SUMMARY OF SIGNIFICANT SC TAX DECISIONS (JANUARY TO JUNE 2015)

1. "At any one time", for purposes of determining the "20 or more lenders" would mean every transaction executed in the primary or secondary market in connection with the purchase or sale of securities.

On March 23, 2001, the Caucus of Development NGO Networks (CODE-NGO, with the assistance of financial advisors led by Rizal Commercial Banking Corporation (RCBC), requested and approval from the Department of Finance for the issuance by the Bureau of Treasury of ten-year zero-coupon treasury certificates (T-notes). The T-notes would initially be purchased by a special purpose vehicle on behalf of CODE-NGO, repackaged and sold at a premium to investors as the Poverty Eradication and Alleviation Certificates or the PEACE Bonds. On May 31, 2001, the BIR, in reply to CODE-NGO's request, issued BIR Ruling No. 020-2001 on the tax treatment of the proposed PEACE Bonds. The ruling confirmed that the PEACE Bonds would not be classified as deposit substitutes and would not be subject to the corresponding withholding tax. This was confirmed in subsequent rulings. In sum, the rulings pronounced that to be able to determine whether the financial assets are deposit substitutes, the "20 or more individual or corporate lenders" rule must apply. Moreover, the determination of the phrase "at any one time" for purposes of determining the "20 or more lenders" is to be determined at the time of the original issuance. Such being the case, the PEACE Bonds were not to be treated as deposit substitutes. On October 18, 2001, the Bureau of Treasury issued P35B worth of 10-year zero-coupon treasury bonds to RCBC on behalf of CODE-NGO. RCBC Capital, as the lead underwriter, sold the bonds in the secondary market. Petitioners purchased the PEACE Bonds on different dates.

On October 7, 2011, the BIR issued BIR Ruling No. 370-2011 declaring that the PEACE Bonds, being deposit substitutes, are subject to the 20% final withholding tax. Pursuant to this ruling, the Secretary of Finance directed the Bureau of Treasury to withhold a 20% final tax from the face value of the PEACE Bonds upon their payment at maturity on October 18, 2011. Hence, a petition for certiorari, prohibition and/or mandamus was filed by the petitioners seeking, among others, to annul BIR Ruling 370-2011 and prohibit the Bureau of Treasury from withholding or collecting the 20% final withholding tax.

The 1997 NIRC defines "public" to mean "twenty (20) or more individual or corporate lenders at any one time." Hence, as decided by the Supreme Court, the number of lenders is determinative of whether a debt instrument should be considered a deposit substitute and consequently subject to the 20% final withholding tax. From the point of view of the financial market, the phrase "at any one time" for purposes of determining the "20 or more lenders" would mean every transaction executed in the primary or secondary market in connection with the purchase or sale of securities. Where the financial assets involved are government securities like bonds, the reckoning of the "20 or more lenders/investors" is made at any transaction in connection with the purchase or sale of the government bonds, such as:

a) Issuance by the Bureau of Treasury of the bonds to the Government Securities Eligible Dealers (GSEDs) in the primary market;
b) Sale and distribution by GSEDs to various lenders/investors in the secondary market;
c) Subsequent sale or trading by a bondholder to another lender/investor in the secondary market usually through a broker or dealer; or
d) Sale by a financial intermediary-bondholder of its participation interests in the bonds to individual or corporate lenders in the secondary market.

When, through any of the foregoing transactions, funds are simultaneously obtained from 20 or more lenders/investors, there is deemed to be a public borrowing and the bonds at that point in time are deemed deposit substitutes. Consequently, the seller is required to withhold the 20% final withholding tax on the imputed interest income from the bonds. Thus, the BIR interpretation as expressed in the 2001 BIR rulings is not consistent with law. Its interpretation of "at any one time" to mean at the point of origination alone is unduly restrictive. Likewise, BIR Ruling No. 370-11 is erroneous in so far as it stated that all treasury bonds, regardless of the number of purchasers/lenders at the time of origination/issuance are considered deposit substitutes. It is thus declared void because it completely disregarded the 20 or more lender rule added by Congress in the 1997 NIRC. It also created a distinction for government debt instruments as against those issued by private corporations when there is none in the law. ***(Banco De Oro, et. al. vs. Republic of the Philippines, et. al., G.R. Nos. 198756, January 13, 2015)***

2. A prior application for tax treaty relief is not required for the availment of preferential tax rates in the tax treaty.

Taxpayer paid interests on borrowings made from foreign banks which are residents of Belgium, Netherlands, Austria and Japan. The taxpayer withheld and remitted 15% on the interests paid to the Belgian, Netherlands and Austrian banks and 20% on the interests paid to Japanese banks. Realizing that that interests are subject only to the 10% preferential tax rates based on the respective tax treaties of the Philippines with Belgium, Austria and Japan, the taxpayer applied for a claim for refund with the BIR and later with the CTA for the excess tax payments. The CTA granted the refunds since these are covered by ITAD rulings confirming the application of the preferential tax treaty rates. However, it denied the claim with respect to the interests on the transactions with the Netherlands bank on the ground that the taxpayer failed to obtain an ITAD ruling pursuant to Revenue Memorandum Order No. 1-2000 which requires a prior application for tax treaty relief.

