

**SC RULINGS ON TAX LAW**

# February 2014 Philippine Supreme Court Decisions on Tax Law

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Here are select February 2014 rulings of the Supreme Court of the Philippines on tax law:

## **Tax laws**

National Internal Revenue Code; Doctrine of Exhaustion of Administrative Remedies. Taxpayer submits that the requirement to exhaust the 12-day period under Section 112 (c) of the National Internal Revenue Code prior to filing the judicial claim with the Court of Tax Appeals (CTA) is a doctrine of “exhaustion of administrative remedies” and that the non-observance of the same merely results in lack of cause of action which may be waived for failure to timely invoke the same. As the Court opined in *San Roque*, a petition for review that is filed with the CTA without waiting for the 120-day mandatory period renders the same void. A person committing a void act cannot claim or acquire any right from such void act. Accordingly, taxpayer’s failure to comply with the 120-day mandatory period renders its petition for review with the CTA void. It is a mere scrap of paper from which taxpayer cannot derive or acquire any right notwithstanding the supposed failure on the part of the Commissioner to raise the issue of non-compliance with the 120-day period in the proceedings before the CTA First Division. *Commissioner of Internal Revenue vs. Team Sual Corporation (Formerly Mirant Sual Corporation)*, **G.R. No. 194105. February 5, 2014**

National Internal Revenue Code; excise tax; *pacta sunt servanda*; Section 135. Under the basic international law principle of *pacta sunt servanda*, the state has the duty to fulfill its treaty obligations in good faith. This entails harmonization of national legislation with treaty provisions. Section 135 (a) of the National Internal Revenue Code embodies the country’s compliance with its undertakings under the 1944 Chicago Convention on International Aviation (Chicago Convention), Article 24 (9) of which has been interpreted

to prohibit taxation of aircraft fuel consumed for international transport, and various bilateral air service agreements not to impose excise tax on aviation fuel purchased by international carriers from domestic manufacturers or suppliers. In the previous decision of the Court in this case, the Court interpreted Section 135 (a) as prohibiting domestic manufacturer or producer to pass on to international carriers the excise tax it had paid on petroleum products upon their removal from the place of production. Thus, the Court found that there was no basis to refund the excise taxes paid on petroleum products sold to tax-exempt international carriers as “erroneously or illegally paid” tax. The Court maintains that Section 135 (a) prohibits the passing of the excise tax to international carriers who buys petroleum products from local manufacturers/sellers such as the respondent taxpayer. However, there is a need to reexamine the effect of denying the domestic manufactures/sellers’ claim for refund of the excise taxes they already paid on petroleum products sold to international carriers, and its serious implications on the Government’s commitment to the goals and objectives of the Chicago Convention. With the process of declining sales of aviation jet fuel sales to international carriers on account of major domestic oil companies’ unwillingness to shoulder the burden of excise tax, or of petroleum products being sold to said carriers by local manufacturers or sellers at still high prices, the practice of “tankering” (i.e., carriers filling their aircraft as full as possible whenever they landed outside a jurisdiction that imposes tax on fuel to avoid paying tax) would not be discouraged. This does not augur well for the Philippines’ growing economy and the booming tourism industry. Worse, the Government would be risking retaliatory action under several bilateral agreements with various countries. Evidently, construction of the tax exemption provision in question should give primary consideration to its broad implications on the country’s commitment under international agreements. In view of the foregoing the Court held that respondent, as the statutory taxpayer who is directly liable to pay the excise tax on its petroleum products is entitled to a refund or credit of the excise taxes it paid for petroleum products sold to international carriers, the latter having been granted exemption from the payment of said excise tax under Section 135 (a) of the NIRC. *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, *G.R. No. 188497. February 19, 2014*.

added tax; prescriptive period for judicial and administrative claims. Section 112([C]) of the National Internal Revenue Code (NIRC) clearly provides that the Commissioner of Internal Revenue (CIR) has “120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit],” within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer’s recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days. In this case, the taxpayer filed an administrative claim for refund with the Bureau of Internal Revenue on March 11, 2002 and the petition for review with the CTA on April 1, 2002. As held by the Court in *Commissioner of Internal Revenue v Aichi Forging Company of Asia, Inc.*, the phrase “within two years... apply for the issuance of a tax credit certificate or refund” refers to applications for refund or credit filed with the CIR and not to appeals made to the CTA.

Moreover, in *Commissioner of Internal Revenue v. San Roque Power Corporation*, the Court emphasized that the 120-day period that is given to the CIR within which to decide claims for refund/tax credit of unutilized input value-added tax is mandatory and jurisdictional. The Court categorically held that the taxpayer-claimant must wait for the 120-day period to lapse, should there be no decision fully or partially denying the claim, before a petition for review may be filed with the CTA. Otherwise, the petition would be rendered premature and without a cause of action. Consequently, the CTA does not have the jurisdiction to take cognizance of a petition for review filed by the taxpayer-claimant should there be no decision by the CIR on the claim for refund/tax credit or the 120-day period had not yet lapsed. *Commissioner of Internal Revenue vs. Team Sual Corporation (Formerly Mirant Sual Corporation)*, *G.R. No. 194105. February 5, 2014*

Local Government Code; taxes vs. fees. Section 5, Article X of the 1987 Constitution provides that “[e]ach local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government.” Consistent with this constitutional mandate, the Local Government Code (LGC) grants

the taxing powers to each local government unit. Specifically, Section 142 of the LGC grants municipalities the power to levy taxes, fees, and charges not otherwise levied by provinces. Section 143 of the LGC provides for the scale of taxes on business that may be imposed by municipalities while Section 147 of the same law provides for the fees and charges that may be imposed by municipalities on business and occupation. The LGC defines the term “charges” as referring to pecuniary liability, as rents or fees against persons or property, while the term “fee” means “a charge fixed by law or ordinance for the regulation or inspection of a business or activity.” In this case, the Municipality issued Ordinance No. 18, which is entitled “An Ordinance Regulating the Establishment of Special Projects,” to regulate the “placing, stringing, attaching, installing, repair and construction of all gas mains, electric, telegraph and telephone wires, conduits, meters and other apparatus, and provide for the correction, condemnation or removal of the same when found to be dangerous, defective or otherwise hazardous to the welfare of the inhabitant[s].” It was also envisioned to address the foreseen “environmental depredation” to be brought about by these “special projects” to the Municipality. Pursuant to these objectives, the Municipality imposed fees on various structures, which included telecommunications towers. As clearly stated in its whereas clauses, the primary purpose of Ordinance No. 18 is to regulate the “placing, stringing, attaching, installing, repair and construction of all gas mains, electric, telegraph and telephone wires, conduits, meters and other apparatus” listed therein, which included petitioner’s telecommunications tower. Clearly, the purpose of the assailed Ordinance is to regulate the enumerated activities particularly related to the construction and maintenance of various structures. The fees in Ordinance No. 18 are not impositions on the building or structure itself; rather, they are impositions on the activity subject of government regulation, such as the installation and construction of the structures. Since the main purpose of Ordinance No. 18 is to regulate certain construction activities of the identified special projects, which included “cell sites” or telecommunications towers, the fees imposed in Ordinance No. 18 are primarily regulatory in nature, and not primarily revenue-raising. While the fees may contribute to the revenues of the Municipality, this effect is merely incidental. Thus, the fees imposed in Ordinance No. 18 are not taxes. Considering that the fees in Ordinance No. 18 are not in the nature of local taxes, and petitioner is questioning the constitutionality of the same, the CTA correctly dismissed the petition for lack of jurisdiction. *Smart Communications, Inc. v. Municipality of Malvar, Batangas*, **G.R. No.**

20442. February 18, 2014

### **Tax Procedure**

Rules of Court; Rule 65 and Rule 45. Petitioners availed of the wrong remedy when they filed the special civil action for *certiorari* under Rule 65 of the Rules of Court with the Court in assailing the resolutions of the Court of Appeals (CA) which dismissed their petition filed with the said court and their motion for reconsideration of such dismissal. There is no dispute that the assailed resolutions of the CA are in the nature of a final order as they disposed of the petition completely. It is settled that in cases where an assailed judgment or order is considered final, the remedy of the aggrieved part is appeal. Hence, in the instant case, petitioner should have filed a petition for review on *certiorari* under Rule 45, which is a continuation of the appellate process over the original case. A special civil action for *certiorari* under Rule 65 is an original or independent action based on grave abuse of discretion amounting to lack of excess of jurisdiction and it will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. It cannot be a substitute for a lost appeal. In accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice, the Court has treated a petition for *certiorari* as a petition for review on *certiorari*, particularly (1) if the petition for *certiorari* was filed within the reglementary period within which to file a petition for review on *certiorari*, (2) when errors of judgment are averred, and (3) when there is sufficient reason to justify the relaxation of the rules. Considering that the present petition was filed within the 15-day reglementary period for filing a petition for review on *certiorari* under Rule 45, that an error of judgment is averred, and because of the significance of the issue on jurisdiction, the Court deemed it proper and justified to relax the rules and treat the petition for *certiorari* as a petition for review on *certiorari*. The City of Manila, etc. et al. v. Hon. Caridad H. Grecia-Cuerdo etc., et al, *G.R. No. 175723. February 4, 2014*

Republic Act No. 1125; Court of Tax Appeals; jurisdiction over petitions for *certiorari*. While it is clearly stated that the Court of Tax Appeals (CTA) has exclusive appellate jurisdiction over decisions, orders or resolutions of the Regional Trial Courts (RTCs) in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction, there is no categorical statement under Republic Act No. (RA) 1125 as well

as the amendatory RA 9282, which provides that the CTA has jurisdiction over petitions for certiorari assailing interlocutory orders issued by the RTC in local tax cases filed before it. The prevailing doctrine is that the authority to issue writs of certiorari involves the exercise of original jurisdiction which must be expressly conferred by the Constitution or by law and cannot be implied from the mere existence of appellate jurisdiction. Section 5 (1), Article VIII of the 1987 Constitution grants power to the Supreme Court, in the exercise of its original jurisdiction, to issue writs of certiorari, prohibition and mandamus. With respect to the Court of Appeals, Section 9 (1) of Batas Pambansa Blg. 129 (BP 129) gives the appellate court, also in the exercise of its original jurisdiction, the power to issue, among others, a writ of certiorari, whether or not in aid of its appellate jurisdiction. As to Regional Trial Courts, the power to issue a writ of certiorari, in the exercise of their original jurisdiction, is provided under Section 21 of BP 129. While there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. On the strength of said constitutional provisions, it can be fairly interpreted that the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of certiorari in these cases. *The City of Manila, etc. et al. v. Hon. Caridad H. Grecia-Cuerdo etc., et al*, *G.R. No. 175723. February 4, 2014*.

Republic Act No. 1125, as amended; Court of Tax Appeals; jurisdiction. Jurisdiction is conferred by law. Republic Act No. 1125, as amended by Republic Act No. 9282, created the Court of Tax Appeals (CTA). Section 7, paragraph (a), sub-paragraph (3) of the law vests the CTA with the exclusive appellate jurisdiction over “decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction.” The question now is whether the trial court resolved a local tax case in order to fall within



the ambit of the CTA's appellate jurisdiction This question, in turn, depends ultimately on whether the fees imposed under Ordinance No. 18 are in fact taxes. *Smart Communications, Inc. v. Municipality of Malvar, Batangas*, *G.R. No. 20442. February 18, 2014*

## January 2014 Philippine Supreme Court Decisions on Tax Law

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Here are select January 2014 rulings of the Supreme Court of the Philippines on tax law:

Court of Tax Appeals; findings of fact. The Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority. Factual findings made by the CTA can only be disturbed on appeal if they are supplied by substantial evidence or there is a showing of gross error or abuse on the part of the CTA. In the absence of any clear and convincing proof to the contrary, the Court must presume that the CTA rendered a decision which is valid in every respect. *Commissioner of Internal Revenue v. Toledo, Power, Inc.*, *G.R. No. 183880, January 20, 2014*.

Refund; solutio indebiti; elements. There is solutio indebiti when: (1) Payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) Payment is made through mistake, and not through liberality or some other cause. Solutio indebiti does not apply in this case because there exists a binding relation between petitioner and the CIR, the former being a taxpayer obligated to pay VAT and the payment of input tax was not made through mistake since petitioner was legally obligated to pay for that liability. The entitlement to a refund or credit of excess input tax is solely based on the distinctive nature of the VAT system. At the time of payment of the input VAT, the amount paid was correct and proper. *CBK Power Company Limited vs. Commissioner of Internal Revenue*, *G.R. No. 198729-30*,

*January 15, 2014.*

Value-added tax; refund of input value-added tax;; prescriptive period for judicial and administrative claims. Under Section 112 of the National Internal Revenue Code (NIRC), it is only the administrative claim for refund of input value-added tax (VAT) that must be filed within the two-year prescriptive period; the judicial claim need not fall within the two-year prescriptive period. Subsection (A) of the said provision states that “any VAT-registered person whose sales are zero-rated may, within two years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales.” The phrase “within two (2) years x x x apply for the issuance of a tax credit certificate or refund” refers to applications for refund/credit filed with the Commissioner of Internal Revenue (CIR) and not to appeals made to the Court of Tax Appeals (CTA). This is apparent in the first paragraph of subsection (D) of the same provision which states that the CIR has “120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)” within which to decide on the claim. *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership, G.R. No. 191498, January 15, 2014.*

Value-added tax; refund of input value-added tax; prescriptive period; reckoning point for two-year prescriptive period. The doctrine in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, which held that claims for refund or credit of input VAT must comply with the two-year prescriptive period under Section 229, should be effective only from its promulgation on June 8, 2007 until its abandonment on September 12, 2008 in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*. The *Atlas* doctrine was limited to the reckoning of the two-year prescriptive period from the date of payment of the output VAT. Prior to the *Atlas* doctrine, the two-year prescriptive period for claiming refund or credit of input VAT should be governed by Section 112(A) following the *verba legis* rule. The *Mirant* ruling, which abandoned the *Atlas* doctrine, adopted the *verba legis* rule, thus applying Section 112(A) in computing the two-year prescriptive period in claiming refund or credit of input VAT. In this case, the claim for refund was filed on October 6, 2005. Thus, it is covered by the rule prior to the



advent of either *Atlas* or *Mirant*. Therefore, the proper reckoning date as provided in Section 112(A) of the NIRC is the close of the taxable quarter when the relevant sales were made. *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*, *G.R. No. 191498, January 15, 2014*.

Value-added tax; refund of input value-added tax; prescriptive period; 30-day period also applies to appeals from inaction. Section 112(D) of the NIRC speaks of two periods: the period of 120 days, which serves as a waiting period to give time for the CIR to act on the administrative claim for refund or credit, and the period of 30 days, which refers to the period for interposing an appeal with the CTA. The 30 day period applies not only to instances of actual denial by the CIR of the claim for refund or tax credit, but to cases of inaction by the CIR as well. The taxpayer can file the appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) filed the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period. *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*, *G.R. No. 191498, January 15, 2014*.

Value-added tax; refund of input value-added tax; prescriptive period; 30-day period to appeal is mandatory and jurisdictional; exception. The 30-day period to appeal to the CTA, as provided in the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*, is both mandatory and jurisdictional. The law states that a taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day period, appeal the decision or the unacted claim with the CTA. However, there is an exception to this rule. Bureau of Internal Revenue (BIR) Ruling No. DA-489-03 dated December 10, 2003 declared that a taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of petition for review. Thus, in cases of premature filing, taxpayers can rely on the BIR ruling from the time of its issuance, December 10, 2003 until its reversal by the Supreme Court on October 6, 2010, when the 120+30 day periods were held to be mandatory and jurisdictional. However, late filing is absolutely prohibited even during the time when the BIR ruling was in force. *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*, *G.R. No. 191498, January 15, 2014*.

Value-added tax; refund of input value-added tax; prescriptive period; administrative claim. The value-added tax (VAT) law provides for a mechanism that would allow VAT-registered persons to recover the excess input taxes over the output taxes they had paid in relation to their sales. For the refund or credit of excess or unutilized input tax, Section 112 of the National Internal Revenue Code (NIRC) is the governing law. Given the distinctive nature of creditable input tax, the law under Section 112(A) provides for a different reckoning point for the two-year prescriptive period, specifically for the refund or credit of that tax only. Section 112(A) is clear that for VAT-registered persons whose sales are zero-rated or effectively zero-rated, a claim for the refund or credit of creditable input tax that is due or paid, and that is attributable to zero-rated or effectively zero-rated sales, must be filed within two years after the close of the taxable quarter when such sales were made. The reckoning frame would always be the end of the quarter when the pertinent sale or transactions were made, regardless of when the input VAT was paid. *CBK Power Company Limited vs. Commissioner of Internal Revenue*, *G.R. No. 198729-30, January 15, 2014*.

Value-added tax; refund of input value-added tax; prescriptive period; judicial claim. Section 112(D) of the NIRC provides that the Commissioner of Internal Revenue (CIR) has to decide on an administrative claim within one hundred twenty (120) days from the date of submission of complete documents in support thereof. Thereafter, the taxpayer may appeal within 30 days from the receipt of the decision or from the expiration of the 120-day period within which the claim has not been acted upon. Given that the 30-day period to appeal to the Court of Tax Appeals (CTA) is dependent on the 120-day period, compliance with both periods is jurisdictional. The period of 120 days is a prerequisite for the commencement of the 30-day period to appeal to the CTA. *CBK Power Company Limited vs. Commissioner of Internal Revenue*, *G.R. No. 198729-30, January 15, 2014*.

Value-added tax; refund of input value-added tax; prescriptive period; judicial claim; reckoning point of the prescriptive period. The taxpayer can file his administrative claim for refund or issuance of tax credit certificate anytime within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner of Internal Revenue (CIR) will then have 120 days from such filing to decide the claim. If the CIR decides the claim on the 120<sup>th</sup> day or does not decide it on that day, the taxpayer still has 30 days to file his

judicial claim with the Court of Tax Appeals (CTA). In other words, the taxpayer may “within thirty (30) days from receipt of the decision denying the claim or after the expiration of the one hundred twenty day period, appeal the decision or the unacted claim with the [CTA].” *Team Energy Corporation (formerly Mirant Pagbilao Corp.) vs. Commissioner of Internal Revenue*, *G.R. No. 190928, January 13, 2014*.

Value-added tax; refund of input value-added tax; prescriptive period; judicial claim; reckoning point of the prescriptive period. The taxpayer can file his administrative claim for refund or issuance of tax credit certificate anytime within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner of Internal Revenue (CIR) will then have 120 days from such filing to decide the claim. If the CIR decides the claim on the 120<sup>th</sup> day or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the Court of Tax Appeals (CTA). In other words, the taxpayer may “within thirty (30) days from receipt of the decision denying the claim or after the expiration of the one hundred twenty day period, appeal the decision or the unacted claim with the [CTA].” *Team Energy Corporation (formerly Mirant Pagbilao Corp.) vs. Commissioner of Internal Revenue*, *G.R. No. 190928, January 13, 2014*.

Value-added tax; refund of input value-added tax; prescriptive period; judicial claim; reckoning point of the prescriptive period. A VAT-registered taxpayer claiming for refund or tax credit of their excess and unutilized input VAT must file their administrative claim within two years from the close of the taxable quarter when the sales were made. After that, the taxpayer must await the decision or ruling of denial of its claim, whether full or partial, or the expiration of the 120-day period from the submission of complete documents in support of such claim. Once the taxpayer receives the decision or ruling of denial or expiration of the 120-day period, it may file its petition for review with the CTA within thirty (30) days. The 120-30-day period in Section 112(C) of the NIRC is mandatory and its non-observance is fatal to the filing of a judicial claim with the CTA. In the *Aichi* case, the Court explained that if after the 120-day mandatory period, the CIR fails to act on the application for tax refund or credit, the remedy of the taxpayer is to appeal the inaction of the CIR to the CTA within thirty (30) days. The judicial claim, therefore, need not be filed within the two-year prescriptive period from the close of the taxable quarter but has to be filed within the

required 30-day period after the expiration of the 120 day period. *Team Energy Corporation (formerly Mirant Pagbilao Corp.) vs. Commissioner of Internal Revenue*, *G.R. No. 190928, January 13, 2014*.

Value-added tax; refund of input value-added tax; prescriptive period; judicial claim; reckoning point of the prescriptive period; exception. The mandatory and jurisdictional nature of the 120+30-day rule does not apply on claims for refund that were prematurely filed during the interim period from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 to October 6, 2010 when the *Aichi* doctrine was adopted. The exemption was premised on the fact that prior to the promulgation of the *Aichi* decision, there was an existing interpretation laid down in BIR Ruling No. DA-489-03 where the BIR expressly ruled that the taxpayer need not wait for the expiration of the 120-day period before it could seek judicial relief with the CTA. Since the CIR has exclusive and original jurisdiction to interpret tax laws, taxpayers acting in good faith should not be made to suffer for adhering to general interpretative rules of the CIR interpreting tax laws, should such interpretation later turn out to be erroneous and be reversed by the CIR or the Court. Indeed, Section 246 of the NIRC expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who, in good faith, relied on the BIR regulation or ruling prior to its reversal. BIR Ruling No. DA-489-03 is a general interpretative rule because it is a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the CIR the administrative claim of Lazi Bay Resources Development, Inc., the agency was, in fact, asking the CIR what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period. *Team Energy Corporation (formerly Mirant Pagbilao Corp.) vs. Commissioner of Internal Revenue*, *G.R. No. 190928, January 13, 2014*.

Value-added tax; refund of input value-added tax; prescriptive period; exception. The 120+30 day period is mandatory because the law is clear and unequivocal. Section 112 of the NIRC decrees that a VAT-registered person, whose sales are zero-rated or effectively zero-rated, may apply for the issuance of a tax credit or refund creditable input tax due or paid attributable

to such sales within two years after the close of the taxable quarter when the sales were made. From the date of submission of complete documents in support of its application, the CIR has 120 days to decide whether or not to grant the claim for refund or issuance of tax credit certificate. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the CIR to act on the application within the given period, the taxpayer may, within 30 days from receipt of the decision denying the claim or after the expiration of the 120-day period, appeal with the CTA the decision or inaction of the CIR. This rule, however, is not without exception, Strict compliance with the 120+30day periods is not necessary when the judicial claims are filed between December 10, 2003 (issuance of BIR Ruling No. DA-489-03 which states that the taxpayer need not wait for the 120-day period to expire before it could seek judicial relief) to October 6, 2010 (promulgation of the *Aichi* doctrine which declared that the 120+30 day periods are mandatory) All taxpayers, therefore, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on December 10, 2003 up to its reversal by the Court in *Aichi* on October 6, 2010, as an exception to the mandatory and jurisdictional 120+30 day periods. *Commissioner of Internal Revenue v. Toledo, Power, Inc.*, *G.R. No. 183880, January 20, 2014*.

Value-added tax; refund of input value-added tax; prescriptive period; rules on the determination of the prescriptive period for filing. In a nutshell, the rules on the determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT, as provided in Section 112 of the NIRC, are as follows: (1)An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made (2)The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction (3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR (4) All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, as an exception to the mandatory and jurisdictional



120+30 day periods. *Commissioner of Internal Revenue v. Toledo, Power, Inc.*, *G.R. No. 183880, January 20, 2014*.

Value-added tax; refund of input value-added tax; invoicing requirements. The words “zero-rated” must appear in the invoice covering zero-rated sales. Although the same was merely stamped and not pre-printed in the present case, the same is sufficient compliance with the law, since the imprinting of the word “zero-rated” was required merely to distinguish sales subject to 10% VAT, those that are subject to 0% VAT (zero-rated) and exempt sales, to enable the Bureau of Internal Revenue to properly implement and enforce the other VAT provisions of the Tax Code. *Commissioner of Internal Revenue v. Toledo, Power, Inc.*, *G.R. No. 183880, January 20, 2014*.

## December 2013 Philippine Supreme Court Decisions on Tax Law

Posted on *January 22, 2014* by *Carina C. Laforteza* • Posted in *Philippines - Cases, Philippines - Law, Tax Law* •

National Internal Revenue Code; value-added tax; claim for input value-added tax refund; prescriptive period. Taxpayer filed its monthly and quarterly value-added tax (VAT) returns for the period beginning January 1, 2003 and ending on June 30, 2003. On August 9, 2004, it filed a claim for refund for its unutilized input VAT attributable to its zero-rated sales. Due to the failure of the Commissioner of Internal Revenue (CIR) to act on the claim, the taxpayer filed a petition for review with the Court of Tax Appeals (CTA) on May 5, 2005. The CIR argued that the period within which to file the petition for review had prescribed based on Section 112(D) (now 112 (C)) of the National Internal Revenue Code (NIRC). The taxpayer, on the other hand, argued that the period had not yet prescribed based on Section 229 of the NIRC. The Court ruled that Section 112(D) (now 112 (C)) of the NIRC is the applicable provision. Section 229 applies only to erroneously or excessively collected taxes and input VAT is not an erroneously or excessively collected tax. Therefore, Section 112(D) (now 112 (C)) prevails. In accordance with the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*, the taxpayer’s judicial claim for refund must be denied for having been filed late. Although taxpayer filed its administrative claim with the Bureau of Internal Revenue before the



expiration of the two-year period in Section 112 (A) of the NIRC, it failed to comply with the 120 + 30 day period in Section 112 (D) (now 112 (C)) which requires that upon the inaction of the CIR for 120 days after the submission of the documents in support of the claim, the taxpayer has to file its judicial claim within 30 days from the lapse of the said period. In this case, the 120 days granted to the CIR to decide the case ended on December 7, 2004. Thus, taxpayer had 30 days therefrom, or until January 6, 2005 to file a petition for review with the CTA. Unfortunately, taxpayer only sought judicial relief on May 5, 2005 when it belatedly filed its petition to the CTA. Thus, CTA did not properly acquire jurisdiction over the claim. *Commissioner of Internal Revenue vs. Dash Engineering Philippines, Inc., G.R.No. 184145, December 11, 2013.*

## November 2013 Philippine Supreme Court Decisions on Tax Law

Posted on [December 9, 2013](#) by [Carina C. Laforteza](#) • Posted in [Philippines - Cases](#), [Philippines - Law](#), [Tax Law](#) • Tagged [evidence](#), [merger](#), [value added tax](#) •

Here are select rulings of the Supreme Court of the Philippines on tax laws:

Merger; concept. The term “merger” or “consolidation”, when used shall be understood to mean: (i) the ordinary merger or consolidation, or (ii) the acquisition by one corporation of all or substantially all the properties of another corporation solely for stock: Provided, [t]hat for a transaction to be regarded as a merger or consolidation, it must be undertaken for a bona fide business purpose and not solely for the purpose of escaping the burden of taxation. In case of a merger, two previously separate entities are treated as one entity and the remaining entity may be held liable for both of their tax deficiencies. In the agreement between Traders Royal Bank and Bank of Commerce, it was explicitly provided that they shall continue to exist as separate entities. Since the purchase and sale of identified assets between the two companies does not constitute a merger under the foregoing definition, the Bank of Commerce is considered an entity separate from petitioner. Thus, it cannot be held liable for the payment of the deficiency documentary stamp tax assessed against petitioner. *Commissioner of Internal Revenue v. Bank of Commerce, G.R. No. 180529. November 13, 2013.*

Newly discovered evidence; concept; applicability. Ordinarily, the concept of newly discovered evidence is applicable to litigations in which a litigant seeks a new trial or the re-opening of the case in the trial court. Seldom is the concept appropriate when the litigation is already on appeal, because appellate courts, in general, are not triers of facts. Facts have to be proven while the case is still pending with the lower courts. The taxpayer has to convince the CTA that the quasi-judicial agency a quo should not have denied the claim, and to do so the taxpayer should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA, including whatever was required for the successful prosecution of the administrative claim as the means of demonstrating to the CTA that its administrative claim should have been granted in the first place. In order that newly discovered evidence may be a ground for allowing a new trial, it must be fairly shown that: (a) the evidence is discovered after the trial; (b) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) such evidence is material, not merely cumulative, corroborative, or impeaching; and (d) such evidence is of such weight that it would probably change the judgment if admitted. The first two requisites are not present here. First, the proposed evidence was plainly not newly discovered considering the taxpayer's submission that its former Finance and Accounting Manager had misplaced the VAT official receipts. Second, the receipts, had they truly existed, could have been sooner discovered and easily produced at the trial with the exercise of reasonable diligence. *Luzon Hydro Corporation v. Commissioner of Internal Revenue*, G.R. No. 188260. November 13, 2013.

Value-added tax; claims for refund or tax credit of unutilized input VAT; period within which to file judicial claim; applicable provision. Section 229 of the National Internal Revenue Code (NIRC), which provides for a two-year period, reckoned from the date of payment of the tax or penalty, for the filing of a claim of refund or tax credit, is only pertinent to the recovery of taxes erroneously or illegally assessed or collected. The relevant provision of the NIRC for claiming a refund or a tax credit for the unutilized creditable input value-added tax (VAT) is Section 112(A). Input VAT is not 'excessively' collected as understood under Section 229 because at the time the input VAT is collected the amount paid is correct and proper. *Commissioner of Internal Revenue v. Visayas Geothermal Power Company*,

*Inc., G.R. No. 181276. November 11, 2013.*

Value-added tax; claims for refund or tax credit of unutilized input VAT; period within which to file judicial claim; the 120+30 day period is mandatory and jurisdictional. Section 112(D) of the NIRC clearly provides that the Commissioner of Internal Revenue (CIR) has “120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit],” within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer’s recourse is to file an appeal before the Court of Tax Appeals (CTA) within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

The application of the 30-day period from receipt of the decision of the CIR or from the lapse of the 120-day period (the “120+30 day period”) given to the taxpayer within which to file a petition for review with the CTA, as provided for in Section 112(D) of the Tax Code, was further explained in the *San Roque* cases[1] which affirmed the doctrine in the case of *CIR v Aichi Forging Company of Asia, Inc.* and explicitly ruled that “the 120-day waiting period is mandatory and jurisdictional.” *Commissioner of Internal Revenue v. Visayas Geothermal Power Company, Inc.*, *G.R. No. 181276. November 11, 2013.*

Value-added tax; claims for refund or tax credit of unutilized input VAT; period within which to file judicial claim; the 120+30 day period is mandatory and jurisdictional; exception. Bureau of Internal Revenue (BIR) Ruling No. DA-489-03 provides a valid claim for equitable estoppel under Section 246 of the NIRC. BIR Ruling No. DA-489-03 expressly states that the “taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review.” Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals, that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed. Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in the *Aichi* case on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional. *Commissioner of Internal Revenue v. Visayas Geothermal*

*Power Company, Inc., G.R. No. 181276. November 11, 2013.*

Value-added tax; tax credits or refund of input tax; period to file judicial claim. Section 112(A) of the National Internal Revenue Code provides for a two-year prescriptive period after the close of the taxable quarter when the sales were made, within which a value-added tax-registered person whose sales are zero-rated or effectively zero-rated may file an administrative application for the issuance of a tax credit certificate or refund of creditable input tax. The Commissioner of Internal Revenue (CIR) has one hundred twenty (120) days from the date of submission of complete documents in support of the application within which to decide on the administrative claim. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals. *Applied Food Ingredients Co., Inc. v. Commissioner of Internal Revenue, G.R. No. 184266. November 11, 2013.*

Value-added tax; refund or tax credit of unutilized input VAT; requisites. A claim for refund or tax credit for unutilized input value-added tax (VAT) may be allowed only if the following requisites concur, namely: (a) the taxpayer is VAT-registered; (b) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (c) the input taxes are due or paid; (d) the input taxes are not transitional input taxes; (e) the input taxes have not been applied against output taxes during and in the succeeding quarters; (f ) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (g) for zero-rated sales under Section 106(A)(2)(1) and (2), 106(B), and 108(B)(1) and (2) of the National Internal Revenue Code, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas; (h) where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and (i) the claim is filed within two years after the close of the taxable quarter when such sales were made. *Luzon Hydro Corporation v. Commissioner of Internal Revenue, G.R. No. 188260. November 13, 2013.*

Value-added tax; refund or tax credit of input VAT; evidence of zero-rated sales. Although the taxpayer has correctly contended here that the sale of electricity by a power generation company like it should be subject to zero-rated VAT under Republic Act No. 9136, its assertion that it need not prove its having actually made zero-rated sales of electricity by presenting the VAT official receipts and VAT returns cannot be upheld. It could not be permitted to substitute such vital and material documents with secondary evidence like financial statements. As the Court of Tax Appeals (CTA) En Banc precisely found, the petitioner did not reflect any zero-rated sales from its power generation in its four quarterly VAT returns, which indicated that it had not made any sale of electricity. Had there been zero-rated sales, it would have reported them in the returns. Indeed, it carried the burden not only that it was entitled under the substantive law to the allowance of its claim for refund or tax credit but also that it met all the requirements for evidentiary substantiation of its claim before the administrative official concerned, or in the de novo litigation before the CTA in Division. *Luzon Hydro Corporation v. Commissioner of Internal Revenue*, *G.R. No. 188260. November 13, 2013.*

## October 2013 Philippine Supreme Court Decisions on Tax Law

Posted on [November 8, 2013](#) by [Carina C. Laforteza](#) • Posted in [Philippines - Cases](#), [Philippines - Law](#), [Tax Law](#) •

Here are select October 2013 rulings of the Supreme Court of the Philippines on tax law:

National Internal Revenue Code; income tax; creditable withholding tax; claims for tax credit or refund; requisites. A taxpayer claiming for a tax credit or refund of creditable withholding tax must comply with the following requisites: (1) The claim must be filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax; (2) It must be shown on the return of the recipient that the income received was declared as part of the gross income; and (3) The fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld. The first requirement is based on section 229 of the National Internal Revenue

Code of 1997 which provides that “no such suit or proceeding shall be filed after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment.” The second and third requirements are based on Section 10 of Revenue Regulation No. 6-85 which provides that a claim will prosper only “when it is shown on the return that the income payment received has been declared as part of the gross income and the fact of withholding is established by a copy of the Withholding Tax Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.” *Commissioner of Internal Revenue v. Team [Philippines] Operations Corporation (formerly Mirant [Philippines] Operations Corporation)*, *G.R. No. 185728. October 16, 2013.*

National Internal Revenue Code; income tax; creditable withholding tax; claims for tax credit or refund; requisites; certificate of creditable withholding tax. Commissioner of Internal Revenue insists that the fact of withholding had not been established since the original copies of the Certificates of Creditable Tax Withheld at Source were not submitted to the Court of Tax Appeals (CTA) and that the payors or withholding agents or persons who prepared and executed the same were not presented to prove the authenticity of the certificates. Taxpayer presented the original copies of the certificates to the court-commissioned independent certified public accountant (ICPA) who examined the original copies and certified that the copies submitted to the CTA as evidence were faithful reproductions of the original certificates. Said procedure was in accordance with Rule 13 of the Revised Rules of the Court of Tax Appeals provides that one of the duties of an Independent CPA is the “reproduction of, and comparison of such reproduction with, and certification that the same are faithful copies of original documents, and pre-marking of documentary exhibits consisting of voluminous documents.” Section 3 of the same rule provides that the submission of the pre-marked documents is still subject to verification and comparison with the original documents. Commissioner never signified any intention to verify the authenticity of the withholding tax certificates. She did not interpose any objections when the certificates were formally offered in court as part of taxpayer’s evidence. She made no effort to examine the original certificates to determine its authenticity and to ascertain that the photocopies are faithful reproductions by comparing it with the original



copies. Hence, she cannot now claim that it was deprived of the opportunity to examine and scrutinize the certificates and other documents submitted by taxpayer. It is not necessary for the person who executed and prepared the Certificates of Creditable Tax Withheld at Source to be presented and to testify personally as to the authenticity of the certificates. The copies of the Certificates of Creditable Tax Withheld at Source when found by the duly commissioned ICPA to be faithful reproductions of the original copies would suffice to establish the fact of withholding. *Commissioner of Internal Revenue v. Team [Philippines] Operations Corporation (formerly Mirant [Philippines] Operations Corporation)*, *G.R. No. 185728. October 16, 2013.*

National Internal Revenue Code; value-added tax (“VAT”); refund of input VAT. Prior to the issuance of Bureau of Internal Revenue (BIR) Ruling No. DA-489-03, the BIR’s actual administrative practice was to contest simultaneous filing of claims at the administrative and judicial levels, until the Court of Appeals declared in the case of *Commissioner v. Hitachi Computer Products (Asia) Corporation* (the “Hitachi case”) that the BIR’s position was wrong. The Hitachi case is the basis of BIR Ruling No. DA-489-03 dated December 10, 2003 allowing simultaneous filing. From then on, taxpayers could rely in good faith on BIR Ruling No. DA-489-03 until the Court held in the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.* (the “Aichi case”), promulgated on October 6, 2010, that the 120+30 day period is compulsory. Strict observance of the 120+30 day period is the presently controlling doctrine. Judicial and administrative claims simultaneously filed during the period from the promulgation of BIR Ruling No. DA-489-03 until the promulgation of the Aichi case, are treated as valid claims. *Commissioner of Internal Revenue v. San Roque Power Corporation*, *G.R. No. 187485/G.R. No. 196113/G.R. No. 197156. October 8, 2013.*

National Internal Revenue Code; claim for refund of input VAT; limited applicability of operative fact doctrine. The Court applied the doctrine of operative fact when it recognized the simultaneous filing during the period between December 10, 2003, when BIR Ruling No. DA-489-03 was issued, and October 6, 2010, when the Court promulgated its decision in the Aichi case declaring the 120 + 30 day periods mandatory and jurisdictional thus reversing BIR Ruling No. DA-489-03. The doctrine of operative fact is incorporated in section 246 (non-retroactivity of rulings) of the National Internal Revenue Code (the “Tax Code”). Under section 246, taxpayers may

rely upon a rule or ruling issued by the Commissioner of Internal Revenue from the time the rule or ruling is issued up to its reversal by the Commissioner or the Court. The reversal is not given retroactive effect. This, in essence, is the doctrine of operative fact. There must, however, be a rule or ruling issued by the Commissioner that is relied upon by the taxpayer in good faith. A mere administrative practice, not formalized into a rule or rulings, will not suffice because such a mere administrative practice may not be uniformly and consistently applied. An administrative practice, if not formalized as a rule or ruling, will not be known to the general public and can be availed of only by those with informal contacts with the government agency. Since the law has already prescribed in section 246 of the Tax Code how the doctrine of operative fact should be applied, there can be no invocation of the doctrine of operative fact other than what the law has specifically provided in section 246.. *Commissioner of Internal Revenue v. San Roque Power Corporation*, *G.R. No. 187485/G.R. No. 196113/G.R. No. 197156. October 8, 2013.*

National Internal Revenue Code; value-added tax (VAT); refund of input VAT; period to file judicial claim. A taxpayer is required to file an administrative claim for input VAT refund within 2 years from the close of the taxable quarter when the sales were made. The taxpayer will always have 30 days to file the judicial claim for refund even if the Commissioner acts only on the 120<sup>th</sup> day, or does not act at all during the 120 day period. With the 30 –day period always available to the taxpayer, the taxpayer can no longer file a judicial claim for refund or tax credit of unutilized excess input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period. Failure to comply with the 120-day waiting period violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition. The 120+30 day rule, therefore, is mandatory and jurisdictional. However, BIR Ruling No. DA-489-03 dated December 10, 2003 provided a valid claim for equitable estoppel under section 246 of the National Internal Revenue Code. The aforementioned ruling was classified as a general interpretative rule that was made in response to a query by the very government agency that was tasked to implement the processing of tax refunds and credits. All taxpayers could therefore rely on the aforementioned ruling from the time of its issuance, December 10, 2003, until its reversal in the Case of Aichi which was promulgated on October 6, 2010. *Republic of the Philippines*

*represented by the Commissioner of Internal Revenue v. GST Philippines, Inc., G.R. No. 190872. October 17, 2013.*

Local Government Code; real property tax; assessment; administrative remedies; payment under protest. Section 252 and section 222 of the Local Government Code sets out the administrative remedies available to a taxpayer or real property owner who does not agree with the assessment of the real property tax sought to be collected. The language of the law is clear and no interpretation is needed. Section 252 emphatically directs that the taxpayer/real property owner questioning the assessment should first pay the tax due before his protest can be entertained. Secondly, within the period prescribed by law, any owner or person having legal interest in the property not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may file an appeal with the Local Board of Assessment Appeals (LBAA) of the province or city concerned. Thereafter, within thirty days from receipt, he may elevate, by filing a notice of appeal, the adverse decision of the LBAA with the Central Board of Assessment Appeals. *Camp John Hay Development Corporation v. Central Board of Assessment Appeals, G.R. No. 169234. October 2, 2013.*

Local Government Code; real property tax; assessment; administrative remedies; claim for exemption. A claim for exemption from payment of real property taxes does not actually question the assessor's authority to assess and collect such taxes, but pertains to the reasonableness or correctness of the assessment by the local assessor, a question of fact which should be resolved, at the very first instance, by the Local Board of Assessment Appeals. This may be inferred from section 206 (Proof of Exemption of Real Property from Taxation) of the Local Government Code. By providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, section 206 implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim. Therefore, if the property being taxed has not been dropped from the assessment roll, taxes must be paid under protest if the exemption from taxation is insisted upon. *Camp John Hay Development Corporation v. Central Board of Assessment Appeals, G.R. No. 169234. October 2, 2013.*

# September 2013 Philippine Supreme Court Decisions on Tax Law

Posted on [October 14, 2013](#) by [Carina C. Laforteza](#) • Posted in [Philippines - Cases](#), [Philippines - Law](#), [Philippines - Regulation](#), [Tax Law](#) •

Here are select September 2013 rulings of the Supreme Court of the Philippines on tax law:

National Internal Revenue Code; tax refund. If the Bureau of Internal Revenue, or other government taxing agencies for that matter, expects taxpayers to observe fairness, honesty, transparency and accountability in paying their taxes, it must hold itself against the same standard in refunding excess payments or illegal exactions. As a necessary corollary, when the taxpayer's entitlement to a refund stands undisputed, the State should not misuse technicalities and legalisms, however exalted, to keep money not belonging to it. The government is not exempt from the application of *solutio indebiti*, a basic postulate proscribing one, including the State, from enriching himself or herself at the expense of another. *Commissioner of Internal Revenue v. Fortune Tobacco Corporation, Fortune Tobacco Corporation v. Commissioner of Internal Revenue*, [G.R. Nos. 167274-75/G.R. No. 192576, September 11, 2013](#).

