through judicial review." [37]

Petitioner's allegations are obviously based on speculation, surmises and theories with his use of the words "possibly" and "potential." Petitioner's allegations are unequivocally not based on actual facts. There was not even an assertion of contrariety of legal rights, such that the law will be so contrary to his rights that there is no other interpretation, but that there is a factual breach of right or that the provision be declared unconstitutional. Even the requisites for applicability of a facial challenge—to avert the chilling effect on protected speech, in cases of egregious violation of fundamental rights, and in violation of constitutional provisions on emergency measures—are not alleged or established.

Also, petitioner admits himself that he only seeks "issues of legal interpretation that require clarification," Even the ponente points out the presence of an actual case "as theorized by [petitioner]." [38] This Court does not issue advisory opinions nor does it have the mandate to answer all of life's questions no matter how interesting or compelling it is, as emphasized in *Falcis III v. Civil Registrar General*: [39]

This Court's constitutional mandate does not include the duty to answer all of life's questions. No question, no matter how interesting or compelling, can be answered by this Court if it cannot be shown that there is an "actual and an antagonistic assertion of rights by one party against the other in a controversy wherein judicial intervention is unavoidable."

This Court does not issue advisory opinions. We do not act to satisfy academic questions or dabble in thought experiments. We do not decide hypothetical, feigned, or abstract disputes, or those collusively arranged by parties without real adverse interests. If this Court were to do otherwise and jump headlong into ruling on

every matter brought before us, we may close off avenues for opportune, future litigation. We may forestall proper adjudication for when there are actual, concrete, adversarial positions, rather than mere conjectural posturing:

....

As this Court makes "final and binding construction[s] of law[.]" our opinions cannot be mere counsel for unreal conflicts conjured by enterprising minds. Judicial decisions, as part of the legal system, bind actual persons, places, and things. Rulings based on hypothetical situations weaken the immense power of judicial review.

....

It is not enough that laws or regulations have been passed or are in effect when their constitutionality is questioned. The judiciary interprets and applies the law. "It does not formulate public policy, which is the province of the legislative and executive branches of government." Thus, it does not—by the mere existence of a law or regulation—embark on an exercise that may render laws or regulations inefficacious.

Lest the exercise of its power amount to a ruling on the wisdom of the policy imposed by Congress on the subject matter of the law, the judiciary does not arrogate unto itself the rule-making prerogative by a swift determination that a rule ought not exist. There must be an actual case, "a contrast of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence."^[40] (Emphasis supplied, citation omitted)

This Court must ensure that an actual case or controversy exists before constitutionality of law is ruled upon, as rulings based on hypothetical situations weaken the immense power of judicial review. It is never enough that laws or regulations have been passed or are in effect to question its constitutionality; otherwise, this Court will forestall proper adjudication when there are actual, concrete, adversarial positions, rather than mere conjectural posturing.

II

Not only is this petition not justiciable for failing to present an actual case or controversy, but also, petitioner does not possess the requisite legal standing to file this petition.

Legal standing or *locus standi* is the "right of appearance in a court of justice on a given question."^[41] This requirement prevents the courts from indiscriminately opening their doors to all types of suits and suitors:

The requirements of legal standing and the recently discussed actual case and controversy are both "built on the principle of separation of powers, sparing as it does unnecessary interference or invalidation by the judicial branch of the actions rendered by its co-equal branches of government." In addition, economic reasons justify the rule. Thus: A lesser but not insignificant reason for screening the standing of persons who desire to litigate constitutional issues is economic in character. Given the sparseness of our resources, the capacity of courts to render efficient judicial service to our people is severely limited. For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice. To be sure, this is an evil that clearly confronts our judiciary today.^[42] (Emphasis supplied)

To possess legal standing, a party must have "personal and substantial interest in the case such that [they have] sustained, or will sustain, direct injury as a result of its enforcement."^[43] Interest means "material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest"^[44] and it is a present substantial interest, not a "mere expectancy or a future, contingent, subordinate, or consequential interest."^[45]

In exceptional cases, those who have no personal or substantial interest in the challenged governmental act, but whose petitions nevertheless raise constitutional issue of critical significance, were allowed legal standing as, "non-traditional suitors", specifically: (1) concerned citizens, when there are issues of transcendental importance which must be settled early; (2) taxpayers, when there are claims of illegal disbursement of public funds; (3) voters, when there is obvious interest in the validity of the election law in question; and (4) legislators, when the official action complained of infringes their prerogatives as legislators.[46] However, these parties must still claim some kind of injury-in-fact:

Even for exceptional suits filed by taxpayers, legislators, or concerned citizens, this Court has noted that the party must claim some kind of injury-in-fact. For concerned citizens, it is an allegation that the continuing enforcement of a law or any government act has denied the party some right or privilege to which they are entitled, or that the party will be subjected to some burden or penalty because of the law or act being complained of. For taxpayers, they must show 'sufficient interest in preventing the illegal expenditure of money raised by taxation[.]'[47] (Citations omitted)

