

Associates

# BDB Law

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collaborating with **Andersen Global**  
in the Philippines

# Significant Court Decisions

By: Mabel L. Buted  
Partner

# Refunds

## Excess income tax credits (CWT)

If the taxpayer had chosen to be refunded or granted with a TCC, but carried over the excess tax credits, such option to carry-over becomes irrevocable.

### Current year

BIR Form No. <b>1702-RT</b> January 2018 (ENCS) Page 1	<b>Annual Income Tax Return</b> <b>Corporation, Partnership and Other Non-Individual Taxpayer</b> <b>Subject Only to REGULAR Income Tax Rate</b> <i>Enter all required information in CAPITAL LETTERS. Mark applicable boxes with an "X".</i> <i>Two copies MUST be filed with the BIR and one held by the taxpayer.</i>
<input checked="" type="checkbox"/> To be refunded <input checked="" type="checkbox"/> To be issued a Tax Credit Certificate (TCC) <input type="checkbox"/> To be carried over as tax credit for next year/quarter	

### Subsequent year

United Coconut Planters Bank v. CIR  
(G.R. No. 204687, April 24, 2023)

Stablewood Philippines, Inc. v. CIR  
(G.R. No. 206517, May 13, 2024)

BIR Form No. <b>1702-RT</b> January 2018 (ENCS) Page 1	<b>Annual Income Tax Return</b> <b>Corporation, Partnership and Other Non-Individual Taxpayer</b> <b>Subject Only to REGULAR Income Tax Rate</b> <i>Enter all required information in CAPITAL LETTERS. Mark applicable boxes with an "X".</i> <i>Two copies MUST be filed with the BIR and one held by the taxpayer.</i>
<b>43 Tax Due</b> (Normal Income Tax Due in Item 41 OR the MCIT Due in Item 42, whichever is higher) (To Part II Item 14)	
Less: Tax Credits/Payments (attach proof)	
<b>44 Prior Year's Excess Credits other than MCIT</b>	

BIR Form No. <b>1702Q</b> January 2018 (ENCS) Page 1	<b>Quarterly Income Tax Return</b> <b>For Corporations, Partnerships and Other Non-Individual Taxpayers</b> <i>Enter all required information in CAPITAL LETTERS. Mark applicable boxes with an "X".</i> <i>Two copies MUST be filed with the BIR and one held by the taxpayer.</i>
<b>Schedule 4 - Tax Credits/Payments</b> (attach additional sheet/s, if necessary)	
<b>1 Prior Year's Excess Credits</b>	

Amount carried over can no longer be refunded/issued a TCC.

# Refunds

Excess income tax credits (CWT)

No need to substantiate prior years' excess tax credits with withholding tax certificates. Prior years' ITRs would suffice.

Tullett Prebon (Philippines), Inc. v. CIR  
(G.R. No. 215159, July 5, 2022)

<b>Income tax due</b>	<u>200,000.00</u>	} <b>100,000</b> → Carry-over
Prior year's excess tax credits	300,000.00	
Creditable tax withheld from previous quarter/s per BIR Form No. 2307	250,000.00	} <b>400,000</b> → Refund
Creditable tax withheld per BIR Form No. 2307 for the 4th Quarter	150,000.00	
<b>Total tax credits</b>	<u>700,000.00</u>	
<b>Net income tax payable</b>	<u>-500,000.00</u>	<b>= 500,000</b>

	Previous	Should Be
Income tax due	200,000	200,000
Less: CWT – previous periods	Unsupported by BIR Form 2307 0	Supported by Annual ITRs 300,000
<b>Carry-over of excess CWT</b>		<b><u>-100,000</u></b>
<b>CWT – current period</b>	400,000	400,000
<b>Less: Income tax due</b>	200,000	0
<b>Refundable amount</b>	<b><u>200,000</u></b>	<b><u>400,000</u></b>

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# Refunds

## VAT

Taxpayer has the option to (a) charge input tax attributable to 0-rated sales against output tax and only the excess may be refunded or (b) claim the amount in its entirety.