Procedure; execution of judgment; *fallo* prevails over the body of the opinion; exceptions. It is established jurisprudence that "the only portion of the decision which becomes the subject of execution and determines what is ordained is the dispositive part, the body of the decision being considered as the reasons or conclusions of the Court, rather than its adjudication." However, there are two (2) exceptions to this rule: [1] where there is ambiguity or uncertainty, the body of the opinion may be referred to for purposes of construing the judgment because the dispositive part of a decision must find support from the decision's *ratio decidendi*; and [2] where extensive and explicit discussion and settlement of the issue is found in the body of the decision. Both exceptions apply in this case. There is an ambiguity in the *fallo* of the July 21, 2008 decision in [G.R. Nos. 167274-75](#) considering that the propriety of the Court of Appeals holding in [CA-G.R. SP No. 83165](#) formed part of the core issues raised in [G.R. Case Nos. 167274-75](#) but was left out in the decretal portion of the judgment. The *fallo*

of the Court's July 21, 2008 decision should, therefore, be corresponding corrected. *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*, *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*, **G.R. Nos. 167274-75/G.R. No. 192576, September 11, 2013.**

National Internal Revenue Code; income taxation. As a general rule, a domestic corporation must pay whichever is higher of (1) the income tax under Section 27(A) of the National Internal Revenue Code (NIRC), computed by applying the tax rate to the taxable income of the corporation, or (2) the minimum corporate income tax under Section 27(E) of the NIRC equivalent to 2% of the gross income of the corporation. *Commissioner of Internal Revenue v. Philippine Airlines, Inc. (PAL)*, **G.R. No. 179259, September 25, 2013.**

National Internal Revenue Code; Presidential Decree No. 1590; minimum corporate income tax. Under Philippine Air Lines, Inc.'s (PAL) charter, Presidential Decree No. 1590, however, PAL cannot be subjected to MCIT as finally settled and categorically enunciated in *Commissioner of Internal Revenue v. Philippine Airlines, Inc.* for the following reasons:

(1) "Basic corporate income tax" under Section 13(a) of PAL's charter refers to the tax rate under Section 27(A) of the National Internal Revenue Code of 1997 (NIRC). There is nothing in that provision which says that PAL is subject to the entire Title II of the NIRC, entitled "Tax on Income."

(2) Section 13(a) of PAL's charter further provides that the basic corporate income tax of PAL shall be based on its annual net taxable income. Taxable income is defined under Section 31 of the NIRC as the pertinent items of gross income specified in the NIRC, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by the NIRC or other special laws. PAL's charter may be considered as one of such special laws authorizing PAL, in computing its annual net taxable income, on which its basic corporate income tax shall be based, to deduct from its gross income the following: (1) depreciation of assets at twice the normal rate; and (2) net loss carry-over up to five years following the year of such loss.

In comparison, inclusions in and exclusions/deductions from gross income for MCIT purposes are limited to those directly arising from the conduct of the taxpayer's business as provided under Section 27(E) of the NIRC. It is, thus, more limited than the gross income used in the computation of basic corporate income tax. In light of the foregoing, there is an apparent distinction under the NIRC between taxable income, which is the basis for basic corporate income tax under Section 27(A); and gross income, which is the basis for the MCIT under Section 27(E). The two terms have their respective technical meanings, and cannot be used interchangeably.

(3) Even if the basic corporate income tax and the MCIT are both income taxes under Section 27 of the NIRC, and one is paid in place of the other, the two are distinct and separate taxes. The MCIT is different from the basic corporate income tax, not just in the rates, but also in the bases for their computation. Not being covered by Section 13(a) of PAL's charter, which makes PAL liable only for basic corporate income tax, then MCIT is included in "all other taxes" from which PAL is exempted.

(4) The evident intent of Section 13 of PAL's charter is to extend to PAL tax concessions not ordinarily available to other domestic corporations. Section 13 of PAL's charter permits PAL to pay whichever is lower of the basic corporate income tax or the franchise tax; and the tax so paid shall be in lieu of all other taxes, except only real property tax. Hence, under its franchise, PAL is to pay the least amount of tax possible.

(5) A careful reading of Section 13 rebuts the argument that the "in lieu of all other taxes" proviso is a mere incentive that applies only when PAL actually pays something. It is clear that PAL's charter is intended to give respondent two options of paying taxes as consideration for its franchise. Either option excludes the payment of other taxes and dues imposed or collected by the national or the local government. PAL has the option to choose the alternative which results in lower taxes. It is not the fact of tax payment that exempts it, but the exercise of its option.

(6) PAL's charter explicitly allows PAL, in computing its basic corporate income tax, to carry over as deduction any net loss incurred in any year, up to five years following the year of such loss. Therefore, PAL's charter does not only consider the possibility that, at the end of a taxable period, PAL



shall end up with zero annual net taxable income (when its deductions exactly equal its gross income), but also the likelihood that PAL shall incur net loss (when its deductions exceed its gross income). If PAL is subjected to MCIT, the provision in PAL's Charter on net loss carry-over will be rendered nugatory. Net loss carry-over is material only in computing the annual net taxable income to be used as basis for the basic corporate income tax of PAL; but PAL will never be able to avail itself of the basic corporate income tax option when it is in a net loss position, because it will always then be compelled to pay the necessarily higher MCIT. *Commissioner of Internal Revenue v. Philippine Airlines, Inc. (PAL)*, **G.R. No. 179259**, **September 25, 2013**.

## July 2013 Philippine Supreme Court Decisions on Tax Law

Posted on **August 19, 2013** by **Carina C. Laforteza** • Posted in **Philippines - Cases, Philippines - Law, Tax Law** •

Here are select July 2013 rulings of the Supreme Court of the Philippines on tax law:

National Internal Revenue Code; value-added tax; claims for tax refund or credit. Before an administrative claim for refund or tax credit can be granted, there must be a showing that all documentary and evidentiary requirements are satisfied. The taxpayer claiming the refund must comply with the invoicing and accounting requirements mandated by the National Internal Revenue Tax Code, as well as the revenue regulations implementing them.

Thus, the change of taxpayer's name to "Bonifacio GDE Water Corporation," being unauthorized and without approval of the Securities and Exchange Commission, and the issuance of official receipts under that name which were presented to support taxpayer's claim for tax refund, cannot be used to allow the grant of tax refund or issuance of a tax credit certificate in taxpayer's favor. The absence of official receipts issued in its name is tantamount to noncompliance with the substantiation requirements provided by law. *Bonifacio Water Corporation (formerly Bonifacio Vivendi Water*

*Corporation) v. The Commissioner of Internal Revenue*, G.R. No. 175142, July 22, 2013.

National Internal Revenue Code; value-added tax; capital goods; definition. “Capital goods or properties” refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29(f) of the National Internal Revenue Code, used directly or indirectly in the production or sale of taxable goods or services. Thus, payment for services relating to the construction of the capital assets were not considered capital assets considering, especially, that the same were not recorded in the taxpayer’s property, plant and equipment account. *Bonifacio Water Corporation (formerly Bonifacio Vivendi Water Corporation) v. The Commissioner of Internal Revenue*, G.R. No. 175142, July 22, 2013.

Factual findings of the Court of Tax Appeals; grave abuse of discretion. It is doctrinal that the Supreme Court will not lightly set aside the conclusions reached by the Court of Tax Appeals (CTA) which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject unless there has been an abuse or improvident exercise of authority. In *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*, the Court held that it accords the findings of fact by the CTA with the highest respect. It ruled that factual findings made by the CTA can only be disturbed on appeal if they are supported by substantial evidence or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect. *Bonifacio Water Corporation (formerly Bonifacio Vivendi Water Corporation) v. The Commissioner of Internal Revenue*, G.R. No. 175142, July 22, 2013.

## July 2013 Philippine Supreme Court Decisions on Tax Law

Posted on [August 7, 2013](#) by [Carina C. Laforteza](#) • Posted in [Philippines - Cases, Philippines - Law, Tax Law](#) • Tagged [double taxation, excise tax](#) • [2 Comments](#)

Here are select July 2013 rulings of the Supreme Court of the Philippines on tax law:

National Internal Revenue Code; excise tax; goods subject to excise tax; persons liable to pay. Excise taxes are imposed on two (2) kinds of goods, namely: (a) goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition; and (b) things imported. With respect to the first kind of goods, Section 130 of the National Internal Revenue Code (the “Tax Code”) states that, unless otherwise specifically allowed, the taxpayer obligated to file the return and pay the excise taxes due thereon is the manufacturer/producer. On the other hand, with respect to the second kind of goods, Section 131 of the Tax Code states that the taxpayer obligated to file the return and pay the excise taxes due thereon is the owner or importer, unless the imported articles are exempt from excise taxes and the person found to be in possession of the same is other than those legally entitled to such tax exemption. While the Tax Code mandates the foregoing persons to pay the applicable excise taxes directly to the government, they may, however, shift the economic burden of such payments to someone else – usually the purchaser of the goods – since excise taxes are considered as a kind of indirect tax. *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, [G.R. No. 198759, July 1, 2013](#).

National Internal Revenue Code; excise tax; statutory taxpayer as proper party to seek refund; exception. Since excise taxes are considered as a kind of indirect tax, the statutory taxpayer can transfer to its customers the value of the excise taxes it paid or would be liable to pay to the government by treating it as part of the cost of the goods and tacking it on to the selling price. This notwithstanding, pursuant to Section 204(c) of the Tax Code, the proper party to question, or seek a refund of, excise tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another. Accordingly, in cases involving excise tax exemptions on petroleum products under Section 135 of the Tax Code, the Court has consistently held that it is the statutory taxpayer who is entitled to claim a tax refund based thereon and not the party who merely bears its economic burden. However, the abovementioned rule should not apply to instances where the law clearly grants the party to which the economic burden of the tax is shifted an exemption from both direct and

indirect taxes. In which case, the latter must be allowed to claim a tax refund even if it is not considered as the statutory taxpayer under the law. Thus, the propriety of a tax refund claim is hinged on the kind of exemption which forms its basis. If the law confers an exemption from both direct or indirect taxes, a claimant is entitled to a tax refund even if it only bears the economic burden of the applicable tax. On the other hand, if the exemption conferred only applies to direct taxes, then the statutory taxpayer is regarded as the proper party to file the refund claim. *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 198759, July 1, 2013.

Philippine Airlines franchise; withdrawal of tax exemption. Letter of Instructions No. 1438 (LOI 1438) amended Philippine Airlines's (PAL's) franchise by withdrawing the tax exemption privilege granted to PAL on its purchase of domestic petroleum products for use in its domestic operations. Based on Section 13 of PAL's franchise, PAL's tax exemption privilege on all taxes on aviation gas, fuel and oil may be classified into three (3) kinds: (i) all taxes due on PAL's local purchase of aviation gas, fuel and oil, (ii) all taxes directly due from or imposable upon the purchaser of the seller, producer, manufacturer, or importer of aviation gas, fuel and oil but are billed or passed on to PAL, and (iii) all taxes due on all importations by PAL of aviation gas, fuel, and oil. The phrase "purchase of domestic petroleum products for use in its domestic operations"- which characterizes the tax privilege withdrawn by LOI 1438- refers only to PAL's tax exemptions on passed on excise tax costs due from the seller, manufacturer/producer of locally manufactured/produced goods for domestic sale and does not, in any way, pertain to any of PAL's tax privileges concerning imported goods. Records disclose that Caltex imported aviation fuel from abroad and merely re-sold the same to PAL, tacking the amount of excise taxes it paid or would be liable to pay to the government on to the purchase price. The said petroleum products are in the nature of "things imported" and thus, beyond the coverage of LOI 1483. *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 198759, July 1, 2013.

Local Government Code; double taxation; definition; elements. Double taxation means taxing the same property twice when it should be taxed only once; that is, "taxing the same person twice by the same jurisdiction for the same thing." It is obnoxious when the taxpayer is taxed twice, when it

should be but once. Otherwise described as “direct duplicate taxation,” the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and the taxes must be of the same kind or character. Petitioner is indeed liable to pay business taxes to the City of Manila; nevertheless, considering that the former has already paid these taxes under Section 14 of the Manila Revenue Code, it is exempt from the same payments under Section 21 of the same code. As held in *The City of Manila v. Coca-Cola Bottlers Philippines, Inc.*, when a municipality or city has already imposed a business tax on manufacturers, etc. of liquors, distilled spirits, wines, and any other article of commerce, pursuant to Section 143(a) of the Local Government Code (LGC), said municipality or city may no longer subject the same manufacturers, etc. to a business tax under Section 143(h) of the same code. Section 143(h) may be imposed only on businesses that are subject to excise tax, value-added tax, or percentage tax under the National Internal Revenue Code, and that are “not otherwise specified in preceding paragraphs.” Thus, business already subject to a local business tax under Section 14 [which is based on Section 143(a) of the LGC], can no longer be made liable for local business tax under Section 21 [which is based on Section 143(h) of the LGC]. *Swedish Match Philippines Inc. v. The Treasurer of the City of Manila*, [G.R. No. 181277, July 3, 2013](#).

## June 2013 Philippine Supreme Court Decisions on Tax Law

Posted on [July 10, 2013](#) by [Carina C. Laforteza](#) • Posted in [Tax Law](#) • Tagged [local tax](#), [petition for review](#), [tax certificate](#) •

Here are select June 2013 rulings of the Supreme Court of the Philippines on tax law:

National Internal Revenue Code; Certificate of Tax Clearance under Section 52(C); liquidation under the New Central Bank Act. A tax clearance is not a prerequisite to the approval of the project of distribution of the assets of a bank under liquidation by the Philippine Deposit Insurance Corporation (PDIC) for the following reasons:

(1) Section 52(C) of the National Internal Revenue Code of 1997 pertains only to a regulation of the relationship between the Securities and Exchange Commission (SEC) and the Bureau of Internal Revenue (BIR) with respect to corporations contemplating dissolution or reorganization. On the other hand, banks under liquidation by the PDIC as ordered by the Monetary Board constitute a special case governed by the special rules and procedures provided under Section 30 of the New Central Bank Act, which does not require that a tax clearance be secured from the BIR.

(2) Only a final tax return is required to satisfy the interest of the BIR in the liquidation of a closed bank, which is the determination of the tax liabilities of a bank under liquidation by the PDIC. In view of the timeline of the liquidation proceedings under Section 30 of the New Central Bank Act, it is unreasonable for the liquidation court to require that a tax clearance be first secured as a condition for the approval of project of distribution of a bank under liquidation.

(3) It is not for the courts to fill in any gap in current statutes and regulations as to the relations among the BIR, the Bangko Sentral ng Pilipinas and the PDIC. It is up to the legislature to address the matter through appropriate legislation, and to the executive to provide the regulations for its implementation.

(4) Section 30 of the New Central Bank Act expressly provides that debts and liabilities of the bank under liquidation are to be paid in accordance with the rules on concurrence and preference of credit under the Civil Code. Duties, taxes, and fees due the Government enjoy priority only when they are with reference to a specific movable property, under Article 2241(1) of the Civil Code, or immovable property, under Article 2242(1) of the same Code. However, with reference to the other real and personal property of the debtor, sometimes referred to as “free property,” the taxes and assessments due the National Government, other than those in Articles 2241(1) and 2242(1) of the Civil Code, such as the corporate income tax, will come only in ninth place in the order of preference. If a tax clearance shall be required before the project of distribution of the assets of a bank under liquidation may be approved, then its tax liabilities will be given absolute preference in



all instances, including those that do not fall under Articles 2241(1) and 2242(1) of the Civil Code. *Philippine Deposit Insurance Corporation v. Bureau of Internal Revenue*, **G.R. No. 172892, June 13, 2013**.

Local Government Code; Claims for Tax Refund or Credit. Section 196 of the Local Government Code provides that in order to be entitled to a refund or credit of local taxes, the following procedural requirements must concur: *first*, the taxpayer concerned must file a written claim for refund/credit with the local treasurer; and *second*, the case or proceeding for refund has to be filed within two (2) years from the date of the payment of the tax, fee, or charge or from the date the taxpayer is entitled to a refund or credit. As petitioners have failed to prove that they have filed a written claim for refund with the local treasurer, their claim for local tax refund/credit must be denied. It is hornbook principle that a claim for a tax refund/credit is in the nature of a claim for an exemption and the law is construed in *strictissimi juris* against the one claiming it and in favor of the taxing authority. *Metro Manila Shopping Mecca Corp., et al. v. Ms. Liberty M. Toledo, in her official capacity as the City Treasurer of Manila, and the City of Manila*, **G.R. No. 190818, June 5, 2013**.

Revised Rules of the Court of Tax Appeals; extension to file petition for review. The Revised Rules of the Court of Tax Appeals (the “Rules”) does not explicitly sanction extensions to file a petition for review with the Court of Tax Appeals (CTA). However, section 1, Rule 7 thereof reads that in the absence of any express provision in the Rules, Rules 42, 43, 44 and 46 of the Rules of Court may be applied in a suppletory manner. In particular, Section 9 of Republic Act No. 9282 makes reference to the procedure under Rule 42 of the Rules of Court. In this light, Section 1 of Rule 42 states that the period for filing a petition for review may be extended upon motion of the concerned party. In other words, the reglementary period provided under Section 3, Rule 8 of the Rules is extendible and, as such, the CTA Division’s grant of respondents’ motion for extension falls squarely within the law. *Metro Manila Shopping Mecca Corp., et al. v. Ms. Liberty M. Toledo, in her official capacity as the City Treasurer of Manila, and the City of Manila*, **G.R. No. 190818, June 5, 2013**.

# April 2013 Philippine Supreme Court Decisions on Tax Law

Posted on May 15, 2013 by Carina C. Laforteza • Posted in Philippines - Cases, Philippines - Law, Philippines - Regulation, Tax Law •

Here are select April 2013 rulings of the Supreme Court of the Philippines on tax law:

National Internal Revenue Code; Revenue Regulations No. 12-86; withholding taxes; imposition thereof dependent upon the nature of work performed. For taxation purposes, a director is considered an employee under Section 5 of Revenue Regulations No. 12-86. An individual performing services for a corporation, whether as an officer and director or merely as a director whose duties are confined to attendance at and participation in the meetings of the Board of Directors, is an employee. The non-inclusion of the names of some of petitioner's directors in the company's Alpha List does not *ipso facto* create a presumption that they are not employees of the corporation, because the imposition of withholding tax on compensation hinges upon the nature of work performed by such individuals in the company. Revenue Regulations No. 2-98 does not apply to this case as the latter is a later regulation while the accounting books examined were for taxable years 1997. *First Lepanto Taisho Insurance Corporation vs. Commissioner of Internal Revenue*, G.R. No. 197117. April 10, 2013.

Local Government Code; taxing power of local government units. The power to tax "is an attribute of sovereignty," and as such, inheres in the State. Such, however, is not true for provinces, cities, municipalities and barangays as they are not the sovereign; rather, they are mere "territorial and political subdivisions of the Republic of the Philippines". The power of a province to tax is limited to the extent that such power is delegated to it either by the Constitution or by statute. Book II of the Local Government Code establishes the parameters of the taxing powers of local government units. *Pelizloy Realty Corporation vs. The Province of Benguet*, G.R. No. 183137. April 10, 2013.

Local Government Code; limitations on taxing power of local government units; percentage tax. Section 133 (i) of the Local Government Code (LGC) prohibits the levy by local government units (LGUs) of percentage tax except as otherwise provided by the LGC. Percentage Tax is a tax measured by a certain percentage of the gross selling price or gross value in money of goods sold, bartered or imported; or of the gross receipts or earnings derived by any person engaged in the sale of services. Since amusement taxes are fixed at a certain percentage of the gross receipts incurred by certain specified establishments, they are actually percentage taxes. However, provinces are not barred from levying amusement taxes even if amusement taxes are a form of percentage taxes. Section 140 of the LGC carves a clear exception to the general rule in Section 133 (i). *Pelizloy Realty Corporation vs. The Province of Benguet*. G.R. No. 183137. April 10, 2013.

Local Government Code; limitations on taxing power of local government units; amusement tax. Section 140 of the Local Government Code (LGC) expressly allows for the imposition by provinces of amusement taxes on “the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement.” *Pelizloy Realty Corporation vs. The Province of Benguet*. G.R. No. 183137. April 10, 2013.

Theaters, cinemas, concert halls, circuses, and boxing stadia are bound by a common typifying characteristic in that they are all venues primarily for the staging of spectacles or the holding of public shows, exhibitions, performances, and other events meant to be viewed by an audience. Accordingly, “other places of amusement” must be interpreted in light of the typifying characteristic of being venues “where one seeks admission to entertain oneself by seeing or viewing the show or performances” or being venues primarily used to stage spectacles or hold public shows, exhibitions, performances, and other events meant to be viewed by an audience. Considering that resorts, swimming pools, bath houses, hot springs and tourist spots do not belong to the same category or class as theaters, cinemas, concert halls, circuses, and boxing stadia, it follows that they cannot be considered as among the ‘other places of amusement’ contemplated by Section 140 of the LGC and which may properly be subject to amusement taxes. *Pelizloy Realty Corporation vs. The Province of Benguet*. G.R. No. 183137. April 10, 2013.

# March 2013 Philippine Supreme Court Decisions on Tax Law

Posted on [April 15, 2013](#) by [Carina C. Laforteza](#) • Posted in [Philippines - Cases, Philippines - Law, Tax Law](#) •

Here are select rulings of the Supreme Court of the Philippines on tax law:

National Internal Revenue Code; value added tax; prescriptive period for filing a tax refund or credit of input value-added tax. The rules on the determination of the prescriptive period for filing a tax refund or credit of unutilized input value-added tax (VAT), as provided in Section 112 of the 1997 Tax Code, are as follows:

(1) An administrative claim must be filed with the Commissioner of Internal Revenue (CIR) within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

(2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.

(3) A judicial claim must be filed with the Court of Tax Appeals (CTA) within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.

(4) All taxpayers, however, can rely on Bureau of Internal Revenue Ruling No. DA-489-03, which expressly states that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review," from the time of its issuance on 10 December 2003 up to its reversal by the Court in *CIR vs. Aichi*

*Forging Company of Asia* on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods. *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue/Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue*. **G.R. No. 193301 & G.R. No. 194637. March 11, 2013.**

National Internal Revenue Code; value-added tax; isolated transactions. Taxpayer's sale of the Nissan Patrol is said to be an isolated transaction. However, it does not follow that an isolated transaction cannot be an incidental transaction for purposes of value-added tax (VAT) liability. Section 105 of the National Internal Revenue Code of 1997 would show that a transaction "in the course of trade or business" includes "transactions incidental thereto." Taxpayer's business is to convert the steam supplied to it by PNOC-EDC into electricity and to deliver the electricity to National Power Corporation. In the course of its business, taxpayer bought and eventually sold a Nissan Patrol. Prior to the sale, the Nissan Patrol was part of taxpayer's property, plant, and equipment. Therefore, the sale of the Nissan Patrol is an incidental transaction made in the course of taxpayer's business which should be liable for VAT. *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue/Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue*. **G.R. No. 193301 & G.R. No. 194637. March 11, 2013.**

National Internal Revenue Code; value-added tax; period to appeal decision or inaction of the Commissioner of Internal Revenue in claims for tax refund or credit of input value-added tax. The taxpayer may appeal the denial or the inaction of the Commissioner of Internal Revenue (CIR) only within thirty (30) days from receipt of the decision denying the claim or the expiration of the 120-day period given to the CIR to decide the claim. Because the law is categorical in its language, there is no need for further interpretation by the courts and non-compliance with the provision cannot be justified. *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*. **G.R. No. 196907. March 13, 2013**

National Internal Revenue Code; value-added tax; period to appeal decision or inaction of the Commissioner of Internal Revenue in claims for tax refund or credit of input value-added tax; exception. Judicial claims for tax refund or credit filed from January 1, 1998 until the present should strictly adhere to the 120+ 30-day period referred to in Section 112 of the National Internal

Revenue Code of 1997 (NIRC). The 120-day period is given by law to the Commissioner of Internal Revenue (CIR) to grant or deny application for tax refund or credit. The 30-day period refers to the period within which the taxpayer may appeal the denial or the inaction of the CIR. The only exception to the 120+ 30-day period is the period from December 10, 2003 — when Bureau of Internal Revenue Ruling No. DA-489-03, which expressly stated that the taxpayer need not wait for the lapse of the 120-day period before seeking judicial relief, was issued — until its reversal on October 6, 2010. *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*. **G.R. No. 196907. March 13, 2013.**

## February 2013 Philippine Supreme Court Decisions on Tax Law

Posted on **March 20, 2013** by **Carina C. Laforteza** • Posted in **Philippines - Cases, Philippines - Law, Tax Law** • Tagged **documentary stamp tax, gross receipts tax, value added tax** •

Here are select February 2013 rulings of the Supreme Court of the Philippines on tax law:

National Internal Revenue Code; documentary stamp tax; issuance of promissory notes; persons liable for the payment of DST; acceptance. Under Section 173 of the National Internal Revenue Code, the persons primarily liable for the payment of DST are the persons (1) making; (2) signing; (3) issuing; (4) accepting; or (5) transferring the taxable documents, instruments or papers. Should these parties be exempted from paying tax, the other party who is not exempt would then be liable. In this case, petitioner Philacor is engaged in the business of retail financing. Through retail financing, a prospective buyer of home appliance may purchase an appliance on installment by executing a unilateral promissory note in favor of the appliance dealer, and the same promissory note is assigned by the appliance dealer to Philacor. Thus, under this arrangement, Philacor did not make, sign, issue, accept or transfer the promissory notes. It is the buyer of the appliances who made, signed and issued the documents subject to tax while it is the appliance dealer who transferred these documents to Philacor which



likewise indisputably received or “accepted” them. Acceptance, however, is an act that is not even applicable to promissory notes, but only to bills of exchange. Under the Negotiable Instruments Law, the act of acceptance refers solely to bills of exchange. In a ruling adopted by the Bureau of Internal Revenue as early as 1995, “acceptance” has been defined as having reference to incoming foreign bills of exchange which are accepted in the Philippines by the drawees thereof, and not as referring to the common usage of the word as in receiving. Thus, a party to a taxable transaction who “accepts” any documents or instruments in the plain and ordinary meaning does not become primarily liable for the tax. *Philacor Credit Corporation vs. Commissioner of Internal Revenue*, *G.R. No. 169899. February 6, 2013.*

National Internal Revenue Code; documentary stamp tax; issuance of promissory notes; persons liable for the payment of DST; Revenue Regulations No. 26 Revenue Regulations No. 26. Section 42 of Revenue Regulations (RR) No. 26 issued on March 26, 1924 provides that the person using a promissory note can be held responsible for the payment of documentary stamp tax (DST). The rule uses the word “can” which is permissive, rather than the word “shall,” which would make the liability of the persons named definite and unconditional. In this sense, a person using a promissory note can be made liable for the DST if the person is: (a) among those persons enumerated under the law – i.e., the person who makes, issues, signs, accepts or transfers the document or instrument; or (2) if these persons are exempt, a non-exempt party to the transaction. Such interpretation would avoid any conflict between Section 173 of the 1997 National Internal Revenue Code and section 42 of RR No. 26 and make it unnecessary for the latter to be struck down as having gone beyond the law it seeks to interpret. However, section 42 of RR No. 26 cannot be interpreted to mean that anyone who “uses” the document, regardless of whether such person is a party to the transaction, should be liable, as this reading would go beyond section 173 of the 1986 National Internal Revenue Code, the law it seeks to implement. Implementing rules and regulations cannot amend a law for they are intended to carry out, not supplant or modify, the law. To allow RR No. 26 to extend the liability for DST to persons who are not even mentioned in the relevant provisions of the tax codes (particularly the 1986 National Internal Revenue Code which is the relevant law at that time) would be a clear breach of the rule that a statute must always be superior to its

implementing regulations. *Philacor Credit Corporation vs. Commissioner of Internal Revenue*, *G.R. No. 169899. February 6, 2013.*

National Internal Revenue Code; documentary stamp tax; assignment or transfer of evidence of indebtedness. Under Section 198 of the then 1986 National Internal Revenue Code, an assignment or transfer becomes taxable only in connection with mortgages, leases and policies of insurance. The list does not include the assignment or transfer of evidence of indebtedness; rather it is the renewal of these that is taxable. The present case does not involve a renewal, but a mere transfer or assignment of the evidence of indebtedness or promissory notes. A renewal would involve an increase in the amount of indebtedness or an extension of a period, and not the mere change in the person of the payee. The law has set a pattern of expressly providing for the imposition of documentary stamp tax on the transfer and/or assignment of documents evidencing certain transactions. Where the law did not specify that such transfer and/or assignment is to be taxes, there would be no basis to recognize an imposition. *Philacor Credit Corporation vs. Commissioner of Internal Revenue*, *G.R. No. 169899. February 6, 2013.*

National Internal Revenue Code; value added tax; 120-day period given by law to the Commissioner of Internal Revenue to grant or deny application for tax refund or credit mandatory and jurisdictional. Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the Court of Tax Appeals (CTA) does not acquire jurisdiction over the taxpayer's petition. The charter of the CTA expressly provides that its jurisdiction is to review on appeal "decisions of the Commissioner of Internal Revenue (CIR) in cases involving xxx refunds of internal revenue taxes." When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the CIR, there is no "decision" of the CIR to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. The charter of the CTA also expressly provides that if the CIR fails to decide within "a specific period" required by law, such inaction shall be deemed a denial" of the application for a tax refund or credit. It is the CIR's decision or inaction "deemed a denial," that the taxpayer can take to the CTA for review. Without a decision or an "inaction xxx deemed a denial" of the CIR, the CTA has no jurisdiction over a petition for review. *Commissioner of Internal Revenue vs.*

*San Roque Power Corporation/Taganito Mining Corporation vs. Commissioner of Internal Revenue/Philex Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 187485/G.R. No. 196113/G.R. No. 197156. February 12, 2013.*

National Internal Revenue Code; value added tax; 30-day period need not fall within the two-year prescriptive period. The 30-day period provided for under section 112 (C) of the National Internal Revenue Code (NIRC) within which to appeal the decision of the Commissioner of Internal Revenue (CIR) to the Court of Tax Appeals (CTA) need not necessarily fall within the two-year prescriptive period under section 112 (A) of the NIRC. *First*, section 112 (A) clearly states that the taxpayer may apply with the CIR for a refund or credit “within two (2) years,” which means at any time within two years. Thus, the application for refund or credit may be filed on the last day of the two-year prescriptive period and it will still strictly comply with the law. The two-year prescriptive period is a grace period in favor of the taxpayer and he can avail of the full period before his right to apply for a tax refund or credit is barred by prescription. *Second*, as held by the Court in the case of *Commissioner of Internal Revenue v Aichi*, the “phrase ‘within two years xxx apply for the issuance of a tax credit or refund’ refers to applications for refund/credit with the CIR and not to appeals made to the CTA.” *Third*, if the 30-day period, or any part of it, is required to fall within the two-year prescriptive period (equivalent to 730 days), then the taxpayer must file his administrative claim for refund or credit within the first 610 days of the two-year prescriptive period. Otherwise, the filing of the administrative claim beyond the first 610 days will result in the appeal to the CTA being filed beyond the two-year prescriptive period. Thus, if the taxpayer files his administrative claim on the 611<sup>th</sup> day, the CIR, with his 120-day period, will have until the 731<sup>st</sup> day to decide the claim. If the CIR decides only on the 731<sup>st</sup> day, or does not decide at all, the taxpayer can no longer file his judicial claim with the CTA because the two-year prescriptive period (equivalent to 730 days) has lapsed. The 30-day period granted by law to the taxpayer to file an appeal before the CTA becomes utterly useless, even if the taxpayer complied with the law by filing his administrative claim within the two-year prescriptive period. *Commissioner of Internal Revenue vs. San Roque Power Corporation/Taganito Mining Corporation vs. Commissioner of Internal Revenue/Philex Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 187485/G.R. No. 196113/G.R. No. 197156. February 12, 2013.*

National Internal Revenue Code; value added tax; “excess” input VAT and “excessively” collected tax. Under Section 229 of the National Internal Revenue Code (NIRC), the prescriptive period for filing a judicial claim for refund is two years from the date of payment of the tax “erroneously, xxx illegally, xxx excessively or in any manner wrongfully collected.” However, in a claim for refund or credit of “excess” input value-added tax (VAT) under Section 110 (B) and Section 112 (A) of the NIRC, the input VAT is not “excessively” collected as understood under Section 229. At the time of payment of the input VAT, the amount paid is the correct and proper amount. Under the VAT system, there is no claim or issue that the input VAT is “excessively” collected, that is, that the input VAT paid is more than what is legally due. The person legally liable for the input VAT cannot claim that he overpaid the input VAT by the mere existence of an “excess” input VAT. The term “excess” input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due. Thus, the taxpayer who legally paid the input VAT cannot claim for refund or credit of the input VAT as “excessively” collected under Section 229. *Commissioner of Internal Revenue vs. San Roque Power Corporation/Taganito Mining Corporation vs. Commissioner of Internal Revenue/Philex Mining Corporation vs. Commissioner of Internal Revenue*, *G.R. No. 187485/G.R. No. 196113/G.R. No. 197156. February 12, 2013.*

National Internal Revenue Code; value added tax; equitable estoppel under section 246; Bureau of Internal Revenue Ruling. Bureau of Internal Revenue (BIR) Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under section 246 of the National Internal Revenue Code (NIRC). BIR Ruling No. DA-489-03 expressly states that the “taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review.” Prior to this ruling, the BIR held that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed. There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are two exceptions to this rule. The first exception is if the CIR, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the CIR, through a general interpretative rule issued under section 4 of the

NIRC, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the CIR cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under section 246 of the NIRC. A general interpretative rule issued by the CIR may be relied upon by taxpayers from the time the rule is issued up to its reversal by the CIR or the Court. Taxpayers should not be prejudiced by an erroneous interpretation by the CIR, particularly on a difficult question of law. BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance. All taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on December 10, 2003 up to its reversal by the Court in the case of *Aichi* on October 6, 2010, whether the Court held that the 120+30 day periods are mandatory and jurisdictional. *Commissioner of Internal Revenue vs. San Roque Power Corporation/Taganito Mining Corporation vs. Commissioner of Internal Revenue/Philex Mining Corporation vs. Commissioner of Internal Revenue*, *G.R. No. 187485/G.R. No. 196113/G.R. No. 197156. February 12, 2013.*

National Internal Revenue Code; documentary stamp tax; levied on the exercise of privileges not on obligations imposed by law. Documentary stamp tax (DST) is by nature an excise tax since it is levied on the exercise by persons of privileges conferred by law. These privileges may cover the creation, modification or termination of contractual relationships by executing specific documents like deeds of sale, mortgages, pledges, trust and issuance of shares of stock. The sale of Fort Bonifacio land was not a privilege but an obligation imposed by law which was to sell lands to fulfill a public purpose. To charge DST on a transaction which was basically a compliance with a legislative mandate would go against its very nature as an excise tax. *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*, *G.R. Nos. 164155 & 175543. February 25, 2013.*

National Internal Revenue Code; gross receipts tax; final withholding tax forms part of gross receipts. The amount of interest income withheld, in payment of the 20% final withholding tax, forms part of a bank's gross receipts in computing the gross receipts tax on banks. "Gross Receipts" comprise the "entire receipts without any deduction." Otherwise, if deductions were to be made, it would have been considered as "net



receipts.” Moreover, the exclusion of the final withholding tax from gross receipts operates as a tax exemption which the law must expressly grant. In this case, petitioner failed to point to any specific provision of law allowing deduction, exemption or exclusion from its taxable gross receipts, of the amount withheld as final tax. *China Banking Corporation vs. Commissioner of Internal Revenue*, *G.R. No. 175108. February 27, 2013.*

## Dissension in the Court: February 2013

Posted on [March 6, 2013](#) by [Rafael L. Encarnacion](#) • Posted in [Philippines - Cases](#), [Philippines - Law](#), [Philippines - Regulation](#), [Tax Law](#) • Tagged [value added tax](#) •

The primary issue in the three (3) consolidated cases involving San Roque Power, Taganito Mining and Philex Mining decided last February 12, 2013 revolves around the proper period for filing the judicial claim for refund or credit of creditable input tax. Under Section 112(A) and 112(C) of the Tax Code, a taxpayer whose sales are zero-rated or effectively zero-rated can file his administrative claim for refund or credit at anytime within two (2) years after the taxable quarter when the sales were made and, after full or partial denial of the claim or failure of the Commissioner to act on his application within 120 days from submission of the same, he may, within 30 days from receipt of the decision denying the claim or after the expiration of the 120-day period, file his judicial claim with the CTA.

These cases all involved the timely filing by the taxpayers of their administrative claims with the Commissioner of Internal Revenue. However, San Roque and Taganito both prematurely filed their judicial claims without waiting for the 120-day period (for the Commissioner to act on their administrative claims) to lapse, whereas Philex was a case of late filing since it did not file its judicial claim until after 426 days beyond the 120 + 30 day periods. Voting 9 to 6, the majority, in a decision penned by Justice Carpio, denied tax refund or credit to San Roque and Philex, but granted the same to Taganito.

The majority denied refund to San Roque on the basis, among others, that the waiting period for filing a judicial claim is mandatory and jurisdictional and has been in the Tax Code for more than 15 years before San Roque filed



its judicial claim in April 10, 2003 (barely 13 days after it filed its administrative claim). The majority, however, granted refund to Taganito who, although like San Roque filed its judicial claim without waiting for the 120-day period to lapse, was deemed to have filed its judicial claim on time since it was filed on February 14, 2007 or after the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 (which states that the taxpayer need not wait for the 120-day period to lapse before it could seek judicial relief with the CTA) but before the October 6, 2010 Supreme Court (SC) decision in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia* (reinstating the 120+30 day periods as mandatory and jurisdictional). The majority held that since the Commissioner has exclusive and original jurisdiction to interpret tax laws under Section 4 of the Tax Code, a taxpayer should not be prejudiced by an erroneous interpretation by the Commissioner and, under Section 246, a reversal of a BIR ruling cannot adversely prejudice a taxpayer like Taganito who in good faith relied on it prior to its reversal.

In denying Philex's judicial claim for refund filed on October 17, 2007, the majority ruled that the inaction of the Commissioner during the 120-day period is a "deemed denial" and Philex's failure to file an appeal within 30 days from the expiration of the 120-day period rendered the "deemed denial" decision of the Commissioner final and unappealable.

In his dissenting opinion, J. Velasco, joined by J. Mendoza and J. Perlas-Bernabe, suggested that the doctrine applicable to a claim for refund depends on the operative case and the prevailing rulings and practices at the time of filing the claim. In *San Roque*, since both the administrative and judicial claims were filed during the effectivity of RR 7-95 (which still applied the 2-year prescriptive period to judicial claims), *San Roque* can claim good faith reliance on RR 7-95 and the then prevailing practices of the BIR and CTA to believe that the 120 + 30-day periods are dispensable so long as both administrative and judicial claims are filed within the 2-year period. In denying refund to Taganito, however, the dissenter pointed out that Taganito cannot claim reliance in good faith on RR 7-95 since it filed its judicial claim after November 1, 2005 when RR 16-2005 took effect and superseded RR 7-95 (including BIR Ruling No. DA-489-03 relied upon by the majority in granting refund to Taganito and which this dissenter believed

was a mere application of RR 7-95), deleting the reference therein to the 2-year period for filing judicial claims. Philex, on the other hand, filed its claim belatedly under both the superseded RR 7-95 and the effective RR 16-2005. This dissenter thus voted to grant refund to San Roque, but to deny it to Taganito and Philex.

In his separate dissenting opinion, CJ Sereno, concurred with J. Velasco's dissent in San Roque and Philex but disagreed with the latter's stand in Taganito since, at the time Taganito filed its administrative and judicial claims for refund, the 2-year prescriptive period remained the unreversed interpretation of the court. Thus, Taganito cannot be faulted for relying on court interpretations even with the existence of RR 16-2005, and for preferring to abide by court interpretations over mere administrative issuances as the latter's validity is still subject to judicial determination. This dissenter believed that the mandatory and jurisdictional nature of the 120+30 day periods was only definitely and categorically declared by the SC in Aichi on October 6, 2010 and should only be applied prospectively from that time, and that previous regard to the 120+30-day periods is an exceptional circumstance which warrants procedural liberality to taxpayers who relied on such interpretations.

In his separate dissenting opinion, J. Leonen, joined by J. del Castillo, disagreed that SC interpretations of the law take effect only prospectively, since the SC's duty is to construe and not to make law, and its interpretation became part of the law from the date it was originally passed. This dissenter further reminds us that an "erroneous application of the law by public officers does not preclude a subsequent correct application of the statute, and the Government is never estopped by mistake or error on the part of its agents." Accordingly, while the Commissioner is given power and authority to interpret tax laws, it cannot legislate guidelines contrary to the law it is tasked to implement. Hence its interpretation is not conclusive and will be ignored if judicially found to be erroneous. And while concededly any reversal of any BIR ruling cannot adversely prejudice a taxpayer who in good faith relied on it prior to its reversal, if it is patently clear that the ruling is contrary to the text itself, there can be no reliance in good faith. Further, that it is the duty of the lawyers of private parties to best discern the acceptable interpretation of legal text and, in doing so, they take the risk that the SC will rule otherwise, especially if the text of the law – as in this case – is very clear. This dissenter thus voted to deny refund to all three taxpayers.