The Supreme Court reversed the CTA decision. Citing its earlier decision in the case of *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue, G.R. No. 188550, August 19, 2013,* the Supreme Court ruled that the principle of prior application with the BIR becomes moot in refund cases where the very basis of the claim is erroneous or there is excessive payment arising from the non-availment of a tax treaty relief at the first instance. Further, the Court ruled that the obligation to comply with a tax treaty must take precedence over the objective of RMO 1-2000. The requirement is an imposition that is not found at all in the applicable tax treaties. ***(CBK Power Company Limited vs. Commissioner of Internal Revenue, G.R. Nos. 193383-84, January 14, 2015)***

3. In a claim for refund for erroneously paid taxes, the doctrine of exhaustion of administrative remedies is not violated if the taxpayer files a judicial claim a few days after filing the administrative claim.

On March 4, 2005, taxpayer filed an administrative claim for refund of its excess final withholding taxes erroneously withheld for the years 2003. For the inaction of the BIR on the taxpayer's administrative claim, the taxpayer filed the judicial claim with the CTA on March 9, 2005. The BIR laments that it was deprived of the opportunity to act on the administrative claim for refund of excess final withholding tax which was filed on March 4, 2005, a Friday, and then the following Wednesday, March 9, 2005, the taxpayer hastily elevated the case to the CTA. The BIR argues that the failure on the part of the taxpayer to give the BIR a reasonable time to act on the said claim is violative of the doctrines of exhaustion of administrative remedies and of primary jurisdiction.

In ruling in favor of the taxpayer, the Supreme Court ruled that Sections 204 and 229 of the Tax Code pertains to the refund of erroneously or illegally collected taxes. Section 204 applies to an administrative claim while Section 229 applies to a judicial claim. In both cases, taxpayer's claim must be filed within 2 years from the date of payment of the tax. The Court noted that two returns were filed by the taxpayer on March 10, 2003 and June 10, 2003. Thus, the deadline of the two year prescriptive period for filing a claim was on March 10, 2005 and June 10, 2005, respectively. For the return filed on March 10, 2003, had the taxpayer awaited the action of the BIR prior to taking action to the Court, it would have lost its right to seek judicial recourse and the right to recover the taxes erroneously paid. For the return filed on June 10, 2003 that was to prescribe on June 10, 2005, the taxpayer could have waited for three more months to give the BIR at the administrative level an opportunity to act on the claim. However, the Court, on that basis alone, cannot deny a legitimate claim that was, for all intents and purposes, timely filed in accordance with Section 229 of the Tax Code. There is no violation of the law since Section 229, as worded, only requires that a prior administrative claim be filed. ***CBK Power Company Limited vs. Commissioner of Internal Revenue, G.R. Nos. 193383-84, January 14, 2015)***

4. A judicial claim for the refund of input tax filed beyond 30 days after the lapse of 120 days from the filing of the administrative claim is considered filed out of time.

On December 11, 2000, taxpayer filed with the BIR an application for the refund or credit of its unutilized input taxes incurred in July and August of 2000. The BIR had not acted on the BIR's claim. Under the belief that it had a period of two-years from September 30, 2000 (the end of the quarter when the transactions were made) to file a judicial claim, taxpayer filed a petition for review before the CTA on September 11, 2002.

In deciding against the taxpayer, the Supreme Court reiterated its earlier decisions that it is only the administrative claim that must be filed within the two-year prescriptive period[1] and that the 30-day period always applies, whether there is denial or inaction on the part of the Commissioner[2]. Thus, from the filing of the administrative claim for refund on December 11, 2000, the BIR had a period of 120 days or until April 10, 2011 to act on the claim. Since the BIR failed to do so, the taxpayer should have then treated the inaction as denial of its claim. Taxpayer would then have had 30 days or until May 10, 2001 to file a judicial claim with the CTA. Since the judicial claim was filed only on September 11, 2002, the judicial claim was thus filed late. As the 30-day period is mandatory and jurisdictional, the CTA had no jurisdiction over the taxpayer's refund claim. (***ROHM Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue, G.R. No. 168950, January 14, 2015)***

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[1] Commission of Internal Revenue vs. Aichi Forging Company of Asia, Inc. (G.R. No. 184823, October 6, 2010

[2] Commissioner of Internal Revenue vs. San Roque Power Corporation, G.R. No. 187485, February 12, 2013

5. Submission and presentation of the quarterly ITRs of the succeeding quarters of a taxable year is not indispensable in a claim for refund of excess income tax payment.

In a claim for refund of excess income tax payments resulting from unutilized creditable withholding taxes for the year 2003, the CTA agreed with the argument of the BIR that the claim should be denied on the ground that the taxpayer failed to present in evidence its quarterly income tax return of the subsequent year 2004 to prove that the excess income tax payment was not carried over to the succeeding year.