Chevron Holdings, Inc. v. CIR (G.R. No. 215159, July 5, 2022)

<i>Output tax</i>		
	Amount	Tax
Sales subject to 12%	500,000.00	60,000.00
Sales subject to 0%	100,000.00	-
<b>Total sales</b>	<b>600,000.00</b>	<b>60,000.00</b>
<i>Input tax</i>		
Input tax carried over from previous period		20,000.00
Input tax from current purchases	375,000.00	45,000.00
<b>Total available input tax</b>	<b>375,000.00</b>	<b>65,000.00</b>
<b>Excess input tax</b>		<b>- 5,000.00</b>

Output tax	60,000
Less: Input tax carry-over from previous period	20,000
Input tax attributable to 12%-rated sales	37,500
<b>Remaining output tax payable</b>	<b><u>2,500</u></b>

Current input tax allocation		
	% of sales	Input tax
12%	83%	37,500.00
0%	17%	7,500.00
	<b>100%</b>	<b>45,000.00</b>

	Option 1	Option 2
Charge remaining output tax against input tax attributable to 0-rated sales	2,500	
Pay remaining output tax		2,500
<b>Refund</b>	<b>5,000</b>	<b>7,500</b>

# Refunds

## VAT

No need to substantiate input tax carried over from previous period.

Chevron Holdings, Inc. v. CIR (G.R. No. 215159, July 5, 2022)

<i>Output tax</i>		
	Amount	Tax
Sales subject to 12%	500,000.00	60,000.00
Sales subject to 0%	100,000.00	-
<b>Total sales</b>	<b>600,000.00</b>	<b>60,000.00</b>
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	<b>100%</b>	<b>45,000.00</b>