(*Commissioner of Internal Revenue vs San Roque Power Corporation* (G.R. No. 187485), *Taganito Mining Corporation vs. Commissioner of Internal Revenue* (G.R. No. 196113), *Philex Mining Corporation vs. Commissioner of Internal Revenue* (G.R. No. 197156)' dissenting opinions: [Sereno, CJ](#); [Velasco, J.](#), [Leonen](#),

## January 2013 Philippine Supreme Court Decisions on Tax Law

Posted on [February 25, 2013](#) by [Carina C. Laforteza](#) • Posted in [Philippines - Cases](#), [Philippines - Law](#), [Tax Law](#) •

Here are select January 2013 rulings of the Philippine Supreme Court on tax law and procedure:

VAT; Transitional Input Tax Credits; prior payment not required. Prior payment of taxes is not required for a taxpayer to avail of the 8% transitional input tax credit.

First, Section 105 of the old National Internal Revenue Code provides that for a taxpayer to avail of the 8% transitional input tax credit, all that is required from the taxpayer is to file a beginning inventory with the Bureau of Internal Revenue. It was never mentioned in Section 105 that prior payment of taxes is a requirement. To require it now would be tantamount to judicial legislation.

Second, transitional input tax credit is not a tax refund per se but a tax credit. Logically, prior payment of taxes is not required before a taxpayer could avail of transitional input tax credit. Tax credit is not synonymous to tax refund. Tax refund is defined as the money that a taxpayer overpaid and is thus returned by the taxing authority. Tax credit, on the other hand, is an amount subtracted directly from one's total tax liability. It is any amount given to a taxpayer as a subsidy, a refund, or an incentive to encourage investment.

Third, in the case of *Fort Bonifacio v. Commissioner of Internal Revenue* (G.R. No. 158885 & 170680, April 2, 2009), the Court had already ruled that the law as framed contemplates a situation where transitional input tax credit is claimed even if there was no actual payment of VAT in the underlying transaction. In such cases, the tax base used shall be the value of the beginning inventory of good, materials and supplies. Moreover, in the case of *Commissioner of Internal Revenue v. Central Luzon Corp.* (G.R. No. 159647, April 15, 2005), the Court declared that while tax liability is essential to the *availment or use* of any tax credit, prior tax payments are not. On the other hand, for the *existence or grant* solely of such credit, neither a tax liability nor a prior tax payment is needed. *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue and Revenue District Officer, etc.*, *G.R. No. 173425. January 22, 2013.*

VAT; Transitional Input Tax Credits; cash refund or tax credit of transitional input tax. Contrary to the dissent, Section 112 of the Tax Code does not prohibit cash refund or tax credit of transitional input tax in the case of zero-rated or effectively zero-rated VAT registered taxpayers, who do not have any output VAT. The phrase “except transitional input tax” in Section 112 of the Tax Code was inserted to distinguish creditable input tax from transitional input tax credit. Transitional input tax credits are input taxes on a taxpayer’s beginning inventory of goods, materials, and supplies equivalent to 8% (then 2%) or the actual VAT paid on such goods, materials and supplies, whichever is higher. It may only be availed of once by first-time VAT taxpayers. Creditable input taxes, on the other hand, are input taxes of VAT taxpayers in the course of their trade or business, which should be applied within two years after the close of the taxable quarter when the sales were made. *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue and Revenue District Officer, etc.*, *G.R. No. 173425. January 22, 2013.*

## Dissension in the Court: January 2013

Posted on February 13, 2013 by Rafael L. Encarnacion • Posted in Philippines - Cases, Philippines - Law, Tax Law • Tagged value added tax •

The same legal issue resolved in the earlier case of *Fort Bonifacio*

*Development Corporation v. Commissioner of Internal Revenue* (G.R. Nos. 158885 & 170680, 2 October 2009) – regarding the proper interpretation of Section 105 (now Section 111(A)) of the National Internal Revenue Code (“Tax Code”) – was again raised in the recent case of *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue and Revenue District Officer, Revenue District No. 44, Taguig and Pateros, Bureau of Internal Revenue* (G.R. No. 173425, January 22, 2013), resulting in the same decision and dissenting opinion.

Section 105 of the old Tax Code provides:

**SEC. 105. Transitional input tax credits.** – A **person who becomes liable to value-added tax** or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory prescribed by regulations, be **allowed input tax on his beginning inventory of good, materials and supplies equivalent to 8% of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies**, whichever is higher, which shall be creditable against the output tax. (Emphasis supplied.)

The recent case began with the purchase by Fort Bonifacio Development Corporation (“FBDC”) on February 8, 1995 from the national government of a portion of the Fort Bonifacio Global City. On January 1, 1996, RA 7716 restructured the VAT system by, among others, extending the VAT to real properties held primarily for sale to customers or held for lease in the ordinary course of trade of business.

On September 19, 1996, FBDC submitted to the BIR Revenue District No. 44 an inventory of all its real properties, the book value of which aggregated around Php71.2B, and claimed entitlement to the 8% transitional input tax credit of roughly Php5.7B, pursuant to Section 105 of the old Tax Code.

For the first quarter of 1997, FBDC generated close to Php3.7B from its sales and lease of lots, on which the output VAT payable was Php368.5M. FBDC credited its Php8.9M unutilized input tax credit on purchases of goods and services (not its transitional input tax credit) and paid Php359.6M. Realizing that its Php5.7B transitional input tax credit was

not applied in computing its output VAT for the first quarter of 1997, FBDC filed with the BIR on November 17, 1998 a claim for refund of the Php359.6M erroneously paid as output VAT for the said period.

The Court of Tax Appeals (“CTA”), to whom the matter was elevated by FBDC due to the inaction of the Commissioner of Internal Revenue (“CIR”), denied on October 12, 2000 FBDC’s claim for refund on the basis that “the benefit of transitional input tax credit comes with the condition that business taxes should have been paid first.” The CTA noted that since, in this case, FBDC acquired the Global City property from the national government under a VAT-free sale transaction, it cannot avail of the transitional input tax credit. The CTA likewise pointed out that under Revenue Regulations No. (RR) 7-95, implementing Section 105 of the Tax Code, the 8% transitional input tax credit should be based on the value of the **improvements** on land, and not on the book value of the real property.

FBDC filed a Petition for Review before the Court of Appeals (CA), but the latter affirmed the decision of the CTA and further ruled, as to the validity of RR 7-95, that the latter is entitled to great weight as it was issued pursuant to the rule-making authority of the Secretary of Finance under Section 245 of the old Tax Code. FBDC filed a Petition for Review on Certiorari with the Supreme Court, whereupon the latter on September 4, 2012, through Justice Mariano Del Castillo, but with Justice Antonio Carpio (joined by Chief Justice Sereno and Justices Brion, Reyes, and Perlas-Bernabe, and subsequently Justice Leonen) dissenting, reversed the CA decision and ordered the CIR *“to refund petitioner FBDC the amount of Php359,652,009.47 paid as output VAT for the first quarter of 1997 in light of the transitional input tax credit available to petitioner for the said quarter, or in the alternative, to issue a tax credit certificate corresponding to such amount.”*

The CIR moved for reconsideration but this was denied with finality by the Supreme Court in its order promulgated last January 22, 2013. Justice Carpio again took exception to this ruling of the majority and voted to grant the motion for reconsideration filed by the CIR, basing his argument on the same four grounds he had raised in this and in the 2009 FBDC case, which the majority addressed again accordingly as follows:



First, the dissenter argues that prior payment of taxes is a prerequisite before a taxpayer could avail of the transitional input tax credit. He claims that the VAT provides a tax crediting system that allows a tax credit for taxes **previously paid** when the same goods and services are sold further in the chain of transactions. The purpose of this tax crediting system is to **prevent double taxation** in the subsequent sale of the same product or services that were already previously paid. Since the national government did not pass on to FBDC any previous sales tax or VAT as part of the purchase price of the Global City land (since (i) the national government is not subject to any tax, including VAT, when the law authorizes it to sell government property like the Global City land, and (ii) in 1995, the old VAT law did not yet impose VAT on the sale of land), FBDC will not be subject to double taxation on its subsequent sale of that land and is thus not entitled to any transitional input VAT refund or credit when it subsequently sells that land.

According to the dissenter, there can be no refund or credit unless there is actual or, in the case of the transitional input tax, assumed tax payment, whether actually paid or not. In either case, there must be a law imposing the input VAT. This can be inferred from the provision of Section 105 that a taxpayer is “allowed input tax on his beginning inventory ... equivalent to 8% ..., **or the actual value-added tax paid ..., whichever is higher.**” The phrase “actual value-added tax paid” means there was a law imposing the VAT, whether or not it was actually paid. Since there was no law imposing VAT on the sale of the Global City land, there is no possibility of an actual or even assumed tax payment of input VAT on such sale. Hence, there can be no refund or credit of input VAT. The dissenter claims that the transitional input VAT was introduced to ease the transition from the old VAT to the expanded VAT system by allowing an 8% presumptive input VAT on goods and services newly covered by the expanded VAT system **without need of substantiating the same, on the legal presumption that the VAT imposed by law prior to the expanded VAT system had been paid, regardless of whether it was actually paid.**

The majority believes though that prior payment of taxes is not necessary before a taxpayer could avail of the 8% transitional input tax credit. First, all that Section 105 requires for a taxpayer to avail of the 8% transitional input tax credit is to file a beginning inventory with the BIR. Second, since Section 105 does not provide for prior payment of taxes, to require it now would be tantamount to judicial legislation. Third, a transitional input tax

credit is not a tax refund *per se* but a tax credit and, logically, prior payment of taxes is not required before a taxpayer could avail of transitional input tax credit. Fourth, as held in the 2009 FBDC case, if the intent of the law were to limit the input tax to cases where actual VAT was paid, it could have simply said that the tax base shall be the actual VAT paid. Instead, the law as framed contemplates a situation where a transitional input tax credit is claimed even if there was no actual payment of VAT in the underlying transaction. In such cases, the tax base used shall be the value of the beginning inventory of good, materials and supplies. In this regard, the majority ruled that RR 7-95, insofar as it restricts the definition of “goods” under Section 105 in relation to Section 100 of the old Tax Code (which includes “*real properties* held primarily for sale to customers or held for lease in the ordinary course of business”) and limits the transitional input tax credit to the value of the *improvements* of the real properties, is an administrative regulation that contravenes the law on which it is based and is hence a nullity. Fifth, as held in *Commissioner of Internal Revenue v. Central Luzon Drug Corp* (496 Phil. 307 (2005):

While a tax liability is essential to the *availment or use of any tax credit*, prior tax payments are not. On the contrary, for the *existence or grant* solely of such tax credit, neither a tax liability nor a prior tax payment is needed. The Tax Code is replete with provisions granting or allowing *tax credits* even though no taxes have been previously paid (*e.g.*, Tax Code Section 86(E) on estate taxes and Section 101(C) on donor’s taxes which allow tax credits for taxes paid to a foreign country, even if not made to our government; and Sections 110, 111(B), 112(A), 28(B)(5)(b), and 34(C)(3) in relation to Section 34(C)(7)(b) which allow a tax credit where no tax is actually paid prior to availment of the credit)

X X X

In addition to the above-cited provisions in the Tax Code, there are also tax treaties and special laws (*e.g.*, Article 48 of PD 1789, as amended by BP 391) that grant or allow *tax credits*, even though no prior tax payments have been made.

X X X

Citing further the history of the transitional input tax credit, the majority dispels dissenter's claim that the transitional input tax credit is integrally related to previously paid sales taxes since Congress has reenacted the transitional input tax credit several times, belying the absence of any relationship between such tax credit and the long-abolished sales taxes. Section 105 states that the transitional input tax credit may be claimed by a newly-VAT registered person such as a starting enterprise. It is not always true that the acquisition of goods, materials and supplies by a new business entails the payment of taxes on its part. For example, if the goods are not acquired from a person in the course of trade or business, the sale would be subject to capital gains tax, not VAT, and it is the seller who would shoulder the tax. If acquired through donation, again it is not subject to VAT but to donor's tax which the donor would be liable to pay. If through succession, again the transfer would not be subject to VAT but liable instead for estate tax. The interpretation proffered by the CTA and the dissenter would exclude goods which are acquired through the foregoing means from the beginning inventory on which the transitional input tax credit is based. Nothing in the Tax Code qualifies the previous payment of VAT or any other taxes on the goods as a prerequisite for inclusion in the beginning inventory.

Second, the dissenter argues that Section 110(B) of the Tax Code does not allow any cash refund of input VAT (which the decision of September 4, 2012 erroneously allowed), only a tax credit of the input VAT against output VAT, and any excess of the input VAT can only be carried over to the succeeding quarters until totally credited or used up.

The majority believes, as it had already held in the 2009 FBDC case, that, while Section 110 only provides for a tax credit, a taxpayer who excessively pays his output tax is entitled to recover the payments either as a tax credit or tax refund, and notes that both the 2009 FBDC decision and the September 4, 2012 decision did not outrightly direct the cash refund but instead directed the CIR to **either** refund the amount paid as output VAT or to issue a tax credit certificate.

Third, the dissenter claims that Section 112(A) of the Tax Code does not allow any cash refund or credit of transitional input tax even for zero-rated or effectively zero-rated taxpayers:

Sec. 112. Refunds or Tax Credits of Input Tax

(A) Zero-rated or Effectively Zero-rated Sales. – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, **except transitional input tax**, to the extent that such input tax has not been applied against output tax: xxx (Emphasis supplied)

Contrary to the dissent, the majority believes that Section 112 does not prohibit cash refund or tax credit of transitional input tax and that the phrase “**except transitional input tax**” was inserted not to exclude tax refunds or credits of transitional input tax but to distinguish transitional input tax from creditable input tax. Transitional input tax credits are input taxes on a taxpayer’s beginning inventory and may only be availed of once by first-time VAT taxpayers. On the other hand, creditable input taxes which are the subject of Section 112 are input taxes of VAT taxpayers in the course of their trade of business, which should be applied within two years after the close of the taxable quarter when the sales were made.

Fourth, the dissenter claims that the cash refund, not being supported by any prior actual tax payment, is unconstitutional since public funds will be used to pay for the refund which is for the exclusive benefit of petitioner, a private entity, contrary to Section 4(2) of the Government Auditing Code requiring that “government funds or property shall be spent or used solely for public purposes.” Moreover, such refund without prior tax payment is an expenditure of public funds without an appropriation law. Without any previous tax payment as source, a tax refund or credit will be paid out of the general funds of the government, a payment that requires an appropriation law. The Tax Code, particularly its provisions on VAT, is a revenue measure, not an appropriation law.

The majority believes, however, that the grant of a refund or tax credit would not be unconstitutional and would not contravene the Government Auditing Code because it is precisely pursuant to Section 105 of the old Tax Code which allows a refund or tax credit.

In sum, the majority believes that adopting the arguments presented by the dissenter would result in the courts limiting the application or coverage of a law or imposing conditions not provided therein and that to do so would constitute judicial legislation.

## November 2012 Philippine Supreme Court Decisions on Tax Law

Posted on [December 17, 2012](#) by [Carina C. Laforteza](#) • Posted in [Philippines - Cases, Philippines - Law, Tax Law](#) • Tagged [excise, local government](#) •

Here are select November 2012 rulings of the Supreme Court of the Philippines on tax law:

National Internal Revenue Code; excise taxes; nature. Excise taxes imposed under Title VI of the National Internal Revenue Code (“Tax Code”) are taxes on property which are imposed on “goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported.” Although excises taxes are paid by the manufacturer or producer before removal of domestic products from the place of production or by the owner or importer before the release of imported articles from the customs house, the same partake of the nature of indirect taxes when it passed on to the subsequent purchaser. Indirect taxes are defined as those wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted to another person. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of the goods sold or services rendered. *Diageo Philippines, Inc. vs. Commissioner of Internal Revenue*, [G.R. No. 183553, November 12, 2012](#).

National Internal Revenue Code; excise taxes; refund; proper party to file. As defined in Section 22 (N) of the Tax Code, a taxpayer means any person subject to tax. He is, therefore, the person legally liable to file a return and pay excise taxes under Section 130 (A) of the Tax Code. The statutory taxpayer remains to be so even if he shifts the burden of tax to another person. Consequently, the right to claim a refund, if legally allowed, belongs to him and cannot be transferred to another without any clear provision of law allowing the same.

Unlike the law on Value-Added Tax which allows the subsequent purchaser under the tax credit method to refund or credit input taxes passed on to it by a supplier, no provision for excise taxes exists granting non-statutory taxpayer the right to claim a refund or credit. It must also be noted that when the excise taxes were included in the purchase price of the goods sold to petitioner, the same was no longer in the nature of a tax but already formed part of the cost of the goods. *Diageo Philippines, Inc. vs. Commissioner of Internal Revenue*, *G.R. No. 183553, November 12, 2012*.

Local Government Code; local tax; tax ordinance; procedure for assailing validity. As the Supreme Court had ruled in the case of *Reyes v. Court of Appeals*, the Local Government Code requires a dissatisfied taxpayer who questions the validity or legality of a tax ordinance to file his appeal to the Secretary of Justice within 30 days from effectivity thereof. In case the Secretary decides the appeal, a period also of 30 days is allowed for an aggrieved party to go to court. If the Secretary does not act thereon within 60 days, a party could already proceed to seek relief in court. These three separate periods are clearly given for compliance as a prerequisite before seeking redress in a competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions. For this reason the courts construe these provisions of statutes as mandatory. *Cagayan Electric Power and Light Co., Inc. vs. City of Cagayan de Oro*, *G.R. No. 191761, November 14, 2012*.

Local Government Code; local business taxes; definition of business. Business is defined by Section 131 (d) of the Local Government Code as “trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit.” In relation to Section 131 (d), Section 143 (h) of the Local Government Code provides that the city may impose taxes, fees, and charges on any business which is not specified in Section 143 (a) to (g) and which the *sanggunian* concerned may deem proper to tax. *Cagayan Electric Power and Light Co., Inc. vs. City of Cagayan de Oro*, *G.R. No. 191761, November 14, 2012*.

Local Government Code; taxing power of cities; limitations as to the imposable rate; effect of absence of separability clause in a tax ordinance.



Section 151 of the Local Government Code states that, subject to certain exceptions, a city may exceed by not more than 50% the tax rates allowed to provinces and municipalities. Section 143 (h) of the Local Government Code provides that a municipality may impose a business tax at a rate not exceeding “two percent of gross sales or receipts” on any business subject to value-added tax under the National Internal Revenue Code. Following Section 151, a city may impose a business tax of up to 3% of a business’ gross sales or receipts of the preceding calendar year. Thus, the 10% tax rate imposed by the Ordinance in question clearly violates Section 143 (h). In view of the lack of separability clause in the Ordinance, the Supreme Court declare void the entirety of the Ordinance without prejudice to the enactment of the City of Cagayan de Oro of a tax ordinance that complies with the limits set by the Local Government Code. *Cagayan Electric Power and Light Co., Inc. vs. City of Cagayan de Oro*, *G.R. No. 191761, November 14, 2012*.

## October 2012 Philippine Supreme Court Decisions on Tax Law

Posted on *November 12, 2012* by *Carina C. Laforteza* • Posted in *Philippines - Cases, Philippines - Law, Philippines - Regulation, Tax Law* •

Here are select October 2012 rulings of the Supreme Court of the Philippines on tax law:

National Internal Revenue Code; Quarterly income tax; irrevocability of option to carry-over excess or claim for refund. It is clear that once a corporation exercises the option to carry-over, such option is irrevocable “*for that taxable period.*” Having chosen to carry-over the excess quarterly income tax, the corporation cannot thereafter choose to apply for a cash refund or for the issuance of a tax credit certificate for the amount representing such overpayment. To avoid confusion, the Court has defined the phrase “*for that taxable year*” as merely identifying the excess income tax, subject of the option, by referring to the “*taxable period when it was acquired by the taxpayer.*” *United International Pictures, AB vs. Commissioner of Internal Revenue*, *G.R. No. 168331, October 11, 2012*.

National Internal Revenue Code; income tax overpayments; claim for

refund; requirements. In claiming for refund of excess creditable withholding tax, petitioner must show compliance with the following basic requirements: (1) the claim for refund was filed within two years as prescribed under Section 229 of the NIRC of 1997; (2) the income upon which the taxes were withheld were included in the return of the recipient (Sec 10, Revenue Regulations No. 6-85); and (3) the fact of withholding is established by a copy of a statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom (Section 10, Revenue Regulations No. 6-85). Parenthetically, the Office of Solicitor General pointed out that the amount of income payments in the income tax return must correspond and tally to the amount indicated in the certificate of withholding, since there is no possible and efficacious way by which the Bureau of Internal Revenue can verify the precise identity of the income payments as reflected in the income tax return. *United International Pictures, AB vs. Commissioner of Internal Revenue*, *G.R. No. 168331, October 11, 2012*.

## September 2012 Philippine Supreme Court Decisions on Tax Law

Posted on [October 12, 2012](#) by [Carina C. Laforteza](#) • Posted in [Philippines - Law, Tax Law](#) • Tagged [income tax](#) •

Here are select September 2012 rulings of the Philippine Supreme Court on tax law:

Court of Tax Appeals; Rules of Court; motion for reconsideration. At the outset, the Court holds that a dismissal of the petition is warranted in view of the petitioner's failure to file before the Court of Tax Appeals en banc a motion for reconsideration of the assailed resolution. The settled rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for certiorari. Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case. The rationale of the rule rests upon the presumption that the court or administrative body which issued the assailed order or resolution may amend the same, if given the chance to

correct its mistake or error. The “plain, speedy, and adequate remedy” referred to in Section 1, Rule 65 of the Rules of Court is a motion for reconsideration of the questioned order or resolution. While the rule is not absolute and admits of settled exceptions, none of the exceptions attend the present petition. *Commissioner of Internal Revenue vs. Court of Tax Appeals and Ayala Land, Inc.*, *G.R. No. 190680. September 13, 2012.*

National Internal Revenue Code; income tax; exemption of charitable and social welfare institutions. St. Luke’s Medical Center, Inc. (the “petitioner”) claims income tax exemption under Section 30 (E) and (G) of the National Internal Revenue Code (the “Tax Code”). The petitioner claims that it is a charitable institution and an organization promoting social welfare. The petitioner claims that the legislative intent of introducing Section 27 (B) was only to remove the exemption for “proprietary non-profit” hospitals. The Court holds that Section 27 (B) of the Tax Code does not remove the income tax exemption of proprietary non-profit hospitals under Section 30 (E) and (G). The effect of the introduction of Section 27(B) is to subject the taxable income of two specific institutions, namely, proprietary non-profit educational institutions and proprietary non-profit hospitals, which are among the institutions covered by Section 30, to the 10% preferential rate under Section 27(B) instead of the ordinary 30% corporate rate under the last paragraph of Section 30 in relation to Section 27(A)(1). Section 27(B) of the NIRC imposes a 10% preferential tax rate on the income of (1) proprietary non-profit educational institutions and (2) proprietary non-profit hospitals. The only qualifications for hospitals are that they must be proprietary and non-profit. “Proprietary” means private. “Non-profit” means no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution’s purposes and all its activities conducted not for profit. “Non-profit” does not necessarily mean “charitable.” An organization may be considered as non-profit if it does not distribute any part of its income to stockholders or members. However, despite its being a tax exempt institution, any income such institution earns from activities conducted for profit is taxable, as expressly provided in the last paragraph of Section 30. The petitioner fails to meet the requirements under Section 30 (E) and (G) of the Tax Code to be completely tax exempt from all its income. However, it remains a proprietary non-profit hospital under Section 27 (B) as long as it does not distribute any of its

profits to its members and such profits are reinvested pursuant to its corporate purposes. The petitioner, as a proprietary non-profit hospital, is entitled to the preferential tax rate of 10% on its net income from its for-profit activities. *Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc./St. Luke's Medical Center, Inc. vs. Commissioner of Internal Revenue*, *G.R. No. 195909/G.R. No. 195960. September 26, 2012.*

National Internal Revenue Code; Indirect Taxes vs. Withholding Taxes. The Commissioner of Internal Revenue (CIR) contends that taxpayer is disqualified to avail itself of amnesty under Republic Act No. 9480 because it is “deemed” a withholding agent for deficiency value-added tax (VAT) and excise taxes. The CIR did not assess taxpayer as a withholding agent that failed to withhold or remit the deficiency VAT and excise tax to the Bureau of Internal Revenue under the relevant provisions of the National Internal Revenue Code. Indirect taxes, like value-added tax (VAT) and excise tax, are different from withholding taxes. To distinguish, in indirect taxes, the incidence of taxation falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. On the other hand, in case of withholding of taxes, the incidence and burden of taxation fall on the same entity, the statutory taxpayer. The burden of taxation is not shifted to the withholding agent who merely collects, by withholding, the tax due from income payments to entities arising from certain transactions and remits the same to the government. Due to this difference, the deficiency VAT and excise tax cannot be deemed as withholding taxes merely because they constitute indirect taxes. *Asia International Auctioneers, Inc. vs. Commissioner of Internal Revenue*, *G.R. No. 179115. September 26, 2012.*

Republic Act No. 9480; Republic Act No. 9399; Tax Amnesty. Republic Act No. 9480 (RA 9480) granted tax amnesty to qualified taxpayers for all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005. A tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violating a tax law. It partakes of an absolute waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. A tax amnesty, much like a tax exemption, is never favored or presumed in law.

The grant of tax amnesty, similar to tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority. Republic Act No. 9399 (RA 9399) declared a one-time amnesty on certain tax and duty liabilities incurred by certain business enterprises operating within the special economic zones and certain freeports. RA 9399 does not preclude taxpayers within its coverage from availing themselves of other tax amnesty programs available or enacted in the future like 9480. RA 940 does not exclude from its coverage taxpayers operating within special economic zones, such as the taxpayer. Thus, a taxpayer has the liberty to choose which tax amnesty program it wants to avail as long as it is within the bounds of the law. *Asia International Auctioneers, Inc. vs. Commissioner of Internal Revenue*, *G.R. No. 179115. September 26, 2012.*

## August 2012 Philippine Supreme Court Decision on Tax Law

Posted on [September 19, 2012](#) by [Carina C. Laforteza](#) • Posted in [Philippines - Cases](#), [Philippines - Law](#), [Philippines - Regulation](#), [Tax Law](#) •

National Internal Revenue Code; Value Added Tax; claim for credit or refund of input value-added tax; printing of “zero-rated.”. Section 244 of the National Internal Revenue Code (NIRC) explicitly grants the Secretary of Finance the authority to promulgate the necessary rules and regulations for the effective enforcement of the provisions of the tax code. Consequently, the following invoicing requirements enumerated in Section 4.108-1 of the Revenue Regulations (RR) 7-95 must be observed by all VAT-registered taxpayers: (1) the name, TIN and address of seller; (2) date of transaction; (3) quantity, unit cost and description of merchandise or nature of service; (4) the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client; (5) the word “zero-rated imprinted on the invoice covering zero-rated sales; and the invoice value or consideration. The need for taxpayers to indicate in their invoices and receipts the fact that they are zero-rated or that its transactions are zero-rated became more apparent upon the integration of the abovementioned provisions of RR No. 7-95 in Section 113 of the NIRC enumerating the invoicing requirements of VAT-registered persons when the NIRC was amended by Republic Act No.

9337. The Court has consistently ruled that the absence of the word “zero-rated” on the invoices and receipts of a taxpayer will result in the denial of the claim for tax refund. *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, *G.R. No. 168856, August 29, 2012*.

## July 2012 Philippine Supreme Court Decisions on Tax Law

Posted on [August 3, 2012](#) by [Carina C. Laforteza](#) • Posted in [Philippines - Cases](#), [Philippines - Law](#), [Tax Law](#) • Tagged [Court of Tax Appeals](#), [local government](#), [real property tax](#), [VAT](#) •

Here are select July 2012 rulings of the Supreme Court of the Philippines on tax law:

National Internal Revenue Code; Value Added Tax; “zero-rated” transaction; recipient of services. The recipient of services must be doing business outside the Philippines for the transaction to qualify it as zero-rated under Section 108 (B) of the National Internal Revenue Code of 1997 (1997 Tax Code). Since Section 108 (B) of the 1997 Tax Code is a verbatim copy of Section 102 (b) of the National Internal Revenue Code of 1977 (1977 Tax Code), any interpretation of the latter holds true for the former. When the Supreme Court decides a case, it does not pass a new law, but merely interprets a pre-existing one. Even though the taxpayer’s present petition was filed before the decision in the case of *Commissioner of Internal Revenue v Burmeister and Wain Scandinavian Contractor Mindanao, Inc.* was promulgated, the pronouncements made in that case may be applied to the present case without violating the rule against retroactive application. When the Court interpreted Section 102 (b) of the 1977 Tax Code in the *Burmeister* case, this interpretation became part of the law from the moment it became effective. It is elementary that the interpretation of a law by the Court constitutes part of that law from the date it was originally passed, since the Court’s construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.



As explained by the Court in the *Burmeister* case: “If the provider and recipient of the ‘other services’ are both doing business in the Philippines, the payment of foreign currency is irrelevant. Otherwise, those subject to the regular VAT under section 102 (a) [of the 1977 Tax Code] can avoid paying the VAT by simply stipulating payment in foreign currency inwardly remitted by the recipient of services. To interpret section 102 (b) (2) to apply to a payer-recipient of services doing business in the Philippines is to make the payment of the regular VAT under section 102 (a) dependent on the generosity of the taxpayer. The provider of services can choose to pay the regular VAT or avoid it by stipulating payment in foreign currency inwardly remitted by the payer-recipient. Such interpretation removes section 102 (a) as a tax measure in the Tax Code, an interpretation this Court cannot sanction. A tax is a mandatory exaction, not a voluntary contribution.” *Accenture, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012.

National Internal Revenue Code; Value Added Tax; “zero-rated” transaction; not doing business in the Philippines. It is not enough that the recipient of the services be proven to be a foreign corporation; it must be specifically proven to be a non-resident foreign corporation. There is no specific criterion as to what constitutes “doing” or “engaging in” or “transacting” business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. *Accenture, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012.

Local Government Code; local business tax; appeal under Section 195; Rule 65 petition for certiorari. A taxpayer dissatisfied with a local treasurer’s denial of or inaction on his protest over an assessment has 30 days within which to appeal to the court of competent jurisdiction. The said period is to be reckoned from the taxpayer’s receipt of the denial of his protest or the lapse of the 60-day period within which the local treasurer is required to decide the protest, from the moment of its filing. Section 195 of the Local Government Code does not elaborate on how an appeal is to be made from the denial by a local treasurer of a protest on assessment made by a taxpayer. However, taxpayer erroneously availed of the wrong remedy in filing a Rule

65 petition for certiorari to question the treasurer's inaction on its letter-protest. As a special civil action, certiorari is available only if the following essential requisites concur: (1) it must be directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (2) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and, (3) there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law. Judicial function entails the power to determine what the law is and what the legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties. Quasi-judicial function, on the other hand, refers to the action and discretion of public administrative officers or bodies, which are required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature. From the foregoing, the treasurer cannot be said to be performing a judicial or quasi-judicial in assessing the business tax and/or effectively denying the taxpayer's protest. For this reason, the treasurer's actions are not the proper subjects of a Rule 65 petition for certiorari which is the appropriate remedy in cases where the tribunal, board or officer exercising judicial or quasi-judicial functions acted without or in grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal or any plain, speedy, and adequate remedy in law. Certiorari is an extraordinary remedy designed for the correction of errors of jurisdiction and not errors of judgment. It is likewise considered mutually exclusive with appeal like the one provided by Article 195 of the Local Government Code for a local treasurer's denial or inaction on a protest. Appeals from the judgments, resolutions or orders of the Regional Trial Court in tax collection cases originally decided by them in their respective territorial jurisdiction must be filed with the Court of Tax Appeal within 30 days from receipt of the decision. **Team Pacific Corporation vs. Daza as Municipal Treasurer of Taguig**, G.R. No. 167732, July 11, 2012.

Republic Act No. 1125; Court of Tax Appeals; exclusive appellate jurisdiction. By going directly to the Supreme Court on a Rule 45 petition for review on certiorari, taxpayer lost sight of the fact that Court of Tax Appeals has the exclusive appellate jurisdiction over, among others, appeals from judgments, resolutions or orders of the regional trial courts in tax collection cases originally decided by them in their respective territorial

jurisdictions Appeals to the Court of Tax Appeals must be perfected within 30 days from receipt of the decision and shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure. The perfection of an appeal in the manner and within the period fixed by law is not only mandatory but jurisdictional and non-compliance with these legal requirements is fatal to a party's cause. **Team Pacific Corporation vs. Daza as Municipal Treasurer of Taguig**, G.R. No. 167732, July 11, 2012.

Local Government Code; real property tax; tax exemption of the Republic. Section 133 of the Local Government Code (LGC) prohibits local governments from imposing taxes of any kind on the National Government, its agencies or instrumentalities. However, Section 193 of the LGC has withdrawn tax exemptions enjoyed by, among others government-owned or controlled corporations (GOCCs). On the other hand, Section 234 of the LGC exempts from real property tax, real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration, or otherwise, to a taxable person. The Philippine Reclamation Authority (PRA) is not a GOCC because it is neither a stock nor non-stock corporation as required by the Administrative Code, which is the governing law defining the legal relationship and status of government entities. PRA is a government instrumentality vested with corporate powers and performing an essential public service. Being an incorporated government instrumentality, it is exempt from payment of real property tax. Moreover, real property owned by the Republic of the Philippines is exempt from real property tax unless the beneficial use thereof has been granted to a taxable person. **Republic of the Philippines represented by the Philippine Reclamation Authority vs. City of Paranaque**, G.R. No. 191109, July 18, 2012.

Constitution; Civil Code; property of public domain; foreclosure. The subject reclaimed lands are still part of the public domain, owned by the State and, therefore exempt from real property tax. They are portions of the foreshore and offshore areas of Manila Bay. As such, they remain public lands and form part of the public domain under the Constitution and the Civil Code. As held by the Court in the case of Chavez v. Public Estates Authority and AMARI Coastal Development Corporation, foreshore and submerged areas irrefutably belonged to the public domain and were inalienable unless reclaimed, classified as alienable lands open to disposition

and further declared no longer needed for public service. The fact that alienable lands of the public domain were transferred to the Public Estates Authority (now PRA) and issued land patents or certificates of title in PEA's name did not automatically make such lands private. The Court in the said case also held that reclaimed lands retained their inherent potential as areas for public use or public service. Reclaimed lands are reserved lands for public use. They are properties of public dominion. The ownership of such land remains with the State unless they are withdrawn by law or presidential proclamation from public use. Properties of public dominion are not subject to execution or foreclosure sale. **Republic of the Philippines represented by the Philippine Reclamation Authority vs. City of Paranaque, G.R. No. 191109, July 18, 2012.**

## June 2012 Philippine Supreme Court Decisions on Tax Law

Posted on **July 18, 2012** by **Carina C. Laforteza** • Posted in **Philippines - Cases, Philippines - Law, Tax Law** • Tagged **non-stock corporation, value added tax** •

Here are select June 2012 rulings of the Supreme Court of the Philippines on tax law:

National Internal Revenue Code; Revenue Regulations No. 7-95; refund of input VAT; printing of “zero-rated” on official receipt. Revenue Regulations No. 7-95, which took effect on 1 January 1996, proceeds from the rule-making authority granted to the Secretary of Finance by the National Internal Revenue Code for the efficient enforcement of the same Tax Code and its amendments. In *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*, the Court had ruled that this provision is “reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services.” Moreover, the Court held in *Kepeco Philippines Corporation v. Commissioner of Internal Revenue* that the subsequent incorporation of Section 4.108-1 of RR 7-95 in Section 113 (B) (2) (c) of Republic Act No. 9337 actually confirmed the validity of the imprinting requirement on VAT invoices or official receipts – a case falling under the principle of legislative approval of

administrative interpretation by reenactment. The Court has consistently held as fatal the failure to print the word “zero-rated” on the VAT invoices or official receipts in claims for a refund or credit of input VAT on zero-rated sales, even if the claims were made prior to the effectivity of R.A. 9337. *Western Mindanao Power Corporation vs. Commissioner of Internal Revenue*, *G.R. No. 181136, June 13, 2012*.

Republic Act No. 6055; Presidential Decree No. 1096 (National Building Code of the Philippines); Republic Act No. 7160 (Local Government Code of 1991); exemption of non-stock non-profit foundations; building permit fee. Republic Act (R.A.) No. 6055 granted the following tax exemptions to educational institutions like petitioner which converted to non-stock, non-profit educational foundations: exemption from the payment of all taxes, import duties, assessments, and other charges imposed by the Government on all income derived from or property, real or personal, used exclusively for the educational activities of the Foundation. On the other hand, under the National Building Code, only public buildings and traditional indigenous family dwellings are exempted from the payment of building permit fees. Hence, not being expressly included in the enumeration of structures to which the building permit fees does not apply, petitioner’s claim for exemption rests solely on its interpretation of the term “other charges imposed by the National Government” in the tax exemption clause of R.A. No. 6055. A “charge” is broadly defined as the “price of, or rate for, something,” while the word “fee” pertains to a “charge fixed by law for services of public officers or for use of a privilege under control of government.” As used in the Local Government Code of 1991 (R.A. No. 7160), “charges” refers to pecuniary liability, as rents or fees against persons or property, while “fee” means a charge fixed by law or ordinance for the regulation or inspection of a business or activity. That “charges” in its ordinary meaning appears to be a general term which could cover a specific “fee” does not support petitioner’s position that building permit fees are among those “other charges” from which it was expressly exempted. Note that the “other charges” mentioned in R.A. No. 6055 is qualified by the words “imposed by the Government on all property used exclusively for the educational activities of the foundation.” Building permit fees are not impositions on property but on the activity subject of government regulation. While it may be argued that the fees relate to particular properties, i.e.,

buildings and structures, they are actually imposed on certain activities the owner may conduct either to build such structures or to repair, alter, renovate or demolish the same. Since building permit fees are regulatory impositions and not charges on property, they are not impositions from which the petitioner is exempt. *Angeles University Foundation vs. City of Angeles, et al.*, *G.R. No. 189999, June 27, 2012*.

## March 2012 Philippine Supreme Court Decisions on Tax Law

Posted on [April 23, 2012](#) by [Carina C. Laforteza](#) • Posted in [Philippines - Cases](#), [Philippines - Law](#), [Tax Law](#) • Tagged [assessment](#), [tax credit](#) •

Here are select March 2012 rulings of the Supreme Court of the Philippines on tax law:

National Internal Revenue Code; assessment; remedies. In case the Commissioner of Internal Revenue failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: (1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision. These options are mutually exclusive and resort to one bars the application of the other. In arguing that the assessment became final and executory by the sole reason that petitioner failed to appeal the inaction of the Commissioner within 30 days after the 180-day reglementary period, respondent, in effect, limited the remedy of Lascona, as a taxpayer, under Section 228 of the National Internal Revenue Code to just one, that is – to appeal the inaction of the Commissioner on its protested assessment after the lapse of the 180-day period. This is incorrect. The word “decisions” in paragraph 1, Section 7 of Republic Act No. 1125, has been interpreted to mean the *decisions* of the Commissioner of Internal Revenue on the *protest* of the taxpayer against the assessments. Taxpayers cannot be left in quandary by the Commissioner’s inaction on the protested assessment. The taxpayers must be informed of its action in order that the taxpayer



should be able to take recourse to the tax court at the opportune time. Finally, as pointed out by the Court of Tax Appeals, to adopt the interpretation of the Commissioner will not only sanction inefficiency, but will likewise condone the Bureau of Internal Revenue's inaction *Lascona Land, Inc. vs. Commissioner of Internal Revenue*, *G.R. No. 171251, March 5, 2012*.

National Internal Revenue Code; Omnibus Investments Code; Revenue Regulation No. 5-2000; tax credit certificate (TCC); assignment of TCC. Under the Omnibus Investments Code, tax credit certificates (TCC) are granted to entities registered with the Board of Investment (BOI) and are given for taxes and duties paid on raw materials used for the manufacture of their export products. A TCC may be used by the grantee assignee in the payment of its direct internal revenue tax liability. It may also be transferred to an assignee subject to the following conditions: 1) the TCC transfer is made with the prior approval of the Commissioner of Internal Revenue or his duly authorized representative; 2) the transfer of a TCC is limited to one transfer only; and 3) the transferee shall strictly use the TCC for the payment of the assignee's direct internal revenue tax liability. The processing of a TCC is entrusted to a specialized agency called the "One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center" ("Center"). A TCC may be assigned through a Deed of Assignment, which the assignee submits to the Center for its approval. Upon approval of the deed, the Center will issue a DOF Tax Debit Memo (DOF-TDM), [38] which will be utilized by the assignee to pay the latter's tax liabilities for a specified period. Upon surrender of the TCC and the DOF-TDM, the corresponding Authority to Accept Payment of Excise Taxes (ATAPET) will be issued by the Bureau of Internal Revenue (BIR) Collection Program Division and will be submitted to the issuing office of the BIR for acceptance by the Assistant Commissioner of Collection Service. This act of the BIR signifies its acceptance of the TCC as payment of the assignee's excise taxes. Issued TCCs are immediately valid and effective and are not subject to a post-audit as a suspensive condition. A transferee in good faith and for value has the right to rely on the validity and effectivity of the TCCs that were assigned to it. *Commissioner of Internal Revenue vs. Petron Corporation*, *G.R. No. 185568, March 21, 2012*.