Thus, standing in a constitutional suit is still premised on a personal, direct, and material injury, whether it is shared with the public in general or only with a defined class.[48] As rule, in raising constitutional challenges, a party invoking one's right as citizen must show: (1) personal suffering of some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury, which is fairly traceable to the challenged action; and (3) the injury, which is likely to be redressed by a favorable action.[49]

Also, parties must possess their own right to the relief sought, and mere general invocation of their rights as citizen or a taxpayer is deemed insufficient, as emphasized by the Court in *Pangilinan v. Cayetano*:^[50]

[P]ersons invoking their rights as citizens must satisfy the following requisites to file a suit: (1) they must have "personally suffered some actual or threatened injury as a result of the allegedly illegal conduct of government"; (2) "the injury is fairly traceable to the challenged action"; and (3) "the injury is likely to be redressed by a favorable action."

In G.R. Nos. 239483 and 240954, what petitioners assail is an act of the President, in the exercise of his executive power. They failed to show the actual or imminent injury that they sustained as a result of the President's withdrawal from the Rome Statute. Again, "whether a suit is public or private, the parties must have 'a present substantial interest,' not a 'mere expectancy or a future, contingent, subordinate, or consequential interest.'"

Similarly, petitioners have no standing as taxpayers. In cases involving expenditure of public funds, also known as a taxpayer's suit, "there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional[.]"

Petitioners here failed to show any illegal expenditure of public funds. To allow these petitioners who suffer no injury to invoke this Court's discretion would be to allow everyone to come to courts on the flimsiest of grounds.

Parties must possess their own right to the relief sought, and a general invocation of citizen's or a taxpayer's rights is insufficient. This Court must not indiscriminately open its doors to every person urging it to take cognizance of a case where they have no demonstrable injury. This may ultimately render this Court ineffective to dispense justice as cases clog its docket.[51] (Citation omitted)

In *Pagua v. Office of the President*,^[52] the Court dismissed the petition without reaching the merits, and deferred "for another day the resolution of the question raised, novel and fundamental it may be"^[53] for lack of a case or controversy grounded on petitioner's lack of capacity to sue. The Court held that petitioner's citizenship and taxpayer status did not sufficiently clothe him with standing to bring this suit.^[54] In *Advocates for Truth in*

Lending, Inc. v. Bangko Sentral Monetary Board[55] where petitioners assert a public right to assail CB Circular No. 905, the Court held they did not possess sufficient interest in the vindication of the public order and did not pass the "direct injury" test, such that they have "a personal and substantial interest in the case such that [s]he has sustained, or will sustain direct injury as a result." [56]

To emphasize, the party challenging a constitutionality of the law must assert a specific and concrete legal claim or show the law's direct adverse effect on them.[57] One cannot have standing unless one's constitutional rights are affected by the assailed governmental act's operation.[58] A party bringing the case must prove a personal stake in its outcome, assuring "that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions." [59]

Only those who have the capability to shape the issues they raise and the resources to move their cases forward should be granted liberality in legal standing to raise violations of constitutional rights or unconstitutionality of government actions.[60] Beyond the act of filing a petition, they would have been able to responsibly articulate their arguments, substantiate their allegations and withstand the proceedings before this Court. They could responsibly move the case forward based on their experiences, resources, legal or technical know-how. Only when this Court is satisfied that the parties, through their counsel, framed the controversy with adverseness produced from their materials, should this Court exercise its discretion to relax its rule on legal standing. Such is necessary so as this Court will not fall into the temptation of making its own argument and substituting its own discretion in developing constitutional issues.

As I have opined in a similar case, proper representation, particularly in class suit, is a must to be liberal in relaxing the rule on legal standing:

Those who bring class suits do so, carrying a heavy burden of representation. All the parties represented may not have consented to the agency imposed on them.

Courts, therefore, must ensure that the parties that bring the suit are sufficiently numerous to ensure that all possible interests and arguments have been considered. The community, class, group, or identity that is represented must be sufficiently defined so that the court will be able to properly assess that the parties bringing the suit are properly representative.

In view of the technical nature of some environmental cases, not only should the parties be representative in terms of the interests and arguments that they bring, they must likewise show that they have the capability to bring reasonably cogent, rational, scientific, well-founded arguments. This is so because if they purportedly represent a community, class, group, or identity, we should assume that all those represented would have wanted to argue in the best possible manner.

