

# RMC No. 5-2024

## Taxation of Cross Border Transactions

March 6, 2024

MEMBER FIRM OF

**wts global**

*Aces Philippines Cellular Satellite Corporation v. Commissioner of Internal Revenue*  
*G.R. No. 226680, January 30, 2023*

☑ Facts:

The BIR assessed Aces Philippines for failure to withhold taxes on payment of satellite airtime fees to Aces Indonesia for satellite communications time under an Airtime Purchase Agreement. The assessment was protested and elevated to the CTA up to the Supreme Court En Banc.

☑ Issue:

Is the payment to Aces Indonesia for airtime fees considered an income from Philippine sources subject to withholding tax?

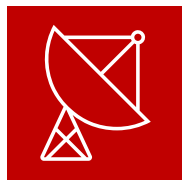
☑ Decision:

The satellite airtime fees paid to Aces Bermuda is Philippine-sourced income on the following grounds:

- a. The payment is made only when the satellite airtime is delivered to Aces Philippines and its subscribers and is utilized in the Philippines for voice/data call;
- b. The service is not considered delivered if the signal does not reach the gateways located in the Philippines.

*Aces Philippines Cellular Satellite Corporation v. Commissioner of Internal Revenue*  
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The Supreme Court held that the income generated by Aces Bermuda (an NRFC) from satellite air time payments made by Aces Philippines is **subject to Philippine taxation**.



**Source of Income:**

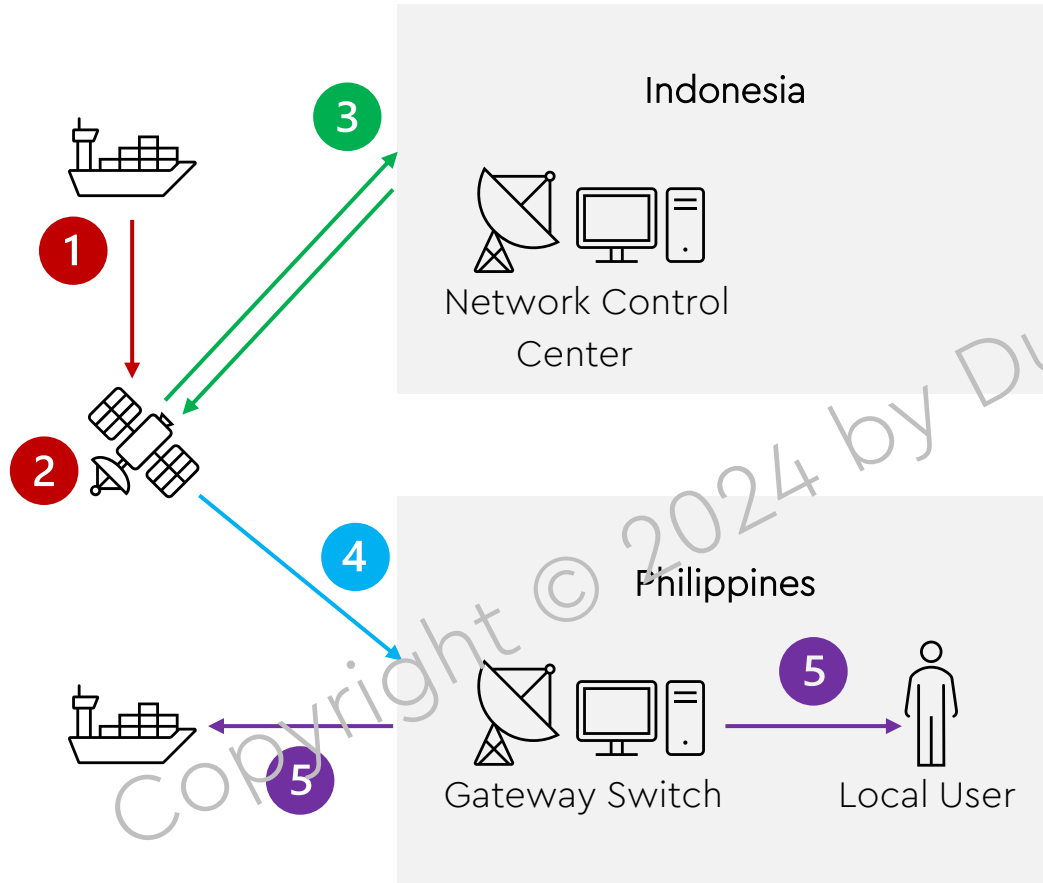
The gateways' receipt of the call as routed by the satellite is the income source.



**Situs of Income:**

The situs of the income-producing activity is within the Philippines.