# February 2012 Philippine Supreme Court Decisions on Tax Laws

Posted on [March 16, 2012](#) by [Carina C. Laforteza](#) • Posted in [Philippines - Cases](#), [Philippines - Law](#), [Tax Law](#) • Tagged [equal protection](#) •

Tariff and Customs Code; Revised Administrative Code Customs Memorandum Order No. 27-2003. Customs Memorandum Order No. 27-2003 (CMO 23-2007) is invalid. The Commissioner of Customs (1) violated the right to due process in the issuance of CMO 27-2003 when he failed to observe the requirements under the Revised Administrative Code, (2) violated the right to equal protection of laws when he provided for an unreasonable classification in the application of the regulation, and (3) went beyond his powers of delegated authority when the regulation limited the powers of the customs officer to examine and assess imported articles. CMO 27-2003 was issued without following the mandate of the Revised Administrative Code on public participation, prior notice, and publication or registration with the University of the Philippines Law Center. For tariff purposes, CMO 27-2003 classified wheat according to the following: (1) importer or consignee; (2) country of origin; and (3) port of discharge. This is a violation of the equal protection clause under the Constitution. The Court does not see how the quality of wheat is affected by who imports it, where it is discharged, or which country it came from. Thus, on the one hand, even if other millers excluded from CMO 27-2003 have imported food grade wheat, the product would still be declared as feed grade wheat, a classification subjecting them to 7% tariff. On the other hand, even if the importers listed under CMO 27-2003 have imported feed grade wheat, they would only be made to pay 3% tariff, thus depriving the state of the taxes due. The regulation, therefore, does not become disadvantageous to respondent only, but even to the state. Section 1403 of the Tariff and Customs Law, as amended mandates that the customs officer must first assess and determine the classification of the imported article before tariff may be imposed. Unfortunately, CMO 23-2007 has already classified the article even before the customs officer had the chance to examine it. Finally, Commissioner of Customs diminished the powers granted by the Tariff and Customs Code with regard to wheat importation when it no longer required the customs officer's prior examination and assessment of the proper classification of the wheat. *Commissioner of Customs vs. Hypermix Feeds*

*Corporation, G.R. No. 179579, February 1, 2012.*

## January 2012 Philippine Supreme Court Decisions on Tax Laws

Posted on [February 22, 2012](#) by [Carina C. Laforteza](#) • Posted in [Philippines - Cases, Philippines - Law, Tax Law](#) • Tagged [excise tax, refund](#) •

National Internal Revenue Code; excise tax; proper party to seek a tax refund. Silkair (Singapore) is a foreign corporation licensed to do business in the Philippines as an on-line international carrier. It purchased aviation fuel from Petron and paid the excise taxes. It filed an administrative claim for refund for excise taxes on the purchase of jet fuel from Petron, which it alleged to have been erroneously paid. For indirect taxes, the proper party to question or seek a refund of the tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even when he shifts the burden thereof to another. Thus, Petron, not Silkair, is the statutory taxpayer which is entitled to claim a refund. Excise tax is due from the manufacturers of the petroleum products and is paid upon removal of the products from their refineries. Even before the aviation jet fuel is purchased from Petron, the excise tax is already paid by Petron. Petron, being the manufacturer, is the “person subject to tax.” In this case, Petron, which paid the excise tax upon removal of the products from its Bataan refinery, is the “person liable for tax.” Petitioner is neither a “person liable for tax” nor “a person subject to tax.” *Silkair (Singapore) Pte. Ltd. vs. Commissioner of Internal Revenue, G.R. No. 166482, January 25, 2012.*

## December 2011 Philippine Supreme Court Decisions on Tax Laws

Posted on [January 18, 2012](#) by [Carina C. Laforteza](#) • Posted in [Philippines - Cases, Tax Law](#) • Tagged [value added tax](#) •

National Internal Revenue Code; Value Added Tax; Civil Code. LVM Construction was awarded the construction contract with DPWH. LVM as the contractor entered into a Sub-Contractor Agreement with a Joint Venture as sub-contractor. As the entity which directly dealt with the government insofar as the main contract was concerned, LVM was itself required by law to pay the 8.5% VAT which was withheld by the DPWH. A contract constitutes the law between the parties who are, therefore, bound by its stipulations which, when couched in clear and plain language, should be applied according to their literal tenor. That there was no agreement regarding the offsetting urged by LVM may likewise be readily gleaned from the parties' contemporaneous and subsequent acts which are given primordial consideration in determining their intention. In the absence of any stipulation regarding the Joint Venture's sharing in the VAT deducted and withheld by the DPWH from its payment on the main contract, LVM has no basis in offsetting the amounts of said tax from the retention still in its possession. LVM, as Contractor for the Project, was liable for the 8.5% VAT which was withheld by the DPWH from its payments, pursuant to Section 114 (C) of the NIRC. Absent any agreement to that effect, LVM cannot deduct the amounts thus withheld from the sums it still owed the Joint Venture which, as Sub-Contractor of 30% of the Project, had its own liability for 10% VAT insofar as the sums paid for the sub-contracted works were concerned. Although the burden to pay an indirect tax like VAT can, admittedly, be passed on to the purchaser of the goods or services, it bears emphasizing that the liability to pay the same remains with the manufacturer or seller like LVM and the Joint Venture. In the same manner that LVM is liable for the VAT due on the payments made by the DPWH pursuant to the contract on the Project, the Joint Venture is, consequently, liable for the VAT due on the payments made by LVM pursuant to the parties' Sub-Contract. *LVM Construction Corporation vs. F.T. Sanchez/SOCOR/KIMWA (Joint Venture)*, *G.R. No. 181961, December 5, 2011*.

## September 2011 Philippine Supreme Court Decisions on Tax Law

**Law •**

Here are selected September 2011 rulings of the Supreme Court of the Philippines on tax law:

National Internal Revenue Code; Civil Code; waiver of statute of limitations; estoppel. Taxpayer assails the validity of the waivers of the statute of limitations on the ground that the waivers were merely attested to by the coordinator for the Commissioner of Internal Revenue (CIR) and he failed to indicate the acceptance or agreement of the CIR, as required under Section 223 of the National Internal Revenue Code. Taxpayer argues that the principle of estoppel cannot be used against it because its payment of the other tax assessment does not signify a clear intention on its part to give up its right to question the validity of the waivers. The Court ruled that estoppel applied to the taxpayer. Under Article 1431 of the Civil Code, the doctrine of estoppel is anchored on the rule that “an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.” Thus, a party is precluded from denying his own acts, admissions or representation to the prejudice of the other party in order to prevent fraud and falsehood. In this case, taxpayer, through its partial payment of the revised assessments issued within the extended period as provided for in the questioned waivers, impliedly admitted the validity of those waivers. Had taxpayer believed that the waivers were invalid and that the assessments were issued beyond the prescriptive period, then it should not have paid the reduced amount of taxes in the revised assessment. Its subsequent action effectively believes its insistence that its waivers are invalid. The records show that taxpayer immediately made payment on the uncontested taxes immediately upon receipt of the revised assessment. It is thus estopped from questioning the validity of the waivers. To hold otherwise and allow a party to gainsay its own act of deny rights which it had previously recognized would run counter to the principle of equity which the Court holds dear. *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 170257, September 7, 2011998.

National Internal Revenue Code; foreign currency deposit units; liability for final withholding tax on onshore income; taxpayer versus withholding agent. The liability of the withholding agent is independent from that of the

taxpayer. The former cannot be made liable for the tax due because it is the latter who earned the income subject to withholding tax. The withholding agent is liable only insofar as he failed to perform his duty to withhold the tax and remit the same to the government. The liability for the tax, however, remains with the taxpayer because the gain was realized and received by him. While the payor-borrower can be held accountable for its negligence in performing its duty to withhold the amount of tax due on the transaction, petitioner, as the taxpayer and the one which earned income on the transaction, remains liable for the payment of tax as the taxpayer shares the responsibility of making certain that the tax is properly withheld by the withholding agent, so as to avoid any penalty that may arise from the non-payment of the withholding tax due. Taxpayer bank cannot evade its liability for foreign currency deposit unit onshore tax by shifting the blame on the payor-borrower as the withholding agent. As such, it is liable for payment of deficiency onshore tax on interest income derived from foreign currency loans, pursuant to Section 24(c) (3) of the National Internal Revenue Code. *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 170257, September 7, 2011.

National Internal Revenue Code; excise taxes; Revenue Regulations No. 17-99. The provision in Section 1 of Revenue Regulations No. 17-99 (that requires the payment of excise tax actually being paid prior to January 1, 2000 if this amount is higher than the new specific tax rate) clearly went beyond the terms of the law it was supposed to implement and, therefore, entitles the taxpayer to claim a refund of the overpaid excise taxes collected pursuant to the provision. It effectively extended the qualification stated in the third paragraph of Section 145 (c) of the National Internal Revenue Code that was supposed to apply only during the transition period. The said paragraph states: [t]he excise tax from any brand of cigarettes within the next three (3) years from the effectivity of R.A. No. 8240 shall not be lower than the tax, which is due from each brand on October 1, 1996... [Note that Section 145 was subsequently amended by Republic Act No. 9334 in 2005.] *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation*, G.R. No. 180006, September 28, 2011.

## July 2011 Philippine Supreme Court



# Decisions on Tax Law

Posted on [August 22, 2011](#) by [Carina C. Laforteza](#) • Posted in [Philippines - Cases, Philippines - Law, Tax Law](#) •

Here are selected July 2011 rulings of the Supreme Court of the Philippines on tax law:

National Internal Revenue Code; income tax; advances to affiliates; ; imputation of interest income; power of Commissioner of Internal Revenue. Section 43 [now Section 50] of the 1993 National Internal Revenue Code (NIRC) provides that. “(i)n case of two or more organizations, trades or businesses (whether or not incorporated and whether or not organized in the Philippines) owned or controlled directly or indirectly by the same interests, the Commissioner of Internal Revenue [(CIR)] is authorized to distribute, apportion or allocate gross income or deductions between or among such organization, trade or business, if he determines that such distribution, apportionment or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any such organization, trade or business,” Section 179 of Revenue Regulations No. 2 provides in part that “(i)n determining the true net income of a controlled taxpayer, the [CIR] is not restricted to the case of improper accounting, to the case of a fraudulent, colorable, or sham transaction, or to the case of a device designed to reduce or avoid tax by shifting or distorting income or deductions. The authority to determine true net income extends to any case in which either by inadvertence or design the taxable net income in whole or in part, of a controlled taxpayer, is other than it would have been had the taxpayer in the conduct of his affairs been an uncontrolled taxpayer dealing at arm’s length with another uncontrolled taxpayer.” Despite the broad parameters provided, however, the CIR’s power of distribution, apportionment or allocation of gross income and deductions under the NIRC and Revenue Regulations No. 2 do not include the power to impute “theoretical interests” to the taxpayer’s transactions. Pursuant to Section 28 [now Section 32] of the NIRC, the term “gross income” is understood to mean all income from whatever source derived, including, but not limited to certain items. While it has been held that the phrase “from whatever source derived” indicates a legislative policy to include all income not expressly exempted within the class of taxable income under Philippine laws, the term “income” has been variously interpreted to mean “cash received or its equivalent,” the amount of money

coming to a person within a specific time” or something distinct from principal or capital.” Otherwise stated, there must be proof of the actual or, at the very least, probable receipt or realization by the controlled taxpayer of the item of gross income sought to be distributed, apportioned or allocated by the CIR. In this case, there is no evidence of actual or possible showing that the advances taxpayer extended to its affiliates had resulted to interests subsequently assessed by the CIR. Even if the Court were to accord credulity to the CIR’s assertion that taxpayer had deducted substantial interest expense from its gross income, there would still be no factual basis for the imputation of theoretical interests on the subject advances and assess deficiency income taxes thereon. Further, pursuant to Article 1959 of the Civil Code of the Philippines, no interest shall be due unless it has been expressly stipulated in writing. *Commissioner of Internal Revenue vs. Filinvest Development Corporation*, *G.R. No. 163653, July 19, 2011*; *Commissioner of Internal Revenue vs. Filinvest Development Corporation*, *G.R. No. 167689, July 19, 2011*.

National Internal Revenue Code; documentary stamp tax; advances to affiliates. Loan agreements and promissory notes are taxed under Section 180 of the 1993 National Internal Revenue Code (NIRC) [they are now taxed under Section 179 as “evidence of indebtedness]. When read in conjunction with Section 173 of the NIRC, Section 180 concededly applies to “[a]ll loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located or used in the Philippines.” Section 3 (b) of Revenue Regulations No. 9-94 provides in part that the term “loan agreement” shall include “credit facilities, which may be evidenced by credit memo, advice or drawings.” Section 6 of the same revenue regulations further provides that “[i]n cases where no formal agreements or promissory notes have been executed to cover credit facilities, the documentary stamp tax shall be based on the amount of drawings or availment of the facilities, which may be evidenced by credit/debit memo, advice or drawings by any form of check or withdrawal slip...” Applying the foregoing to the case, the instructional letters as well as the journal and cash vouchers evidencing the advances taxpayer extended to its affiliates in 1996 and 1997 qualified as loan agreements upon which documentary stamp taxes may be imposed. *Commissioner of Internal Revenue vs. Filinvest*

*Development Corporation, G.R. No. 163653, July 19, 2011; Commissioner of Internal Revenue vs. Filinvest Development Corporation, G.R. No. 167689, July 19, 2011.*

National Internal Revenue Code; non-retroactivity of modification of rulings, circulars, rules and regulations; who is entitled to the benefit of such rule. Any revocation, modification or reversal of a Bureau of Internal Revenue (BIR) ruling shall not be applied retroactively if to so apply it would be prejudicial to the taxpayer. This rule does not apply: (a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the BIR; (b) where the facts subsequently gathered by the BIR are materially different from the facts on which the ruling is based; or (c) where the taxpayer acted in bad faith. The foregoing principle of non-retroactivity of BIR may be invoked by the taxpayer who, in the first place, sought the ruling from the Commissioner of Internal Revenue. *Commissioner of Internal Revenue vs. Filinvest Development Corporation, G.R. No. 163653, July 19, 2011; Commissioner of Internal Revenue vs. Filinvest Development Corporation, G.R. No. 167689, July 19, 2011.*

National Internal Revenue Code; income tax; tax-free exchange; acquisition of control. The requisites for the non-recognition of gain or loss under section 34 (c) (2) [now Section 40 (c) (2)] of the 1993 National Internal Revenue Code (NIRC) are the following: (a) the transferee is a corporation; (b) the transferee exchanges its shares of stock for property/ies of the transferor; (c) the transfer is made by a person, acting alone or together with others, not exceeding four persons; and (d) as a result of the exchange the transferor, alone or together with others, not exceeding four, gains control of the transferee. [Prior to the exchange, transferor already had a controlling interest in the transferee. The taxpayer, together with another affiliate which was not an existing stockholder of the transferor prior to the exchange, exchanged property for shares of stock in the transferee. The taxpayer's controlling interest went down from 67.42% prior to the exchange to 61.03% after the exchange. The affiliate acquired 9.96% of the transferee as a result of the exchange.]The Commissioner of Internal Revenue (CIR) argues that taxable gain should be recognized for the exchange considering that the taxpayer's controlling interest in the transferee was decreased as a result of the transfer while the affiliate acquired only 9.96% of the transferee. Rather than isolating the same as proposed by the CIR, the taxpayer's 61.03%

control of transferee should be appreciated in combination with the 9.96% which as issued to its affiliate. Since, the term “control” is clearly defined as “ownership of stocks in a corporation possessing at least fifty-one percent of the total voting power of classes of stock entitled to vote,” the exchange of property for stocks between taxpayer, the affiliate and the transferee clearly qualify as a tax free exchange under the NIRC. *Commissioner of Internal Revenue vs. Filinvest Development Corporation*, *G.R. No. 163653, July 19, 2011*; *Commissioner of Internal Revenue vs. Filinvest Development Corporation*, *G.R. No. 167689, July 19, 2011*.

National Internal Revenue Code; income tax; gross income. No deficiency tax can be assessed on the gain on the supposed dilution and/or increase in the value of taxpayer’s shareholdings in the transferee which the Commissioner of Internal Revenue (CIR), at any rate, failed to establish. Bearing in mind the meaning of “gross income,” it cannot be gainsaid that a mere increase or appreciation in the value of the shares cannot be considered income for taxation purposes. Since “a mere advance in the value of the property of a person or corporation in no sense constitute the ‘income’ specified in the revenue law,” it has been held in the early case of *Fisher vs. Trinidad* that it “constitutes and can be treated merely as an increase of capital.” Hence, the CIR has no factual and legal basis in assessing income tax on the increase in the value of the taxpayer’s shareholdings in the transferee until the same is actually sold. *Commissioner of Internal Revenue vs. Filinvest Development Corporation*, *G.R. No. 163653, July 19, 2011*; *Commissioner of Internal Revenue vs. Filinvest Development Corporation*, *G.R. No. 167689, July 19, 2011*.

National Internal Revenue Code; value-added tax; toll fees as gross receipts derived from sale of services. Section 108 of the National Internal Revenue Code (NIRC) imposes value added tax on “all kinds of service” rendered in the Philippines for a fee, including those specified in the list. The enumeration of affected services is not exclusive. By qualifying services with the words “all kinds,” Congress has given the term “services” an all-encompassing meaning. Thus, every activity that can be imagined as a form of “service” rendered for a fee should be deemed included unless some provision of law especially excludes it. When a tollway operator takes a toll fee from a motorist, the fee is in effect for the latter’s use of the tollway facilities over which the operator enjoys private proprietary rights that its contract and the law recognize. In this sense, the tollway operator is no

different from those enumerated under Section 108 of the NIRC who allow others to use their properties or facilities for a fee. *Renato V. Diaz and Aurora Ma. F. Timbol vs. the Secretary of Finance and the Commissioner of Internal Revenue*, *G.R. No. 193007; July 19, 2011*.

National Internal Revenue Code; value-added tax; tollway operators as franchise grantees. Section 108 of the National Internal Revenue Code (NIRC) also imposes value added tax (VAT) on “all other franchise grantees” other than those under Section 119 of the NIRC. Tollway operators are franchise grantees and they do not belong to the exceptions (the low-income radio and/or television broadcasting companies with gross annual incomes of less than PhP 10 million and gas and water utilities) that Section 119 spares from VAT. The word “franchise” broadly covers government grants of a special right to do an act or series of acts of public concern. It has been broadly construed as referring, not only to authorization that Congress directly issues in the form of a special law, but also to those granted by administrative agencies to which the power to grant franchises has been delegated by Congress. Tollway operators are, owing to the nature and object of their business, “franchise grantees.” The construction, operation, and maintenance of toll facilities on public improvements are activities of public consequence that necessarily require a special grant of authority from the state. Apart from Congress, tollway franchise may also be granted by the Toll Regulatory Board, pursuant to the exercise of its delegated powers under Presidential Decree No. 1112. The franchise in this case is evidence by a “Toll Operation Certificate.” *Renato V. Diaz and Aurora Ma. F. Timbol vs. the Secretary of Finance and the Commissioner of Internal Revenue*, *G.R. No. 193007; July 19, 2011*.

National Internal Revenue Code; value-added tax; toll fee is not a user’s tax. Petitioners argue that toll fee is a user’s tax and to impose value-added tax on toll fees is tantamount to taxing a tax. Fees paid by the public to tollway operators for use of the tollways, are not taxes in any sense. A tax is imposed under the taxing power of the government principally for the purpose of raising revenues to fund public expenditures. Toll fees, on the other hand, are collected by private tollway operators as reimbursement for the costs and expenses incurred in the construction, maintenance and operation of the tollways, as well as to assure them a reasonable margin of income. Although toll fees are charged for the use of public facilities, they are not government exactions that can be properly treated as tax. Taxes may



be imposed only by the government under its sovereign authority, toll fees may be demanded by either the government or private individuals or entities, as an attribute of ownership. *Renato V. Diaz and Aurora Ma. F. Timbol vs. the Secretary of Finance and the Commissioner of Internal Revenue*, *G.R. No. 193007; July 19, 2011*.

National Internal Revenue Code; value-added tax (VAT); even if toll fee is a user's tax, VAT is not a tax on tax. Even if toll fees were deemed as a "user's tax," value-added tax (VAT) on tollway operations cannot be a tax on tax. VAT is assessed against the tollway operator's gross receipts and not necessarily on the toll fees. Although the tollway operator may shift the VAT burden to the tollway user, it will not make the latter directly liable for the VAT. The shifted VAT simply becomes part of the toll fees that one has to pay in order to use the tollways. *Renato V. Diaz and Aurora Ma. F. Timbol vs. the Secretary of Finance and the Commissioner of Internal Revenue*, *G.R. No. 193007; July 19, 2011*.

Taxation; impairment of obligation of contracts. Petitioner Timbol has no personality to invoke the non-impairment of contract clause on behalf of private investors in the tollway projects. She will neither be prejudiced by nor be affected by the alleged diminution of return of investments that may result from the value-added tax imposition. She has no interest at all in the profits to be earned under the toll operating agreements. The interest in and right to recover investments solely belongs to private investors. *Renato V. Diaz and Aurora Ma. F. Timbol vs. the Secretary of Finance and the Commissioner of Internal Revenue*, *G.R. No. 193007; July 19, 2011*.

Taxation; administrative feasibility. Administrative feasibility is one of the canons of a sound tax system. It simply means that the tax system should be capable of being effectively administered and enforced with the least inconvenience to the taxpayer. Non-observance of the canon, however, will not render a tax imposition invalid "except to the extent that specific constitutional or statutory limitations are impaired. Thus, even if the imposition of value-added tax on tollway operations may seem burdensome to implement, it is not necessarily invalid unless some aspect of it is shown to violate any law or the Constitution. *Renato V. Diaz and Aurora Ma. F. Timbol vs. the Secretary of Finance and the Commissioner of Internal Revenue*, *G.R. No. 193007; July 19, 2011*.



Republic Act No. 7432 or “An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and For Other Purposes”; tax credit; cost of the 20% senior citizens’ discount. Prior to its amendment, Section 4 of Republic Act No. 7432, allows the 20% senior citizens’ discount to be claimed by the private establishment as a tax credit and not merely as a tax deduction from gross sales or gross income. [Note that currently the law treats the discount as a tax deduction instead of as a tax credit.] The law is however is silent as to how the “cost of discount” as a tax credit should be construed. Following other cases on this issue, the term “cost” is the amount of the 20% discount extended by a private establishment to senior citizens . *Mercury Drug Corporation vs. Commissioner of Internal Revenue*, *G.R. No. 164050; July 20, 2011*.

National Internal Revenue Code; documentary stamp tax; savings account plus product. The savings account plus (SAP) product is subject to documentary stamp tax (DST) under Section 180 [now 179] of the National Internal Revenue Code where, although the money is payable anytime, the withdrawal of the money before the expiration of the term results in the reduction of the interest rate. The fact that the SAP is evidence by a passbook does not remove it from the coverage of Section 180. A document to be considered a certificate of deposit need not be in a specific form. Thus, a passport issued by a bank qualifies as a certificate of deposit drawing interest because it is considered a written acknowledgment by a bank that it has accepted a deposit of a sum of money from a depositor. *Prudential Bank vs. Commissioner of Internal Revenue*, *G.R. No. 180390; July 27, 2011*.

## June 2011 Philippine Supreme Court Decisions on Tax Law

Posted on [July 12, 2011](#) by [Carina C. Laforteza](#) • Posted in [Philippines - Cases, Tax Law](#) • Tagged [income tax](#), [real property tax](#) • [1 Comment](#)

Here are selected June 2011 rulings of the Supreme Court of the Philippines on tax law:

### National Internal Revenue Code

National Internal Revenue Code; irrevocability of option to carry-over excess income tax payments. The last sentence of Section 76 of the National Internal Revenue Code, stating that “[o]nce the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor,” is clear in its mandate. Once the corporation exercises the option to carry-over and apply the excess quarterly income tax against the tax due for the taxable quarters of the succeeding taxable years, such option is irrevocable for that taxable period. Having chosen to carry-over the excess quarterly income tax, the corporation cannot thereafter choose to apply for a cash refund or for the issuance of a tax credit certificate for the amount representing such overpayment. *Commissioner of Internal Revenue vs. Mirant (Philippines) Operations, Corporation*, G.R. No. 171742; *Mirant (Philippines) Operations, Corporation vs. Commissioner of Internal Revenue*, *G.R. No. 176165; June 15, 2011*.

National Internal Revenue Code; requisites for claiming tax credit or refund of creditable withholding taxes. The requisites for claiming a tax credit or a refund of creditable withholding tax are as follows: (1) the claim must be filed with the Commissioner of Internal Revenue within the two-year period from the date of the payment of the tax; (2) it must be shown on the return that the income received was declared as part of the gross income; and (3) the fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld. *Commissioner of Internal Revenue vs. Mirant (Philippines) Operations, Corporation*, G.R. No. 171742; *Mirant (Philippines) Operations, Corporation vs. Commissioner of Internal Revenue*, *G.R. No. 176165; June 15, 2011*.

## **Local Government Code**

Local Government Code; real property tax; local government unit entitled to collect. Under Presidential Decree No. 464, or the “Real Property Tax Code,” the authority to collect real property taxes is vested in the locality

where the property is situated. This requisite was reiterated in Republic Act No. 7160, or the Local Government Code. Thus, while a local government unit is authorized under several laws to collect real estate tax on properties falling under its territorial jurisdiction, it is imperative to first show that these properties are unquestionably within its geographical boundaries. The Court cited the case of *Mariano, Jr. v Commission on Elections* which stated that “the importance of drawing with precise strokes the territorial boundaries of a local unit of government cannot be overemphasized. The boundaries must be clear for they define the limits of the territorial jurisdiction of a local government unit. It can legitimately exercise powers of government only within the limits of its territorial jurisdiction. Beyond these limits, its acts are *ultra vires*.” Clearly therefore, the local government unit entitled to collect real property taxes from Sta. Lucia must undoubtedly show that the subject properties are situated within its territorial jurisdiction; otherwise, it would be acting beyond the powers vested to it by law. *Sta. Lucia Realty & Development, Inc. vs. City of Pasig*, *G.R. No. 166838, June 15, 2011*.

Local Government Code; real property tax; certificates of title as evidence of location. While a certificate of title is conclusive as to its ownership and location, this does not preclude the filing of an action for the very purpose of attacking the statements therein. As the Court proclaimed in the case of *De Pedro vs Romasan Development Corporation*: “[W]hile certificates of title are indefeasible, unassailable and binding against the whole world, including the government itself, they do not create or vest title. They merely confirm or record title already existing and vested. That cannot be used to protect a usurper from the true owner, nor can they be used as a shield for the commission of fraud; neither do they permit one to enrich himself at the expense of other.” Although it is true that “Pasig” is the locality stated in the transfer certificates of title of the subject properties, both taxpayer and the municipality of Cainta aver that the metes and bounds of the subject properties, as they are described in the certificates, reveal that they are within Cainta’s boundaries. This only means that there may be a conflict between the location as stated and the location as technically described in the certificates. Mere reliance therefore on the face of the certificates will not suffice as they can only be conclusive evidence of the subject properties’ locations if both the stated and described locations point to the same area. The Antipolo regional trial court, wherein the boundary dispute case between Pasig and Cainta is pending, would be able to best determine once

and for all the precise metes and bounds of both Pasig's and Cainta's respective territorial jurisdictions. The resolution of this dispute would necessarily ascertain the extent and reach of each local government's authority, a prerequisite in the proper exercise of their powers, one of which is the power of taxation. *Sta. Lucia Realty & Development, Inc. vs. City of Pasig*, *G.R. No. 166838, June 15, 2011*.

## April 2011 Philippine Supreme Court Decisions on Tax Law

Posted on *May 31, 2011* by *Carina C. Laforteza* • Posted in *Philippines - Cases, Philippines - Law, Tax Law* •

Here are selected April 2011 rulings of the Supreme Court of the Philippines on tax law:

National Internal Revenue Code; irrevocability of option to carry-over excess income tax payments. When the taxpayer opted to carry over its unutilized creditable withholding tax from 1997 to taxable year 1998, the carry-over could no longer be converted into a claim for tax refund because of the irrevocability rule provided in Section 76 of the National Internal Revenue Code of 1997. Thereby, the taxpayer became barred from claiming the refund. *Commissioner of Internal Revenue vs. PL Management International Philippines, Inc.*, *G.R. No. 160949, April 4, 2011*.

National Internal Revenue Code; carrying-over excess income tax payments; prescription. In view of its irrevocable choice, taxpayer remained entitled to utilize that amount of excess creditable withholding tax as tax credit in succeeding taxable years until fully exhausted. In this regard, prescription did not bar it from applying the amount as tax credit considering that there was no prescriptive period for the carrying over of the amount as tax credit in subsequent taxable years. *Commissioner of Internal Revenue vs. PL Management International Philippines, Inc.*, *G.R. No. 160949, April 4, 2011*.

National Internal Revenue Code; value-added tax; claim for credit or refund of input value-added tax; printing of “zero-rated.” Taxpayer insists that Sections 113 and 237 of the National Internal Revenue Code (NIRC) and Section 4.108-1 of Revenue Regulations (RR) No. 7-95 do not provide that failure to indicate the word “zero-rated” in the invoices or receipts would result in the outright invalidation of these invoices or receipts and the disallowance of a claim for tax credit or refund. Sections 113 (A) and 237 of the NIRC provide for the invoicing requirements for value-added tax (VAT) registered persons. Related to these provisions, Section 4.108-1 of RR No. 7-95 enumerates the information which must appear on the face of the official receipts or invoices for every sale of goods by VAT-registered persons. At the time taxpayer filed its claim for credit of VAT input tax, RR No. 7-95 was already in effect and it required, among others, that the word “zero-rated” be imprinted on the invoice covering zero-rated sales. It also provided that only VAT-registered persons are required to print their tax identification number followed by the word “VAT” in their invoices or receipts and this shall be considered as a “VAT invoice.” All purchases covered by invoices other than a “VAT invoice” shall not give rise to any input tax. The invoicing requirements for VAT-registered taxpayer as provided in the NIRC and revenue regulations are clear. A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file a claim for input taxes on domestic purchases for goods or services attributed to zero-rated sales. A “VAT invoice” is an invoice that meets the requirements of Section 4.108-1 of RR No. 7-95. Contrary to taxpayer’s claim, RR No. 7-95 expressly states that “purchases covered by invoices other than a VAT invoice shall not give rise to any input tax.” Taxpayer’s invoice, lacking the word “zero-rated,” is not a “VAT invoice,” and this cannot give rise to any input tax. The subsequent enactment of Republic Act No. 9337 [amending the NIRC] on 1 November 2005 elevating provisions of RR No. 7-95 into law merely codified into law administrative regulations that already had the force and effect of law. Such codification does not mean that prior to the codification the administrative regulations were not enforceable. *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*, *G.R. No. 180173, April 6, 2011*.

National Internal Revenue Code; value-added tax; claim for credit or refund of input value-added tax; rationale for printing of “zero-rated.” As the Court has ruled in several cases, the printing of the word “zero-rated” is required to be placed on VAT invoices or receipts covering zero-rated sales in order to

be entitled to claim for tax credit or refund. In *Panasonic vs. Commissioner of Internal Revenue*, the Court held that the appearance of the word “zero-rated” on face of invoices covering zero-rated sales prevents buyers from falsely claiming input VAT from their purchases when no VAT is actually paid. Absent such word, the government may be refunding taxes it did not collect. *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*, *G.R. No. 180173, April 6, 2011*.

## March 2011 Philippine Supreme Court Decisions on Tax Law

Posted on [April 28, 2011](#) by [Carina C. Laforteza](#) • Posted in [Philippines - Cases](#), [Philippines - Law](#), [Philippines - Regulation](#), [Tax Law](#) •

Here are selected March 2011 rulings of the Supreme Court of the Philippines on tax law:

National Internal Revenue Code; irrevocability of option to carry-over excess income tax payments; utilization of excess income tax payments. In the previous decision, the Court denied taxpayer’s claim for refund because it has earlier opted to carry over its 1997 excess income tax payments by marking the tax credit option box in its 1997 income tax return. However, while taxpayer may no longer file a claim for refund, it properly carried over its 1997 excess income tax payments by applying portions thereof to its 1998 and 1999 minimum corporate income tax. Taxpayer may apply the unutilized excess income tax payments as a tax credit to the succeeding taxable years until fully utilized. *Belle Corporation vs. Commissioner of Internal Revenue*, *G.R. No. 181298, March 2, 2011*.

Rules of Court; motion to withdraw petition before Supreme Court; effect on Court of Tax Appeals decision. Under Section 1, Rule 13 of the Internal Rules of the Supreme Court a case is deemed submitted for decision or resolution upon the filing of the last pleading, brief or memorandum that the Court or its Rules require. In this case, the Court required petitioner taxpayer to file a reply; however, petitioner taxpayer opted to file a motion to withdraw. Clearly, by requiring petitioner taxpayer to file its reply, the Court



has not yet deemed the case submitted for decision or resolution. The Court granted petitioner taxpayer's motion to withdraw. By withdrawing the appeal, petitioner taxpayer is deemed to have accepted the decision of the Court of Tax Appeals (CTA). And since the CTA had already denied petitioner taxpayer's request for the issuance of a tax credit certificate for insufficiency of evidence, it may no longer be included in petitioner taxpayer's future claims. Petitioner taxpayer cannot be allowed to circumvent the denial of its request for a tax credit by abandoning its appeal and filing a new claim. As stated in a previous case, an appellant who withdraws his appeal must face the consequences of his withdrawal, such as the decision of the court *a quo* becoming final and executory. *Central Luzon Drug Corporation vs. Commissioner of Internal Revenue*, *G.R. No. 181371, March 2, 2011*.

National Internal Revenue Code; withdrawal of PAGCOR income tax exemption; equal protection of the laws. Under Section 1 of Republic Act (RA) No. 9337, amending Section 27(c) of the National Internal Revenue Code of 1997, Philippine Amusement and Gaming Corporation (PAGCOR) is no longer exempt from corporate income tax as it has been omitted from the list of the government owned and controlled corporations (GOCCs) that are exempt from it. PAGCOR argues that such omission is unconstitutional as it violates the right to equal protection under the Constitution. A perusal of the legislative records of the Bicameral Conference Meeting of the Committee on Ways and Means dated October 27, 1997 would show that the exemption of PAGCOR from the payment of corporate income tax was due to the acquiescence of Committee on Ways and Means to the request of PAGCOR that it be exempt from such tax. Thus, the previous exemption of PAGCOR from paying corporate income tax was not based on a classification showing substantial distinctions which make for real differences but was granted upon PAGCOR's request. With the subsequent enactment of RA No. 9337, PAGCOR has been excluded from the enumeration of GOCCs that are exempt from paying corporate income tax. The records of the Bicameral Conference Meeting dated April 18, 2005, of the Committee on the Disagreeing Provisions of Senate Bill No. 1950 and House Bill No. 3555, show that it is the legislative intent that PAGCOR be subject to the payment of corporate income tax. The express mention of the GOCCs exempted from payment of corporate income tax excludes all

others. Not being excepted, PAGCOR must be regarded as coming within the purview of the general rule that GOCCs shall pay corporate income tax, expressed in the maxim- *exceptio firmat regulam in casibus non exceptis*. PAGCOR cannot find support in the equal protection clause of the Constitution, as the legislative records of the Bicameral Conference Meeting dated October 27, 1997, of the Committee on Ways and Means, show that PAGCOR's previous exemption from payment of corporate income tax was not made pursuant to a valid classification based on substantial distinctions and the other requirements of a reasonable classification by legislative bodies, so that the law may operate only on some, and not all, without violating the equal protection clause but was made upon PAGCOR's own request to be exempted. *Philippine Amusement and Gaming Corporation (PAGCOR) vs The Bureau of Internal Revenue*, *G.R. No. 172087, March 15, 2011*.

National Internal Revenue Code; withdrawal of PAGCOR income tax exemption; non-impairment of contracts. PAGCOR contends that Section 1 (c) of Republic Act (RA) No. 9337 is null and void *ab initio* for violating the non-impairment clause of the Constitution. PAGCOR avers that laws form part of, and is read into, the contract even without the parties expressly saying so. PAGCOR states that the private parties/investors transacting with it considered the tax exemptions, which inure to their benefit, as the main consideration and inducements for their decision to transact or invest with it. PAGCOR argues that the withdrawal of its exemption from corporate income tax by RA No. 9337 has the effect of changing the main consideration and inducement for the transactions of private parties with it and thus violative of the non-impairment clause. This contention lacks merit. The non-impairment clause, which provides that no law impairing the obligations of contracts shall be passed, is limited in application to laws that derogate from prior acts or contracts by enlarging, abridging or in any manner changing the intention of the parties. There is impairment of a subsequent law changes the terms of a contract between the parties, imposes new conditions, dispenses with those agreed upon or withdraws remedies for the enforcement of the rights of the parties. As regards franchises, Section 11, Article XII of the Constitution provides that no franchise or right shall be granted except under the condition that it shall be subject to amendment, alteration or repeal by the Congress when the common good so requires. In the case of *Manila Electric Company vs Province of Laguna*, the Court held that a franchise partakes the nature of a grant, which is beyond the purview

of the non-impairment clause of the Constitution. In this case, PAGCOR was granted a franchise to operate and maintain gambling casinos, clubs and other recreation or amusement places, sports, gaming pools, i.e., basketball, football, lotteries, etc., whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines. Under Section 11, Article XII of the Constitution, PAGCOR's franchise is subject to amendment, alteration or repeal by Congress such as the amendment under Section 1 of RA No. 9377. Hence, the provision in said section withdrawing the exemption of PAGCOR from corporate income tax, which may affect any benefits to PAGCOR's transactions with private parties, is not violative of the non-impairment clause of the Constitution. *Philippine Amusement and Gaming Corporation (PAGCOR) vs The Bureau of Internal Revenue*, , *G.R. No. 172087, March 15, 2011*.

National Internal Revenue Code; PAGCOR value added tax exemption; Revenue Regulation No. 16-2005. The provision in Revenue Regulation (RR) No. 16-2005 subjecting PAGCOR to 10% value-added tax (VAT) is invalid for being contrary to Republic Act (RA) No. 9337. Nowhere in RA No. 9337 is it provided that PAGCOR can be subjected to VAT. RA No. 9337 is clear only as to the removal of PAGCOR's exemption from the payment of corporate income tax. RA No. 9337 itself exempts PAGCOR from VAT pursuant to Section 7 (k) thereof which provides among the transaction exempt from VAT, transactions which are exempt under special laws. PAGCOR's charter, Presidential Decree No. 1869, is a special law that grants it exemption from taxes. Moreover, PAGCOR's exemption from VAT is supported by Section 6 of RA No. 9337, which retained Section 108 (B)(3) of RA No. 8424. Under this Section 108 (B)(3), among transactions subject to zero percent (0%) rate are services rendered to persons or entities whose exemption under special laws effectively subject the supply of such services of zero percent (0%) rate. PAGCOR's exemption from VAT has been discussed in the case of *Commissioner of Internal Revenue vs Acesite (Philippines) Hotel Corporation*, where the Court held that Section 13 of PAGCOR's charter clearly gives PAGCOR a blanket exemption to taxes with no distinction on whether the taxes are direct or indirect. *Philippine Amusement and Gaming Corporation (PAGCOR) vs The Bureau of Internal Revenue*, *G.R. No. 172087, March 15, 2011*.

National Internal Revenue Code; documentary stamp tax; nature. Documentary stamp tax (DST) is a tax on documents, instruments,

loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. It is in the nature of an excise tax because it is imposed upon the privilege, opportunity or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business distinct and separate from the business itself. DST is levied on the exercise of certain privileges granted by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. Examples of these privileges, the exercise of which are subject to DST, are leases of lands, mortgages, pledges, trusts and conveyances of real property. DST is thus imposed on the exercise of these privileges through the execution of specific instruments, independently of the legal status of the transactions giving rise thereto. The DST must be paid upon the issuance of these instruments, without regard to whether the contracts which gave rise to them are rescissible, void, voidable, or unenforceable. Accordingly, DST on insurance policies, though imposed on the document itself, is actually levied on the privilege to conduct insurance business. Under Section 173 of the National Internal Revenue Code (NIRC), the DST becomes due and payable at the time the insurance policy is issued, with the tax based on the amount insured by the policy as provided for in Section 183 of the NIRC. *Commissioner of Internal Revenue vs Manila Bankers' Life Insurance Corporation*, *G.R. No. 169103, March 16, 2011*.