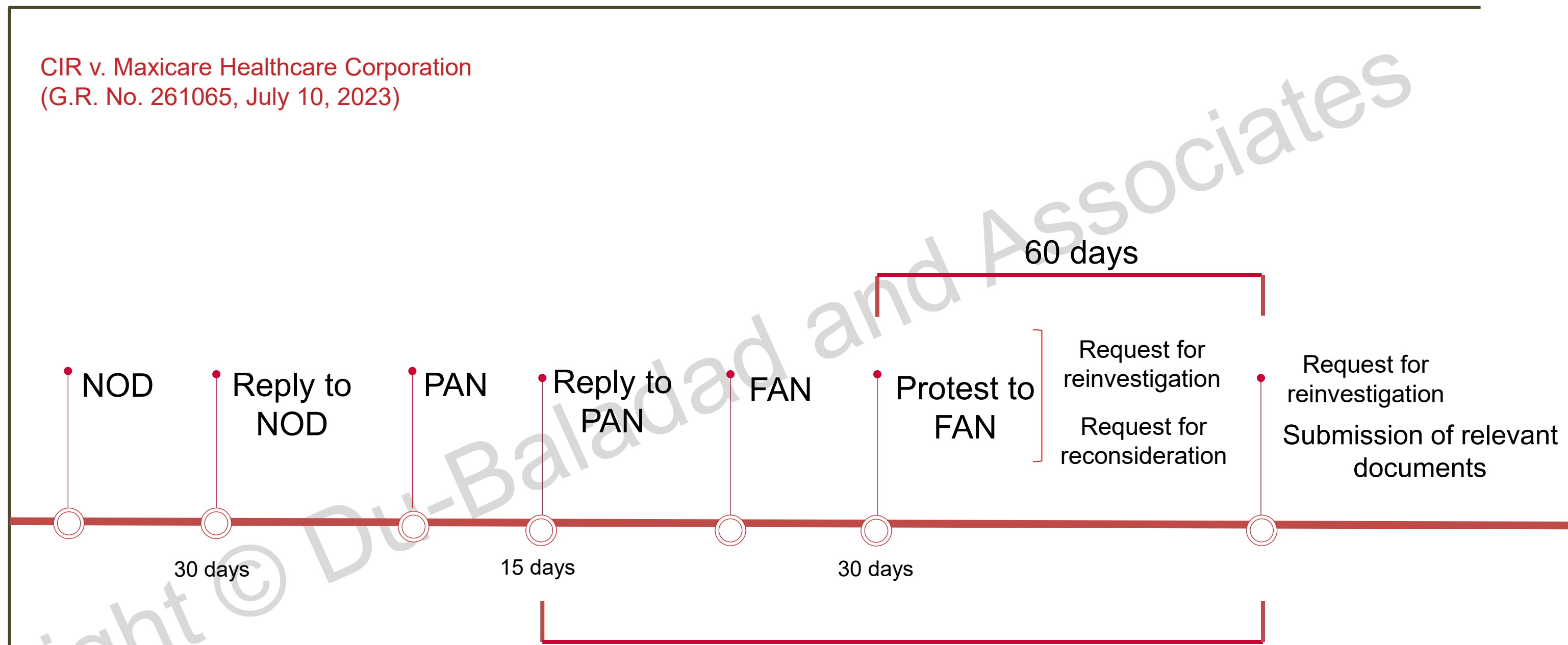


Need not be substantiated

# Assessment

CIR v. Maxicare Healthcare Corporation  
(G.R. No. 261065, July 10, 2023)

The 60-day period to submit relevant supporting documents starts from the filing of protest in the form of request for reinvestigation.



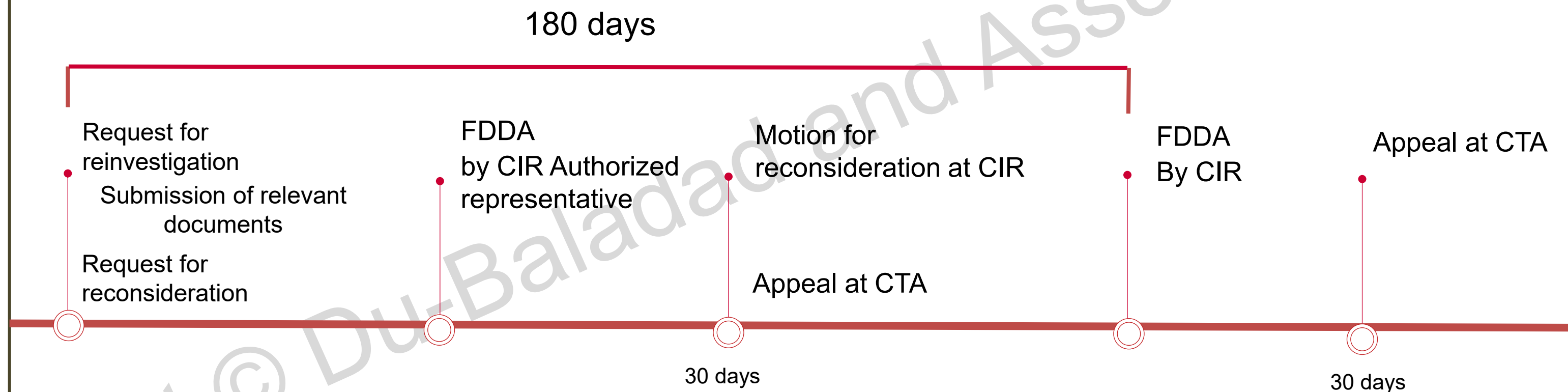
60 days (*Roca case*, G.R. No. 241338, April 10, 2019)

This *Maxicare case* invalidates the *Roca case* holding that the 60-day period begins from filing reply to PAN.

# Assessment

Nueva Ecija II Electric Cooperative, Inc. Area II v. CIR  
(G.R. No. 258101, April 19, 2022)

There is no fresh 180-day period to decide on protest at the CIR level.



# Assessment

## Aces Philippines Cellular Satellite Corporation v. CIR (G.R. No. 226680, August 30, 2022)

### ☑ Parties

- Petitioner: Aces Philippines Cellular Satellite Corporation
- Respondent: Commissioner of Internal Revenue

### ☑ Subject

- Satellite airtime fees paid by Aces Philippines to Aces Bermuda under the Airtime Purchase Agreement for taxable year 2006