The cogency and representativeness of the arguments can readily be seen in the initiatory pleading. In the special civil actions invoked in this case, this court has the discretion to scrutinize the initiatory pleading to determine whether it should grant due course prior or after the filing of a comment. In my view, this pleading falls short of the requirement of representativeness.[61] (Emphasis supplied)

In the present case, petitioner asserts his legal standing as: (a) a resident citizen who "has vested interest in ensuring that the law complies with the constitutional requirement of being uniform and equitable"; (b) a consumer who has "legitimate interest" in ensuring equality and fairness; (c) a taxpayer, who is "directly affected by the laws that govern taxation" and "has direct interest in ensuring that tax laws are applied fairly and in accordance with constitutional principles"; (d) a professional who has "direct interest in ensuring that laws are governing taxation and legal principles, including those relating to VAT refunds, are constitutionally sound and fairly applied; (e) a former college instructor and senior high school teacher who can demonstrate that the VAT exemption impacts his ability to effectively teach business and economics subjects; and (f) a youth and graduate

student who "find it unfair that foreign tourists receive VAT exemptions while [he], with a limited budget, [is] not entitled to the same benefits." [62]

Clearly, petitioner does not have a material interest, or an interest in issues affected by the law that would give him legal standing. Even as a non-traditional suitor, i.e. citizen and taxpayer, he did not prove that the issues he raised are of transcendental importance which must be settled early, nor did he claim illegal disbursement of public funds. Even then, "[t]ranscendental interest is not a talisman to blur the lines of authority drawn by our most fundamental law." [63] Its general invocation cannot negate the requirement of locus standi. [64] The following factors to determine whether an issue is of transcendental importance: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition, by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised, [65] were not even raised and shown here. Petitioner does not even claim direct injury and simply "find it unfair that foreign tourists receive VAT exemptions while [he], with a limited budget, [is] not entitled to the same benefits." He claims that "this disparity affects [his] ability to travel locally and [he has a] personal stake in challenging this unequal treatment." [66]

To reiterate, a party challenging the constitutionality of the law must assert a specific and concrete legal claim or show the law's direct adverse effect on them. [67] One must prove a personal stake in its outcome so as to be able to fully articulate their arguments before this Court and shape the issues presented before this Court. [68] Such party and its counsel must satisfy the Court that they can responsibly move the case forward based on their experiences, resources, legal or technical know-how, and based on how they framed the controversy in their pleadings with adverseness produced from their materials. Only then should this Court relax the rule on legal standing for such party and counsel. "Judicial wisdom is, in large part, the art of discerning when courts choose not to exercise their perceived competencies." [69] This is not such a case where we should relax our rule.

Filing cases in the Supreme Court should never be considered except when all the justiciability requirements are present. [70] We cannot privilege those who seek media mileage over those who would have the proper legal position and motives. Not only will the overeagerness to file waste this Court's resources, but it also puts in unnecessary peril the legal arguments of the party that has an actual case and legal standing. Without proper legal standing in relation to an actual case, arguments raised will amount to a mere advisory opinion undermining the legal position and choices of a party with legal standing. [71]

For failure to show that there exists an actual controversy or that petitioner has legal standing, the present petition should have been dismissed outright as it is inefficient to proceed to deliberate on the other issues raised by petitioner. The procedural and substantial issues hinted in the petition will better be adjudicated with the real party with legal standing.

In view of the foregoing, the petition should be denied outright.

[1] J. Leonen, Concurring Opinion in *Arigo v. Swift*, 743 Phil. 8, 72 (2014) [Per J. Villarama, Jr., En Banc].

[2] *Falcis III v. Civil Registrar General*, 861 Phil. 388, 413 (2019) [Per J. Leonen, En Banc].

[3] *Lagman v. Ochoa, Jr.*, 888 Phil. 434, 469-471 (2020) [Per J. Leonen, En Banc].

[4] *Id.* at 470 citing *National Economic Protectionism Association v. Ongpin*, 253 Phil. 643, 650 (1989) [Per J. Paras, En Banc]; *Philippine Association of Colleges and Universities v. Secretary of Education*, 97 Phil. 806, 809 (1955) [Per J. Bengzon, First Division].