National Internal Revenue Code; documentary stamp tax; life insurance policy; guaranteed continuity clause; renewal or extension. The “guaranteed continuity” clause of the taxpayer’s Money Plus Plan life insurance policy of the taxpayer provides in part that “[a]t the end of each twenty-year period, and provided that you have not attained age 55, you may renew your Policy for a further twenty-year period.” The only things guaranteed in the continuity clause were: the continuity of the policy until the stated expiry date as long as the premiums were paid within the allowed time; the non-change in premiums for the duration of the 20-year policy term; and the option to continue such policy after the 20-year period, subject to certain requirements. In fact, even the continuity of the policy after its term was not guaranteed as the decision to renew it belonged to the insured, subject to certain conditions. Any increase in the sum assured, as a result of the clause, had to survive a new agreement between the taxpayer and the insured. The increase in the life insurance coverage was only corollary to the new premium rate imposed based upon the insured’s age at the time the

continuity clause was availed of. It was not automatic, was never guaranteed, and was certainly neither definite nor determinable at the time the policy was issued. Therefore, the increases in the sum assured brought about by the guaranteed continuity clause cannot be subject to documentary stamp tax under Section 183 of the National Internal Revenue Code as insurance made upon the lives of the insured. However, it is clear from the text of the guaranteed continuity clause that what the taxpayer was actually offering in its Money Plus Plan was the option to renew the policy, after the expiration of its original term. Consequently, the acceptance of this offer would give rise to the renewal of the original policy. To argue that there was no new legal relationship created by the availment of the guaranteed continuity clause would mean that any option to renew, integrated in the original agreement or contract, would not in reality be a renewal but only a discharge of a pre-existing obligation. The truth of the matter is that the guaranteed continuity clause only gave the insured the right to renew his life insurance policy which had a fixed term of 20 years. And although the policy would still continue with essentially the same terms and conditions, the fact is, its maturity date, coverage, and premium rate would have changed. The Court does not agree with the holding of the Court of Tax Appeals that “the renewal, is in effect treated as an increase in the sum assured since no new insurance policy was issued.” The renewal was not meant to restore the original terms of an old agreement, but instead it was meant to extend the life of an existing agreement, with some of the contract’s terms modified. The renewal was still subject to the acceptance and to the conditions of both the insured and the taxpayer. This is entirely different from a simple mutual agreement between the insurer and the insured, to increase the coverage of an existing and effective life insurance policy. It is clear that the availment of the option in the guaranteed continuity clause will effectively renew the Money Plus Plan policy, which is indisputably subject to the imposition of documentary stamp tax under Section 183 as an insurance renewed upon the life of the insured. *Commissioner of Internal Revenue vs Manila Bankers’ Life Insurance Corporation*, *G.R. No. 169103, March 16, 2011*.

National Internal Revenue Code; documentary stamp tax; life insurance policy; group life insurance; additional members. When a group insurance plan is taken out, a group master policy is issued with the coverage and premium rate based on the number of members covered at that time. In the case of a company group insurance plan, the premiums paid on the issuance



of the master policy over only those employees enrolled at the time such master policy was issued. When the employer hires additional employees during the life of the policy, the additional employees may be covered by the same group insurance already taken out without any need for the issuance of a new policy. The taxpayer claims that since the additional premiums represented the additional members of the same existing group insurance policy, then under our tax laws, no additional documentary stamp tax (DST) should be imposed since the appropriate documentary stamp tax, by its nature, is paid at the time of the issuance of the policy. The taxpayer asserts that since the DST, by its nature, is paid at the time of the policy, "then there can be no other imposition on the same, regardless of any change in the number of employees covered by the existing group insurance. Section 183 of the National Internal Revenue Code covers all policies of insurance or other instruments by whatever name the same may be called, whereby any insurance shall be made or renewed upon life or lives. The phrase "other instruments" as also found in the earlier version of Section 183, i.e., Section 1449(j) of the Administrative Code of 1917, was explained in Regulations No. 26 to include "any instrument by whatever name the same is called whereby insurance is made or renewed, i.e., by which the relationship of insurer and insured is created or evidenced." Whenever a master policy admits of another member, another life is insured and covered. This means that the taxpayer, by approving the addition of another member to its existing master policy, is once more exercising its privilege to conduct the business of insurance, because it is yet again insuring a life. It does not matter that it did not issue another policy to effect this change, the fact remains that insurance on another life is made and the relationship of insurer and insured is created between the taxpayer and the additional member of that master policy. In the taxpayer's case, its group insurance plan is embodied in a contract which includes not only the master policy, but all documents subsequently attached to the master policy. Among these documents are the Enrollment Cards accomplished by the employees when they applied for membership in the group insurance plan. Once registered in the Schedule of Benefits and attached to the master policy, the Enrollment Card of a new employee becomes evidence of such employee's membership in the group insurance plan, and his right to receive the benefits therein. Every time, the taxpayer registers and attaches an Enrollment Card to an existing master policy, it exercises its privilege to conduct its business of insurance and this is patently subject to a DST as an insurance made upon a life under Section 183. *Commissioner of Internal Revenue vs Manila*



*Bankers' Life Insurance Corporation, G.R. No. 169103, March 16, 2011.*

Tariff and Customs Code; Bureau of Customs; liability for lost shipment. The owner is entitled to recover the value of its lost shipment based on the acquisition cost at the time of payment. In the case of *C.F. Sharp and Co., Inc. vs Northwest Airlines, Inc.*, the Court ruled that the rate of exchange for the conversion in the peso equivalent should be the prevailing rate at the time of payment. In said case, the Court cited the case of *Zagala vs. Jimenez* and said that under Republic Act No. 529, as amended by RA No. 4100, stipulations on the satisfaction of obligations in foreign currency are void. Thus payments of monetary obligations, subject to certain exceptions, must be discharged in the currency which is the legal tender in the Philippines. However, since RA No. 529 does not provide for the rate of exchange for the payment of foreign currency obligations incurred after its enactment, the Court held in a number of cases that the rate of exchange for the conversion in the peso equivalent should be the prevailing rate at the time of payment. Also, in the case of *Republic of the Philippines represented by the Bureau of Customs vs UNIMEX Micro-Electronics GmbH*, which involved the seizure and detention of a shipment of computer game items which disappeared while in the custody of the Bureau of Customs, the Court upheld the decision of the Court of Appeals holding that the petitioner's liability may be paid in Philippine currency, computed at the exchange rate prevailing at the time of actual payment. *Commissioner of Customs vs AGHFA Incorporated, G.R. No. 187425, March 28, 2011.*

Bureau of Customs; liability for lost shipment; state immunity. Regarding the state immunity doctrine, the Commissioner of Customs cannot escape liability for the lost shipment for goods. As discussed in the case of *Republic of the Philippines represented by the Bureau of Customs vs UNIMEX Micro-Electronics GmbH*, "the Court cannot turn a blind eye to [the Bureau of Customs'] ineptitude and gross negligence in the safekeeping of respondent's goods. [The Court is] not likewise unaware of its lackadaisical attitude in failing to provide a cogent explanation on the goods' disappearance, considering that they were in its custody and that they were in fact the subject of litigation. The situation does not allow [the Court] to reject respondent's claim on the mere invocation of the doctrine of state immunity. Succinctly, the doctrine must be fairly observed and the State should not avail itself of this prerogative to take undue advantage of parties that may have legitimate claims against it. *Commissioner of Customs vs*

*AGHFA Incorporated, G.R. No. 187425, March 28, 2011.*

## February 2011 Philippine Supreme Court Decisions on Tax Law

Posted on [March 30, 2011](#) by [Carina C. Laforteza](#) • Posted in [Philippines - Cases](#), [Philippines - Law](#), [Tax Law](#) •

Here are selected February 2011 rulings of the Supreme Court of the Philippines on tax law:

Local Government Code; real property tax; tax delinquency sale; writ of possession; premature issuance. A writ of possession is mere incident in the transfer of title. In this case, it stemmed from the exercise of alleged ownership by respondent city over EDSA MRT III properties by virtue of a tax delinquency sale. The issue of whether the auction sale should be enjoined is still pending before the Court of Appeals. Pending determination, it is premature for the respondent city to have conducted the auction sale and caused the transfer of title over the real properties to its name. The denial by the Regional Trial Court (RTC) to issue an injunction or a temporary restraining order does not automatically give the respondent city the liberty to proceed with the actions sought to be enjoined, especially so in this case where a *certiorari* petition assailing the denial is still being deliberated in the Court of Appeals (CA). All the more it is premature for the RTC to issue a writ of possession where the ownership of the subject properties is derived from an auction sale, the validity of which is still being threshed out in the CA. The RTC should have held in abeyance the issuance of a writ of possession. At this juncture, the writ issued is premature and has no force and effect. *Republic of the Philippines (Department of Transportation and Communications) vs City of Mandaluyong, G.R. No. 184879, February 23, 2011.*

National Internal Revenue Code; capital gains tax; documentary stamp tax; if right of redemption exercised. Under Revenue Regulations (RR) No. 13-85 (December 12, 1985), every sale or exchange or other disposition of real property classified as capital asset under the National Internal Revenue Code

(NIRC) shall be subject to final capital gains tax. The term “sale” includes *pacto de retro* and other forms of conditional sale. Section 2.2 of Revenue Memorandum Order (RMO) No. 29-86, as amended by RMO Nos. 16-88, 27-89 and 6-92, states that these conditional sales “necessarily includes mortgage foreclosure sales (judicial and extrajudicial foreclosure sales).” Further, for real property foreclosed by a bank on or after September 3, 1986, the capital gains tax and documentary stamp tax must be paid before title to the property can be consolidated in favor of the bank. Under Section 63 of Presidential Decree No. 1529, or the Property Registration Decree, if no right of redemption exists, the certificate of title of the mortgagor shall be cancelled, and a new certificate issued in the name of the purchaser. But where the right of redemption exists, the certificate of title of the mortgagor shall not be cancelled, but the certificate of sale and the order confirming the sale shall be registered by brief memorandum thereof made by the Register of Deeds on the certificate of title. It is therefore clear that in foreclosure sale, there is no actual transfer of the mortgaged real property until after the expiration of the one-year redemption period as provided in Act No. 3135, or An Act or Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real Estate Mortgages, and title thereto is consolidated in the name of the mortgagee in case of non-redemption. In the interim, the mortgagor is given the option whether or not to redeem the real property. The issuance of the Certificate of Sale does not by itself transfer ownership. RR No. 4-99 (March 16, 1999), further amends RMO No. 6-92 relative to the payment of capital gains tax and documentary stamp tax on extrajudicial foreclosure sale of capital assets initiated by banks, finance and insurance companies. Under this RMO, in case the mortgagor exercises his right of redemption within one year from the issuance of the certificate of sale, no capital gains tax shall be imposed because no capital gain has been derived by the mortgagor and no sale or transfer of real property was realized. Moreover, the transaction will be subject to documentary stamp tax of only PhP 15 because no land or realty was sold or transferred for a consideration. *Supreme Transliner, Inc., Moises C. Alvarez and Paulita S. Alvarez vs BPI Family Savings Bank, Inc., G.R. No. 165617, February 25, 2011; BPI Family Savings Bank, Inc. vs Supreme Transliner, Inc., Moises C. Alvarez and Paulita S. Alvarez, G.R. No. 165837, February 25, 2011.*

National Internal Revenue Code; non-retroactivity of rulings; exception. Section 246 of the National Internal Revenue Code sets out that rule on non-retroactivity of rulings. In this case, the retroactive application of Revenue

Regulations No. 4-99 [to the transaction which took place before its effectivity] is more consistent with the policy of aiding the exercise of the right of redemption. As the Court of Tax Appeals concluded in one case, RR No. 4-99 “has curbed the inequity of imposing a capital gains tax even before the expiration of the redemption period [since] there is yet no transfer of title and no profit or gain is realized by the mortgagor at the time of foreclosure sale but only upon expiration of the redemption period.” In his commentaries [Hector] De Leon expressed the view that while revenue regulations as a general rule have no retroactive effect, if the revocation is due to the fact that the regulation is erroneous or contrary to law, such revocation shall have retroactive operation as to affect past transactions, because a wrong construction cannot give rise to a vested right that can be invoked by a taxpayer. *Supreme Transliner, Inc., Moises C. Alvarez and Paulita S. Alvarez vs BPI Family Savings Bank, Inc.*, G.R. No. 165617, February 25, 2011; *BPI Family Savings Bank, Inc. vs Supreme Transliner, Inc., Moises C. Alvarez and Paulita S. Alvarez*, *G.R. No. 165837, February 25, 2011*.

## January 2011 Philippine Supreme Court Decisions on Tax Law

Posted on [February 28, 2011](#) by [Carina C. Laforteza](#) • Posted in [Philippines - Cases](#), [Philippines - Law](#), [Tax Law](#) • Tagged [excise tax](#), [value added tax](#) •

Here are selected January 2011 rulings of the Supreme Court of the Philippines on tax law:

National Internal Revenue Code; section 76; option to carry-over excess income tax payments to succeeding taxable years; option irrevocable. Under section 76 of the National Internal Revenue Code (Tax Code) in case of overpayment of income taxes, a corporation may either file a claim for refund or carry-over the excess payments to the succeeding taxable year and the availment of one remedy precludes the other. However, unlike section 69 of the previous Tax Code, the carry-over of excess income tax payments is no longer limited to the succeeding taxable year but is carried over to the succeeding taxable year until fully utilized. Moreover, the option to carry-

over excess income tax payments is not irrevocable. Hence; unutilized excess income tax payments may no longer be refunded. *Belle Corporation vs Commissioner of Internal Revenue*, G.R. No. 181298, January 10, 2011.

National Internal Revenue Code; value-added tax; claim for credit or refund of input value-added tax; requirements. In its section 112 (A), the National Internal Revenue Code sets down the following requirements in a claim for credit or refund of input value-added tax (VAT): (1) the taxpayer must be VAT registered, (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated, (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made, and (4) the creditable input VAT due or paid must be attributable to such sales, except the transitional input VAT, to the extent that such input VAT has not been applied against the output VAT. *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011.

National Internal Revenue Code; value-added tax; claim for credit or refund of input value-added tax; authority to print. The authority to print (ATP) need not be reflected or indicated in the invoices or receipts because there is no law or regulation requiring it. In the absence of such law or regulation, failure to print the ATP on the invoices or receipts should not result in the outright denial of a claim or the invalidation of the invoices or receipts for purposes of claiming a refund. However, section 238 of the National Internal Revenue Code (Tax Code) expressly requires persons engaged in business to secure an ATP from the Bureau of Internal Revenue prior to printing invoices or receipts. Under section 112 (A) of the Tax Code, a claimant must be engaged in sales which are zero-rated or effectively zero-rated. To prove this, duly registered invoices or receipts evidencing zero-rated sales must be presented. However, since the ATP is not indicated in the invoices or receipts, the only way to verify whether the invoices or receipts are duly registered is by requiring the claimant to present its ATP from the BIR. Without this proof, the invoices or receipts would have no probative value for the purpose of refund. *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011.

National Internal Revenue Code; value-added tax; claim for credit or refund of input value-added tax; printing of “zero-rated.” Failure to print the word “zero-rated” on the sales invoices or receipts is fatal to a claim for refund of input value-added tax on zero-rated sales. As explained in the case of *Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) vs Commissioner of Internal Revenue*, compliance with section 4.108-1 of Revenue Regulations No. 7-95, requiring the printing of the word “zero-rated” on the invoice covering zero-rated sales, is essential as this regulation proceeds from the rule-making authority of the Secretary of Finance under section 244 of the National Internal Revenue Code. *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011.

National Internal Revenue Code; value-added tax; claim for credit or refund of input value-added tax; documentary requirements. When claiming tax refund or credit, the value-added taxpayer must be able to establish that it does have refundable or creditable input value-added tax (VAT), and the same has not been applied against its output VAT liabilities- information which are supposed to be reflected in the taxpayer’s VAT returns. Thus, an application for tax refund or credit must be accompanied by copies of the taxpayer’s VAT return or returns for taxable quarter or quarters concerned. *Atlas Consolidated Mining and Development Corporation vs Commissioner of Internal Revenue*, G.R. No. 159471, January 26, 2011.

National Internal Revenue Code; coverage of excise tax. Excise taxes are imposed under Title VI of the National Internal Revenue Code (Tax Code). They apply to specific goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition, and to those that are imported. In effect, these taxes are imposed when the following conditions concur: (1) the articles subject to tax belong to any of the categories of goods enumerated in Title VI of the Tax Code and (2) that said articles are for domestic sale or consumption, excluding those that are actually exported. There are certain exemptions to the coverage of excise taxes, such as petroleum products sold to international carriers and exempt entities or agencies such as under section 135 of the Tax Code. *Exxonmobil Petroleum and Chemical Holdings, Inc.- Philippine Branch vs Commissioner of Internal Revenue*, G.R. No. 180909, January 19, 2011.



National Internal Revenue Code; excise tax; section 135. Under section 135 of the National Internal Revenue Code (Tax Code), petroleum products sold to international carriers of [Philippine or] foreign registry for their use or consumption outside the Philippines are exempt from excise tax, provided that the petroleum products sold to such international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue. *Exxonmobil Petroleum and Chemical Holdings, Inc.- Philippine Branch vs Commissioner of Internal Revenue, G.R. No. 180909, January 19, 2011.*

National Internal Revenue Code; nature of excise tax. Excise taxes are of the nature of indirect taxes, the liability for payment of which may fall on a person other than he who actually bears the burden of the tax. Accordingly, the party liable for the tax can shift the burden to another, as part of the purchase price of the goods or services. Although the manufacturer/seller is the one who is statutorily liable for the tax, it is the buyer who actually shoulders or bears the burden of the tax, albeit not in the nature of a tax, but part of the purchase price or the cost of the goods or services sold. *Exxonmobil Petroleum and Chemical Holdings, Inc.- Philippine Branch vs Commissioner of Internal Revenue, G.R. No. 180909, January 19, 2011.*

National Internal Revenue Code; excise tax; refund; proper party. The proper party to question, or to seek a refund of, an indirect tax, is the statutory taxpayer, or the person on whom the tax is imposed by law and who paid the same, even if he shifts the burden thereof to another. *Exxonmobil Petroleum and Chemical Holdings, Inc.- Philippine Branch vs Commissioner of Internal Revenue, G.R. No. 180909, January 19, 2011.*

## December 2010 Philippine Supreme Court Decisions on Tax Law

Posted on [January 5, 2011](#) by [Carina C. Laforteza](#) • Posted in [Philippines - Cases](#), [Philippines - Law](#), [Tax Law](#) • Tagged [assessment](#), [due process](#), [real property tax](#) •

Here are selected December 2010 rulings of the Supreme Court of the

Philippines on tax law:

National Internal Revenue Code; Revenue Regulations No. 12-99; due process requirements; preliminary assessment notice. Section 228 of the national Internal Revenue Code (Tax Code) clearly require that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a preliminary assessment notice (PAN). He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations- that taxpayers should be able to present their case and adduce supporting evidence. This is confirmed under section 3 of Revenue Regulations No. 12-99. From the said section, it is clear that the sending of a PAN to taxpayer to inform him of the assessment is part of the “due process requirement in the issuance of a deficiency tax assessment,” the absence of which renders nugatory any assessment made by the tax authorities. The use of the word “shall” in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the Commissioner of Internal Revenue (CIR) to strictly comply with the requirements laid down by law and its own rules is a denial of taxpayer’s right to due process. Thus for failure to send the PAN stating the facts and the law on which the assessment was made as required by section 228 of the Tax Code, the assessment made by the CIR is void. *Commissioner of Internal Revenue vs Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010.*

Local Government Code; real property tax; government instrumentality. Philippine Fisheries Development Authority (PFDA) is a government instrumentality and therefore exempt from real property tax imposed on the Lucena Fishing Port Complex, except those portions which are leased to private persons or entities. Under section 133 (o) of the Local Government Code, local government units have no power to tax instrumentalities of the national government. In the 2007 case of “Philippine Fisheries Development Authority v. Court of Appeals,” the Court resolved the issue of whether the PFDA is a government-owned or controlled corporation (GOCC) or an instrumentality of the national government. In that case, the Court ruled that PFDA is not a GOCC but an instrumentality of the national government which is generally exempt from payment of real property tax except for the

portions of the Iloilo Fishing Port Complex (which was managed and operated by PFDA) which were leased to private entities. The PFDA has a capital stock but it is not divided into shares of stocks. It has no stockholders or voting shares. Hence, it is not a stock corporation. Neither is it a non-stock corporation because it has no members. The PFDA is a national government instrumentality which is defined as an agency of the national government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This ruling was affirmed by the Court in a subsequent PFDA case involving the Navotas Fishing Port Complex. *Philippine Fisheries Development Authority vs Central Board of Assessment Appeals, Local Board of Assessment Appeals of Lucena City, City of Lucena, Lucena City Assessor and Lucena City Treasurer*, *G.R. No. 178030, December 15, 2010*.

Local Government Code; real property tax; property of public dominion. Under section 234 (a) of the Local Government Code, properties of public dominion intended for public use are exempt from real property tax. Properties of public dominion are owned by the state or the national government as defined under section 420 of the Civil Code. The Lucena Fishing Port Complex, which is one of the major infrastructure projects undertaken by the national government under the Nationwide Fishing Ports Package is devoted for public use and falls with the term “ports.” It “serves as [the Philippine Fisheries Development Authority’s (PFDA’s)] commitment to continuously provide post-harvest infrastructure support to the fishing industry, especially in areas where productivity among the various players in the fishing industry need to be enhanced.” As property of public dominion, the Lucena Fishing Port Complex is owned by the Republic of the Philippines and exempt from real property tax except for the portions that the PFDA has leased to private parties. *Philippine Fisheries Development Authority vs Central Board of Assessment Appeals, Local Board of Assessment Appeals of Lucena City, City of Lucena, Lucena City Assessor and Lucena City Treasurer*, *G.R. No. 178030, December 15, 2010*.

# November 2010 Philippine Supreme Court Decisions on Tax Law

Posted on [December 28, 2010](#) by [Carina C. Laforteza](#) • Posted in [Philippines - Cases](#), [Philippines - Law](#), [Tax Law](#) • Tagged [assessment](#), [Court of Tax Appeals](#), [prescription](#), [value added tax](#) •

Here are selected November 2010 rulings of the Supreme Court of the Philippines on tax law:

Court of Tax Appeals; jurisdiction; other matters. The jurisdiction of the Court of Tax Appeals (CTA) over “other matters” is found in number 1 of Section 7 of Republic Act No. 1125, as amended. Under this provision, the CTA exercises exclusive appellate jurisdiction to review by appeal decisions of the Commissioner of Internal Revenue (CIR) in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other law as part of law administered by the Bureau of Internal Revenue (BIR). The term “other matters” is limited only by the qualifying phrase that follows it. The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. It covers other cases that arise out of the NIRC or related laws administered by the BIR. The issue of whether or not the BIR’s right to collect taxes had already prescribed is a subject matter falling under the NIRC. In connection therewith, the NIRC also states that the collection of taxes is one of the duties of the BIR. Thus, from the foregoing, the issue of prescription of the BIR’s right to collect taxes may be considered as covered by the term “other matters” over which the CTA has appellate jurisdiction. *Commissioner of Internal Revenue vs Hambrecht & Quist Philippines, Inc.*, [G.R. No. 169225, November 17, 2010](#).

Court of Tax Appeals; petition for review with Court of Tax Appeals en banc; motion for reconsideration mandatory. Rule 8, Section 1 of the Revised Rules of Court of Tax Appeals (CTA) requiring that “the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Decision” is mandatory. The word “must” clearly indicate the mandatory- not merely directory- nature of a requirement. The rules are clear. Before the CTA En Banc could take cognizance of the petition for review concerning a case falling under its exclusive appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or

moved for a new trial with the concerned CTA division. Procedural rules are not to be trifled with or be excused simply because their non-compliance may have resulted in prejudicing a party's substantive rights. Rules are meant to be followed. They may be relaxed only for very exigent and persuasive reasons to relieve a litigant of an injustice not commensurate to his careless non-observance of the prescribed rules. *Commissioner of Customs vs. Marina Sales, Inc.*, *G.R. No. 183868, November 22, 2010*.

Court of Tax Appeals; petition for certiorari; requisites. In order for a petition for certiorari to succeed, the following requisites must concur: (a) the writ is directed against a tribunal, a board, or any officer exercising judicial or quasi-judicial functions, (b) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and (c) there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law. "Without jurisdiction" denotes that the tribunal, board or officer acted with absolute lack of authority. There is "excess of jurisdiction" when the public respondent exceeds its power or acts without any statutory authority. "Grave abuse of discretion" connotes such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; otherwise stated, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law. The grant or denial of a motion for postponement is addressed to the sound discretion of the court which should always be predicated on the consideration that more than the mere convenience of the courts or of the parties, the ends of justice and fairness should be served thereby. Furthermore, this discretion must be exercised intelligently. In this case, the taxpayer was given more than ample time to collate and gather its evidence. Accordingly, its right to due process was not transgressed. *Milwaukee Industries Corporation vs. Court of Tax Appeals and Commissioner of Internal Revenue*, *G.R. No. 173815, November 24, 2010*.

Prescriptive period; suspension; collection of taxes. The validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the Commissioner of Internal Revenue (CIR) to collect the validly assessed tax has

prescribed. The following requisites must concur before the period to enforce collection may be suspended: (a) the taxpayer requests for reinvestigation and (b) the CIR grants such request. Consequently, the mere filing of a protest letter which is not granted does not operate to suspend the running of the period to collect taxes. *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, *G.R. No. 169225, November 17, 2010.*

National Internal Revenue Code; assessment; letter of authority; scope. Under the National Internal Revenue Code (Tax Code), a letter of authority (LOA) is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. There must be a grant of authority before any revenue officer can conduct an examination or assessment. The revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity. LOA 19734 covered “the period 197 and unverified prior years.” Thus, the Commissioner of Internal Revenue (CIR) acting through its revenue officers went beyond the scope of their authority because the deficiency value-added tax assessment they arrived at was based on records from January to March 198 or using the fiscal year which ended in March 31, 1998. The CIR knew which period should be covered by the investigation. If the CIR wanted to or intended the investigation to include the year 1998, it should have done so by including it in the LOA or issuing another LOA. Moreover, the coverage of LOA 19734, particularly the phrase “and unverified prior years,” violated section C of Revenue Memorandum Order No. 43-90 dated September 20, 1990, which provides that a LOA should cover a taxable period not exceeding one taxable year. *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, *G.R. No. 178697, November 17, 2010.*

National Internal Revenue Code; input value-added tax; source of payment irrelevant. Taxpayer’s deficiency value-added tax (VAT) assessment stemmed from the Commissioner of Internal Revenue’s (CIR) disallowance of the input VAT credits that should have been realized from the advertising expense of the taxpayer. It is evident under section 110 of the National Internal Revenue Code that an advertising expense duly covered by a VAT invoice is a legitimate business expense. There is no denying that taxpayer incurred advertising expense, the advertising companies issued invoices in the name of the taxpayer and the latter paid for the same. The taxpayer incurred and paid for advertising expense/services. Where the money came from is another matter all together but will definitely not change said fact. . *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, *G.R. No. 178697, November 17, 2010.*



National Internal Revenue Code; output value-added tax; subsidy from affiliate. The subsidy, which was termed by the Commissioner of Internal Revenue (CIR) as reimbursement, which was not even exclusively earmarked for the taxpayer's advertising expense but was an assistance or aid in view of taxpayer's dire or adverse economic conditions, and was only "equivalent to the [taxpayer's] advertising expenses," is not subject to value-added tax (VAT). Under section 106 of the National Internal Revenue Code, there must be a sale, barter or exchange of goods or properties before any VAT may be levied. There was no such sale, barter or exchange in the subsidy given by its parent to the taxpayer. It was but a dole out by the affiliate and not in payment for goods or properties sold, bartered or exchanged by the taxpayer. The Court has previously ruled that services rendered for a fee even on reimbursement-on-cost basis only and without realizing profit are also subject to VAT. In this case, however, the taxpayer did not render any service to its affiliate at all. The services rendered by the advertising companies, paid for by the taxpayer using its affiliate's dole-out, were for the taxpayer and not its affiliate. The affiliate just gave assistance to taxpayer in the amount equivalent to the latter's advertising expense but never received any goods, properties or service from taxpayer. *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, *G.R. No. 178697, November 17, 2010*.

National Internal Revenue Code; royalties; time of withholding; payment or accrual. Under Revenue Regulations 2-98, as amended, taxpayer is required to deduct and withhold final taxes on royalty payments when the royalty is paid or is payable. After which, the corresponding return and remittance must be made within ten (10) days after the end of each month. Under the Manufacturing License Agreement (MLA) between taxpayer and Sony-Japan, taxpayer should pay Sony-Japan within two (2) months after every semi-annual period which ends in June 30 and December 31. However, there was an accrual of royalty by the end of December 1997 as well as by the end of June 1998. Given this, the final withholding taxes should have been paid or remitted by the taxpayer to the Commissioner of Internal Revenue on January 10, 1998 and July 10, 1998, or ten (10) days from its accrual. *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, *G.R. No. 178697, November 17, 2010*.

National Internal Revenue Code; value-added tax; invoicing requirements; imprinting of word "zero-rated". The issue of whether the word "zero-rated" should be imprinted on invoices and/or official receipts as part of the invoicing requirements has been settled by the Court in previous cases. As the Court stated in the previous case of *Panasonic Communications Imaging Corporation of the Philippines vs Commissioner of Internal Revenue*, section 4.108-1 of Revenue Regulations No. (RR) 7-95 [which required the imprinting of the word "zero-rated" on the value-added tax (VAT) invoice or receipt] proceeds from the rule-

making authority granted to the Secretary of Finance under the National Internal Revenue Code of 1977 for the efficient enforcement of the tax code and its amendments. The requirement is reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services. Following said ruling, section 4.108-1 of RR 7-95 neither expanded nor supplanted the tax code but merely supplemented what the tax code already defined and discussed. In fact, the necessity of indicating “zero-rated” into VAT invoices/receipts became more apparent when the provisions of this revenue regulations was later integrated into Republic Act No. 9337, the amendatory law of the National Internal Revenue Code of 1997. As the taxpayer failed to indicate in its VAT invoices and receipts that the transactions were zero-rated, it failed to comply with the correct substantiation requirement for zero-rated transactions. *KEPCO Philippines Corporation vs. Commissioner of Internal Revenue*, *G.R. No. 181858, November 24, 2010*.

National Internal Revenue Code; value-added tax; invoicing requirements; imprinting of TIN VAT. Section 4.108-1 of Revenue Regulations No. 7-95 specifically requires the value-added tax (VAT) registered person to imprint TIN-VAT on its invoices or receipts. The Court agrees with the Court of Tax Appeals that to be considered a “VAT invoice,” the TIN-VAT must be printed, and not merely stamped. Consequently, purchases supported by invoices or official receipts, wherein the TIN-VAT is not printed thereon, shall not give rise to any input VAT. Likewise, input VAT on purchases supported by invoices or official receipts which are NON-VAT are disallowed because these invoices or official receipts are not considered as “VAT invoices.” *KEPCO Philippines Corporation vs. Commissioner of Internal Revenue*, *G.R. No. 181858, November 24, 2010*.

National Internal Revenue Code; input value-added tax; invoices and official receipts. Under the law, a value-added tax (VAT) invoice is necessary for every sale, barter or exchange of goods or properties which a VAT official receipt properly pertains to every lease of goods or properties, and for every sale, barter or exchange of services. The Court distinguished an invoice from a receipt in *Commissioner of Internal Revenue vs Manila Mining Corporation*. Thus, a “sales or commercial invoice” is a written account of goods sold or services rendered indicating the price charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services. A “receipt,” on the other hand, is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer. In other words, the VAT invoice is the seller’s best proof of the sale of the goods or services to the buyer while the VAT receipt is the buyer’s best evidence of the payment of goods or services received from the seller.

Even though the VAT invoices and receipts are normally issued by the supplier/seller alone, the said invoices and receipts, taken collectively, are necessary to substantiate the actual amount or quantity of goods sold and their selling price (proof of transaction), and the best means to prove the input VAT payments (proof of payment). Hence, VAT invoice and VAT receipt should not be confused as referring to one and the same thing. Although the Court of Tax Appeals (CTA) is not strictly governed by technical rules of evidence, invoicing and substantiation requirement must be followed because it is the only way to determine the veracity of the taxpayer's claims. The CTA correctly disallowed the input VAT that did not meet the required standard of substantiation. *KEPCO Philippines Corporation vs. Commissioner of Internal Revenue*, *G.R. No. 181858, November 24, 2010*.

Tariff and Customs Code; Tariff Heading H.S. 2106.90 50; original character of article must be retained. To fall under Tariff Heading H.S. 2106.90 50, which calls for a higher import duty rate of 7%, the imported articles must not lose their original character. The laboratory analysis of importer's samples yielded a different result. The report supported importer's position that the subject importations are not yet ready for human consumption. The juice compounds could not be taken in their raw form because they are highly concentrated and must be mixed with other additives before they could be marketed as Sunquick juice products. If taken in their unprocessed form, the concentrates without the mixed additives would produce a sour taste. The concentrates, to be consumable, must have to lose their original character. The importer transforms said juice compounds, being raw materials, into a substance suitable for human consumption. Contrary to the Commissioner of Customs' assertions, empirical evidence shows that the subject importations would have to undergo a laborious method, as shown by its manufacturing flowchart and manufacturing process, to achieve their marketable juice consistency. Accordingly, the 1% tariff import duty rate under Tariff Heading H.S. 2106.90 10 was correctly applied to the subject importations. *Commissioner of Customs vs. Marina Sales, Inc.*, *G.R. No. 183868, November 22, 2010*.

October 2010 Philippine Supreme

# Court Decisions on Tax Law

Posted on **November 8, 2010** by **Carina C. Laforteza** • Posted in **Tax Law** • Tagged **subpoena, tax evasion, value added tax** •

Here are selected October 2010 rulings of the Supreme Court of the Philippines on tax law:

Assessment; validity of assessment notice; lack of control number. The formality of a control number in the assessment notice is not a requirement for its validity; rather the contents thereof should inform the taxpayer of the declaration of deficiency tax against the taxpayer. Both the formal letter of demand and the notice of assessment shall be void if the former failed to state the fact, the law, rules and regulations or jurisprudence on which the assessment is based, which is a mandatory requirement under section 228 of the National Internal Revenue Code. *Commissioner of Internal Revenue vs Hon. Raul M. Gonzalez, Secretary of Justice, L.M. Camus Engineering Corporation (represented by Luis M. Camus and Lino D. Mendoza)*, **G.R. No. 177279, October 13, 2010.**

Income tax; irrevocability of option to carry-over of excess income tax credits; prospective application. Section 76 (on irrevocability of option to carry-over excess income tax credit) of the 1997 National Internal Revenue Code (1997 NIRC) and its companion provisions should be applied following the general rule on the prospective application of laws such that they operate to govern the conduct of corporate taxpayers the moment the 1997 NIRC took effect on January 1, 1998. At the time the taxpayer filed its final adjustment return for 1997 on April 15, 1998, the 1997 NIRC was already in force. Thus, section 76 of the same is controlling. *Commissioner of Internal Revenue vs McGeorge Food Industries, Inc.*, **G.R. No. 174157, October 20, 2010.**

Income tax; irrevocability of option to carry-over of excess income tax credits; changes from previous provision. Section 76 (on irrevocability of option to carry-over excess income tax credit) of the 1997 National Internal Revenue Code (1997 NIRC) wrought two changes to its predecessor, section 69 of the 1977 National Internal Revenue Code: (i) it mandates that the taxpayer's exercise of its option to either seek refund or crediting is irrevocable and (ii) the taxpayer's decision to carry-over and

apply its current overpayment to future tax liability continues until the overpayment has been fully applied, no matter how many cycles it takes. *Commissioner of Internal Revenue vs McGeorge Food Industries, Inc.*, *G.R. No. 174157, October 20, 2010.*

Value-added tax; refund or credit of unutilized input value-added tax; start of prescriptive period. Section 112 (A) of the National Internal Revenue Code (NIRC) is the applicable provision in determining the start of the two-year period for claiming a refund or credit of unutilized input value-added tax (VAT). Sections 204 (C) and 229 of the NIRC are inapplicable as both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made. *Commissioner of Internal Revenue vs Aichi Forging Company of Asia, Inc.*, *G.R. No. 184823, October 6, 2010.*

Value-added tax; refund or credit of unutilized input value-added tax; meaning of “year” in prescriptive period. As between the Civil Code, which provides that a year is 365 days, and the Administrative Code of 1987, which states that a year is composed on 12 calendar months, it is the latter that must prevail being the more recent law. Applying the same to the present case, the two-year period to file a claim for tax refund or credit for the period July 1, 2002 to September 30, 2002 expired on September 30, 2004. In this case, taxpayer’s administrative claim which was filed on September 30, 2004 was timely filed.. *Commissioner of Internal Revenue vs Aichi Forging Company of Asia, Inc.*, *G.R. No. 184823, October 6, 2010.*

Value-added tax; when judicial claim may be filed. Section 112(D) of the National Internal Revenue Code clearly provides that the Commissioner of Internal Revenue (CIR) has “120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit,” within which to grant or deny the claim. However, if after the 120-days period, the CIR fails to act on the application for tax refund or credit, the remedy of the taxpayer is to appeal the inaction of the CIR to the Court of Tax Appeals (CTA) within 30 days. In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Taxpayer

did not wait for the decision of the CIR or the lapse of the 120-day period. Therefore, the filing of the judicial claim with the CTA was premature. *Commissioner of Internal Revenue vs Aichi Forging Company of Asia, Inc.*, *G.R. No. 184823, October 6, 2010.*

Value-added tax; zero-rated sales; input value-added tax refund or credit; failure to print “zero-rated” on invoice. Consistent with previous decision on this matter (i.e. Panasonic Communications Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue), failure to print the word “zero-rated” on the invoices or receipts is fatal to a claim for credit or refund of input value-added tax on zero-rated sales. *J.R.A. Philippines, Inc. vs Commissioner of Internal Revenue*, *G.R. No. 177127, October 11, 2010.*

Value-added tax; zero-rated sales; input value-added tax refund or credit; Revenue Regulations 7-95; invoicing requirements. When taxpayer filed its claim for refund or tax credit, Revenue Regulations No. 7-95 was already in force. Section 4.108-1 of the said regulations required, among others, the tax identification number (TIN) of the seller and the word “zero-rated” to be imprinted on invoice covering zero-rated sales. The said regulations also provide that only VAT-registered persons are required to print their TIN followed by the word “VAT” in their invoices or receipts and this shall be considered as a “VAT invoice.” All purchases covered by invoices other than a “VAT invoice” shall not give rise to any input tax. In this case, the taxpayer’s export sales invoices did not indicate the seller’s TIN followed by the word “VAT.” The word “zero-rated” was also not imprinted on the invoices. The Court of Tax Appeals found that the invoices were not duly registered with the Bureau of Internal Revenue. Thus, taxpayer failed to establish the factual basis of its claim for refund or tax credit. *Hitachi Global Storage Technologies Philippines Corp. (formerly Hitachi Computer Products (Asia) Corporations) vs Commissioner of Internal Revenue*, *G.R. No. 174212, October 20, 2010.*

Tax evasion; failure to comply with subpoena duces tecum not relevant to tax evasion; forum shopping. A violation of section 266 (failure to obey summons) of the National Internal Revenue Code (NIRC) involves a separate offense and hence *litis pendencia* is not present considering that the outcome of this complaint is not determinative of the issue as to whether probable cause exists to charge the taxpayer with the crimes of attempt to evade or defeat tax and willful failure to supply correct and accurate



information and pay tax defined and penalized under sections 254 and 255, respectively, of the NIRC. For the crime of tax evasion in particular, compliance by the taxpayer with such subpoena, if any had been issued, is irrelevant. Thus, the Secretary of Justice erred in holding that the Commissioner of Internal Revenue committed forum shopping when it filed the complaint for tax evasion during the pendency of its appeal from the City Prosecutor's dismissal of the complaint involving the act of disobedience to the summons in the course of the preliminary investigation on the taxpayer's correct tax liabilities for the taxable years 1997, 1998 and 1999. *Commissioner of Internal Revenue vs Hon. Raul M. Gonzalez, Secretary of Justice, L.M. Camus Engineering Corporation (represented by Luis M. Camus and Lino D. Mendoza)*, *G.R. No. 177279, October 13, 2010*.

Tax evasion; lack of consent by taxpayer under investigation. Lack of consent by the taxpayer under investigation does not imply that the Bureau of Revenue (BIR) obtained the information from third parties illegally or that the information received is false or malicious. Nor does the lack of consent preclude the BIR from assessing deficiency taxes on the taxpayer based on the documents. In the same vein, the taxpayer cannot be allowed to escape criminal prosecution under sections 254 and 255 of the National Internal Revenue Code (NIRC) by mere imputation of a "fictitious" or disqualified informant under section 282 of the NIRC simply because other than disclosure of the official registry number of the third party "informant," the BIR insisted on maintaining the confidentiality of the identity and personal circumstances of said "informant." *Commissioner of Internal Revenue vs Hon. Raul M. Gonzalez, Secretary of Justice, L.M. Camus Engineering Corporation (represented by Luis M. Camus and Lino D. Mendoza)*, *G.R. No. 177279, October 13, 2010*.

Voluntary Assessment Program; Revenue Regulations No. 2-99; Economic Recovery Assistance Payment (ERAP) Program; immunity. Revenue Regulations No. 2-99 explained in its Policy Statement that considering the scarcity of financial and human resources as well as the time constraints within which the Bureau of Internal Revenue (BIR) has to "clean the [BIR's] backlog of unaudited tax returns in order to keep updated and be focused with the most current accounts" in preparation for the full implementation of a computerized tax administration, the said revenue regulation was issued "providing for last priority in audit and investigation of tax returns" to accomplish the said objective "without, however, compromising the revenue

collection that would have been generated from audit and enforcement activities.” The program granted immunity from audit and investigation of income tax, VAT and percentage tax returns for 1998. It expressly excluded withholding tax returns. Since such immunity from audit and investigation does not preclude the collection of revenues generated from audit and enforcement activities, it follows that the BIR is likewise not barred from collecting any tax deficiency discovered as a result of tax fraud investigations. *Commissioner of Internal Revenue vs Hon. Raul M. Gonzalez, Secretary of Justice, L.M. Camus Engineering Corporation (represented by Luis M. Camus and Lino D. Mendoza)*, *G.R. No. 177279, October 13, 2010*.