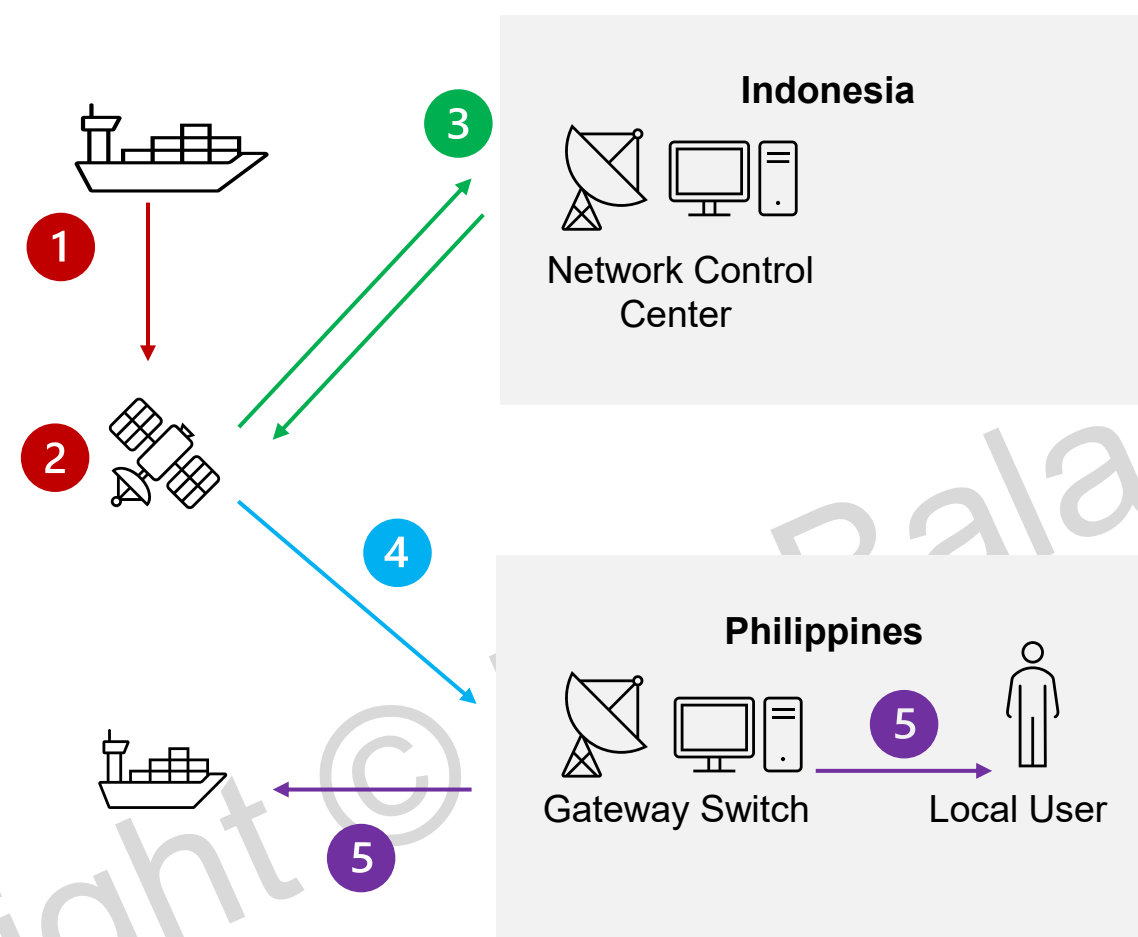
### ☑ Issue

- Whether or not the satellite airtime fees are subject to final withholding tax
  - *Situs* of the fees

The receipt of call by the gateways located in the Philippines marked the completion or delivery of service. The satellite fees in consideration of the service are considered earned inside the Philippines, hence, they are subject to final withholding tax.

# Assessment

Aces Philippines Cellular Satellite Corporation v. CIR  
(G.R. No. 226680, August 30, 2022)