- [5] *Lagman v. Ochoa, Jr.*, 888 Phil. 434, 471 citing *J. Corona, Concurring Opinion in Galicto v. Aquino III*, 683 Phil. 141, 182 (2012) [Per J. Brion, En Banc].
- [6] *Parcon-Song v. Parcon*, 876 Phil. 364, 398 (2020) [Per J. Leonen, En Banc].
- [7] *Lagman v. Ochoa, Jr.*, 888 Phil. 434, 470-471 (2020) [Per J. Leonen, En Banc]. (Citations omitted)
- [8] *Information Technology Foundation of the Phils. v. Commission on Elections*, 499 Phil. 281, 304 (2005) [Per J. Panganiban, En Banc].
- [9] 499 Phil. 281 (2005) [Per J. Panganiban, En Banc].
- [10] *Id.* at 304-305.
- [11] *Angara v. Electoral Commission*, 63 Phil. 139, 158-159 (1936) [Per J. Laurel, En Banc].
- [12] *Universal Robina Corporation v. Department of Trade and Industry*, 936 Phil. 17, 28-29 (2023) [Per J. Leonen, En Banc].
- [13] *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 245-246 (2018) [Per J. Leonen, En Banc].
- [14] 646 Phil. 452 (2010) [Per J. Carpio-Morales, En Banc].
- [15] *Id.* at 482-483.
- [16] 718 Phil. 294 (2013) [Per J. Perlas-Bernabe, En Banc].
- [17] *Id.* at 305.
- [18] 836 Phil. 205 (2018) [Per J. Leonen, En Banc].
- [19] *Id.* at 248-249.
- [20] *Universal Robina Corporation v. Department of Trade and Industry*, 936 Phil. 17, 29 (2023) [Per J. Leonen, En Banc].
- [21] 918-B Phil. 1 (2021) [Per J. Carandang, En Banc].
- [22] *Id.* at 55-56.
- [23] *Executive Secretary Mendoza v. Pilipinas Shell Petroleum Corp.*, 936 Phil 538, 564 (2023) [Per J. Leonen, En Banc].
- [24] *Universal Robina Corporation v. Department of Trade and Industry*, 936 Phil. 17, 30 (2023) [Per J. Leonen, En Banc].
- [25] *Initiatives for Dialogue and Empowerment through Alternative Legal Services, Inc. v. Senate*, 942 Phil. 1, 33 (2023) [Per J. Leonen, En Banc].
- [26] *Disini v. Secretary of Justice*, 727 Phil. 28, 121-122 (2014) [Per J. Abad, En Banc].
- [27] *Initiatives for Dialogue and Empowerment through Alternative Legal Services, Inc. v. Senate*, 942 Phil. 1, 34 (2023) [Per J. Leonen, En Banc].
- [28] *Southern Hemisphere. Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 489 (2010) [Per J. Carpio-Morales, En Banc]. (Citation omitted)

[29] Id.

[30] Estrada v. Sandiganbayan, 421 Phil. 290, 355 (2001) [Per J. Bellosillo, En Banc].

[31] Universal Robina Corporation v. Department of Trade and Industry, 936 Phil. 17, 31-32 (2023) [Per J. Leonen, En Banc].

[32] Id.

[33] Initiatives for Dialogue and Empowerment through Alternative Legal Services, Inc. v. Senate, 942 Phil. 1, 39 (2023) [Per J. Leonen, En Banc].

[34] Id.

[35] Rollo, p. 3.

[36] Id. at 3-4.

[37] Id. at 24.

[38] Ponencia, p. 8.

[39] 861 Phil. 388 (2019) [Per J. Leonen, En Banc].

[40] Id. at 438-440.

[41] Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment, 836 Phil. 205, 249 (2018) [Per J. Leonen, En Banc]. (Citation omitted)

[42] Id. at 249-250.

[43] Falcis III v. Civil Registrar General, 861 Phil. 388, 531 (2019) [Per J. Leonen, En Banc]. (Citations omitted)

[44] Id. (Citations omitted)

[45] Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment, 836 Phil. 205, 250 (2018) [Per J. Leonen, En Banc]. (Citation omitted)

[46] Id. at 250-251.

[47] Falcis III v. Civil Registrar General, 861 Phil. 388, 532-533 (2019) [Per J. Leonen, En Banc].

[48] J. Leonen, Concurring Opinion in Intellectual Property Association of the Philippines v. Ochoa, 790 Phil. 276, 339 (2016) [Per J. Bersamin, En Banc].

[49] Private Hospitals Association of the Philippines, Inc. v. Medialdea, 842 Phil. 747, 784 (2018) [Per J. Tijam, En Banc].

[50] 898 Phil. 522 (2021) [Per J. Leonen, En Banc].

[51] Id. at 613-614.

[52] 635 Phil 568 (2010) [Per J. Carpio, En Banc].

[53] Id. at 570.

[54] Id. at 571.

[55] 701 Phil. 483 (2013) [Per J. Reyes, En Banc].

[56] Id. at 493. (Citations omitted)

[57] Lagman v. Ochoa, Jr., 888 Phil. 434, 469-471 (2020) [Per J. Leonen, En Banc].

[58] Id.

[59] Falcis, III v. Civil Registrar General, 861 Phil. 388, 532 (2019) [Per J. Leonen, En Banc]. (Citation omitted).

[60] J. Leonen, Concurring Opinion in Arigo v. Swift, 743 Phil. 8, 72 (2014) [Per J. Villarama, Jr., En Banc].

[61] Id. at 91-92.

[62] Rollo, pp. 6-7.