Voluntary Assessment Program; immunity. Availment by the taxpayer of the voluntary assessment program (VAP) under Revenue Regulations No. 8-2001, as amended, did not amount to settlement of its assessed tax deficiencies for the period 1997 to 1999, nor immunity from prosecution for filing fraudulent return and attempt to evade or defeat tax. From the express terms of the said revenue regulations, taxpayer is not qualified to avail of the VAP granting taxpayers the privilege of last priority in the audit and investigation of all internal revenue taxes for the taxable year 2000 and all prior years under certain conditions, considering that, first, it was issued a preliminary assessment notice (PAN) on February 19, 2001, and, second, it was the subject of investigation as a result of verified informed filed by a tax informer under section 282 of the National Internal Revenue Code duly recorded in the BIR official registry even prior to the issuance of the PAN, which are excepted from coverage of the VAP under said regulations. Moreover, the taxpayer cannot invoke the availment of VAP to foreclose any subsequent audit of its account books and other accounting records in view of the strong finding of underdeclaration in its payment of the correct income tax liability by more than 30% as supported by the written report of the Tax Fraud Division. Under the regulations, a taxpayer who has availed of the VAP shall not be audited except upon authorization and approval of the Commissioner of Internal Revenue when there is strong evidence or finding of understatement in the payment of its correct tax liability by more than 30% as supported by a written report of the appropriate office detailing the facts and the law on which such finding is based. *Commissioner of Internal Revenue vs Hon. Raul M. Gonzalez, Secretary of Justice, L.M. Camus Engineering Corporation (represented by Luis M. Camus and Lino D. Mendoza)*, *G.R. No. 177279, October 13, 2010*.

Voluntary Assessment Program; estoppel. Given the explicit conditions for the grant of immunity from audit under the said revenue regulations, the Secretary of Justice erred in declaring that the Commissioner of Internal Revenue is estopped from assessing any tax deficiency against the taxpayer after the issuance of the documents of immunity from audit/investigation and settlement of tax liabilities. The State can never be in estoppel, and this is particularly true in matters involving taxation. The errors of certain administrative officers should never be allowed to jeopardize the government's financial position. *Commissioner of Internal Revenue vs Hon. Raul M. Gonzalez, Secretary of Justice, L.M. Camus Engineering Corporation (represented by Luis M. Camus and Lino D. Mendoza)*, **G.R. No. 177279, October 13, 2010.**

Voluntary Assessment Program; exception to rule that examination and inspection should be made only once a taxable year. The discovery of substantial underdeclarations of income by the taxpayer for taxable years 1997, 1998 and 1999 upon verified information provided by an "informer" under section 282 of the National Internal Revenue Code (NIRC), as well as the necessity of obtaining information from third parties to ascertain correctness of the return filed or evaluation of tax compliance in collecting taxes (as a result of the disobedience to the summons issued by the Bureau of Internal Revenue against the taxpayer) are circumstances warranting exception from the general rule in section 235 of the NIRC. *Commissioner of Internal Revenue vs Hon. Raul M. Gonzalez, Secretary of Justice, L.M. Camus Engineering Corporation (represented by Luis M. Camus and Lino D. Mendoza)*, **G.R. No. 177279, October 13, 2010.**

## Philippine Laws: September 2010

Posted on **October 26, 2010** by **Ricardo Ma. P.G. Ongkiko** • Posted in **Philippines - Law, Tax Law** •

On the fourth month of his presidency and the third month of the 15th Congress, P-Noy was again not able to approve a new law in September 2010. One law, however, was published in two newspapers of general circulation on October 9, 2010, and consequently became effective on October 24, 2010. This was Republic Act No. 10143, or the Philippine Tax

Academy Act, which was approved by the House of Representatives on February 1, 2010 and by the Senate on June 4, 2010, and lapsed into law on July 31, 2010 without the signature of President GMA.

The Act created the Philippine Tax Academy which shall serve as a learning institution of primarily tax collectors and administrators of government. It will handle all the trainings, continuing education program, and other courses for all officials and personnel of the Bureau of Internal Revenue (BIR), the Bureau of Customs (BOC), and the Bureau of Local Government Finance (BLGF). The Academy will develop and implement a curriculum not only on the technical aspects of tax collection, administration and compliance, but also on the career orientation and development for civil servants. It shall seek to mold, develop and enhance the skills and knowledge, moral fitness, efficiency and capability of tax collectors and administrators.

All existing officials and personnel of the BIR, BOC and BLGF are required to undergo the re-tooling and enhancement seminars and training programs of the Academy. Moreover, all applicants are required to pass the basic courses before they can be hired by these government agencies whether on a contractual or permanent status.

The Academy will have a 7-member Board of Trustees, with the representative from the Department of Finance as *ex officio* Chairperson, the representatives from the BIR and BOC as *ex officio* Vice-Chairpersons, the representative from the BLGF and 3 representatives from the academe (with 5-year teaching experience from reputable schools) as members. The representatives from the BIR, the BOC and the BLGF will be chosen from nominees of the Secretary of Finance, while the representatives from the academe will be chosen from nominees of state universities and/or accredited private educational institutions. The members of the Board of Trustees will serve for a term of 3 years.

The Academy will have separate learning institutes for the BIR, BOC and the BLGF, each of which will be administered by a Chancellor and Vice-Chancellor. The Academy will also have a President who, together with the

Chancellors and Vice-Chancellors, will constitute the executive officials of the Academy, who will be appointed by the Secretary of Finance for a term of 3 years, without prejudice to subsequent reappointment.

The Secretary of Finance, in coordination with the Commissioners of the BIR and the BOC, and the Executive Director of the BLGF, in consultation with representatives from the academe, will issue the implementing rules and regulations within 90 days from the effectivity of the Act.

Here's hoping that the Academy can take the first step in transforming the BIR and the BOC into a more effective and, more importantly, more principled, government agency befitting the high hopes for the P-Noy administration.

## September 2010 Philippine Supreme Court Decisions on Tax Law

Posted on [October 8, 2010](#) by [Carina C. Laforteza](#) • Posted in [Tax Law](#) •

Here are selected September 2010 rulings of the Supreme Court of the Philippines on tax law:

National Internal Revenue Code; irrevocability of option to carry-over of excess income tax credits. It is undisputed that taxpayer indicated in its 1997 income tax return (ITR) its option to carry-over as tax credit for the next year its tax overpayment. In its 1998 ITR, taxpayer again indicated its preference to carry-over the excess income tax credit against the tax liabilities for the succeeding taxable years. Clearly, taxpayer chose to carry-over and apply the overpaid tax against the income tax due in the succeeding taxable years. Under section 76 of the National Internal Revenue Code of 1997, once the taxpayer exercises the option to carry-over and apply the excess creditable tax against the income tax due for the succeeding taxable years, such option is irrevocable. Thus, taxpayer can [in the succeeding years, i.e., 1999] no longer claim a refund of its excess income tax credit in the taxable year 1997 because it has already opted to carry-over the excess income tax credit against the tax due in the succeeding taxable years.

*Commissioner of Internal Revenue vs. The Philippine American Life and General Insurance Company, G.R. No. 175124, September 29, 2010.*

National Internal Revenue Code; international air carriers; Gross Philippine Billings; regular income tax. Inasmuch as the taxpayer has ceased operating passenger flights to or from the Philippines in 1998, it is not taxable under Section 28(A)(3)(a) of the National Internal Revenue Code (NIRC), or on 2 1/2% of its Gross Philippine Billings (GPB). The correct interpretation of said provisions is that, if an international air carrier maintains flights to and from the Philippines then it shall be taxed at the rate of 2 1/2 % of its GPB, while international air carriers that do not have flights to and from the Philippines but nonetheless earn income from other activities in the country will be taxed at the rate of 32% [now 30%] of such income. *United Airlines, Inc. vs Commissioner of Internal Revenue, G.R. No. 178788, September 29, 2010.*

National Internal Revenue Code; claims for refunds. Under Section 72 [Suit to Recover Tax Based on False or Fraudulent Returns] of the National Internal Revenue Code, the Court of Tax Appeals can make a valid finding that taxpayer made erroneous deductions on its gross cargo revenue; that because of the erroneous deductions, taxpayer reported a lower cargo revenue and paid a lower income tax thereon; and that taxpayer's underpayment of the income tax on cargo revenue is even higher than the income tax it paid on passenger revenue subject of the claim for refund, such that the refund cannot be granted. On the assumption that taxpayer filed a correct return, it had the right to file a claim for refund of the Gross Philippine Billings (GPB) tax on passenger revenues it paid in 1999 when it was not operating passenger flights to and from the Philippines. However, upon examination by the CTA, taxpayer's return was found erroneous as it understated its gross cargo revenue for the same taxable year due to deductions of two items. Having underpaid the GPB tax due on its cargo revenues for 1999, taxpayer is not entitled to a refund of its GPB tax on its passenger revenue, the amount of the former being even much higher than the tax refund sought. *United Airlines, Inc. vs Commissioner of Internal Revenue, G.R. No. 178788, September 29, 2010.*



# August 2010 Philippine Supreme Court Decisions on Tax Law

Posted on [September 9, 2010](#) by [Carina C. Laforteza](#) • Posted in [Tax Law](#) • Tagged [appeal](#), [real property tax](#), [value added tax](#), [withholding tax](#) •

Here are selected August 2010 rulings of the Supreme Court of the Philippines on tax law:

## National Internal Revenue Code

Appeal; right to appeal. The right to appeal is not a natural right and is also not part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. One who seeks to avail of the right to appeal must comply with the requirements for the Rules of Court and failure to do so often leads to the loss of the right to appeal. The failure to timely perfect an appeal is not a mere technicality for it is jurisdictional. The claim that the government would suffer loss of substantial amount if not allowed to recover the tax refund in the amount of more than fifteen million pesos has been caused by petitioner's own doing or undoing. While the Court understands petitioner's counsel's predicament of being burdened with a heavy case load, it cannot always rule in favor of the government. In this case, the dismissal of the petition for review and denial of the amended petition for review were premised on: (1) the late filing of the original petition for review by the petitioner; (2) the absence of a motion of reconsideration of the January 29, 2002 resolution (which dismissed the petition for review); and (3) lack of authority of the legal officer of the Bureau of Internal Revenue Region 8, Makati City, to pursue the case on behalf of the petitioner Commissioner of Internal Revenue. *Commissioner of Internal Revenue vs Fort Bonifacio Development Corporation*, [G.R. No. 167606, August 11, 2010](#).

Tax refund; relation between taxpayer and withholding agent; proper party-in-interest. A parent-subsidary relation between the taxpayer and the withholding agent is a factor that increases the withholding agent's legal interest to file a claim for refund but is not required for the withholding agent to have the right to file claim for refund. A withholding agent has a legal right to file a claim for refund for two reasons: (1) he is considered a

“taxpayer” under the National Internal Revenue Code as he is personally liable for the withholding tax as well as for deficiency assessments, surcharges, and penalties, should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under the law; (2) as an agent of the taxpayer, his authority to file the necessary income tax return and to remit the tax withheld to the government impliedly includes the authority to file a claim for refund and to bring an action for recovery of such claim. *Commissioner of Internal Revenue vs Smart Communication, Inc.*, *G.R. No. 179045-46, August 25, 2010*.

Tax refund; obligation of withholding agent to the taxpayer. While the withholding agent has the right to recover the taxes erroneously or illegally collected, he nevertheless has the obligation to remit the same to the principal taxpayer. As an agent of the taxpayer, it is the withholding agent’s duty to return what he has recovered; otherwise, he would be unjustly enriching himself at the expense of the principal taxpayer from whom the taxes were withheld, and from whom he derives his legal right to file a claim for refund. *Commissioner of Internal Revenue vs Smart Communication, Inc.*, *G.R. No. 179045-46, August 25, 2010*.

Value-added tax; requirements for refund or issuance of unutilized input tax credit. A taxpayer engaged in zero-rated transactions may apply for tax refund or issuance of tax credit certificate for unutilized input value-added tax (VAT) subject to the following requirements: (1) the taxpayer is engaged in sales which are zero-rated or effectively zero-rated; (2) the taxpayer is VAT-registered; (3) the claim is filed within two years after the close of the taxable quarter when such sales were made; (4) the creditable input tax due or paid is attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax; and in case of zero-rated sales under Section 106 (A)(2)(a) (1) and (2), Section 106 (B) and Section 108 (B) (1) and (2) of the National Internal Revenue Code (Tax Code), the acceptable foreign currency exchange proceeds thereof have been duly accounted for in accordance with Bangko Sentral ng Pilipinas rules and regulations. *AT & T Communications Services Philippines, Inc. vs Commissioner of Internal Revenue*, *G.R. No. 182364, August 3, 2010*.

Value-added tax; official receipts and sales invoices. Section 113 of the Tax Code does not create a distinction between a sales invoice and an official receipt. Section 113 states that “a VAT-registered person shall, for every

sale, issue an invoice or receipt.” Moreover, section 100 of the Tax Code provides that “any input tax evidenced by a VAT invoice or official receipt issued in accordance with section 113... shall be creditable against the output tax....” Thus, to determine the validity of petitioner’s claim as to unutilized input VAT, an invoice would suffice provided that the requirements under sections 113 and 237 of the Tax Code are met. *AT & T Communications Services Philippines, Inc. vs Commissioner of Internal Revenue*, *G.R. No. 182364, August 3, 2010*.

Value-added tax; proof to substantiate claim for refund. Sales invoices are recognized commercial documents to facilitate trade or credit transactions. They are proofs that a business transaction has been concluded and therefore should not be considered bereft of probative value. Only the preponderance of evidence threshold as applied in ordinary civil action is needed to substantiate a claim for tax refund proper. *AT & T Communications Services Philippines, Inc. vs Commissioner of Internal Revenue*, *G.R. No. 182364, August 3, 2010*.

### **Local Government Code**

Local Government Code and Presidential Decree No. 464; right of redemption. Section 79 of Presidential Decree No. (PD) 464 provides for a one-year redemption period for properties foreclosed due to tax delinquency reckoned from the date of the registration of the sale of the property. Section 261 of the Local Government Code (LGC) provides, on the other hand, that the one-year period is reckoned from the date of sale. Section 534, or the repealing clause of the LGC, expressly repealed PD 464. Thus, as regards redemption of tax delinquent properties sold at public auction, section 261 of the LGC is applicable and the owner of the delinquent real property or person having interest therein, or his representative, has the right to redeem the property within one year from the date of sale upon payment of the delinquent tax and other fees. *City Mayor, City Treasurer, City Assessor, all of Quezon City and Alvin Emerson S. Yu vs Rizal Commercial Banking Corporation*, *G.R. No. 171033, August 3, 2010*.

Local Government Code; Quezon City Revenue Code of 1993; general law and special law; right of redemption. The Quezon City, pursuant to the

taxing power vested on local government units by the Constitution and the Local Government Code enacted the Quezon City Revenue Code of 1993 which provided, among other things, in its section 14 (a) paragraph 7 that the right of redemption may be exercised within one year from the date of the annotation of the sale of the property at the proper registry. The LGC is general law while the Quezon City Revenue Code of 1993 is a special law, having emanated only from the LGC and with limited territorial application in Quezon City only. The general law and the special law should be read together and harmonized, if possible, with a view to giving effect to both. To harmonize the provisions of the two laws and to maintain the policy of the law to aid rather than to defeat the owner's right to redeem his property, section 14(a) paragraph 7 of the Quezon City Revenue Code of 1993 as defining the phrase "one (1) year from the date of sale" appearing in section 261 of the LGC to mean "one (1) year from the date of the annotation of the sale of the property at the proper registry." *City Mayor, City Treasurer, City Assessor, all of Quezon City and Alvin Emerson S. Yu vs Rizal Commercial Banking Corporation*, *G.R. No. 171033, August 3, 2010*.

### **Tax Treaty**

Philippines-Malaysia Tax Treaty; royalties and business profits. Payments for the use of programs where the recipient has proprietary rights is considered "royalties" under the Philippine-Malaysia tax treaty. Payments for programs where the proprietary rights belong to the payor are considered business profits under the said treaty and, where the recipient has no permanent establishment in the Philippines, are not subject to Philippine income tax. *Commissioner of Internal Revenue vs Smart Communication, Inc.*, *G.R. No. 179045-46, August 25, 2010*.

## **Regulations Update: BIR Regulations Implementing Expanded Senior Citizens Act**

Philippines - Regulation, Tax Law • Tagged [income tax](#), [value added tax](#) •

The Bureau of Internal Revenue recently issued Revenue Regulations No. 07-10 (the “Regulations”), which implement Republic Act No. 9994, otherwise known as the Expanded Senior Citizens Act of 2010.

The major provisions of the Regulations include the following:

**A. Income tax and other taxes**

In general, Senior Citizens must file income tax returns and pay income tax. However, the Senior Citizen is exempt from paying income tax if his returnable income is in the nature of compensation income and he qualifies as a minimum wage earner under RA No. 9504. The Senior Citizen is also exempt from income tax if the aggregate amount of gross income earned by the Senior Citizen during the taxable year does not exceed the amount of his personal exemptions (basic and additional).

Under the Regulations, the Senior Citizen can avail of income tax exemption only upon compliance with certain requirements. These are:

1. the Senior Citizen must first be qualified as such by the Commissioner of Internal Revenue or his duly authorized representative (i.e., the Revenue District Officer (RDO)) having jurisdiction over the place where the Senior Citizen resides), by submitting a certified true copy of his Senior Citizen Identification Card (OSCA ID) issued by the OSCA of the city or municipality where he resides;
2. the Senior Citizen must file a Sworn Statement on or before January 31 of every year that his annual taxable income for the previous year does not exceed the poverty level as determined by the NEDA thru the NSCB; and
3. if qualified, his name shall be recorded by the RDO in the Master List of Tax-Exempt Senior Citizens for that particular year, which the RDO is mandatorily required to keep.

A Senior Citizen who is a compensation income earner deriving from only

one employer an annual taxable income exceeding the poverty level or the amount determined by the NEDA thru the NSCB on a particular year, but whose income had been subjected to the withholding tax on compensation, shall, although not exempt from income tax, be entitled to the substituted filing of income tax return under Revenue Regulations No. 2-98, as amended.

Note that the income tax exemption does not extend to all types of income. Under section 8 of the Regulations, the Senior Citizen can still be held liable for the following taxes on income:

1. The 20% final withholding tax on interest income from any currency bank deposit, yield and other monetary benefit from deposit substitutes, trust fund and similar arrangements; royalties (except on books, as well as other literary works and musical compositions, which shall be imposed a final withholding tax of 10%); prizes (except prizes amounting to P10,000 or less which shall be subject to income tax at the rates prescribed under Sec. 24(A) of the Tax Code, and other winnings (except Philippine Charity Sweepstakes and Lotto winnings) (Sec. 24(B)(1), Tax Code);
2. The 7.5% final withholding tax on interest income from a depository bank under the expanded foreign currency deposit system (Sec. 24(B)(1), Tax Code);
3. If the Senior Citizen will pre-terminate his 5-year long-term deposit or investment in the form of savings, common or individual trust funds, deposit substitutes, investment management accounts and other investments evidenced by certificates in such form prescribed by the Bangko Sentral ng Pilipinas before the fifth year, he shall be subject to the final withholding tax imposed on the entire income depending on the holding period of the deposit or investment. If held for a period of:
  - Four years to less than five years — 5%
  - Three years to less than four years — 12%; and
  - Less than three years — 20%



4. The 10% final withholding tax –
  - a. On cash and/or property dividends actually or constructively received from a domestic corporation or from a joint stock company, insurance or mutual fund company and a regional operating headquarters of a multinational company; or
  - b. On the share of an individual in the distributable net income after tax of a partnership (except a general professional partnership) of which he is a partner; or
  - c. On the share of an individual in the net income after tax of an association, a joint account, or a joint venture or consortium taxable as a corporation of which he is a member or a co-venturer (Sec. 24(B)(2), Tax Code).
5. Capital gains tax from sales of shares of stock not traded in the stock exchange (Sec. 24(C), Tax Code); and
6. The 6% final withholding tax on presumed capital gains from sale of real property, classified as capital asset, except capital gains presumed to have been realized from the sale or disposition of principal residence (Sec. 24(D), Tax Code).

A Senior Citizen remains liable for other internal revenue taxes. The Regulations provide:

SEC. 9. Liability for Other Internal Revenue Taxes. — A Senior Citizen shall also be subject to the following internal revenue taxes, among others, imposed under the Tax Code:

1. Value Added Tax (VAT) or other Percentages Taxes, as the case may be. If he is self-employed or engaged in business or practice of profession, and his gross annual sales and/or receipts exceeds P1,500,000 or such amount to which this may be adjusted pursuant to Sec. 109(1)(V) of the Tax Code, he shall be subject to VAT. Otherwise, he shall be subject to the 3% percentage tax;

2. Donor's Tax – All donations made by a Senior Citizen during any calendar year, unless exempt under a specific provision of law, shall be subject to the donor's tax imposed under Title III of the Tax Code;
3. Estate Tax – In the event of death, the estate of the Senior Citizen may also be subject to the estate tax following the rules enunciated under Title III of the Tax Code and its implementing Regulations;
4. Excise tax on certain goods;
5. Documentary stamp tax.

**B. Discounts to senior citizens**

The Regulations reiterate the expanded coverage of goods and services subject to the 20% discount granted to Senior Citizens. In order to avail of the 20% discount, the Senior Citizen may present any of the following:

1. an identification card issued by the Office of the Senior Citizen Affairs (OSCA) of the place where the senior citizen resides: Provided, That the identification card issued by the particular OSCA shall be honored nationwide;
2. the passport of the Senior Citizen concerned; or
3. other documents that establish that the Senior Citizen is a citizen of the Republic and is at least sixty (60) years of age.

In the purchase of goods and services which are on promotional discount, the senior citizen can avail of the promotional discount or the 20% discount, whichever is higher.

The 20% discount applies to the following:

1. *on the purchase of medicines, including the purchase of influenza and pneumococcal vaccines, and such other essential medical supplies, accessories and equipment to be determined by the Department of Health*

(DOH).

Under the Regulations, the grant of discount shall be subject to guidelines that will be issued by the Bureau of Food and Drugs, Department of Health in coordination with the Philippine Health Insurance Corporation.

The Regulations define “medicine” as referring to “both prescription and nonprescription medicines, and articles approved by the BFAD-DOH, which are intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man; but do not include food and devices or their components, parts, or accessories.”

2. *on the professional fees of attending physician/s in all private hospitals, medical facilities, outpatient clinics and home health care services;*

3. *on the professional fees of licensed professional health providing home health care services as endorsed by private hospitals or employed through home health care employment agencies;*

4. *on medical and dental services, diagnostic and laboratory fees in all private hospitals, medical facilities, outpatient clinics, and home health care services, in accordance with the rules and regulations to be issued by the DOH, in coordination with the Philippine Health Insurance Corporation (PhilHealth);*

The Regulations define: (1) “medical services” as “hospital services, professional services of physicians and other health care professionals and diagnostic and laboratory tests that are necessary for the diagnosis or treatment of an illness or injury; (2) “dental services” as “oral examination, cleaning, permanent and temporary filling extractions and gum treatments, restoration, replacement or repositioning of teeth, or alteration of the alveolar or periodontium process of the maxilla and the mandible that are necessary for the diagnosis or treatment of an illness or injury” and (3) “home health care service” as “health or supportive care provided to the Senior Citizen patient at home by licensed health care professionals to include but not limited to, physicians, nurses, midwives, physical therapists and caregivers.”

5. *in actual fare for land transportation travel in public utility buses (PUBs), public utility jeepneys (PUJs), taxis, Asian utility vehicles (AUVs), shuttle services and public railways, including Light Rail Transit (LRT), Mass Rail Transit (MRT), and Philippine National Railways (PNR);*

6. *in actual transportation fare for domestic air transport services and sea shipping vessels and the like, based on the actual fare and advanced booking;*

7. *on the utilization of services in hotels and similar lodging establishments, restaurants and recreation centers;*

The Regulations define the terms “hotel/hostels”, “lodging establishments,” “restaurants,” and recreation centers.”

8. *on admission fees charged by theaters, cinema houses and concert halls, circuses, leisure and amusement; and*

9. *on funeral and burial services for the death of senior citizens;*

The beneficiary or any person who shall shoulder the funeral and burial expenses of the deceased Senior Citizen shall claim the discount, such as casket, embalment, cremation cost and other related services for the Senior Citizen upon payment and presentation of his death certificate.

### **C. Special discount on public utilities**

The Regulations reiterate the requirement imposed under the Act that the monthly utilization of water and electricity by the Senior Citizen supplied by public utilities will be subject to a five percent (5%) discount upon concurrence of the following:

1. the individual meters for the said utilities are registered in the name of the Senior Citizen residing therein;
2. the monthly consumption does not exceed one hundred kilowatt hours (100kwh) of electricity and thirty cubic meters (30 m<sup>3</sup>) of water; and

3. the privilege is granted per household regardless of the number of Senior Citizens residing therein.

## July 2010 Philippine Supreme Court Decisions on Tax Law

Posted on [August 6, 2010](#) by [Carina C. Laforteza](#) • Posted in [Remedial Law](#), [Tax Law](#) • Tagged [appeal](#), [tax credit](#) •

Here are selected July 2010 rulings of the Supreme Court of the Philippines on tax law:

Court of Tax Appeals; raising new issues on appeal; general rule. The general rule is that appeals can only raise questions of law or fact that (a) were raised in the court below; and (b) were within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal. *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*, [G.R. No. 163835, July 7, 2010](#).

Court of Tax Appeals; raising new issues on appeal; exceptions. In this case, contrary to respondent's claim, the petitioner has previously questioned the nature of the respondent's transactions (i.e., respondent was also engaged in value-added tax (VAT) transactions) insofar as they affected the claim for VAT refund, in petitioner's motion for reconsideration of the Court of Tax Appeals' decision, although it did not specifically refer to the relevant provision of the National Internal Revenue Code (Tax Code). Moreover, the rule against raising new issues on appeals is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. Former Senator Vicente Francisco, a

noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time: The appellate court may, in the interest of justice, properly take into consideration in deciding the case matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings. As applied in the present case, even without the petitioner raising the applicability of Section 104 (A) of the Tax Code, since all four of respondent's tax returns clearly stated that it earned income from exempt sales, i.e., non-VAT taxable sales. Respondent's quarterly VAT returns are matters of record and were, in fact, included by it in its formal offer of evidence before the CTA. *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*, *G.R. No. 163835, July 7, 2010*.

National Internal Revenue Code; irrevocability of option to carry-over of excess income tax credits. In the old National Internal Revenue Code provision, the option to carry-over the excess or overpaid income tax for a given taxable year is limited to the immediately succeeding taxable year only. Under the current provision, the application of the option to carry-over the excess creditable tax is not limited only to the immediately following tax year but extends to the next succeeding taxable years. Thus, once the taxpayer opts to carry-over the excess income tax against the taxes due for the succeeding taxable years, such option is irrevocable for the whole amount of the excess income tax, thus, prohibiting the taxpayer from applying for a refund for that same excess income tax in the next succeeding taxable years. The unutilized excess tax credits will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income tax liabilities until fully utilized. *Asiaworld Properties Philippine Corporation vs. Commissioner of Internal Revenue*, *G.R. No. 171766, July 29, 2010*.

Omnibus Investments Code; tax credit certificates; validity thereof; post audit is not a suspensive condition. Tax credit certificates (TCCs) issued pursuant to article 39 (k) of Executive Order No. 36 (or the "Omnibus Investments Code") are subject to the guidelines and instructions printed at the back thereof and are valid upon their issuance in favor of the original grantees which have the right to use them in payment of their tax liabilities and/or transfer them to assignees which could in turn utilize them as



payment of their own tax liabilities. TCCs are not subject to a post-audit as a suspensive condition. The post-audit is limited only to computational discrepancies arising from the use or transfer of TCCs and would, if at all, only give rise to an adjustment of the monetary value of the TCCs subject thereto. *Petron Corporation vs. Commissioner of Internal Revenue*, *G.R. No. 180385, July 28, 2010*.

Omnibus Investments Code; tax credit certificates; fraud in the issuance thereof; effect on transferees for value and in good faith. A transferee of the TCCs for value and in good faith cannot be prejudiced by the subsequent discovery of fraud that attended the issuance thereof. In this case, Petron had no participation in the procurement of the subject TCCs. It was not shown to have had a hand in or knowledge of the fraud which purportedly attended the issuance of the same TCCs. It was qualified to be a transferee as a Board of Investments-registered enterprise. And it went through the multi-tiered prescribed procedures for the transfer of said TCCs and use thereof in payment of its tax obligations. Relying on the validity of the TCCs, the Department of Finance One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center's (the Center) approval of the transfer thereof and the Bureau of Internal Revenue's acceptance of the same as consideration for the TCCs, Petron issued credit notes by way of consideration for the TCCs and delivered petroleum products in favor of the grantees and/or their assignees. As a transferee in good faith and for value, Petron cannot, therefore be said to have incurred any liability insofar as the transfers of the TCCs are concerned. *Petron Corporation vs. Commissioner of Internal Revenue*, *G.R. No. 180385, July 28, 2010*.

Omnibus Investments Code; tax credit certificates; cancellation thereof; government remedies. The Center has concurrent authority to cancel subject TCCs alongside the Bureau of Internal Revenue (BIR) and the Bureau of Customs. Given the nature of the TCC's immediate effectiveness and validity, however, said authority may be exercised only before the TCC has been fully utilized by a transferee which had no participation in the perpetration of fraud in the issuance, transfer and utilization thereof. Once accepted by the BIR and applied towards the satisfaction of such transferee's tax obligations, a TCC is effectively used up, debited and canceled such that there is nothing left to avoid or cancel anew. Considering the protection afforded to transferees in good faith and for value, the remedy of the government is to go after grantees alleged to have perpetrated fraud in the

procurement of the subject TCCs. *Petron Corporation vs. Commissioner of Internal Revenue*, [G.R. No. 180385, July 28, 2010](#).

## June 2010 Philippine Supreme Court Decisions on Tax Law

Posted on [July 7, 2010](#) by [Carina C. Laforteza](#) • Posted in [Tax Law](#) • Tagged [Court of Tax Appeals](#), [excise tax](#), [income tax](#), [injunction](#), [local tax](#), [trust](#) •

Here are selected June 2010 decisions of the Supreme Court of the Philippines on tax law:

Court of Tax Appeals; factual findings final, binding and conclusive. The factual findings of the Court of Tax Appeals (CTA), a special court exercising expertise on the subject of tax, are generally regarded as final, binding and conclusive upon the Supreme Court, especially if these are substantially similar to the findings of the Court of Appeals (CA) which is normally the final arbiter of questions of fact. *Miguel G. Osorio Pension Foundation, Incorporated vs Court of Appeals and Commissioner of Internal Revenue*, [G.R. No. 162175, June 28, 2010](#).

Court of Tax Appeals; factual findings final, binding and conclusive; exceptions. Recognized exceptions to the rule that the factual findings are final, binding and conclusive are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the CA went beyond the issues of the case; or its findings are contrary to the admissions of both the appellee and the appellant; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties which, if properly considered, would justify a different conclusion. *Miguel G. Osorio Pension*

*Foundation, Incorporated vs Court of Appeals and Commissioner of Internal Revenue, G.R. No. 162175, June 28, 2010.*

Employees' trust fund; no estoppel in favor of BIR. An employees' trust fund is not estopped from proving its ownership over a lot held in trust by, and titled in the name of, another when the purpose is not to contest the disposition or encumbrance of the property in favor of an innocent third-party purchaser for value. The Bureau of Internal Revenue (BIR), not being a buyer or claimant to any interest in the lot, has not relied on the fact of the title of the lot to acquire any interest in it. Thus, there is no basis for the BIR to claim that the trustee of employees' trust fund is estopped from proving that it co-owns the lot. *Miguel G. Osorio Pension Foundation, Incorporated vs Court of Appeals and Commissioner of Internal Revenue, G.R. No. 162175, June 28, 2010.*

Employees' trust fund; article 1452 of the Civil Code; recognition of trust by the BIR. Article 1452 of the Civil Code expressly allows a co-owner, or first co-owner, of a parcel of land to register his proportionate share in the name of his co-owner, or second co-owner, in whose name the entire land is registered. The second co-owner serves as a legal trustee of the first co-owner insofar as the proportionate share of the first co-owner is concerned. For said article to apply, all that a co-owner needs to show is that there is "common consent" among the purchasing co-owners to put the legal title to the purchased property in the name of one co-owner for the benefit of all. Once this "common consent" is shown a trust is created by force of law. The BIR has no option but to recognize such legal trust as well as the beneficial ownership of the real owners because the trust is created by force of law. The fact that the title is registered solely in the name of one person is not conclusive that he alone owns the property. *Miguel G. Osorio Pension Foundation, Incorporated vs Court of Appeals and Commissioner of Internal Revenue, G.R. No. 162175, June 28, 2010.*

Employees' trust fund; income tax exemption; rationale. Income of an employees' trust fund is exempt otherwise taxation of those earnings would result in a diminution of accumulated income and reduce whatever the trust beneficiaries would receive out of the trust fund. *Miguel G. Osorio Pension*

*Foundation, Incorporated vs Court of Appeals and Commissioner of Internal Revenue, G.R. No. 162175, June 28, 2010.*

Employees' trust fund; refund; trustee proper party in interest. Since the petitioner exists for the purpose of holding title to, and administering, the tax-exempt employees' trust fund established for the benefit of the employees, it has personality to claim tax refunds due the employees' trust fund. *Miguel G. Osorio Pension Foundation, Incorporated vs Court of Appeals and Commissioner of Internal Revenue, G.R. No. 162175, June 28, 2010.*

Excise Tax; principle that company should be taxed only on main business not applicable. The principle that when a company is taxed on its main business, it is no longer taxable for engaging in an activity that is but a part of incidental to, and necessary to such main business, applies to business taxes and not to taxes such as the sand and gravel tax imposed by the provincial government. The reasoning was that the incidental activity could not be treated as a business separate and distinct from the main business of the taxpayer. The sand and gravel tax is an excise tax imposed on the privilege of extracting sand and gravel. It is settled that provincial governments can levy excise taxes on quarry resources independently from national government. *Lepanto Consolidated Mining Company vs Hon. Mauricio B. Ambanloc in his capacity as the Provincial Treasurer of Benguet, G.R. No. 180639, June 29, 2010.*

Local Government Code; sand and gravel tax. Section 138 of the Local Government Code (LGC) which authorizes provinces to levy and collect tax on ordinary stones, sand, gravel, earth and other quarry resources extracted from public lands or from beds of seas, lakes, rivers, streams, creeks and other public waters within its territorial jurisdiction should be deemed to cover extractions for both personal and commercial uses. *Lepanto Consolidated Mining Company vs Hon. Mauricio B. Ambanloc in his capacity as the Provincial Treasurer of Benguet, G.R. No. 180639, June 29, 2010.*

Local Government Code; Revised Benguet Revenue Code; sand and gravel tax; permits. The Revised Benguet Revenue Code provides that the sand and gravel tax must be paid prior to the issuance of the permit to extract sand and

gravel. It enumerates four kinds of permits: commercial, industrial, special and gratuitous. Special permits cover only personal use of the extracted materials and did not allow permittees to sell materials coming from his concession. However, only gratuitous permits were exempt from the sand and gravel tax. It follows that persons who applied for special permits needed to pay the tax, event though they did not extract materials for commercial purposes. *Lepanto Consolidated Mining Company vs Hon. Mauricio B. Ambanloc in his capacity as the Provincial Treasurer of Benguet*, *G.R. No. 180639, June 29, 2010*.

Local Government Code; prohibition on injunction to restrain collection of tax. Unlike in the case of the NIRC, there is no express provision in the Local Government Code (LGC) prohibiting courts from issuing an injunction to restrain local governments from collecting taxes. However, injunctions enjoining the collection of local taxes are still frowned upon and court should therefore exercise extreme caution in issuing such injunctions. And the requirements for the issuance of a writ of preliminary injunction laid down under section 3, rule 58 of the Rules of Court are applicable, namely: (1) the existence of a clear and unmistakable right that must be protected and (2) an urgent and paramount necessity for the writ to prevent serious damage. *Angeles City vs Angeles City Electric Corporation and Regional Trial Court Branch 57, Angeles City*, *G.R. No. 166134, June 29, 2010*.

National Internal Revenue Code; prohibition on injunction to restrain collection of tax; exception. Taxes, being the lifeblood of the government, should be collected promptly, without unnecessary hindrance or delay. In line with this principle, the National Internal Revenue Code of 1997 (NIRC) expressly provides that no court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by the NIRC. An exception to this rule is when, in the opinion of the Court of Tax Appeals (CTA), the collection thereof may jeopardize the interest of the government and/or the taxpayer. *Angeles City vs Angeles City Electric Corporation and Regional Trial Court Branch 57, Angeles City*, *G.R. No. 166134, June 29, 2010*.

# May 2010 Philippine Supreme Court Decisions on Tax Law

Posted on [June 4, 2010](#) by [Carina C. Laforteza](#) • Posted in [Tax Law](#) • Tagged [assessment](#), [estoppel](#), [prescription](#), [waiver](#) •

Here are May 2010 rulings of the Supreme Court of the Philippines on tax law:

Assessment; prescriptive period. The government must assess internal revenue taxes within three years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later. An assessment notice issued after the three-year prescriptive period is no longer valid and effective unless falling under the exceptions. *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, [G.R. No. 178087, May 5, 2010](#).

Prescriptive period for assessment; exceptions. In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed at any time within ten years after the discovery of the falsity, fraud or omission. If before the expiration of the time prescribed in the National Internal Revenue Code (NIRC) for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon. *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, [G.R. No. 178087, May 5, 2010](#).

Prescriptive period for assessment; requirements for a proper waiver. RMO 20-90 and RDAO 05-01 lay down the following procedures for the proper execution of the waiver of the prescriptive period:

(1) the waiver must be in the proper form prescribed by RMO 20-90; the phrase “but not after \_\_\_\_ 19\_\_\_\_,” which indicates the expiry date of the period agreed upon to assess the tax after the regular three-year period of



prescription must be filled up;

(2) the waiver must be signed by the taxpayer himself or his duly authorized representative; in the case of a corporation, the waiver must be signed by any of its responsible officials; if the authority is delegated by the taxpayer to a representative, such should be in writing and duly notarized;

(3) the waiver should be duly notarized;

(4) the Commissioner of Internal Revenue (CIR) or the revenue official authorized by him must sign the waiver indicating that the Bureau of Internal Revenue (BIR) has accepted and agreed to the waiver; the date of the BIR's acceptance should be indicated; before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative;

(5) both the date of execution by the taxpayer and date of acceptance by the BIR should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed; and

(6) the waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the office accepting the waiver; the fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement. *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, *G.R. No. 178087, May 5, 2010*.

Prescriptive period; estoppel. The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. Estoppel has its origin in equity, which is justice according to natural law and right. Thus, it cannot give validity to an act that is prohibited by law or that is against public

policy. Unlike in the case of *Collector of Internal Revenue vs Suyoc Consolidated Mining Company*, where the doctrine of estoppel prevented the taxpayer from raising the defense of prescription against the government's efforts to collect the assessed tax, the assessments were issued beyond the prescribed period and there was no showing that the taxpayer made any request to persuade the BIR to postpone the issuance of the assessments. *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, *G.R. No. 178087, May 5, 2010*.

## April 2010 Philippine Supreme Court Decisions on Tax Law

Posted on *May 3, 2010* by *Carina C. Laforteza* • Posted in *Tax Law* • Tagged *appeal, Court of Tax Appeals, value added tax* •

Here are selected April 2010 rulings of the Supreme Court of the Philippines on tax law:

Procedure; perfection of an appeal; when disregarded. The procedure for perfecting an appeal may be disregarded for strong compelling reasons such as when insisting on strict compliance therewith will allow the government to collect deficiency VAT that it has no right at all to collect or receive. In this instance, dismissing the case on a mere technicality would lead to the unjust enrichment of the government at the expense of petitioner. *TFS, Incorporated vs. Commissioner of Internal Revenue*, *G.R. No. 166829, April 19, 2010*.

VAT; pawnshops. Since the imposition of VAT of pawnshops (which are non-bank financial intermediaries) was deferred for tax years 1996 to 2002, petitioner is not liable for VAT for tax year 1998. *TFS, Incorporated vs. Commissioner of Internal Revenue*, *G.R. No. 166829, April 19, 2010*.

## March 2010 Philippine Supreme

# Court Decisions on Tax Law

Posted on [April 5, 2010](#) by [Carina C. Laforteza](#) • Posted in [Tax Law](#) • Tagged [Court of Tax Appeals](#), [due process](#), [equal protection](#), [minimum corporate income tax](#), [value added tax](#), [withholding tax](#) •

Here are selected March 2010 rulings of the Supreme Court of the Philippines on tax law:

Constitutionality; justiciable controversy. A dispute ripens into a judicial controversy by the mere enactment of a questioned law or the approval of a challenged act, even without any other overt act. Thus, there is no need to wait until the concerned taxpayers have shut down their operations as a result of the questioned minimum corporate income tax (MCIT) or creditable withholding tax (CWT). *Chamber of Real Estate and Builders' Associations, Inc. vs. The Hon. Executive Secretary Alberto Romulo, et al.*, [G.R. No. 160756, March 9, 2010](#).

Court of Tax Appeals; issues not raised. Failure by the Commissioner of Internal Revenue (CIR) to timely plead and prove before the CTA the defenses that Toshiba was VAT-exempt under Republic Act No. 7916 and that its export sales were VAT-exempt under the Tax Code is deemed a waiver of such defenses. *Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue*, [G.R. No. 157594, March 9, 2010](#).

