

## Significant Supreme Court Decisions June 2018

### **Prior year's excess credit must be substantiated in a claim for refund of excess creditable tax.**

The taxpayer filed a claim for refund of excess creditable withholding tax. The taxpayer used its prior year's excess credits to pay for its current year's income tax due. The Supreme Court (SC) disallowed the same because the prior year's excess credits was unsubstantiated. Further, when the taxpayer opted to just carry-over to the succeeding year its prior year's excess credits and creditable taxes that is subject of the refund, the SC went on to explain that only the substantiated tax credits may be carried-over to the succeeding year and may be applied against the income tax due in the succeeding year. The SC ordered the BIR to issue a FAN on the taxpayer for using its unsubstantiated excess credits as payment for its income tax due for the current year. (*Commissioner of Internal Revenue vs. Cebu Holdings, Inc.*, G.R. No. 189792, June 20, 2018).

**Note:** How should a taxpayer substantiate its prior year's excess credits? Is it enough that the taxpayer present the income tax return or the CWT certificates of the preceding years? Or is the taxpayer required to prove, like in a claim for refund, that the said CWT certificates were declared as part of income of the corresponding taxable years. This will be a very difficult requirement for a taxpayer that is claiming for refund. In substantiating prior year's excess credits, a taxpayer needs to prove not only the immediately preceding taxable year but the many years of carry over where the immediately preceding prior year's excess credits was derived from.

### **No assessment was issued unless the assessment was received by the taxpayer.**

In this case, the taxpayer denied receiving the assessment notice and the BIR was unable to present evidence that such notice was, indeed, mailed or received by the taxpayer. Thus, according to the SC, the failure of the BIR to prove the receipt of the assessment by the BIR means that no assessment was issued. (*Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 224327, June 11, 2018).