[63] Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment, 836 Phil. 205, 257 (2018) [Per J. Leonen, En Banc].

[64] Pangilinan v. Cayetano, 898 Phil. 522, 617 (2021) [Per J. Leonen, En Banc].

[65] Chamber of Real Estate and Builders' Association, Inc. v. Energy Regulatory Commission, 638 Phil. 542, 556-557 (2010) [Per J. Brion, En Banc].

[66] Rollo, pp. 6-7.

[67] Lagman v. Ochoa, Jr., 888 Phil. 434, 469-471 (2020) [Per J. Leonen, En Banc].

[68] J. Leonen, Concurring Opinion in Arigo v. Swift, 743 Phil. 8, 72 (2014) [Per J. Villarama, Jr., En Banc].

[69] Falcis III v. Civil Registrar General, 861 Phil. 388, 413 (2019) [Per J. Leonen, En Banc].

[70] Gadon v. Hon. Cayetano, G.R. No. 251932, June 2, 2020. [Unsigned Resolution, En Banc].

[71] Id.

CONCURRING OPINION

SINGH, J.:

The ponencia rules that Republic Act No. 12079, which provides for the value-added tax (VAT) refund mechanism for tourists, is not unconstitutional. In so ruling, the ponencia found that the requisites of judicial review are present; however, on substance, the law did not violate the equality and uniformity clause found in Article VI, Section 28(1) of the Constitution^[1] as the measure is not discriminatory to Filipinos but was enacted with the primary goal to boost tourism.

I fully concur in the ponencia.

Nevertheless, I find this an opportune time to elucidate further why the VAT refund system for tourists established under Republic Act No. 12079 is in accord with the concepts behind and the structure supporting the overall VAT system in the Philippines.

First, a discussion of the VAT's legislative history.

The VAT traces its roots to the idea of a German entrepreneur named von Siemens who wrote of a cascading sales tax in the 1920s.^[2] Adoption of the VAT would thereafter slowly rise. The modern VAT, as a consumption-type tax, would first be introduced in France in 1954.^[3] Beginning in the 1960s, the spread of the VAT in other countries would accelerate until the late 1970s when it slackened, but it would again pick up steam in the 1980s

and 1990s.[4] To date, over 170 countries implement the VAT.[5]

It was during the uptick of VAT adoption in the 1980s that the Philippines would join the rest of the world. The VAT system was first introduced in the country by virtue of Executive Order No. 273,[6] which took effect in 1988.[7] The purpose of implementing the VAT was to, according to the preamble of the law, "rationalize the present system of taxing goods and services [...] to replace the tax on original and subsequent sales tax and percentage tax or certain services." [8] In *Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Hon. Tan*, [9] the Court ruled that the VAT system was constitutional. The Court held that Executive Order No. 273, which was issued by then President Corazon Aquino, was a valid tax measure since the President was, at that time, granted legislative powers prior to the convening of the first Congress under the 1987 Constitution. [10] The Court likewise held that the VAT satisfied all requirements of a valid tax: (a) it is uniform as it applied similarly on all goods and services sold to the public, which are not exempt, at the constant rate of zero percent or ten percent; and (b) it is equitable as it is only imposed on sales of goods or services by persons engaged in business with an aggregate gross sales exceeding PHP 200,000.00 (the VAT threshold). [11]

Then, in 1994, Congress enacted Republic Act No. 7716 or the Expanded VAT (E-VAT) Law, which sought to widen the base of transactions subject to the VAT, and to enhance the administration of the tax. Immediately thereafter, several petitions were filed questioning the constitutionality of the law. Most of the arguments pertained to issues involving the internal processes of Congress, but some petitioners also raised questions pertaining to the nature of the VAT itself, i.e., that it is a regressive tax. In *Tolentino v. Secretary of Finance*, [12] the Court held that Republic Act No. 7716 is a valid law. The Court ruled that the constitutional processes of how to enact a law were observed by Congress. [13] With the regard to the issue of regressivity, which is essential to understanding the nature of VAT, the Court held that the claim that VAT will disproportionately hit poor and middle-income households compared to rich ones is largely an academic exercise since the petitioners failed to show proof that such will happen. [14] Instead, the Court declared that the Constitution's mandate for "Congress to evolve a progressive system of taxation" [15] is only a directive to Congress and not a negative standard that the Court can enforce. [16]

Republic Act No. 8241 would be passed by Congress in 1996, which amended the E-VAT Law. Republic Act No. 8761 was enacted by Congress in 2001, which amended the VAT provisions of the now 1997 Tax Code. Then, in 2003, Republic Act No. 9010 was passed, which expanded the VAT on the sale of services. Republic Act No. 9238, enacted in 2004, would add certain VAT-exempt transactions. These four amendatory laws did not face any petitions questioning their validity.