CTA; judicial admissions. An admission made in a stipulation of facts at pre-trial by the parties is considered a judicial admission and, under the Rules of Court, requires no proof. Such admission may be controverted only by a showing that it was made through a palpable mistake or that no such admission was made. *Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue*, [G.R. No. 157594, March 9, 2010](#).

Creditable withholding tax (CWT); constitutionality; due process. Imposition of CWT does not constitute a deprivation of property without due process because seller may claim tax refund if net income is less than the taxes withheld. Practical problems in claiming tax refund do not affect the constitutionality and validity of CWT as a method of collecting tax. *Chamber of Real Estate and Builders' Associations, Inc. vs. The Hon. Executive Secretary Alberto Romulo, et al.*, [G.R. No. 160756, March 9,](#)

2010.

CWT; constitutionality; equal protection. The taxing power has authority to make reasonable classifications for purposes of taxation. Inequalities resulting from singling out of one particular class for taxation or exemption do not infringe any constitutional limitation. The real estate industry is, by itself, a class and can be validly treated differently from other business enterprises. *Chamber of Real Estate and Builders' Associations, Inc. vs. The Hon. Executive Secretary Alberto Romulo, et al.*, *G.R. No. 160756, March 9, 2010.*

CWT; constitutionality; legality. The assailed provisions of Revenue Regulations No. 2-98, as amended, imposing CWT on sales of real property held as ordinary assets merely implements Section 57(B) of the Tax Code by specifying what income is subject to CWT. Where a statute does not require any particular procedure to be followed by an administrative agency, the agency may adopt any reasonable method to carry out its functions. Considering that the law uses the general term "income," the Secretary of Finance and the Commissioner of Internal Revenue may apply the kinds of income the rules will apply to based on what is feasible. *Chamber of Real Estate and Builders' Associations, Inc. vs. The Hon. Executive Secretary Alberto Romulo, et al.*, *G.R. No. 160756, March 9, 2010.*

Minimum corporate income tax; constitutionality. The imposition of MCIT is not violative of due process. MCIT is imposed on gross income and not capital. Thus, it is not arbitrary or confiscatory. Moreover, it is not an additional tax imposition but is imposed in lieu of normal net income tax and only if said tax is suspiciously low. Finally, there is no legal objection to a broader tax base or taxable income resulting from the elimination of all deductible items and, at the same time, reduction of the applicable tax rate. Inasmuch as deductions are a matter of legislative grace, Congress has the power to condition, limit or deny deductions from gross income in order to arrive at the net that it chooses to tax. *Chamber of Real Estate and Builders' Associations, Inc. vs. The Hon. Executive Secretary Alberto Romulo, et al.*, *G.R. No. 160756, March 9, 2010.*

Tax refund; burden of proof. The burden of establishing the factual basis of a claim for a refund rests on the taxpayer. While the Commissioner of Internal Revenue has the power to make an examination of the returns and to assess the correct amount of tax, his failure to exercise such powers does not create a presumption in favor of correctness of the return. The taxpayer must still present substantial evidence to prove his claim for refund. There is no automatic grant of a tax refund. *Commissioner of Internal Revenue vs. Far East Bank & Trust Company, etc.*, *G.R. No. 173854, March 15, 2010.*

Tax refund; requisites. A taxpayer claiming for a tax credit or refund of creditable withholding tax must comply with the following requisites: (1) the claim must be filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax, (2) it must be shown on the return that the income received was declared as part of the gross income; and (3) the fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld. *Commissioner of Internal Revenue vs. Far East Bank & Trust Company, etc.*, *G.R. No. 173854, March 15, 2010.*

Value-added tax (VAT); exemption. Prior to the issuance by the BIR of Revenue Memorandum Circular No. 74-99, whether a PEZA-registered enterprise was exempt from VAT or subject to VAT depended on the type of fiscal incentive availed of by said enterprise. If the enterprise availed itself of 5% gross income taxation under Republic Act No. 7916, it was exempt from VAT. If it availed itself of income tax holiday under the Omnibus Investments Code, it was subject to VAT. *Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue*, *G.R. No. 157594, March 9, 2010.*

Value-added tax (VAT); exemption. Prior to the issuance by the BIR of Revenue Memorandum Circular No. 74-99, whether a PEZA-registered enterprise was exempt from VAT or subject to VAT depended on the type of fiscal incentive availed of by said enterprise. If the enterprise availed itself of 5% gross income taxation under Republic Act No. 7916, it was exempt from VAT. If it availed itself of income tax holiday under the Omnibus Investments Code, it was subject to VAT. *Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue*, *G.R. No. 157594, March 9, 2010.*

VAT; zero-rating. Upon issuance of RMC 74-99, the rule was clearly established that following the cross-border doctrine, based on the fiction that ecozones are foreign territory, a sale by a supplier in the customs territory to a PEZA-registered enterprise is considered an export sale and therefore subject to zero VAT. *Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue*, *G.R. No. 157594, March 9, 2010*.

## February 2010 Philippine Supreme Court Decisions on Tax Law

Posted on *March 1, 2010* by *Hector M. de Leon Jr.* • Posted in *Tax Law* • Tagged *assessment, corporation, Court of Tax Appeals, excise tax, value added tax* •

Here are selected February 2010 rulings of the Supreme Court of the Philippines on tax law:

Assessment; final decision. Records show that petitioner disputed the PAN but not the Formal Letter of Demand with Assessment Notices. Nevertheless, we cannot blame petitioner for not filing a protest against the Formal Letter of Demand with Assessment Notices since the language used and the tenor of the demand letter indicate that it is the final decision of the respondent on the matter. We have time and again reminded the CIR to indicate, in a clear and unequivocal language, whether his action on a disputed assessment constitutes his final determination thereon in order for the taxpayer concerned to determine when his or her right to appeal to the tax court accrues. Viewed in the light of the foregoing, respondent is now estopped from claiming that he did not intend the Formal Letter of Demand with Assessment Notices to be a final decision. *Allied Banking Corporation vs. Commissioner of Internal Revenue*, *G.R. No. 175097, February 5, 2010*.

Excise tax; refund. The proper party to question, or claim a refund or tax credit of an indirect tax is the statutory taxpayer, which is Petron in this case, as it is the company on which the tax is imposed by law and which paid the same even if the burden thereof was shifted or passed on to another. It bears stressing that even if Petron shifted or passed on to petitioner Silkair, the burden of the tax, the additional amount which petitioner paid is not a tax but a part of the purchase price which it had to pay to obtain the goods. *Silkair (Singapore) PTE. Ltd. vs. Commissioner of Internal*



*Revenue, G.R. No. 184398, February 25, 2010.*

Gross Philippine billings; off line carrier. South African Airways, an off-line international carrier selling passage documents through an independent sales agent in the Philippines, is engaged in trade or business in the Philippines subject to the 32% income tax imposed by Section 28 (A)(1) of the 1997 NIRC.

The general rule is that resident foreign corporations shall be liable for a 32% income tax on their income from within the Philippines, except for resident foreign corporations that are international carriers that derive income “from carriage of persons, excess baggage, cargo and mail originating from the Philippines” which shall be taxed at 2 1/2% of their Gross Philippine Billings. Petitioner, being an international carrier with no flights originating from the Philippines, does not fall under the exception. As such, petitioner must fall under the general rule. This principle is embodied in the Latin maxim, *exception firmit regulam in casibus non exceptis*, which means, a thing not being excepted must be regarded as coming within the purview of the general rule.

To reiterate, the correct interpretation of the above provisions is that, if an international air carrier maintains flights to and from the Philippines, it shall be taxed at the rate of 2 1/2% of its Gross Philippine Billings, while international air carriers that do not have flights to and from the Philippines but nonetheless earn income from other activities in the country will be taxed at the rate of 32% of such income. *South African Airways vs. Commissioner of Internal Revenue, G.R. No. 180356, February 16, 2010.*

Overseas communication tax; PAL. Under its franchise, Philippine Airlines is exempt from the overseas communications tax. *Republic of the Philippines represented by the Commissioner of Internal Revenue vs. Philippine Airlines, Inc. (PAL), G.R. No. 179800, February 4, 2010.*

VAT; invoice. The CTA en banc correctly denied petitioner Panasonic’s claim for refund of the VAT it paid as a zero-rated taxpayer on the ground that its sales invoices did not state on their faces that its sales were “zero-

rated.” For the effective zero rating , the taxpayer has to be VAT-registered and must comply with invoicing requirements.

When petitioner Panasonic made the export sales subject of this case, i.e., from April 1998 to March 1999, the rule that applied was Section 4.108-1 of RR 7-95, otherwise known as the Consolidated Value-Added Tax Regulations, which the Secretary of Finance issued on December 9, 1995 and took effect on January 1, 1996. It already required the printing of the word “zero-rated” on the invoices covering zero-rated sales. When R.A. 9337 amended the 1997 NIRC on November 1, 2005, it made this particular revenue regulation a part of the tax code. This conversion from regulation to law did not diminish the binding force of such regulation with respect to acts committed prior to the enactment of that law. *Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*, *G.R. No. 178090, February 8, 2010*.

VAT; motion pictures. Gross receipts derived by respondents from admission tickets in showing motion pictures, films or movies are not subject to value-added tax under Section 108 of the National Internal Revenue Code of 1997. *Commissioner of Internal Revenue vs. SM Prime Holdings, Inc., et al.*, *G.R. No. 183505, February 26, 2010*.

VAT; refund of excess creditable VAT withheld. The CTA did not err in granting respondent Ironcon’s application for refund of its excess creditable VAT withheld.

Respondent Ironcon’s excess creditable VAT in this case consists of amounts withheld and remitted to the BIR by Ironcon’s clients. These clients were government agencies that applied the 6% withholding rate on their payments to Ironcon pursuant to Section 114 of the NIRC (prior to its amendment by R.A. 9337). Petitioner CIR’s main contention is that, since these amounts were withheld in accordance with what the law provides, they cannot be regarded as erroneously or illegally collected as contemplated in Sections 204(C) and 229 of the NIRC.

Petitioner CIR also points out that since the NIRC does not specifically grant taxpayers the option to refund excess creditable VAT withheld, it follows that such refund cannot be allowed. Excess creditable VAT withheld is

much unlike excess income taxes withheld. In the latter case, Sections 76 and 58(D) of the NIRC specifically make the option to seek a refund available to the taxpayer. The CIR submits thus that the only option available to taxpayers in case of excess creditable VAT withheld is to apply the excess credits to succeeding quarters.

But the amounts involved in this case are creditable withholding taxes, not final taxes subject to withholding. As the CTA correctly points out, taxes withheld on certain payments under the creditable withholding tax system are but intended to approximate the tax due from the payee. The withheld taxes remitted to the BIR are treated as deposits or advances on the actual tax liability of the taxpayer, subject to adjustment at the proper time when the actual tax liability can be fully and finally determined. *Commissioner of Internal Revenue vs. Ironco Builders and Development Corp.*, *G.R. No. 180042, February 8, 2010*.

## January 2010 Philippine Supreme Court Decisions on Tax Law

Posted on [February 3, 2010](#) by [Hector M. de Leon Jr.](#) • Posted in [Tax Law](#) • Tagged [assessment](#), [Court of Tax Appeals](#), [interest](#), [real property tax](#), [stamp tax](#), [value added tax](#) • Here are selected January 2010 rulings of the Supreme Court of the Philippines on tax law:

### National Internal Revenue Code

Documentary stamp tax; pledge. A pawn ticket is subject to documentary stamp tax. *Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue*, *G.R. No. 179085, January 21, 2010*.

Interest; good faith reliance. With respect to petitioner's argument against liability for surcharges and interest — that it was in good faith in not paying documentary stamp taxes, it having relied on the rulings of respondent CIR and the CTA that pawn tickets are not subject to documentary stamp taxes, the Court finds the same meritorious.

It is settled that good faith and honest belief that one is not subject to tax on the basis of previous interpretations of government agencies tasked to implement the tax law are sufficient justification to delete the imposition of surcharges and interest. *Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue*, *G.R. No. 179085, January 21, 2010*.

Value added tax; pawnshops. Since the imposition of VAT on pawnshops, which are non-bank financial intermediaries, was deferred for the tax years 1996 to 2002, petitioner is not liable for VAT for the tax year 1999. *Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue*, *G.R. No. 179085, January 21, 2010*.

VAP; coverage. It is well-settled that where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation. The general rule of requiring adherence to the letter in construing statutes applies with particular strictness to tax laws and provisions of a taxing act are not to be extended by implication. A careful reading of the RMOs pertaining to the VAP shows that the recording of the information in the Official Registry Book of the BIR is a mandatory requirement before a taxpayer may be excluded from the coverage of the VAP. *Commissioner of Internal Revenue vs. Julieta Ariete*, *G.R. No. 164152, January 21, 2010*.

#### □ **Tax Procedure**

Assessment; finality. Petitioner's administrative protest was denied by Final Decision on Disputed Assessment dated August 2, 2005 issued by respondent and which petitioner received on August 4, 2005. Under the above-quoted Section 228 of the 1997 Tax Code, petitioner had 30 days to appeal respondent's denial of its protest to the CTA.

Since petitioner received the denial of its administrative protest on August 4, 2005, it had until September 3, 2005 to file a petition for review before the CTA Division. It filed one, however, on October 20, 2005, hence, it was filed out of time. For a motion for reconsideration of the denial of the administrative protest does not toll the 30-day period to appeal to the CTA. *Fishwealth Canning Corporation vs. Commissioner of Internal Revenue*, *G.R. No. 179343, January 21, 2010*.

Court of Tax Appeals; findings of fact. Generally, the findings of fact of the CTA, a court exercising expertise on the subject of tax, are regarded as final, binding, and conclusive upon this Court, especially if these are similar to the findings of the Court of Appeals which is normally the final arbiter of questions of fact. *Commissioner of Internal Revenue vs. Julieta Ariete*, **G.R. No. 164152, January 21, 2010**.

Real property tax; payment of tax prior to protest. The protest contemplated under Section 252 is required where there is a question as to the reasonableness or correctness of the amount assessed. Hence, if a taxpayer disputes the reasonableness of an increase in a real property tax assessment, he is required to “first pay the tax” under protest. Otherwise, the city or municipal treasurer will not act on his protest.

A claim for tax exemption, whether full or partial, does not question the authority of local assessor to assess real property tax. *National Power Corporation vs. Province of Quezon and Municipality of Pagbilao*, **G.R. No. 171586, January 25, 2010**.

Real property tax; proper entity to file protest of assessment. Legal interest is defined as interest in property or a claim cognizable at law, equivalent to that of a legal owner who has legal title to the property. Given this definition, Napocor is clearly not vested with the requisite interest to protest the tax assessment, as it is not an entity having the legal title over the machineries. It has absolutely no solid claim of ownership or even of use and possession of the machineries.

If Napocor truly believed that it was the owner of the subject machineries, it should have complied with Sections 202 and 206 of the LGC which obligates owners of real property to:

- a. file a sworn statement declaring the true value of the real property, whether taxable or exempt; and
- b. file sufficient documentary evidence supporting its claim for tax exemption.

While a real property owner’s failure to comply with Sections 202 and 206

does not necessarily negate its tax obligation nor invalidate its legitimate claim for tax exemption, Napocor's omission to do so in this case can be construed as contradictory to its claim of ownership of the subject machineries. That it assumed liability for the taxes that may be imposed on the subject machineries similarly does not clothe it with legal title over the same. We do not believe that the phrase "person having legal interest in the property" in Section 226 of the LGC can include an entity that assumes another person's tax liability by contract.

A review of the provisions of the LGC on real property taxation shows that the phrase has been repeatedly adopted and used to define an entity:

- a. in whose name the real property shall be listed, valued, and assessed;
- b. who may be summoned by the local assessor to gather information on which to base the market value of the real property;
- c. who may protest the tax assessment before the LBAA and may appeal the latter's decision to the CBAA;
- d. who may be liable for the idle land tax, as well as who may be exempt from the same;
- e. who shall be notified of any proposed ordinance imposing a special levy, as well as who may object the proposed ordinance;
- f. who may pay the real property tax;
- g. who is entitled to be notified of the warrant of levy and against whom it may be enforced;
- h. who may stay the public auction upon payment of the delinquent tax, penalties and surcharge; and
- i. who may redeem the property after it was sold at the public auction for delinquent taxes.



For the Court to consider an entity assuming another person's tax liability by contract as a person having legal interest in the real property would extend to it the privileges and responsibilities enumerated above. The framers of the LGC certainly did not contemplate that the listing, valuation, and assessment of real property can be made in the name of such entity; nor did they intend to make the warrant of levy enforceable against it. Insofar as the provisions of the LGC are concerned, this entity is a party foreign to the operation of real property tax laws and could not be clothed with any legal interest over the property apart from its assumed liability for tax. The rights and obligations arising from the BOT Agreement between Napocor and Mirant were of no legal interest to the tax collector – the Province of Quezon – which is charged with the performance of independent duties under the LGC.

Some authorities consider a person whose pecuniary interests is or may be adversely affected by the tax assessment as one who has legal interest in the property (hence, possessed of the requisite standing to protest it), citing Cooley's Law on Taxation. The reference to this foreign material, however, is misplaced. The tax laws of the United States deem it sufficient that a person's pecuniary interests are affected by the tax assessment to consider him as a person aggrieved and who may thus avail of the judicial or administrative remedies against it. As opposed to our LGC, mere pecuniary interest is not sufficient; our law has required legal interest in the property taxed before any administrative or judicial remedy can be availed. The right to appeal a tax assessment is a purely statutory right; whether a person challenging an assessment bears such a relation to the real property being assessed as to entitle him the right to appeal is determined by the applicable statute – in this case, our own LGC, not US federal or state tax laws. *National Power Corporation vs. Province of Quezon and Municipality of Pagbilao*, *G.R. No. 171586, January 25, 2010*.

## Necessity of paying real property tax prior to protest

Posted on February 1, 2010 by Hector M. de Leon Jr. • Posted in Tax Law • Tagged real

property tax •

As a rule, the taxpayer must pay the real property tax assessed prior to protesting a real property tax assessment. Section 252 of the Local Government Code (LGC) provides:

Section 252. Payment Under Protest. -

(a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words “paid under protest”. The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt. . .

(d) In the event that the protest is denied or upon the lapse of the sixty day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of this Code.

In *Ty vs. Trampe*, the Supreme Court ruled that the payment of the tax prior to protest is not necessary where the taxpayer questions the authority and power of the assessor to impose the assessment and of the treasurer to collect the tax. If the taxpayer claims that the property is exempt from real property tax, is the taxpayer required to pay the tax pursuant to Section 252 or is the taxpayer covered by *Ty vs. Trampe*?

In *National Power Corporation vs. Province of Quezon and Municipality of Pagbilao*, *G.R. No. 171586, January 25, 2010*, the Province of Quezon assessed Mirant Pagbilao Corporation (Mirant) for unpaid real property taxes. Napocor, which entered into a Build-Operate-Transfer (BOT) Agreement with Mirant, protested the assessment before the Local Board of Assessment Appeals (LBAA), claiming entitlement to the tax exemptions provided under Section 234 of the Local Government Code (LGC). The real property taxes assessed were not paid prior to the protest.

The Local Board of Assessment Appeals (LBAA) dismissed Napocor’s petition for exemption for its failure to comply with Section 252 of the LGC requiring payment of the assailed tax before any protest can be made.

The Central Board of Assessment Appeals (CBAA) ultimately dismissed Napocor's appeal for failure to meet the requirements for tax exemption; however, the CBAA agreed with Napocor's position that the protest contemplated in Section 252 (a) is applicable only when the taxpayer is questioning the reasonableness or excessiveness of an assessment. According to the CBAA, a payment prior to protest applies only if the taxpayer is subject to the tax but is disputing the correctness of the amount assessed. The CBAA ruled that the requirement of payment prior to protest does not apply where the legality of the assessment is put in issue on account of the taxpayer's claim that it is exempt from tax.

The Court of Tax Appeals (CTA) en banc agreed with the CBAA's discussion, relying mainly on the cases of *Ty vs. Trampe* and *Olivarez vs. Marquez*.

The Supreme Court disagreed with both the CBAA and the CTA. The Supreme Court held that by claiming exemption from realty taxation, NAPOCOR is simply raising a question of the correctness of the assessment; as such, the real property tax must be paid prior to the making of a protest. On the other hand, if the taxpayer is questioning the authority of the local assessor to assess real property taxes, it is not necessary to pay the real property tax prior to the protest.

The Supreme Court explained *Ty vs. Trampe* as follows:

The petitioner in *Ty v. Trampe* questioned before the trial court the increased real estate taxes imposed by and being collected in Pasig City effective from the year 1994, premised on the legal question of whether or not Presidential Decree No. 921 (PD 921) was repealed by the LGC. PD 921 required that the schedule of values of real properties in the Metropolitan Manila area shall be prepared jointly by the city assessors in the districts created therein; while Section 212 of the LGC stated that the schedule shall be prepared by the provincial, city or municipal assessors of the municipalities within the Metropolitan Manila Area for the different classes of real property situated in their respective local government units for enactment by ordinance of the Sanggunian concerned. The private

respondents assailed Ty's act of filing a prohibition petition before the trial court contending that Ty should have availed first the administrative remedies provided in the LGC, particularly Sections 252 (on payment under protest before the local treasurer) and 226 (on appeals to the LBAA).

The Court, through former Chief Justice Artemio Panganiban, declared that Ty correctly filed a petition for prohibition before the trial court against the assailed act of the city assessor and treasurer. The administrative protest proceedings provided in Section 252 and 226 will not apply. The protest contemplated under Section 252 is required where there is a question as to the reasonableness or correctness of the amount assessed. Hence, if a taxpayer disputes the reasonableness of an increase in a real property tax assessment, he is required to "first pay the tax" under protest. Otherwise, the city or municipal treasurer will not act on his protest. Ty however was questioning the very authority and power of the assessor, acting solely and independently, to impose the assessment and of the treasurer to collect the tax. These were not questions merely of amounts of the increase in the tax but attacks on the very validity of any increase. Moreover, Ty was raising a legal question that is properly cognizable by the trial court; no issues of fact were involved. In enumerating the power of the LBAA, Section 229 declares that "the proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts x x x." Appeals to the LBAA (under Section 226) are therefore fruitful only where questions of fact are involved.

With respect to *Olivarez vs. Marquez*:

*Olivarez v. Marquez*, on the other hand, involved a petition for certiorari, mandamus, and prohibition questioning the assessment and levy made by the City of Parañaque. Olivarez was seeking the annulment of his realty tax delinquency assessment. Marquez assailed Olivarez' failure to first exhaust administrative remedies, particularly the requirement of payment under protest. Olivarez replied that his petition was filed to question the assessor's authority to assess and collect realty taxes and therefore, as held in *Ty v. Trampe*, the exhaustion of administrative remedies was not required. The Court however did not agree with Olivarez's argument. It found that there was nothing in his petition that supported his claim regarding the assessor's alleged lack of authority. What Olivarez raised were the following grounds: "(1) some of the taxes being collected have already prescribed and may no longer be collected as provided in Section 194 of the Local Government

Code of 1991; (2) some properties have been doubly taxed/assessed; (3) some properties being taxed are no longer existent; (4) some properties are exempt from taxation as they are being used exclusively for educational purposes; and (5) some errors are made in the assessment and collection of taxes due on petitioners' properties, and that respondents committed grave abuse of discretion in making the improper, excessive and unlawful the collection of taxes against the petitioner." The Olivarez petition filed before the trial court primarily involved the correctness of the assessments, which is a question of fact that is not allowed in a petition for certiorari, prohibition, and mandamus. Hence, we declared that the petition should have been brought, at the very first instance, to the LBAA, not the trial court.

The Supreme Court concluded that NAPOCOR's situation is similar to that in *Olivarez*:

Like Olivarez, Napocor, by claiming exemption from realty taxation, is simply raising a question of the correctness of the assessment. A claim for tax exemption, whether full or partial, does not question the authority of local assessor to assess real property tax. . .

It was an ill-advised move for Napocor to directly file an appeal with the LBAA under Section 226 without first paying the tax as required under Section 252. Sections 252 and 226 provide successive administrative remedies to a taxpayer who questions the correctness of an assessment. Section 226, in declaring that "any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city, or municipal assessor in the assessment of his property may x x x appeal to the Board of Assessment Appeals x x x," should be read in conjunction with Section 252 (d), which states that "in the event that the protest is denied x x x, the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of the LGC [Chapter 3 refers to Assessment Appeals, which includes Sections 226 to 231]. The "action" referred to in Section 226 (in relation to a protest of real property tax assessment) thus refers to the local assessor's act of denying the protest filed pursuant to Section 252. Without the action of the local assessor, the appellate authority of the LBAA cannot be invoked. Napocor's action before the LBAA was thus prematurely filed.

# December 2009 Philippine Supreme Court Decisions on Tax Law

Posted on [January 8, 2010](#) by [Hector M. de Leon Jr.](#) • Posted in [Tax Law](#) • Tagged [real property tax](#), [tax](#), [tax credit](#), [value added tax](#) •

Here are selected December 2009 rulings of the Supreme Court of the Philippines on tax law:

## **National Internal Revenue Code**

Tax refund; nature. It is settled that tax refunds are in the nature of tax exemptions. Laws granting exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Where the taxpayer claims a refund, the CTA as a court of record is required to conduct a formal trial (*trial de novo*) to prove every minute aspect of the claim. *Kepeco Philippines Corporation vs. Commissioner of Internal Revenue*, [G.R. No. 179356, December 14, 2009](#).

VAT; input VAT on capital goods. For petitioner's purchases of domestic goods and services to be considered as "capital goods or properties," three requisites must concur. First, the useful life of goods or properties must exceed one year; second, said goods or properties are treated as depreciable assets under Section 34 (f) and; third, the goods or properties must be used directly or indirectly in the production or sale of taxable goods and services.

From petitioner's evidence, the account vouchers specifically indicate that the disallowed purchases were recorded under inventory accounts, instead of depreciable accounts. That petitioner failed to indicate under its fixed assets or depreciable assets account, goods and services allegedly purchased pursuant to the rehabilitation and maintenance of Malaya Power Plant Complex, militates against its claim for refund. As correctly found by the CTA, the goods or properties must be recorded and treated as depreciable assets under Section 34 (F) of the NIRC. *Kepeco Philippines Corporation vs. Commissioner of Internal Revenue*, [G.R. No. 179356, December 14, 2009](#).

## **Local Government Code and special laws**



Real property tax; liability of GSIS. Pursuant to Sec. 33 of PD 1146, GSIS enjoyed tax exemption from real estate taxes, among other tax burdens, until January 1, 1992 when the LGC took effect and withdrew exemptions from payment of real estate taxes privileges granted under PD 1146. RA 8291 restored in 1997 the tax exempt status of GSIS by reenacting under its Sec. 39 what was once Sec. 33 of P.D. 1146. If any real estate tax is due to the City of Manila, it is only for the interim period, or from 1992 to 1996, to be precise. *Government Service Insurance System vs. City Treasurer and City Assessor of the City of Manila*, *G.R. No. 186242, December 23, 2009*.

Real property tax; exemption. The real property tax exemption the property of the Republic or its instrumentality carries ceases only if, as stated in Sec. 234(a) of the LGC of 1991, “beneficial use thereof has been granted, for a consideration or otherwise, to a taxable person.” GSIS, as a government instrumentality, is not a taxable juridical person under Sec. 133(o) of the LGC. GSIS, however, lost in a sense that status with respect to the Katigbak property when it contracted its beneficial use to MHC, doubtless a taxable person. Thus, the real estate tax assessment of PhP 54,826,599.37 covering 1992 to 2002 over the subject Katigbak property is valid insofar as said tax delinquency is concerned as assessed over said property.

As a matter of law and contract, MHC stands liable to pay the realty taxes due on the Katigbak property. *Government Service Insurance System vs. City Treasurer and City Assessor of the City of Manila*, *G.R. No. 186242, December 23, 2009*.

## Need for commercial sale to claim input VAT

Posted on *December 30, 2009* by *Hector M. de Leon Jr.* • Posted in *Tax Law* • Tagged *value added tax* •

Under the Tax Code, a taxpayer may claim a tax refund or credit for input VAT attributable to zero-rated or effectively zero-rated sales. Is it necessary

for a taxpayer to have made a commercial sale during the period it is claiming a refund of input VAT?

In *San Roque Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009*, San Roque did not make any commercial sale of electricity to National Power Corporation (NPC) during the period in question as San Roque was still constructing its power plant. However, during the same period, and while the power plant was being tested, San Roque produced and transferred electricity to NPC in exchange for P42.5 million.

San Roque filed a claim for refund with the Bureau of Internal Revenue (BIR). The BIR failed to act on San Roque's claim for refund, which prompted San Roque to file a petition for review with the Court of Tax Appeals (CTA). The CTA's Second Division rendered a decision denying San Roque's claim for tax refund or credit. According to the Second Division, San Roque did not make any zero-rated or effectively-zero rated sales for the taxable year 2002; hence, San Roque's claim must be denied. The CTA En Banc eventually reiterated the ruling of the Second Division that San Roque's claim based on Section 112(A) of the NIRC should be denied since it did not present any records of any zero-rated or effectively zero-rated transactions.

The main issue before the Supreme Court is whether or not San Roque may claim a tax refund or credit for creditable input tax attributable to zero-rated or effectively zero-rated sales pursuant to Section 112(A) of the NIRC or for input taxes paid on capital goods as provided under Section 112(B) of the NIRC.

The Supreme Court found San Roque's petition meritorious and reversed the CTA. It laid out the requirements for claiming a tax refund or credit:

To claim refund or tax credit under Section 112(A), petitioner must comply with the following criteria: (1) the taxpayer is VAT registered; (2) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (3) the input taxes are due or paid; (4) the input taxes are not transitional input taxes; (5) the input taxes have not been applied against output taxes during and in the succeeding quarters; (6) the input taxes claimed are attributable to zero-rated

or effectively zero-rated sales; (7) for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations; (8) where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and (9) the claim is filed within two years after the close of the taxable quarter when such sales were made.

The Supreme Court noted that the issue pertains to compliance with the sixth requirement, i.e., whether the input VAT claimed are attributable to zero-rated or effectively zero-rated sales:

The main dispute in this case is whether or not petitioner's claim complied with the sixth requirement—the existence of zero-rated or effectively zero-rated sales, to which creditable input taxes may be attributed. The CTA in Division and en banc denied petitioner's claim solely on this ground. The tax courts based this conclusion on the audited report, marked as Exhibit "J-2," stating that petitioner made no sale of electricity to NPC in 2002. Moreover, the affidavit of Echevarria (Exhibit "L"), petitioner's Vice President and Director for Finance, contained an admission that no commercial sale of electricity had been made in favor of NPC in 2002 since the project was still under construction at that time.

The Supreme Court ruled that there was a "sale" of electricity by San Roque to NPC in 2002:

. . . upon closer examination of the records, it appears that on 2002, petitioner carried out a "sale" of electricity to NPC. The fourth quarter return for the year 2002, which petitioner filed, reported a zero-rated sale in the amount of P42,500,000.00. In the Affidavit of Echevarria dated 9 February 2005 (Exhibit "L"), which was uncontroverted by respondent, the affiant stated that although no commercial sale was made in 2002, petitioner produced and transferred electricity to NPC during the testing period in exchange for the amount of P42,500,000.00 . . .

The Supreme Court noted that while the sale was not a commercial sale, it was a deemed sale transaction:

The Court is not unmindful of the fact that the transaction described hereinabove was not a commercial sale. In granting the tax benefit to VAT-registered zero-rated or effectively zero-rated taxpayers, Section 112(A) of the NIRC does not limit the definition of “sale” to commercial transactions in the normal course of business. Conspicuously, Section 106(B) of the NIRC, which deals with the imposition of the VAT, does not limit the term “sale” to commercial sales, rather it extends the term to transactions that are “deemed” sale. . .

After carefully examining this provision, this Court finds it an equitable construction of the law that when the term “sale” is made to include certain transactions for the purpose of imposing a tax, these same transactions should be included in the term “sale” when considering the availability of an exemption or tax benefit from the same revenue measures. It is undisputed that during the fourth quarter of 2002, petitioner transferred to NPC all the electricity that was produced during the trial period. The fact that it was not transferred through a commercial sale or in the normal course of business does not deflect from the fact that such transaction is deemed as a sale under the law.

With its finding that the petition is meritorious, the Supreme Court order the BIR to refund, or in the alternative, to issue a tax credit certificate to San Roque in the amount of P246,131,610.40, representing unutilized input VAT for the period 1 January 2002 to 31 December 2002.

## October 2009 Philippine Supreme Court Decisions on Tax Law

Posted on [November 13, 2009](#) by [Hector M. de Leon Jr.](#) • Posted in [Tax Law](#) • Tagged [income tax](#), [mortgage](#), [redemption](#), [stamp tax](#), [value added tax](#) •

Here are selected October 2009 Philippine Supreme Court decisions on tax law:

Income tax; mortgage. Under Revenue Memorandum Circular 58-2008, if the property is an ordinary asset of the mortgagor, the creditable expanded withholding tax is due and must be paid within ten (10) days following the end of the month in which the redemption period expires. The payment of the documentary stamp tax and the filing of the return thereof must be made within five (5) days from the end of the month when the redemption period expires.

Here, the executive judge approved the issuance of the certificate of sale to UCPB on March 1, 2002. Consequently, the three-month redemption period ended only on June 1, 2002. Only on this date then did the deadline for payment of creditable withholding tax and documentary stamp tax on the extrajudicial foreclosure sale become due. UCPB had, therefore, until July 10, 2002 to pay the creditable withholding tax and July 5, 2002 to pay the stamp tax. Since it paid both taxes on July 5, 2002, it is not liable for deficiencies. *Commissioner of Internal Revenue vs. United Coconut Planters Bank*, *G.R. No. 179063, October 23, 2009*.

Stamp tax; certificates drawing interest. Chinabank's special savings deposits (SSD), otherwise known as "Savings Plus Deposit, are "certificates of deposits drawing interest" subject to documentary stamp tax as provided for in Section 180 of the 1997 NIRC. *China Banking Corporation vs. The Commissioner of Internal Revenue*, *G.R. No. 172359, October 2, 2009*.

Value added tax; presumptive input VAT. FBDC is entitled to transitional input tax credit under Section 105 of the NIRC, on its Global City land inventory. Under Revenue Regulations No. 6-97, the allowable transitional input tax credit is not limited to improvements on real properties. *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, et al./Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, et al.*, *G.R. No. 158885/G.R. No. 170680, October 2, 2009*.

September 2009 Philippine Supreme

# Court Decisions on Commercial Law and Tax Law

Posted on [October 12, 2009](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#), [Tax Law](#) • Tagged [board of directors](#), [corporation](#), [rehabilitation](#), [stamp tax](#) •

Here are selected September 2009 Philippine Supreme Court decisions on commercial law and tax law:

## Commercial law

Corporation; board resolution. The second letter-agreement modified the first one entered into by petitioner, through Atty. Jose Soluta, Jr. In previously allowing Atty. Soluta to enter into the first letter-agreement without a board resolution expressly authorizing him, petitioner had clothed him with apparent authority to modify the same via the second letter-agreement. *Associated Bank (now United Overseas Bank [Phils.]) vs. Spouses Rafael and Monaliza Pronstroller/Spouses Eduardo and Ma. Pilar Vaca (Intervenors)*, [G.R. No. 148444, September 3, 2009](#).

Corporation; board vacancy. After the lapse of one year from his election as member of the VVCC Board in 1996, Makalintal's term of office is deemed to have already expired. That he continued to serve in the VVCC Board in a holdover capacity cannot be considered as extending his term. To be precise, Makalintal's term of office began in 1996 and expired in 1997, but, by virtue of the holdover doctrine in Section 23 of the Corporation Code, he continued to hold office until his resignation on November 10, 1998. This holdover period, however, is not to be considered as part of his term, which, as declared, had already expired.

With the expiration of Makalintal's term of office, a vacancy resulted which, by the terms of Section 29 of the Corporation Code, must be filled by the stockholders of VVCC in a regular or special meeting called for the purpose. *Valle Verde Country Club, Inc., et al. Vs. Victor Africa*, [G.R. No. 151969, September 4, 2009](#).

Corporation; corporation sole. Even if the transformation of IEMELIF from a corporation sole to a corporation aggregate was legally defective, its head



or governing body, i.e., Bishop Lazaro, whose acts were approved by the Highest Consistory of Elders, still did not change. A corporation sole is one formed by the chief archbishop, bishop, priest, minister, rabbi or other presiding elder of a religious denomination, sect, or church, for the purpose of administering or managing, as trustee, the affairs, properties and temporalities of such religious denomination, sect or church. As opposed to a corporation aggregate, a corporation sole consists of a single member, while a corporation aggregate consists of two or more persons. If the transformation did not materialize, the corporation sole would still be Bishop Lazaro, who himself performed the questioned acts of removing Juane as Resident Pastor of the Tondo Congregation. If the transformation did materialize, the corporation aggregate would be composed of the Highest Consistory of Elders, which nevertheless approved the very same acts. As either Bishop Lazaro or the Highest Consistory of Elders had the authority to appoint Juane as Resident Pastor of the IEMELIF Tondo Congregation, it also had the power to remove him as such or transfer him to another congregation. *Iglesia Evangelisca Metodista En Las Islas Filipinas (IEMELIF), Inc. vs. Nataniel B. Juane/Nataniel B. Juane Vs. Iglesia Evangelisca Metodista En Las Islas Filipinas (IEMELIF), Inc.*, **G.R. No. 172447, September 18, 2009.**

Corporation; stockholders. Upon the death of a shareholder, the heirs do not automatically become stockholders of the corporation and acquire the rights and privileges of the deceased as shareholder of the corporation. The stocks must be distributed first to the heirs in estate proceedings, and the transfer of the stocks must be recorded in the books of the corporation. Section 63 of the Corporation Code provides that no transfer shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation. During such interim period, the heirs stand as the equitable owners of the stocks, the executor or administrator duly appointed by the court being vested with the legal title to the stock. Until a settlement and division of the estate is effected, the stocks of the decedent are held by the administrator or executor. Consequently, during such time, it is the administrator or executor who is entitled to exercise the rights of the deceased as stockholder.

Thus, even if petitioner presents sufficient evidence in this case to establish

that he is the son of Carlos L. Puno, he would still not be allowed to inspect respondent's books and be entitled to receive dividends from respondent, absent any showing in its transfer book that some of the shares owned by Carlos L. Puno were transferred to him. This would only be possible if petitioner has been recognized as an heir and has participated in the settlement of the estate of the deceased. *Joselito Musni Puno (as heir of the late Carlos Puno) vs. Puno Enterprises, Inc., represented by Jesusa Puno*, *G.R. No. 177066, September 11, 2009*.

Insurance; health maintenance organizations. Applying the "principal object and purpose test," there is significant American case law supporting the argument that a corporation (such as an HMO, whether or not organized for profit), whose main object is to provide the members of a group with health services, is not engaged in the insurance business. *Philippine Health Providers, Inc. vs. Commissioner of Internal Revenue*, *G.R. No. 167330, September 18, 2009*.

Insurance; subrogation. Based on the applicable jurisprudence, because of the inadequacy of the Marine Cargo Risk Note for the reasons already stated, it was incumbent on respondent to present in evidence the Marine Insurance Policy, and having failed in doing so, its claim of subrogation must necessarily fail.

A marine risk note is not an insurance policy. It is only an acknowledgment or declaration of the insurer confirming the specific shipment covered by its marine open policy, the evaluation of the cargo and the chargeable premium. The Marine Risk Note relied upon by respondent as the basis for its claim for subrogation is insufficient to prove said claim. *Eastern Shipping Lines, Inc. vs. Prudential Guarantee and Assurance, Inc.*, *G.R. No. 174116, September 11, 2009*.

Rehabilitation; coverage. The claim of petitioners for payment of tuition fees from CAP is included in the definition of "claims" under the Interim Rules. In addition, the Interim Rules do not provide that a claim arising from a pre-need contract is an exception to the power of the trial court to stay enforcement of all claims upon the finding that the petition for rehabilitation is sufficient in form and substance. *Kei Marie and Bianca Angelica both surnamed Abrera, minors, represented by their parents Evelyn*

*C. Abrera, et al. vs. Hon. Romeo F. Barza, in his capacity as Presiding Judge of Regional Trial Court, Branch 61, Makati City and College Assurance Plan Philippines, Inc. G.R. No. 171681, September 11, 2009.*

## **Tax law**

DST; HMO. A health From the language of Section 185, it is evident that two requisites must concur before the DST can apply, namely: (1) the document must be a policy of insurance or an obligation in the nature of indemnity and (2) the maker should be transacting the business of accident, fidelity, employer's liability, plate, glass, steam boiler, burglar, elevator, automatic sprinkler, or other branch of insurance (except life, marine, inland, and fire insurance).

Health care agreements are clearly not within the ambit of Section 185 of the NIRC and there was never any legislative intent to impose the same on HMOs like petitioner. *Philippine Health Providers, Inc. vs. Commissioner of Internal Revenue, G.R. No. 167330, September 18, 2009.*

# August 2009 Philippine Supreme Court Decisions on Commercial Law, Tax Law and Labor Law

Posted on [September 14, 2009](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#), [Labor Law](#), [Tax Law](#) • Tagged [amnesty](#), [backwages](#), [illegal dismissal](#), [illegal strike](#), [insurance](#), [jurisdiction](#), [misconduct](#), [negligence](#), [redundancy](#), [resignation](#), [stamp tax](#), [tax](#), [union](#) •

Here are selected August 2009 Philippine Supreme Court decisions on commercial law, tax law and labor law:

## **Commercial Law**

Insurance; insurable interest. Insurable interest is one of the most basic and essential requirements in an insurance contract. In general, an insurable interest is that interest which a person is deemed to have in the subject matter insured, where he has a relation or connection with or concern in it,

such that the person will derive pecuniary benefit or advantage from the preservation of the subject matter insured and will suffer pecuniary loss or damage from its destruction, termination, or injury by the happening of the event insured against. The existence of an insurable interest gives a person the legal right to insure the subject matter of the policy of insurance. Section 10 of the Insurance Code indeed provides that every person has an insurable interest in his own life. Section 19 of the same code also states that an interest in the life or health of a person insured must exist when the insurance takes effect, but need not exist thereafter or when the loss occurs. *Violeta R. Lalican vs. The Insular Life Assurance Company Limited, as represented by the President Vicente R. Aylon*, **G.R. No. 183526, August 25, 2009**.