The Supreme Court reversed the CTA. According to the Supreme Court, subsequent quarterly income tax returns are not indispensable. What Section 76 of the Tax Code requires is the fact of not having carried over the excess credits to the subsequent quarters of taxable year. It does not say that to prove such as fact, succeeding quarterly ITRs are absolutely needed. Any document, other than the quarterly ITRs may be used to establish that indeed the non-carry over clause has been complied with, provided that such is competent, relevant and part of the records. The annual ITR can sufficiently reveal whether carry over has been made in subsequent quarters even if the taxpayer has chosen the option of tax credit or refund in the immediately 2003 annual ITR. Thus, the presentation of the annual ITR would suffice in proving that the prior year's excess credits were not utilized for the taxable year in order to make a final determination of the total tax due. (***Winebrenner & Inigo Insurance Broker's Inc. vs. Commissioner of Internal Revenue, G.R. No. 206526, January 28, 2015)***

6. A request for reinvestigation does not necessarily suspend the prescriptive period within which the BIR can collect an assessment.

On April 19, 1989, the taxpayer received an assessment from the BIR finding it liable for deficiency documentary stamp taxes (DST) due for the year 1982 to 1986. On May 8, 1989, the taxpayer filed its protest with the BIR raising various defenses. in the protest, the taxpayer requested a reinvestigation so as to substantiate its assertions. On December 6, 2001, the BIR rendered a decision reiterating the deficiency DST assessment and ordered the payment thereof plus increments. Thus, on January 18, 2002, the taxpayer filed a petition for review before the CTA. The petition was denied by the CTA.

On appeal to the Supreme Court, the taxpayer invoked prescription for the first time, arguing that the government has 3 years from April 19, 1989, the date when the taxpayer received the assessment, to collect the tax. Within that timeframe, neither warrant of distraint or levy was issued, nor a collection case filed in court. Deciding in favor of the taxpayer, the Supreme Court stated that the assessment was issued on April 19, 1989, when the applicable rule was Section 319(c) of the NIRC of 1977. In that provision, the time limit for the government to collect assessed tax was set at 3 years, reckoned from the date when the BIR mails/releases/sends the assessment notice to the taxpayer. Further, Section 319(c) states that the assessed tax must be collected by distraint or levy and/or court proceeding within the 3-year period. Consequently, the claim of the BIR for deficiency DST is forever lost. The fact that the taxpayer may have requested for reinvestigation did not toll the running of the 3-year prescriptive period. A request for reinvestigation alone will not suspend the statute of limitations. Two things must concur: there must be a request for reinvestigation and the BIR must have granted it. In this case, there was no showing that the BIR ever granted the request for reinvestigation. That being the case, it cannot be said that the running of the 3-year prescriptive period was effectively

suspended. ***(China Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 172509, February 4, 2015)***

7. A petition filed with the CTA beyond the 120+30-day period is considered filed out-of-time and the CTA does not acquire jurisdiction.

On September 24, 2001, taxpayer filed a claim for refund of input taxes related to zero-rated sales with the BIR, through the One-Stop-Shop Inter-agency Tax Credit and Duty Drawback Center of the Department of Finance. Due to the inaction on the administrative claim, the taxpayer filed its petition for review before the CTA on April 24, 2002.

Section 112(D) of the NIRC of 1997 categorically states that in case of failure on the part of the BIR to act on the application within the 120-day period prescribed by law, the taxpayer only has 30 days after the expiration of the 120-day period to appeal the unacted claim with the CTA. Since the taxpayer's judicial claim was filed before the CTA only on April 24, 2002, which was beyond the mandatory 120+30 days to seek judicial recourse, such non-compliance with the mandatory period of 30 days is fatal to its refund claim on the ground of prescription. Consequently, the CTA has no jurisdiction over the claim of taxpayer as the petition was belatedly file. (***Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue, G.R. No. 185666, February 04, 2015[3])***

8. The word zero-rated is required on the invoices or receipts issued by VAT registered taxpayers.

Taxpayer filed a claim for refund of its input taxes related to its zero-rated sales for the year 1998. The CTA denied the petition because the official receipts presented by the taxpayer to support is claim failed to imprint the word zero-rated on its face in violation of the invoicing requirements. Also, the taxpayer failed to present sales invoices covering its VATable and exempt sales for purposes of allocating its input taxes.

The Supreme Court affirmed the CTA decision. An applicant for a claim for tax refund must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements. Thus, the failure to indicate the words zero-rated on the invoices or receipts issued by a taxpayer would result in the denial of the claim for refund or tax credit. Moreover, considering that the taxpayer is engaged in mixed transactions that cover its zero-rated sales, taxable and exempt sales, it is only appropriate and reasonable for it to present competent evidence to validate all entries in its returns in order to properly determine which transactions are zero-rated and which are taxable. ***(Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 183531, March 25, 2015)***

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[3] The same decision was made in the case of Northern Mindanao Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 185115, February 18, 2015.