Then, in 2005, Congress enacted Republic Act No. 9337 or the Reformed VAT (R-VAT) Law, a major piece of legislation reforming the VAT system. This law allowed the Bureau of Internal Revenue (BIR) to increase the VAT rate from ten percent to the now existing twelve percent. It also expanded the transactions subject to zero percent VAT, and those that are considered VAT-exempt. The constitutionality of this law was questioned before the Court. In *Abakada Guro Party List v. Hon. Exec. Sec. Ermita*, [17] the Court held that Republic Act No. 9337 was valid. It ruled that even though the law allowed the BIR to raise the VAT rate, such increase can only be done if certain economic parameters set by the law were met. Thus, what was delegated was not the power to tax itself, but only the power to ascertain facts that would trigger the conditions for raising the tax rate. Moreover, the Court held that the raising of the VAT rate from ten percent to twelve percent did not constitute an unfair and unnecessary tax burden. The Court, speaking in practical terms, stated that "[t]he dire need for revenue cannot be ignored." [18] Thus, in line with the principle of fiscal adequacy, the Court was cognizant of the government's objective of raising revenue adequately to meet expenses.

The last major VAT reform measure passed by Congress was Republic Act No. 10963 or the Tax Reform for

Acceleration and Inclusion (TRAIN) Law. The TRAIN Law significantly broadened the tax base for VAT, adjusted the VAT threshold amounts, and made administrative and procedural changes regarding VAT refunds. This law, as is usual with major tax legislation, faced challenges to its constitutionality. In the recent case of *ACT Teachers Rep. Tinio v. President Duterte*,^[19] this Court upheld the constitutionality of the TRAIN Law. Although the petitions in that case did not assail the validity of the VAT provisions in the law, the issue of regressivity of taxes was again brought up to assail the excise tax provisions in the said law. The Court invoked *Tolentino*, however, to reiterate that regressivity—which the VAT is also accused of—is not a negative standard that the Court can use to strike down the law. The Court held that Congress is not even prohibited to impose regressive taxes, but the constitutional provision merely directs Congress to evolve a progressive system of taxation.^[20]

The legislative history of the VAT shows that from the time of its introduction in the Philippines, and at every time the VAT provisions in the Tax Code were amended, petitions would be filed to question them, and this Court would dismiss them for lack of merit. The present Petition is no different. It raises no valid argument that would compel the Court to have a second hard look at the procedure under which Republic Act No. 12079 was enacted, or to the merits behind its enactment. The present Petition, much like the previous ones questioning the VAT, must be dismissed.

Second, the VAT refund mechanism for foreign tourists is in line with the whole concept of the VAT system.

Section 105 of the Tax Code describes the VAT as an "indirect tax," or one where "the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services."^[21] In other words, the VAT is "demanded, in the first instance, from, or is paid by, one person or entity in the expectation and intention of shifting the burden to someone else."^[22] This means that the VAT is imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services,^[23] i.e., the VAT is to be paid at each sale made by the manufacturer, the wholesaler, the distributor, until the product lands on the lap of the final consumer or end-user.

This leads to the second characteristic of the VAT—it is a tax on consumption. As the Court stated in *Commissioner of Internal Revenue v. Magsaysay Lines, Inc.*,^[24] the VAT is "ultimately a tax on consumption, even though it is assessed on many levels of transactions on the basis of a fixed percentage. It is the end user of consumer goods or services which ultimately shoulders the tax, as the liability therefrom is passed on to the end users by the providers of these goods or services[.]"^[25]

Thus, it is only logical that under the VAT system, the place where the goods and services are finally consumed would have the jurisdiction to impose the tax. This is called the Destination Principle, which provides that "goods and services are taxed only in the country where these are consumed."^[26] Another concept that is related to the Destination Principle is the Cross-Border Doctrine, which mandates that "no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority."^[27]

That is why, in the Philippine VAT system, goods that are exported to other countries, or services rendered to non-resident foreign customers, are accorded VAT zero-rating,^[28] i.e., no output tax liability is imposed on the exporter since consumption of the goods or services is outside the Philippines. In much the same way, every importation into the Philippines of goods, whether or not it is done in the ordinary course of trade or business, is subject to VAT.^[29] The law presupposes that goods imported into the Philippines will have its final consumption here.

This is how the VAT system works.

With respect to foreign tourists, which is defined under the statute as a "non-resident foreign passport holder,"^[30]

they may come to the Philippines for a variety of reasons, be it for pleasure and recreation, business, or any other short-term engagement. What the statute only requires is that the foreigner be a: (a) "non-resident," i.e., a mere sojourner who has no domicile in the country;^[31] and (b) "foreign passport holder," i.e., one who holds a passport other than one issued by the Department of Foreign Affairs. These requisites all connote one thing—that a tourist is in the Philippines only for a short period of time, and at some point, he or she must return to his or her home country or any location other than the Philippines.