## Transaction Flow – *Aces Philippines Case*



Aces Philippines argues that the satellite air time fee payments made to Aces Bermuda were **sourced outside the Philippines** because:

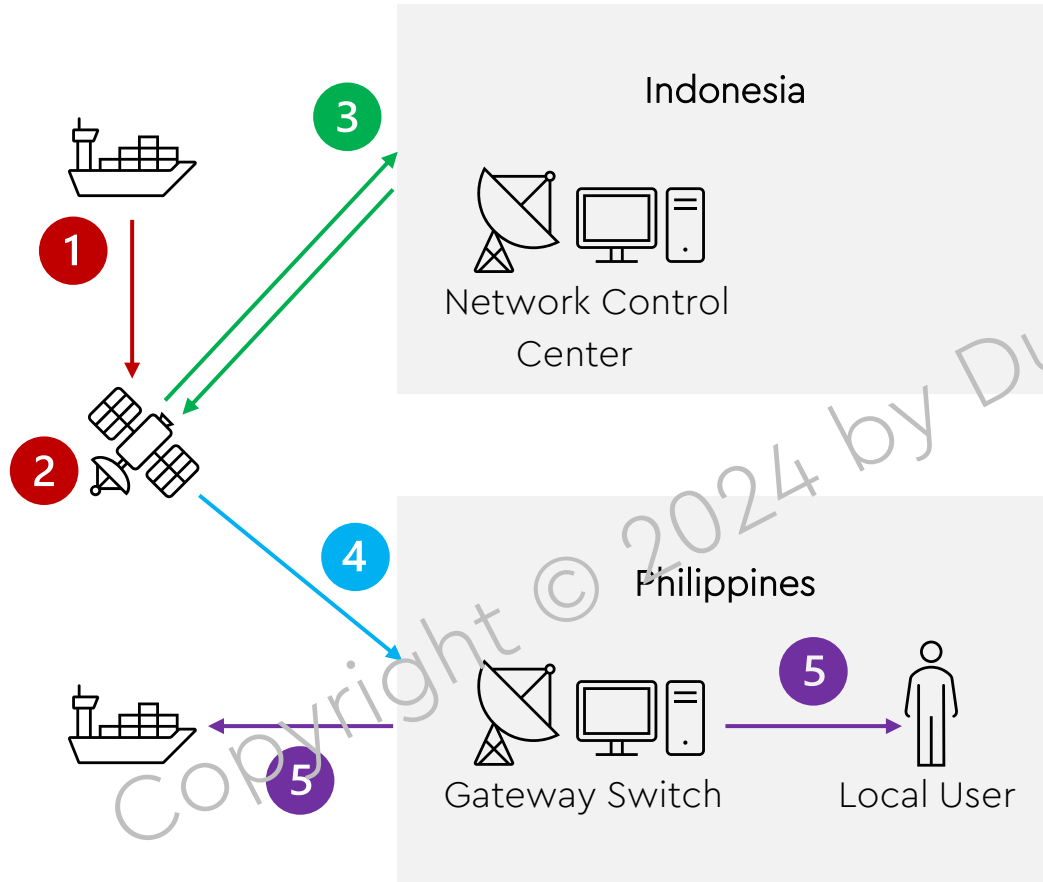
1. The **act of transmission** is the activity that produces the income;