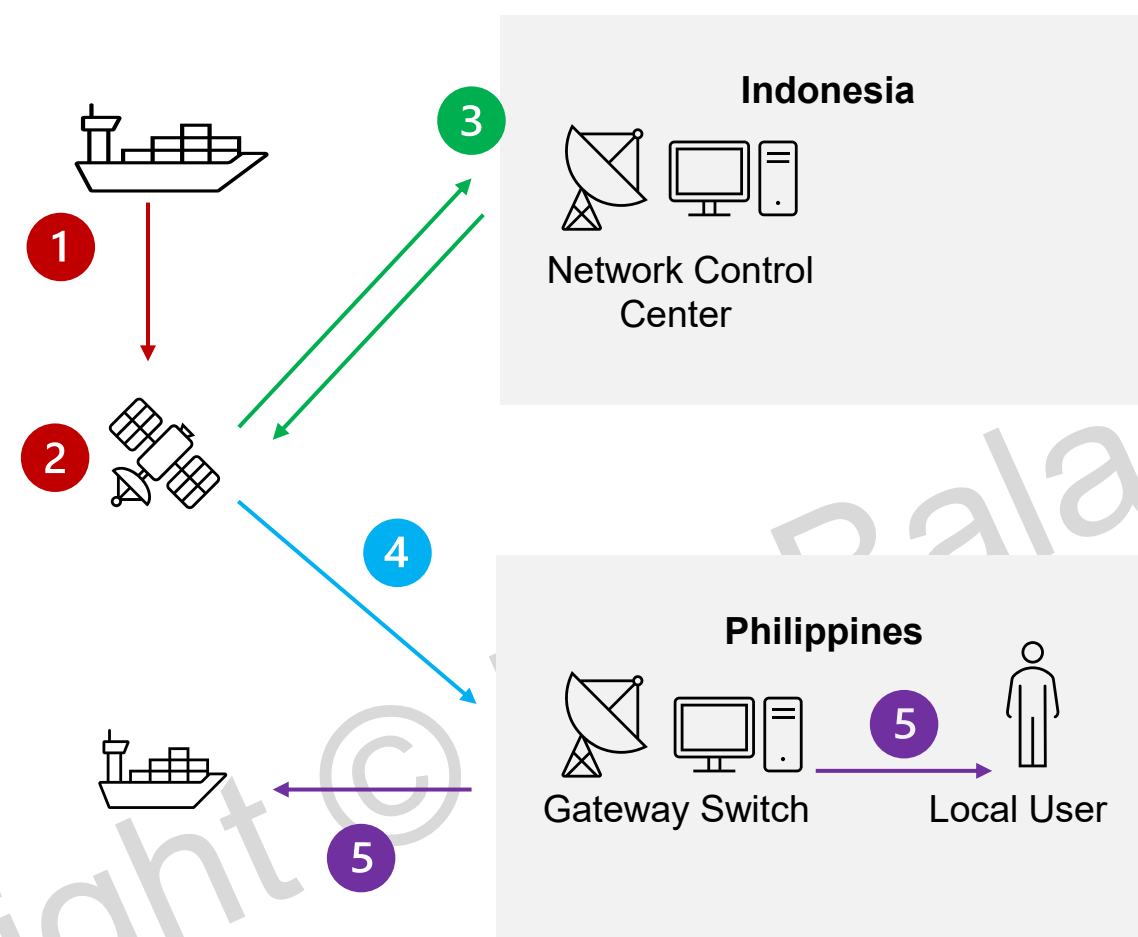
## Facts

- ✓ Aces Bermuda: Operates the ACeS system
  - Launches satellite to receive and transmit radio signals from/to gateways (terminals or ground station interlinks with telephone systems)
- ✓ Aces Philippines: Operates the gateways
- ✓ Subject: Use of the ACeS system by Aces Philippines
- ✓ Consideration: Satellite airtime fees based on billable units (successful call)