Thus, when a tourist buys eligible goods in the Philippines intended for his or her own personal use, it can be reasonably assumed that the tourist would bring the goods back to his or her home country or elsewhere. In that way, although sale of the goods happened in the Philippines, the final consumption thereof will occur in the tourist's home country or any location other than the Philippines. Under the Destination Principle, the VAT, therefore, need not be imposed on the tourist since consumption of the goods is not within the territorial jurisdiction of the Philippines.

Indeed, Section 5 of the Implementing Rules and Regulations (IRR) of Republic Act No. 12079 supports the view that a tourist is only eligible for the VAT refund if the consumption of eligible goods happens outside the Philippines. The provision reads:

Section 5. Eligible Goods. – ...

The following are not qualified for the VAT refund under this IRR:

- Goods in commercial quantity;
- Goods to be consumed fully or partially in the Philippines;
- Goods purchased from e-marketplaces and other digital or online stores; and
- Services, such as transportation, accommodation, or other hospitality services. (Emphasis supplied)

The contemporaneous construction of the Department of Finance, Bureau of Customs, and BIR, which were tasked by the law to issue the IRR, "carr[ies] great weight in determining the operation of [the] statute" and "is entitled to very great respect."^[32]

Moreover, Section 112-A(a)(2) of the Tax Code, which was inserted by Republic Act No. 12079, provides for a temporal limitation that ensures that the eligible goods purchased by a tourist will have to be brought out of the country; otherwise, no VAT refund will be granted to the tourist. The provision reads:

SEC. 112-A. VAT Refund for Tourists. –

(a) A tourist shall be eligible for a VAT refund on locally purchased goods if the following requisites are present:

....

(2) Such goods are taken out of the Philippines by the tourist within [60] days from the date of purchase[.] (Emphasis supplied)

Petitioner's consternation that foreigners who hold long-term visas, such as work or retirement visas, who may be allowed to stay in the Philippines for longer periods, will be at a disadvantage as compared to tourists who stay in the Philippines for much shorter periods, flies in the face of reality. These foreigners who are allowed to stay for a much longer period in the Philippines may still avail of the VAT refund for as long they have no residence in the Philippines, and they take the goods out of the country within 60 days from the date of the purchase and consume

it somewhere else. Otherwise, it is only logical to surmise that these foreigners who stay for longer periods in the Philippines will be able to fully or partially consume in the country the eligible goods they purchased here.

Likewise, it is unreasonable to hold that Filipinos living or working abroad will also be at a disadvantage when they visit the Philippines if they used their Philippine passports. These individuals are, by the mere fact that they hold Philippine passports, remain to be citizens of the Philippines. Simply, they cannot be considered "foreign tourists" in their own country—their legal tie to the Philippines remains full and intact, as compared to a tourist who visits the country for a short period of time and for limited purposes. Whether these Filipinos take out the eligible goods they purchased within 60 days is immaterial because their Philippine citizenship allows them to stay in the Philippines for as long as they like; they cannot be deported anywhere else because this country remains to be their home. Thus, they will be able to fully or partially consume the eligible goods here.

With respect to the petitioner's argument that the VAT refund mechanism will result in substantial loss to the government in terms of revenue, it must be remembered that the Court, notwithstanding its vast power, cannot review the wisdom or propriety of governmental policies unless there is patent unconstitutionality or grave abuse of discretion.[33] Those two grounds are not present here.

At any rate, it must be noted that the supposed substantial loss of revenue from the implementation of the VAT refund system for tourists is not a mere expense in the books of the government, but an investment to make the country a viable destination for tourists. It has been recognized that when competition in the tourism industry increases, taxes in one destination may induce tourists to find for alternatives.[34] The VAT refund mechanism is one policy to improve the Philippines' tourism competitiveness and enhance its attractiveness as a viable tourism destination.[35] In his sponsorship speech, Senator Sherwin Gatchalian recognized the potential of the VAT refund mechanism to promote not only the Philippines' tourism industry but also the creation of additional jobs:

Allow me to present an overview of the political economic gains we are poised to achieve as outlined in the assessments by the National Economic and Development Authority. In terms of net benefit, this fiscal reform is projected to generate an amount ranging from [PHP] 3.3 billion to [PHP] 5.7 billion per annum from 2024 to 2028. The proposed scheme is also expected to create additional employment opportunities of 4,400 to 7,100 per annum from 2024 to 2028.

Moreover, the grant of a VAT refund can encourage purchases from tourists, especially since shopping has emerged as a motivating factor for travel in recent years. In the Philippines, shopping constitutes an average of [twelve percent] of the total expenditures by inbound tourists before the pandemic. While this figure is notably lower compared to the expenditure items such as accommodation, food and beverage, and transportation services, it is worth noting that, in 2022, the share of shopping increased substantially to 21.9%, indicating its potential to drive our economy, moving forward.

