

been developed, agreed upon, and laid down by experts over the years. Each country, however, remains ‘responsible for applying the plan within the framework of its own culture and traditions.’

The Venice Charter is not a treaty and therefore does not become enforceable as law. The Philippines is not legally bound to follow its directive, as in fact, these are not directives but mere guidelines – a set of the best practices and techniques that have been proven over the years to be the most effective in preserving and restoring historical monuments, sites and buildings.

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WHEREFORE, the petition for mandamus is DISMISSED for lack of merit. The Temporary Restraining Order issued by the Court on 16 June 2015 is LIFTED effective immediately.”

**MITSUBISHI CORPORATION-MANILA BRANCH VS.
COMMISSIONER OF INTERNAL REVENUE**

FIRST DIVISION

G.R. No. 175772

June 5, 2017

MITSUBISHI CORPORATION - MANILA BRANCH, Petitioner

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

DECISION

PERLAS-BERNABE, *J.*:

Facts

On 11 June 1987, the governments of Japan and the Philippines executed an Exchange of Notes, where the former, through the Overseas Economic Cooperation Fund (OECF), extended a ¥40,400,000,000 loan to the latter for the Calaca II Coal-Fired Thermal Power Plant Project. Under Paragraph 5(2) of the said agreement, “the Philippine Government, by itself or through its executing

agency, undertook to assume all taxes imposed by the Philippines on Japanese contractors engaged in the Project:

- (2) The Government of the Republic of the Philippines will, itself or through its executing agencies or instrumentalities, assume all fiscal levies or taxes imposed in the Republic of the Philippines on Japanese firms and nationals operating as suppliers, contractors or consultants on and/or in connection with any income that may accrue from the supply of products of Japan and services of Japanese nationals to be provided under the Loan.”

The National Power Corporation (NPC), as executing agency of the Philippines, contracted with Mitsubishi Corporation, the head office in Japan, for engineering, supply, and construction works for the project, among others. The contract included an undertaking by the NPC “to pay any and all forms of taxes that are directly imposable under the Contract:

Article VIII (B)(1)

B. FOR ONSHORE PORTION.

- 1.) [The] CORPORATION (NPC) shall, subject to the provisions under the Contract [Document] on Taxes, pay any and all forms of taxes which are directly imposable under the Contract including VAT, that may be imposed by the Philippine Government, or any of its agencies and political subdivisions”

Petitioner filed an administrative claim for refund with the Respondent Commissioner of Internal Revenue for ₱52,612,812.00, ₱44,288,712.00 representing erroneously paid income tax and ₱8,324,100.00 representing branch profit remittance tax (BPRT). A petition for review was thereafter filed with the CTA. The CTA division granted the petition and ordered the refund of the income tax and BPRT, holding that in the Exchange of Notes, the Philippine Government bound itself to assume tax obligations of the petitioner. The CTA en banc reversed the said ruling, holding that the Exchange of Notes cannot be read as granting tax exemption and further, that it was not concurred in by the Senate as required in Art. VII, Sec. 21 of the Constitution. The Supreme Court reversed the CTA en banc and held that the refund is proper.

Ruling

“In this case, it is fairly apparent that the subject taxes in the amount of ₱52,612,812.00 was erroneously collected from petitioner, considering that the obligation to pay the same had already been assumed by the Philippine Government by virtue of its Exchange of Notes with the Japanese Government. Case law explains that an exchange of notes is considered as an executive agreement, which is binding on the State even without Senate concurrence. In *Abaya v. Ebdane*:

An “exchange of notes” is a record of a routine agreement that has many similarities with the private law contract. The agreement consists of the exchange of two documents, each of the parties being in the possession of the one signed by the representative of the other. Under the usual procedure, the accepting State repeats the text of the offering State to record its assent. The signatories of the letters may be government Ministers, diplomats or departmental heads. The technique of exchange of notes is frequently resorted to, either because of its speedy procedure, or, sometimes, to avoid the process of legislative approval.

It is stated that “treaties, agreements, conventions, charters, protocols, declarations, memoranda of understanding, *modus vivendi* and exchange of notes” all refer to “international instruments binding at international law.”

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Significantly, an exchange of notes is considered a form of an executive agreement, which becomes binding through executive action without the need of a vote by the Senate or Congress.

Paragraph 5(2) of the Exchange of Notes provides for a **tax assumption provision** whereby:

- (2) The **Government of the Republic of the Philippines will, itself or through its executing agencies** or instrumentalities, **assume all fiscal levies or taxes** imposed in the Republic of the Philippines on *Japanese firms and nationals operating as suppliers, contractors or consultants* on and/or in connection with

any income that may accrue from the supply of products of Japan and services of Japanese nationals to be provided under the Loan. (Emphases and underscoring supplied)

To “assume” means “[t]o take on, become bound as another is bound, or put oneself in place of another as to an obligation or liability.” This means that the obligation or liability remains, although the same is merely passed on to a different person. In this light, the concept of an assumption is therefore different from an exemption, the latter being the “[f]reedom from a duty, liability or other requirement” or “[a] privilege given to a judgment debtor by law, allowing the debtor to retain [a] certain property without liability.” Thus, contrary to the CTA En Banc's opinion, the constitutional provisions on tax exemptions would not apply.

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WHEREFORE, the petition is GRANTED. The Decision dated May 24, 2006 and the Resolution dated December 4, 2006 of the Court of Tax Appeals (CTA) En Banc in C.T.A. EB No. 5 are hereby REVERSED and SET ASIDE. The Decision dated December 17, 2003 of the CTA in C.T.A. Case No. 6139 is REINSTATED.”

OCAMPO VS. ENRIQUEZ

EN BANC

G.R. No. 225973

August 8, 2017

SATURNINO C. OCAMPO, TRINIDAD H. REPUNO, BIENVENIDO LUMBERA BONIFACIO P. ILAGAN, NERI JAVIER COLMENARES, MARIA CAROLINA P. ARAULLO, M.D., SAMAHAN NG EX-DETAINEES LABAN SA DETENSYON AT ARESTO (SELDA), represented by DIONITO CABILLAS, CARMENCITA M. FLORENTINO, RODOLFO DEL E ROSARIO, FELIX C. DALISAY, and DANILO M. DELA FUENTE, Petitioners

vs.

REAR ADMIRAL ERNESTO C. ENRIQUEZ (in his capacity as the Deputy Chief of Staff for Reservist and Retiree Affairs, Armed Forces of the Philippines), The Grave Services Unit (Philippine Army), and GENERAL RICARDO R.