2. Aces Bermuda **does not have machinery, equipment and/or computers, or employees in the Philippines**

### Transaction Flow:

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

## Transaction Flow – *Aces Philippines Case*

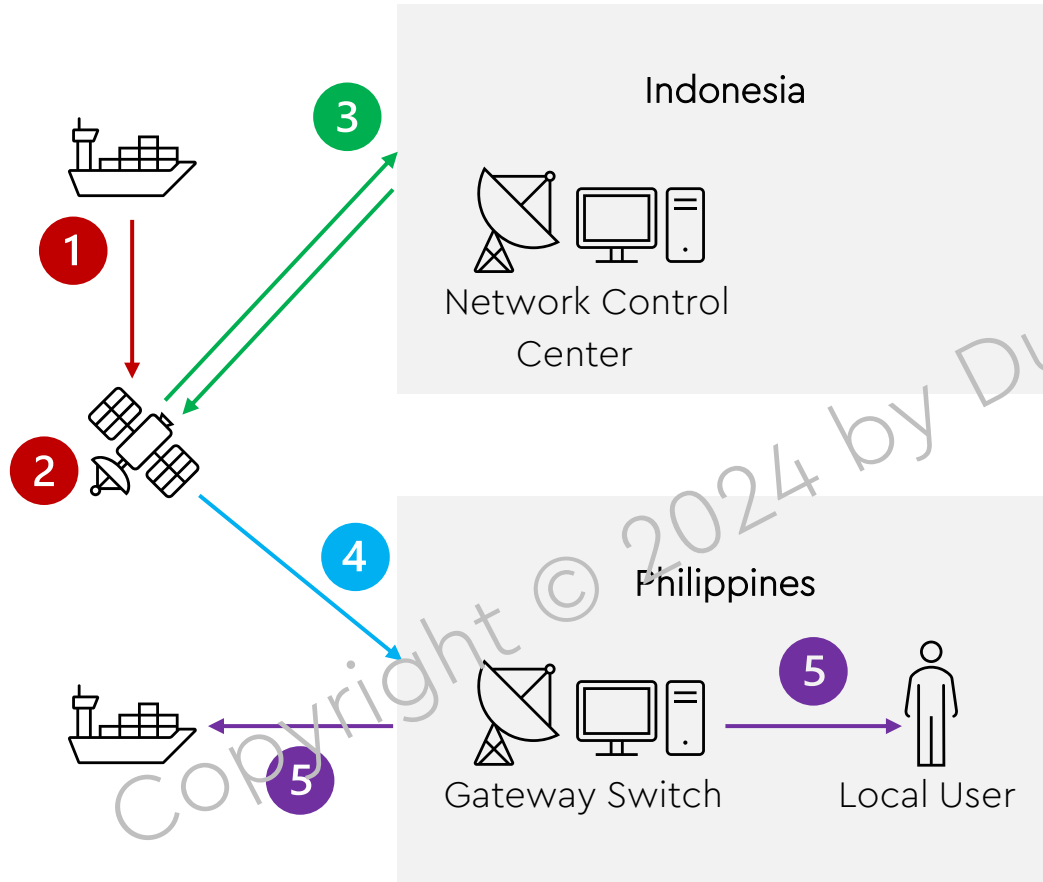


The Supreme Court held that the satellite air time fee payments made to Aces Bermuda were **sourced within the Philippines** because:

As to identification of the source

1. There is a **continuous and very real connection within the components of the Aces System**. The service cannot be compartmentalized to the point of transmission and must include PH gateway's receipt of the routed call.
2. The accrual of satellite air time marks the **inflow of economic benefits**.

## Transaction Flow – *Aces Philippines Case*



The Supreme Court held that the satellite air time fee payments made to Aces Bermuda were **sourced within the Philippines** because:

As to identification of the situs

1. The **income-generating activity is directly associated with the gateways** located within the Philippine territory.
2. Engaging in the business of providing satellite communication services in the Philippines is a **government-regulated industry**.

The BIR stated that the following cross-border services are akin to that of Aces:

International Service Provision (or cross-border services)

Consulting Services

Engineering and Construction

IT Outsourcing

Financial Services

Tourism and Hospitality

Telecommunications

Other Similar Services

## BIR's Application of the Aces Philippines Case to Cross-Border Services

The revenue generating activity for Cross-Border Services occurs **within the Philippines**. The rationale behind this are:



**Benefits Received Theory** – If the income-generating activities are deemed essential, the income derived from these activities are considered sourced from the Philippines for tax purposes.



The utilization of these services offer benefits to the local company. The outcomes or results of these services are put into practical **use, applied, or utilized within the local country**.



Factors to determine whether the RMC will apply to the cross-border service

1. 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?
2. Is the performance of the service dependent on the facility located in the Philippines?
3. 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.

Issues on the BIR's Application of the Doctrine in the Aces Philippines Case to Cross-Border Services

Inconsistency with Situs Rules under Section 42 of the Tax Code



**Observation:** Section 42 of the Tax Code provides the following situs rules:

Place of Performance of Services	Situs
Performed in the Philippines	Income from sources <b>within</b> the Philippines
Performed without the Philippines	Income from sources <b>without</b> the Philippines



**Comment:** Despite the express rule under Section 42, the RMC would still treat income for services performed outside the Philippines as derived from within the Philippines.

Issues on the BIR's Application of the Doctrine in the Aces Philippines Case to Cross-Border Services

Disregard of tax treaties and international commitments



**Observation:** The Philippines has several tax treaties recognizing permanent establishment. However, the RMC disregards the tax treaties and imposes taxes on NRFCs despite having no permanent establishment in the Philippines.



**Comment:** The overarching scope of the RMC effectively subject to tax almost all services to a Philippine entity rendered by an NRFC in their country.

## Permanent Establishment in International Taxation



**Definition:** In general, Permanent Establishment means a fixed place of business through which the business of the enterprise is wholly or partly carried on.



**Emerging Trends:** The Two Pillar Approach:

- ✓ Pillar One – It provides a mechanism for reallocation of profit to each eligible market jurisdictions by giving a taxing right over a portion of the residual profit.
- ✓ Pillar Two – It provides for the imposition of a global minimum tax to address tax leakages from tax havens.

Unlike the RMC, the Pillar Two Approach does not indiscriminately tax all income. It is founded on strict rules.

**Locally rooted – Globally connected**