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# Assessment

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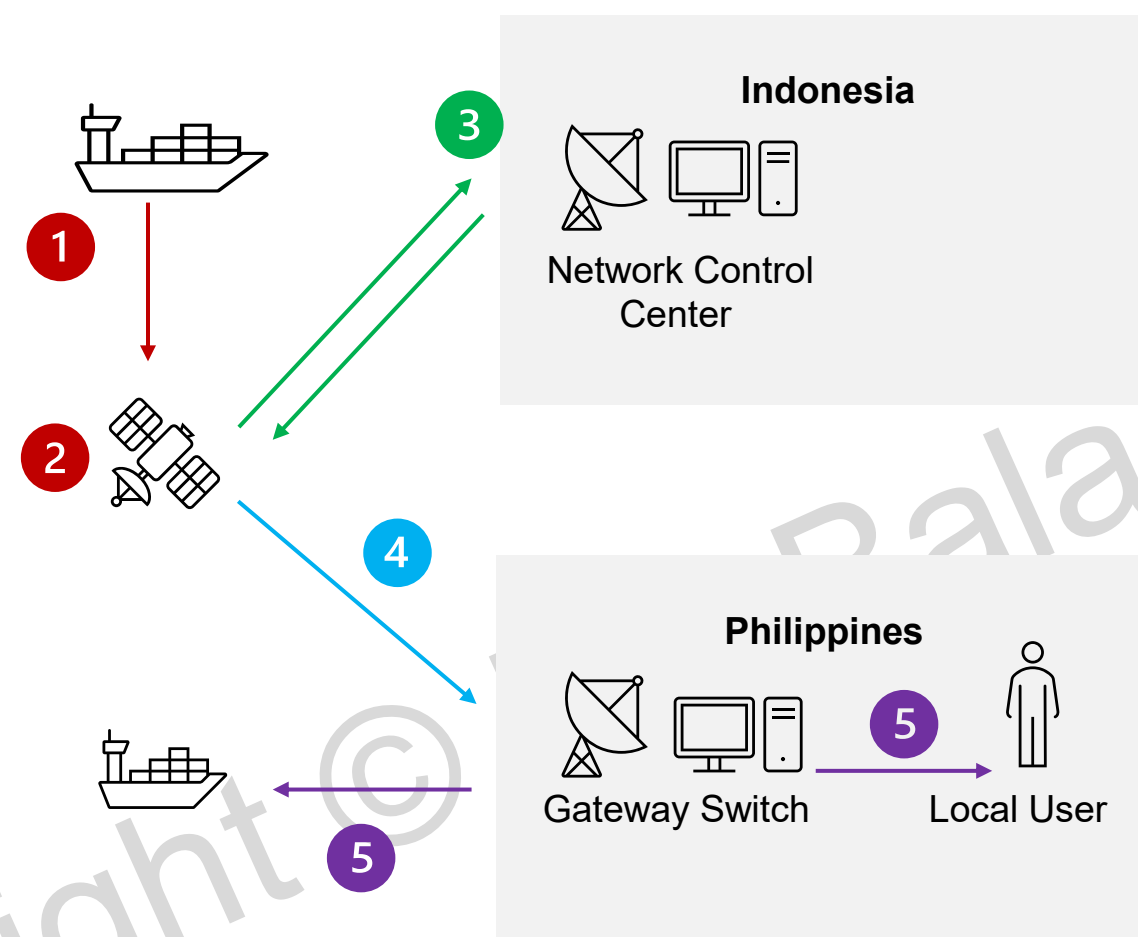
## Transaction Flow

1. Seafarer makes a call
2. Garuda Satellite receives the call and query Network Control Center where to route the call
3. Network Control Center provides information on the Satellite Gateway the call shall be routed to
4. Satellite Gateway receives the call and route to switch
5. Switch process the call for routing and termination

The receipt of call by the gateways located in the Philippines marked the completion or delivery of service. The satellite fees in consideration of the service are considered earned inside the Philippines, hence, they are subject to final withholding tax.

# Assessment

Aces Philippines Cellular Satellite Corporation v. CIR  
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Act of transmission

Gateways' receipt of call

- Marks the completion/delivery of service
- Where the inflow of benefits happens = accrual of fees

**Situs** =  
earned  
within  
Philippines,  
subject to  
final tax

The receipt of call by the gateways located in the Philippines marked the completion or delivery of service. The satellite fees in consideration of the service are considered earned inside the Philippines, hence, they are subject to final withholding tax.

# Assessment

## Aces Philippines Cellular Satellite Corporation v. CIR (G.R. No. 226680, August 30, 2022)

Issues on RMC 5-2024's application of the doctrine in the *Aces Philippines* case

Disregard of tax treaties and international commitments



**Observation:** RMC may impose taxes on NRFCs despite having no physical presence or permanent establishment in the Philippines.



**Comment:** The overarching scope of the RMC effectively subjects to tax almost all services to a Philippine entity rendered by NRFCs in foreign countries.

The receipt of call by the gateways located in the Philippines marked the completion or delivery of service. The satellite fees in consideration of the service are considered earned inside the Philippines, hence, they are subject to final withholding tax.

# Assessment

Aces Philippines Cellular Satellite Corporation v. CIR  
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Factors to determine whether the RMC will  
apply to the cross-border service

- Is the cross-border service dependent on the successful use, consumption or utilization by the Philippine purchaser of the service for income to be accrued?
- Is the performance of the service dependent on the facility located in the Philippines?
- Are the particular stages occurring in the Philippines integral to the over-all transaction that the business activity would not have been accomplished without it?

The receipt of call by the gateways located in the Philippines marked the completion or delivery of service. The satellite fees in consideration of the service are considered earned inside the Philippines, hence, they are subject to final withholding tax.

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