As our economic activities resume, it is important that we seize this opportune moment to attract more non-resident tourists to our shores. As we look back to the initial impact of the pandemic in 2020, a stark decline was observed in the Gross Value Added (GVA) of the tourism sector—plummeting to [PHP] 917 billion, which is equivalent to 5.1% of our gross domestic product. Fast forward two years, we witnessed a resurgence in tourism GVA, reaching [PHP] 1.38 trillion, now constituting 6.2% of our GDP. However, it is crucial to note that we are still below the pre-pandemic benchmarks.

As we now strive to steer ourselves toward recovery, it is crucial that we take proactive measures to entice non-resident tourists to once again grace our shores and witness the wonders we have to offer.[36]

Thus, any revenue loss from the implementation of the VAT refund mechanism may be offset by the expansion of the tax base when the country welcomes more tourists, thereby generating more economic activity, and in turn, more tax revenues.

Confronted with the basic premise of the VAT, it is then easy to discern that the arguments in the present Petition are devoid of merit.

Thus, I CONCUR to dismiss the Petition.

[1] CONST., art. VI, sec. 28(1) states:

The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.

[2] LIAM EBRILL, MICHAEL KEEN, JEAN-PAUL BODIN & VICTORIA SUMMERS, THE MODERN VAT 4 (I.M.F. 2001).

[3] Id.

[4] Id. at 5.

[5] Organisation for Economic Cooperation and Development, VAT policy and administration, available at <https://www.oecd.org/en/topics/sub-issues/vat-policy-and-administration.html> (last accessed on November 8, 2025).

[6] Executive Order No. 273 (1987). Adopting the Value Added Tax System, Amending for the Purpose Certain Provisions of the National Internal Revenue Code, and for Other Purposes.

[7] Executive Order No. 273 (1987), sec. 30 states:

This Order shall take effect on January 1, 1988: Provided, That the provisions of Section 25 (c) hereof shall take effect immediately upon approval of this Order.

[8] Executive Order No. 273 (1987), first whereas clause.

[9] 246 Phil. 380 (1988) [Per J. Padilla, En Banc].

[10] Id. at 386.

[11] Id. at 390.

[12] 305 Phil. 686 (1994) [Per J. Mendoza, En Banc].

[13] Id. at 751-752.

[14] Id. at 765.

[15] CONST., art. VI, sec. 28(1).

[16] Tolentino v. Secretary of Finance, 305 Phil. 686, 766 (1994) [Per J. Mendoza, En Banc].

[17] 506 Phil. 1 (2005) [Per J. Austria-Martinez, En Banc].

[18] Id. at 118.

[19] 934 Phil. 212 (2023) [Per J. Dimaampao, En Banc].

[20] Id. at 273.

[21] TAX CODE, sec. 105 states:

....

The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services.

[22] *Maibarara Geothermal, Inc. v. Commissioner of Internal Revenue*, 925 Phil. 859, 862 (2022) [Per J. J. Lopez, Second Division].

[23] *Commissioner of Internal Revenue v. Court of Appeals*, 385 Phil. 875, 884 (2000) [Per J. Pardo, First Division].

[24] 529 Phil. 64 (2006) [Per J. Tinga, Third Division].

[25] *Id.* at 72.

[26] *Commissioner of Internal Revenue v. Filminera Resources Corp.*, 885 Phil. 515, 530 (2020) [Per J. Lopez, First Division].

[27] *Id.* at 530-531.

[28] TAX CODE, secs. 106(A)(2), 108(B).

[29] TAX CODE, sec. 107.

[30] TAX CODE, sec. 112-A.

[31] C.f. TAX CODE, sec. 22(G) states:

The term 'nonresident alien' means an individual whose residence is not within the Philippines and who is not a citizen thereof.

[32] *Parañaque Industry Owners Association, Inc. v. Recio*, 938 Phil. 602, 614-615 (2023) [Per J. Kho, Jr., Second Division].

[33] *Municipality of San Mateo, Isabela v. Smart Communications, Inc.*, 905 Phil. 260, 274 (2021) [Per J. Zalameda, First Division].

[34] Tingling Wang & Miranda Stewart, *The Law and Policy of VAT Tourist Tax Refund Schemes: A Comparative Analysis* (2021), p. 10, available at https://law.unimelb.edu.au/_data/assets/pdf_file/0005/3634331/WangStewartVAT-Tourist-Tax-Refund-Schemes-13-3-2021.pdf (last accessed on November 9, 2025).

[35] *Id.*

[36] Journal, Senate, 19[th] Congress, Second Regular Session (September 18, 2023).

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