Insurance; reinstatement. To reinstate a policy means to restore the same to premium-paying status after it has been permitted to lapse. Both the Policy Contract and the Application for Reinstatement provide for specific conditions for the reinstatement of a lapsed policy. In the instant case, Eulogio's death rendered impossible full compliance with the conditions for reinstatement of Policy No. 9011992. True, Eulogio, before his death, managed to file his Application for Reinstatement and deposit the amount for payment of his overdue premiums and interests thereon with Malaluan; but Policy No. 9011992 could only be considered reinstated after the Application for Reinstatement had been processed and approved by Insular Life during Eulogio's lifetime and good health.

Eulogio's death, just hours after filing his Application for Reinstatement and depositing his payment for overdue premiums and interests with Malaluan, does not constitute a special circumstance that can persuade this Court to already consider Policy No. 9011992 reinstated. Said circumstance cannot override the clear and express provisions of the Policy Contract and Application for Reinstatement, and operate to remove the prerogative of Insular Life thereunder to approve or disapprove the Application for Reinstatement. Even though the Court commiserates with Violeta, as the tragic and fateful turn of events leaves her practically empty-handed, the Court cannot arbitrarily burden Insular Life with the payment of proceeds on a lapsed insurance policy. Justice and fairness must equally apply to all parties to a case. Courts are not permitted to make contracts for the parties. The function and duty of the courts consist simply in enforcing and carrying out the contracts actually made. *Violeta R. Lalican vs. The Insular Life*

*Assurance Company Limited, as represented by the President Vicente R. Aylon*, [G.R. No. 183526, August 25, 2009](#).

Officers; personal liability. It is settled that in the absence of malice, bad faith, or specific provision of law, a director or an officer of a corporation cannot be made personally liable for corporate liabilities. Gustilo and Castro, as corporate officers of Lowe, have personalities which are distinct and separate from that of Lowe's. Hence, in the absence of any evidence showing that they acted with malice or in bad faith in declaring Mutuc's position redundant, Gustilo and Castro are not personally liable for the monetary awards to Mutuc. *Lowe, Inc., et al. vs. Court of Appeals and Irma Mutuc*, [G.R. Nos. 164813 & G.R. No. 174590, August 14, 2009](#).

## **Tax Law**

Stamp tax; time deposit. The UNISA – the special savings account of Metrobank, granting a higher tax rate to depositors able to maintain the required minimum deposit balance for the specified holding period, and evidenced by a passbook – is a certificate of deposit bearing interest, already subject to DST even under the then Section 180 of the NIRC. Hence, the assessment by the CIR against Metrobank for deficiency DST on the UNISA for 1999 was only proper. *Metropolitan Bank and Trust Co. vs. Commissioner of Internal Revenue*, [G.R. No. 165697/G.R. No. 166481, August 4, 2009](#)

Tax amnesty. A tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violation of a tax law. It partakes of an absolute waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. A tax amnesty, much like a tax exemption, is never favored or presumed in law. The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority. *Metropolitan Bank and Trust Co. vs. Commissioner of Internal Revenue*, [G.R. No. 165697/G.R. No. 166481, August 4, 2009](#).

Taxation; double taxation. Double taxation means taxing the same property twice when it should be taxed only once; that is, “taxing the same person twice by the same jurisdiction for the same thing.” It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as “direct duplicate taxation,” the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and the taxes must be of the same kind or character.

Using the aforementioned test, the Court finds that there is indeed double taxation if respondent is subjected to the taxes under both Sections 14 and 21 of Tax Ordinance No. 7794, since these are being imposed: (1) on the same subject matter – the privilege of doing business in the City of Manila; (2) for the same purpose – to make persons conducting business within the City of Manila contribute to city revenues; (3) by the same taxing authority – petitioner City of Manila; (4) within the same taxing jurisdiction – within the territorial jurisdiction of the City of Manila; (5) for the same taxing periods – per calendar year; and (6) of the same kind or character – a local business tax imposed on gross sales or receipts of the business. *The City of Manila, Liberty M. Toledo in her capacity as the Treasurer of Manila, et al. vs. Coca-Cola Bottlers Philippines, Inc.*, **G.R. No. 181845, August 4, 2009.**

## **Labor Law**

Benefits; backwages. The issue on the proper computation of Mutuc’s backwages has been rendered moot by our decision that Mutuc was validly dismissed. Backwages is a relief given to an illegally dismissed employee. Since Mutuc’s dismissal is for an authorized cause, she is not entitled to backwages. *Lowe, Inc., et al. vs. Court of Appeals and Irma Mutuc*, **G.R. Nos. 164813 & G.R. No. 174590, August 14, 2009.**

Benefits; service charge. Since Dusit Hotel is explicitly mandated by the Article 96 of the Labor Code to pay its employees and management their respective shares in the service charges collected, the hotel cannot claim that payment thereof to its 82 employees constitute substantial compliance with the payment of ECOLA under WO No. 9. Undoubtedly, the hotel employees’ right to their shares in the service charges collected by Dusit Hotel is distinct and separate from their right to ECOLA;



gratification by the hotel of one does not result in the satisfaction of the other. *Philippine Hoteliers, Inc./Dusit Hotel Nikko-Manila vs. National Union of Workers in Hotel, Restaurant, and Allied Industries (NUWHARAIN-APL-IUF) Dusit Hotel Nikko Chapter*, **G.R. No. 181972, August 25, 2009.**

Dismissal; illegal strike. A perusal of the Labor Arbiter's Decision, which was affirmed in toto by the NLRC, shows that on account of the staging of the illegal strike, individual respondents were all deemed to have lost their employment, without distinction as to their respective participation.

Of the participants in the illegal strike, whether they knowingly participated in the illegal strike in the case of union officers or knowingly participated in the commission of violent acts during the illegal strike in the case of union members, the records do not indicate. While respondent Julius Vargas was identified to be a union officer, there is no indication if he knowingly participated in the illegal strike. The Court not being a trier of facts, the remand of the case to the NLRC is in order only for the purpose of determining the status in the Union of individual respondents and their respective liability, if any. *A. Soriano Aviation vs. Employees Association of A. Soriano Aviation, et al.*, **G.R. No. 166879, August 14, 2009.**

Dismissal; misconduct. In its 14 February 2000 decision, PNB's Administrative Adjudication Panel found Maralit guilty of serious misconduct, gross violation of bank rules and regulations, and conduct prejudicial to the best interest of the bank. Maralit violated bank policies which resulted in the return of unfunded checks amounting to P54,950,000. Accordingly, PNB dismissed Maralit from the service with forfeiture of her retirement benefits effective at the close of business hours on 31 December 1998.

PNB may rightfully terminate Maralit's services for a just cause, including serious misconduct. Serious misconduct is improper conduct, a transgression of some established and definite rule of action, a forbidden act, or a dereliction of duty. Having been dismissed for a just cause, Maralit is not entitled to her retirement benefits. *Ester B. Maralit vs. Philippine National Bank*, **G.R. No. 163788, August 24, 2009.**

Dismissal; negligence. Gross negligence connotes want or absence of or failure to exercise even slight care or diligence, or the total absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. To warrant removal from service, the negligence should not merely be gross, but also habitual. A single or isolated act of negligence does not constitute a just cause for the dismissal of the employee.

In *JGB and Associates, Inc. v. National Labor Relations Commission*, the Court further declared that gross negligence connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. Fraud and willful neglect of duties imply bad faith of the employee in failing to perform his job, to the detriment of the employer and the latter's business. *Chona Estacio and Leopoldo Manliclic vs. Pampanga I, Electric Cooperative, Inc. and Loliano E. Allas*, [G.R. No. 183196. August 19, 2009](#)

Dismissal; negligence. Under Article 282 (b) of the Labor Code, negligence must be both gross and habitual to justify the dismissal of an employee. Gross negligence is characterized by want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected.

In the present case, petitioner, as respondent's Accounting Manager, failed to discharge her important duty of remitting SSS/PhilHealth contributions not once but quadruple times, resulting in respondent's incurring of penalties totaling P18,580.41, not to mention the employees/members' contributions being unupdated. *Eden Llamas vs. Ocean Gateway Maritime and Management, Inc.*, [G.R. No. 179293, August 14, 2009.](#)

Dismissal; redundancy. Redundancy exists when the service of an employee is in excess of what is reasonably demanded by the actual requirements of the business. A redundant position is one rendered superfluous by any number of factors, such as overhiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company or phasing out of a service activity formerly undertaken by the enterprise.

For a valid implementation of a redundancy program, the employer must comply with the following requisites: (1) written notice served on both the employee and the DOLE at least one month prior to the intended date of termination; (2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (3) good faith in abolishing the redundant position; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant. *Lowe, Inc., et al. vs. Court of Appeals and Irma Mutuc*, G.R. Nos. 164813 & G.R. No. 174590, August 14, 2009.

Dismissal; redundancy. We agree with the Labor Arbiter that Lowe employed fair and reasonable criteria in declaring Mutuc's position redundant. Mutuc, who was hired only on 23 June 2000, did not deny that she was the most junior of all the executives of Lowe. Mutuc also did not present contrary evidence to disprove that she was the least efficient and least competent among all the Creative Directors.

The determination of the continuing necessity of a particular officer or position in a business corporation is a management prerogative, and the courts will not interfere unless arbitrary or malicious action on the part of management is shown. It is also within the exclusive prerogative of management to determine the qualification and fitness of an employee for hiring and firing, promotion or reassignment. Indeed, an employer has no legal obligation to keep more employees than are necessary for the operation of its business. *Lowe, Inc., et al. vs. Court of Appeals and Irma Mutuc*, G.R. Nos. 164813 & G.R. No. 174590, August 14, 2009.

Dismissal; resignation. In termination cases, it is incumbent upon the employer to prove either the non-existence or the validity of dismissal. Inasmuch as respondents alleged petitioner's resignation as the cause of his separation from work, respondents had the burden to prove the same. The case of the employer must stand or fall on its own merits and not on the weakness of the employee's defense.

Resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one who has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of

an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether, in fact, he intended to sever his employment.

In this case, we find no overt act on the part of petitioner that he was ready to sever his employment ties. *Baltazar L. Payno vs. Orizon Trading Corp./ Orata Trading and Flordeliza Legaspi*, **G.R. No. 175345, August 19, 2009**.

Dismissal; transfer. ATI's transfer of Bismark IV's base from Manila to Bataan was, contrary to Aguanza's assertions, a valid exercise of management prerogative. The transfer of employees has been traditionally among the acts identified as a management prerogative subject only to limitations found in law, collective bargaining agreement, and general principles of fair play and justice. Even as the law is solicitous of the welfare of employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. The free will of management to conduct its own business affairs to achieve its purpose cannot be denied.

On the other hand, the transfer of an employee may constitute constructive dismissal "when continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank and/or a diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee."

Aguanza's continued employment was not impossible, unreasonable or unlikely; neither was there a clear discrimination against him. Among the employees assigned to Bismark IV, it was only Aguanza who did not report for work in Bataan. Aguanza's assertion that he was not allowed to "time in" in Manila should be taken on its face: Aguanza reported for work in Manila, where he wanted to work, and not in Bataan, where he was supposed to work. There was no demotion in rank, as Aguanza would continue his work as Crane Operator. Furthermore, despite Aguanza's assertions, there was no diminution in pay. *Gualberto Aguanza vs. Asian Terminal, Inc., et al.*, **G.R. No. 163505**,

August 14, 2009.

Jurisdiction; Secretary of Labor. In the case at bar, the Secretary of Labor correctly assumed jurisdiction over the case as it does not come under the exception clause in Art. 128(b) of the Labor Code. While petitioner Jethro appealed the inspection results and there is a need to examine evidentiary matters to resolve the issues raised, the payrolls presented by it were considered in the ordinary course of inspection. While the employment records of the employees could not be expected to be found in Yakult's premises in Calamba, as Jethro's offices are in Quezon City, the records show that Jethro was given ample opportunity to present its payrolls and other pertinent documents during the hearings and to rectify the violations noted during the ocular inspection. It, however, failed to do so, more particularly to submit competent proof that it was giving its security guards the wages and benefits mandated by law.

Jethro's failure to keep payrolls and daily time records in Yakult's premises was not the only labor standard violation found to have been committed by it; it likewise failed to register as a service contractor with the DOLE, pursuant to Department Order No. 18-02 and, as earlier stated, to pay the wages and benefits in accordance with the rates prescribed by law. *Jethro Intelligence & Security Corporation and Yakult, Inc. vs.. The Hon. Secretary of Labor and Employment, et al.*, G.R. No. 172537, August 14, 2009.

Labor organization. Article 212(g) of the Labor Code defines a labor organization as "any union or association of employees which exists in whole or in part for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment." Upon compliance with all the documentary requirements, the Regional Office or Bureau shall issue in favor of the applicant labor organization a certificate indicating that it is included in the roster of legitimate labor organizations. Any applicant labor organization shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration. *Sta. Lucia East Commercial Corporation vs. Hon. Secretary of Labor and Employment, et al.*, G.R. No. 162355, August 14, 2009.

Labor organization; bargaining unit. A bargaining unit is a "group of

employees of a given employer, comprised of all or less than all of the entire body of employees, consistent with equity to the employer, indicated to be the best suited to serve the reciprocal rights and duties of the parties under the collective bargaining provisions of the law.” The fundamental factors in determining the appropriate collective bargaining unit are: (1) the will of the employees (Globe Doctrine); (2) affinity and unity of the employees’ interest, such as substantial similarity of work and duties, or similarity of compensation and working conditions (Substantial Mutual Interests Rule); (3) prior collective bargaining history; and (4) similarity of employment status. *Sta. Lucia East Commercial Corporation vs. Hon. Secretary of Labor and Employment, et al.*, **G.R. No. 162355, August 14, 2009**.

Strike; illegal strike. It is hornbook principle that the exercise of the right of private sector employees to strike is not absolute (see Section 3 of Article XIII of the Constitution).

Indeed, even if the purpose of a strike is valid, the strike may still be held illegal where the means employed are illegal. Thus, the employment of violence, intimidation, restraint or coercion in carrying out concerted activities which are injurious to the right to property renders a strike illegal. And so is picketing or the obstruction to the free use of property or the comfortable enjoyment of life or property, when accompanied by intimidation, threats, violence, and coercion as to constitute nuisance.

Here, the Union members’ repeated name-calling, harassment and threats of bodily harm directed against company officers and non-striking employees and, more significantly, the putting up of placards, banners and streamers with vulgar statements imputing criminal negligence to the company, which put to doubt reliability of its operations, come within the purview of illegal acts under Art. 264 of the Labor Code and jurisprudence. *A. Soriano Aviation vs. Employees Association of A. Soriano Aviation, et al.*, **G.R. No. 166879, August 14, 2009**.

## July 2009 Philippine Supreme Court Decisions on Commercial, Tax and



# Labor Laws

Posted on [August 10, 2009](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#), [Labor Law](#), [Tax Law](#) • Tagged [check-off](#), [compensable illness](#), [customs duties](#), [franchise tax](#), [illegal dismissal](#), [illegal strike](#), [jurisdiction](#), [loss of confidence](#), [minimum corporate income tax](#), [probationary employment](#), [project employee](#), [real property tax](#), [retirement](#), [tax credit](#) •

Here are selected July 2009 Philippine Supreme Court decisions on commercial, tax and labor laws:

## Commercial Law

Board action. A corporate loan entered into by the President without board approval is binding on the corporation when the President is authorized under the by-laws to enter into loans on behalf of the corporation. *Cebu Mactan Members Center, Inc. vs. Masahiro Tsukahara*, [G.R. No. 159624, July 17, 2009](#).

## Tax Law

Franchise tax. Jurisprudence suggests that aside from the national franchise tax, the franchisee is still liable to pay the local franchise tax, unless it is expressly and unequivocally exempted from the payment thereof under its legislative franchise. The “in lieu of all taxes” clause in a legislative franchise should categorically state that the exemption applies to both local and national taxes; otherwise, the exemption claimed should be strictly construed against the taxpayer and liberally in favor of the taxing authority. *Smart Communications, Inc., vs. The City of Davao, represented by its Mayor Hon. Rodrigo Duterte and the Sangguniang Panlungsod of Davao City*, [G.R. No. 155491, July 21, 2009](#).

Minimum corporate income tax. Under its charter, Philippine Airlines is exempt from the minimum corporate income tax. *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*, [G.R. No. 180066, July 7, 2009](#).

Overseas communications tax. Section 13 of Presidential Decree No. 1590, granting respondent tax exemption, is clearly all-inclusive. The basic corporate income tax or franchise tax paid by respondent shall be “in lieu of

all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description imposed, levied, established, assessed or collected by any municipal, city, provincial, or national authority or government agency, now or in the future x x x,” except only real property tax. Even a meticulous examination of Presidential Decree No. 1590 will not reveal any provision therein limiting the tax exemption of respondent to final withholding tax on interest income or excluding from said exemption the overseas communications tax. *Commissioner of Internal Revenue vs. Philippine Airlines, Inc. (PAL)*, **G.R. No. 180043, July 14, 2009**.

Real property tax; entity with personality to protest assessment. The liability for taxes generally rests on the owner of the real property at the time the tax accrues. This is a necessary consequence that proceeds from the fact of ownership. However, personal liability for realty taxes may also expressly rest on the entity with the beneficial use of the real property, such as the tax on property owned by the government but leased to private persons or entities, or when the tax assessment is made on the basis of the actual use of the property. In either case, the unpaid realty tax attaches to the property but is directly chargeable against the taxable person who has actual and beneficial use and possession of the property regardless of whether or not that person is the owner.

In the present case, the NPC, contrary to its claims, is neither the owner nor the possessor/user of the subject machineries. *National Power Corporation vs. Province of Quezon and Municipality of Pabgilao*, **G.R. No. 171586, July 15, 2009**.

Real property tax; exemption. NPC’s claim of tax exemptions is completely without merit. To successfully claim exemption under Section 234(c) of the Local Government Code, the claimant must prove two elements: (a) the machineries and equipment are actually, directly, and exclusively used by local water districts and government-owned or controlled corporations; and (b) the local water districts and government-owned and controlled corporations claiming exemption must be engaged in the supply and distribution of water and/or the generation and transmission of electric power.

As applied to the present case, the government-owned or controlled corporation claiming exemption must be the entity actually, directly, and exclusively using the real properties, and the use must be devoted to the generation and transmission of electric power. Neither the NPC nor Mirant satisfies both requirements. Although the plant's machineries are devoted to the generation of electric power, by the NPC's own admission and as previously pointed out, Mirant – a private corporation – uses and operates them. That Mirant operates the machineries solely in compliance with the will of the NPC only underscores the fact that NPC does not *actually, directly, and exclusively use* them. The machineries must be actually, directly, and exclusively used by the government-owned or controlled corporation for the exemption under Section 234(c) to apply. *National Power Corporation vs. Province of Quezon and Municipality of Pabgila*, **G.R. No. 171586, July 15, 2009**.

Real property tax; sale of real property. Section 83 of Presidential Decree No. 464 states that the Regional Trial Court shall not entertain any complaint assailing the validity of a tax sale of real property unless the complainant deposits with the court the amount for which the said property was sold plus interest equivalent to 20% per annum from the date of sale until the institution of the complaint. This provision was adopted in Section 267 of the Local Government Code, albeit the increase in the prescribed rate of interest to 2% per month.

*National Housing Authority v. Iloilo City* holds that the deposit required under Section 267 of the Local Government Code is a jurisdictional requirement, the nonpayment of which warrants the dismissal of the action. Because petitioners in this case did not make such deposit, the RTC never acquired jurisdiction over the complaints.

Consequently, inasmuch as the tax sale was never validly challenged, it remains legally binding. *Spouses Francisco and Betty Wong and Spouses Joaquin and Lolita Wong vs. City of Iloilo, et al.*, **G.R. No. 161748, July 3, 2009**.

Tax credit; irrevocability. Section 76 of the NIRC of 1997 gives two options to a taxable corporation whose total quarterly income tax payments in a given taxable year exceeds its total income tax due. These options are: (1)

filing for a tax refund or (2) availing of a tax credit.

Section 76 remains clear and unequivocal. Once the carry-over option is taken, actually or constructively, it becomes irrevocable. It mentioned no exception or qualification to the irrevocability rule.

Hence, the controlling factor for the operation of the irrevocability rule is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, “no application for tax refund or issuance of a tax credit certificate shall be allowed therefor.”

The last sentence of Section 76 of the NIRC of 1997 reads: “Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor.” The phrase “for that taxable period” merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer. In the present case, the excess income tax credit, which BPI opted to carry over, was acquired by the said bank during the taxable year 1998. The option of BPI to carry over its 1998 excess income tax credit is irrevocable; it cannot later on opt to apply for a refund of the very same 1998 excess income tax credit. *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, **G.R. No. 178490, July 7, 2009**.

Tax lien; unpaid customs duties. The vessel first entered the Philippines through the Port of Mactan and it was the Collector of the Port of Mactan who first acquired jurisdiction over the vessel when he approved the vessel’s temporary release from the custody of the BOC, after Glory Shipping Lines filed Ordinary Re-Export Bond No. C(9) 121818.

When this re-export bond expired on March 22, 1994, Glory Shipping Lines filed a letter dated May 10, 1994 guaranteeing the renewal of the re-export bond on or before May 20, 1994, otherwise the duties, taxes and other

charges on the vessel would be paid. Therefore, when May 20, 1994 came and went without the renewal of the vessel's re-export bond, the obligation to pay customs duties, taxes and other charges on the importation in the amount of P1,296,710.00 arose and attached to the vessel. Undoubtedly, this lien was never paid by Glory Shipping Lines, thus it continued to exist even after the vessel was sold to the respondent. *Secretary of Finance vs. Oro Maura Shipping Lines*, **G.R. No. 156946, July 15, 2009**.

## **Labor Law**

Dismissal; loss of confidence. Loss of confidence applies only to cases involving employees who occupy positions of trust and confidence, or to those situations where the employee is routinely charged with the care and custody of the employer's money or property. To be a valid ground for an employee's dismissal, loss of trust and confidence must be based on a willful breach. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse.

In dismissing an employee on the ground of loss of confidence, it is sufficient that the employer has a reasonable ground to believe, based on clearly established facts, that the employee is responsible for the misconduct and the nature of his participation renders him unworthy of the trust and confidence demanded by his position. If the employer has ample reason to distrust the employee, the labor tribunal cannot justly deny the former the authority to dismiss the latter. *Renita Del Rosario, et al. vs. Makati Cinema Square Corporation*, **G.R. No. 170014. July 3, 2009**.

Dismissal; loss of confidence. To be a valid ground for dismissal, loss of trust and confidence must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. Such ground of dismissal has never been intended to afford an occasion for abuse because of its subjective nature. *Davao Contractors Development Cooperative (DACODECO), represented by Chairman of the Board Engr. L. Chavez vs. Marilyn A. Pasawa*, **G.R. No.**

172174, July 9, 2009.

Dismissal; probationary employee. Under Article 281 of the Labor Code, a probationary employee can be legally dismissed either: (1) for a just cause; or (2) when he fails to qualify as a regular employee in accordance with the reasonable standards made known to him by the employer at the start of the employment. Nonetheless, the power of the employer to terminate the services of an employee on probation is not without limitations. First, this power must be exercised in accordance with the specific requirements of the contract. Second, the dissatisfaction on the part of the employer must be real and in good faith, not feigned so as to circumvent the contract or the law. Third, there must be no unlawful discrimination in the dismissal. In termination cases, the burden of proving just or valid cause for dismissing an employee rests on the employer.

Here, petitioner did not present proof that respondent was duly notified, at the time of her employment, of the reasonable standards she needed to comply with for her continued employment. *Davao Contractors Development Cooperative (DACODECO), represented by Chairman of the Board Engr. L. Chavez vs. Marilyn A. Pasawa*, G.R. No. 172174, July 9, 2009.

Employee benefits; compensable illness. In any determination of compensability, the nature and characteristics of the job are as important as raw medical findings and a claimant's personal and social history. This is a basic legal reality in workers' compensation law.

What the law requires is a reasonable work connection and not direct causal relation. Probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings. For, in interpreting and carrying out the provisions of the Labor Code and its Implementing Rules and Regulations, the primordial and paramount consideration is the employee's welfare. To safeguard the worker's rights, any doubt on the proper interpretation and application must be resolved in favor of labor. *Government Service Insurance System vs. Salvador A. De Castro*, G.R. No. 185035, July 15, 2009.

Employee benefits; retirement. Retirement is the result of a bilateral act of



the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former. Retirement is provided for under Article 287 of the Labor Code, as amended by Republic Act No. 7641, or is determined by an existing agreement between the employer and the employee.

In this case, respondent offered the Special Separation Incentive Program (SSIP) to overhaul the bank structure and to allow it to effectively compete with local peer and foreign banks. SSIP was not compulsory on employees. Employees who wished to avail of the SSIP were required to accomplish a form for availment of separation benefits under the SSIP and to submit the accomplished form to the Personnel Administration and Industrial Relations Division (PAIRD) for approval.

Petitioner voluntarily availed of the SSIP. *Marcelino A. Magdadaro vs. Philippine National Bank*, **G.R. No. 166198, July 17, 2009**.

Employee benefits; salary increase. It is a familiar and fundamental doctrine in labor law that the collective bargaining agreement (CBA) is the law between the parties and they are obliged to comply with its provisions. If the terms of a contract, in this case the CBA, are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of their stipulations shall control.

A reading of the above-quoted provision of the CBA shows that the parties agreed that 80% of the TIP or at the least the amount of P1,500 is to be allocated for individual salary increases.

The CBA does not speak of any other benefits or increases which would be covered by the employees' share in the TIP, except salary increases. *University of San Agustin, Inc. vs. University of San Agustin Employees Union-FFW*, **G.R. No. 177594, July 23, 2009**.

Employee benefits; seamen. The terms and conditions of a seafarer's employment is governed by the provisions of the contract he signs at the time he is hired. But unlike that of others, deemed written in the seafarer's contract is a set of standard provisions set and implemented by the POEA, called the Standard Terms and Conditions Governing the Employment of

Filipino Seafarers on Board Ocean-Going Vessels, which are considered to be the minimum requirements acceptable to the government for the employment of Filipino seafarers on board foreign ocean-going vessels. Thus, the issue of whether petitioner Nisda can legally demand and claim disability benefits from respondents Sea Serve and ADAMS for an illness suffered is best addressed by the provisions of his POEA-SEC, which incorporated the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels. When petitioner Nisda was employed on 7 August 2001, it was the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels (hereinafter referred to simply as Amended Standard Terms and Conditions for brevity) that applied and were deemed written in or appended to his POEA-SEC. *Carlos N. Nisda vs. Sea Serve Maritime Agency, et al.*, **G.R. No. 179177, July 23, 2009**.

Employee benefits; service award. Respondent's service award under Article 87 of the Saudi Labor Law has already been paid. The severance pay received by respondent was his service award. *LWV Construction Corporation vs. Marcelo B. Dupo*, **G.R. No. 172342, July 13, 2009**.

Employees; project employee. The principal test for determining whether a particular employee is a project employee or a regular employee is whether the project employee was assigned to carry out a specific project or undertaking, the duration and scope of which were specified at the time the employee is engaged for the project. "Project" may refer to a particular job or undertaking that is within the regular or usual business of the employer, but which is distinct and separate and identifiable as such from the undertakings of the company. Such job or undertaking begins and ends at determined or determinable times.

Here, the specific projects for which respondent was hired and the periods of employment were specified in his employment contracts. The services he rendered, the duration and scope of each employment are clear indications that respondent was hired as a project employee. *Alcatel Philippines, Inc. vs. Rene R. Relos*, **G.R. No. 164315, July 3, 2009**.

Jurisdiction; Regional Director. Respondent contested the findings of the labor inspector during and after the inspection and raised issues the

resolution of which necessitated the examination of evidentiary matters not verifiable in the normal course of inspection. Hence, the Regional Director was divested of jurisdiction and should have endorsed the case to the appropriate Arbitration Branch of the NLRC. Considering, however, that an illegal dismissal case had been filed by petitioners wherein the existence or absence of an employer-employee relationship was also raised, the CA correctly ruled that such endorsement was no longer necessary. *Victor Meteoro, et al. vs. Creative Creatures, Inc.*, [G.R. No. 171275. July 13, 2009](#)

Labor claim; deed of release. As a rule, deeds of release or quitclaim cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal. The acceptance of those benefits would not amount to estoppel. Furthermore, there is a gross disparity between the amount actually received by petitioner as compared to the amount owing him as initially computed by VA Calipay. The amount of the settlement is indubitably unconscionable; hence, ineffective to bar petitioner from claiming the full measure of his legal rights. In any event, the Supreme Court deemed it appropriate that the amount he received as consideration for signing the quitclaim be deducted from his monetary award. *Rafael Rondina vs. Court of Appeals former special 19th Division, Unicraft Industries International Corp., Inc. Robert Dino, Cristina Dino, Michael Lloyd Dino, Allan Dino and Mylene June Dino*, [G.R. No. 172212, July 9, 2009.](#)

Labor claim; liability of corporate officers. To hold a director personally liable for the debts of the corporation, and thus pierce the veil of corporate fiction, the bad faith or wrongdoing of the director must be established clearly and convincingly. Bad faith is never presumed. Bad faith does not connote bad judgment or negligence. Bad faith imports a dishonest purpose. Bad faith means breach of a known duty through some ill motive or interest. Bad faith partakes of the nature of fraud. *Rafael Rondina vs. Court of Appeals former special 19th Division, Unicraft Industries International Corp., Inc. Robert Dino, Cristina Dino, Michael Lloyd Dino, Allan Dino and Mylene June Dino*, [G.R. No. 172212, July 9, 2009.](#)

Strike; illegal strike. It is undisputed that the notice of strike was filed by the union without attaching the counter-proposal of the company. This, according to petitioners and the labor arbiter, made the ensuing strike of

respondents illegal because the notice of strike of the union was defective.

The Implementing Rules use the words “as far as practicable.” In this case, attaching the counter-proposal of the company to the notice of strike of the union was not practicable. It was absurd to expect the union to produce the company’s counter-proposal which it did not have. One cannot give what one does not have. Indeed, compliance with the requirement was impossible because no counter-proposal existed at the time the union filed a notice of strike. The law does not exact compliance with the impossible. *Nemotenetur ad impossibile*.

Another error committed by the labor arbiter was his declaration that respondents, as union officers, automatically severed their employment with the company due to the alleged illegal strike. In the first place, there was no illegal strike. Moreover, it is hornbook doctrine that a mere finding of the illegality of the strike should not be automatically followed by the wholesale dismissal of the strikers from employment. *Club Filipino, Inc. and Atty. Roberto F. De Leon vs. Benjamin Bautista, et al.*, [G.R. No. 168406, July 13, 2009](#).

Union; check-off. Article 222(b) of the Labor Code, as amended, prohibits the payment of attorney’s fees only when it is effected through forced contributions from the employees from their own funds as distinguished from union funds. Hence, the general rule is that attorney’s fees, negotiation fees, and other similar charges may only be collected from union funds, not from the amounts that pertain to individual union members. As an exception to the general rule, special assessments or other extraordinary fees may be levied upon or checked off from any amount due an employee for as long as there is proper authorization by the employee.

A check-off is a process or device whereby the employer, on agreement with the Union, recognized as the proper bargaining representative, or on prior authorization from the employees, deducts union dues or agency fees from the latter’s wages and remits them directly to the Union. Its desirability in a labor organization is quite evident. The Union is assured thereby of continuous funding. The system of check-off is primarily for the benefit of the Union and, only indirectly, for the individual employees.

Here, the requisites for a valid levy and check-off of special assessments, laid down by Article 241(n) and (o), respectively, of the Labor Code, as amended, have not been complied with in the case at bar. To recall, these requisites are: (1) an authorization by a written resolution of the majority of all the union members at the general membership meeting duly called for the purpose; (2) secretary's record of the minutes of the meeting; and (3) individual written authorization for check-off duly signed by the employee concerned. *Eduardo J. Mariño, Jr. et al. vs. Gil Y. Gamilla, et al.*, **G.R. No. 149763**, July 7, 2009.

## June 2009 Philippine Supreme Court Decisions on Commercial, Tax and Labor Laws

Posted on July 13, 2009 by Hector M. de Leon Jr. • Posted in Commercial Law, Labor Law, Tax Law • Tagged abandonment, attorney's fees, compensable illness, derivative suit, diminution of benefits, employer-employee relationship, illegal dismissal, illegal strike, loss of trust and confidence, misconduct, moral damages, negligence, redemption, reinstatement, retrenchment, stamp tax, union, willful disobedience •

Here are selected June 2009 decisions of the Philippine Supreme Court on commercial, tax and labor laws. □ □ **Commercial Law**

Derivative suits. The general rule is that where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees. Nonetheless, an individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stocks in order to protect or vindicate corporate rights, whenever the officials of the corporation refuse to sue, or are the ones to be sued, or hold the control of the corporation. In such actions, the suing stockholder is regarded as a nominal party, with the corporation as the real party in interest. A derivative action is a suit by a shareholder to enforce a corporate cause of action. The corporation is a necessary party to the suit. And the relief which is granted is a judgment against a third person in favor of the corporation. Similarly, if a corporation has a defense to an action against it and is not asserting it, a stockholder may

intervene and defend on behalf of the corporation. By virtue of Republic Act No. 8799, otherwise known as the Securities Regulation Code, jurisdiction over intra-corporate disputes, including derivative suits, is now vested in the Regional Trial Courts designated by the Supreme Court pursuant to A.M. No. 00-11-03-SC promulgated on 21 November 2000.

□The Supreme Court has recognized that a stockholder's right to institute a derivative suit is not based on any express provision of the Corporation Code, or even the Securities Regulation Code, but is impliedly recognized when the said laws make corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties. Hence, a stockholder may sue for mismanagement, waste or dissipation of corporate assets because of a special injury to him for which he is otherwise without redress. In effect, the suit is an action for specific performance of an obligation owed by the corporation to the stockholders to assist its rights of action when the corporation has been put in default by the wrongful refusal of the directors or management to make suitable measures for its protection. The basis of a stockholder's suit is always one in equity. However, it cannot prosper without first complying with the legal requisites for its institution. *Anthony S. Yu, et al., vs. Joseph S. Yukayguan, et al.*, **G.R. No. 177549, June 18, 2009.**

Illegal dismissal; liability of corporate officer. The general manager of a corporation should not be made personally answerable for the payment of an illegally dismissed employee's monetary claims arising from the dismissal unless he had acted maliciously or in bad faith in terminating the services of the employee. The employer corporation has a separate and distinct personality from its officers who merely act as its agents.

The exception noted is where the official "had acted maliciously or in bad faith," in which event he may be made personally liable for his own act. That exception is not applicable in the case at bar, because it has not been proven that Wiltschek was impleaded in his capacity as General Manager of petitioner corporation and there appears to be no evidence on record that he acted maliciously or in bad faith in terminating the services of respondent. His act, therefore, was within the scope of his authority and was a corporate act for which he should not be held personally liable for. *M+W Zander Philippines, Inc. and Rolf Wiltschek vs. Trinidad M. Enriquez*, **G.R. No. 169173, June 5, 2009**; see also *Bienvenido C. Gilles*



*vs. Court of Appeals, Schema Konsult and Edgardo Abores*, **G.R. No. 149273, June 5, 2009**

Redemption of foreclosed property; General Banking Act. The general rule in redemption is that it is not sufficient that a person offering to redeem manifests his desire to do so. The statement of intention must be accompanied by an actual and simultaneous tender of payment. This constitutes the exercise of the right to repurchase. In several cases decided by the Court where the right to repurchase was held to have been properly exercised, there was an unequivocal tender of payment for the full amount of the repurchase price. Otherwise, the offer to redeem is ineffectual.

Bona fide redemption necessarily implies a reasonable and valid tender of the entire repurchase price, otherwise the rule on the redemption period fixed by law can easily be circumvented. *Allied Banking Corporation vs. Ruperto Jose H. Mateo, represented by Warlito Mateo, as Attorney-in-fact*, **G.R. No. 167420, June 5, 2009**.

## **Tax Law**

Deposit on future subscription; stamp tax. A deposit on future subscription is not subject to documentary stamp tax. *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*, **G.R. Nos. 172045-46, June 16, 2009**.

Validity of regulations. Revenue Regulations Nos. 9-2003, 22-2003, and Revenue Memorandum Order No. 6-2003, as pertinent to cigarettes packed by machine, are invalid insofar as they grant the BIR the power to reclassify or update the classification of new brands every two years or earlier. *Hon. Secretary of Finance, et al. vs. La Suerte Cigar and Cigarette Factory, et al.*, **G.R. No. 166498. June 11, 2009**

## **Labor Law**

Diminution of benefits; company practice. To be considered a company practice, the giving of the benefits should have been done over a long period of time, and must be shown to have been consistent and deliberate. The test or rationale of this rule on long practice requires an indubitable showing that

the employer agreed to continue giving the benefits knowing fully well that said employees are not covered by the law requiring payment thereof.

With regard to the length of time the company practice should have been exercised to constitute voluntary employer practice which cannot be unilaterally withdrawn by the employer, jurisprudence has not laid down any hard and fast rule. In the case of *Davao Fruits Corporation v. Associated Labor Unions*, the company practice of including in the computation of the 13th-month pay the maternity leave pay and cash equivalent of unused vacation and sick leave lasted for six (6) years. In another case, *Tiangco v. Leogardo, Jr.*, the employer carried on the practice of giving a fixed monthly emergency allowance from November 1976 to February 1980, or three (3) years and four (4) months. While in *Sevilla Trading v. Semana*, the employer kept the practice of including non-basic benefits such as paid leaves for unused sick leave and vacation leave in the computation of their 13th-month pay for at least two (2) years. In all these cases, the Supreme Court held that the grant of these benefits has ripened into company practice or policy which cannot be peremptorily withdrawn. The common denominator in these cases appears to be the regularity and deliberateness of the grant of benefits over a significant period of time. *Metropolitan Bank and Trust Company vs. National Labor Relations Commission, Felipe A. Patag and Bienvenido C. Flora*, *G.R. No. 152928, June 18, 2009*.

Compensable illness. A government employee, who suffers complete and permanent loss of sight in one eye, is entitled to income benefit from the GSIS beginning the first month of said employee's disability, but no longer than the maximum period of 25 months. *Government Service Insurance System vs. Jaime K. Ibarra*, *G.R. No. 172925, June 18, 2009*.

Compensable illness. Although the Court commiserates with petitioner's sufferings, the Court cannot close its eyes to the need to ensure that the workmen's trust fund is protected from depletion due to claims for illnesses which may not be truly work-related. *Rodolfo B. Arceño Vs. Government Service Insurance System*, *G.R. No. 162374, June 18, 2009*.

Downsizing. Retrenchment is the reduction of work personnel usually due to poor financial returns, aimed to cut down costs for operation particularly on

salaries and wages. Redundancy, on the other hand, exists where the number of employees is in excess of what is reasonably demanded by the actual requirements of the enterprise. Both are forms of downsizing and are often resorted to by the employer during periods of business recession, industrial depression, or seasonal fluctuations, and during lulls in production occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program, or introduction of new methods or more efficient machinery or automation. Retrenchment and redundancy are valid management prerogatives, provided they are done in good faith and the employer faithfully complies with the substantive and procedural requirements laid down by law and jurisprudence.

For a valid retrenchment, the following requisites must be complied with: (1) the retrenchment is necessary to prevent losses and such losses are proven; (2) written notice to the employees and to the DOLE at least one month prior to the intended date of retrenchment; and (3) payment of separation pay equivalent to one-month pay or at least one-half month pay for every year of service, whichever is higher.

In case of redundancy, the employer must prove that: (1) a written notice was served on both the employees and the DOLE at least one month prior to the intended date of retrenchment; (2) separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher, has been paid; (3) good faith in abolishing the redundant positions; and (4) adoption of fair and reasonable criteria in ascertaining which positions are to be declared redundant and accordingly abolished.

It is the employer who bears the onus of proving compliance with these requirements, retrenchment and redundancy being in the nature of affirmative defenses. Otherwise, the dismissal is not justified. *Hotel Enterprises of the Philippines, Inc., etc. vs. Samahan ng mga Manggagawa sa Hyatt-National Union of Workers in the Hotel Restaurant, etc.*, **G.R. No. 165756, June 5, 2009.**

Employer-employee relationship. There existed no employer-employee relationship between the parties. De Raedt is an independent contractor, who was engaged by SGV to render services

to SGV's client TMI, and ultimately to DA on the CECAP project, regarding matters in the field of her special knowledge and training for a specific period of time. Unlike an ordinary employee, De Raedt received retainer fees and benefits such as housing and subsistence allowances and medical insurance. De Raedt's services could be terminated on the ground of end of contract between the DA and TMI, and not on grounds under labor laws. Though the end of the contract between the DA and TMI was not the ground for the withdrawal of De Raedt from the CECAP, De Raedt was disengaged from the project upon the instruction of SGV's client, TMI. Most important of all, SGV did not exercise control over the means and methods by which De Raedt performed her duties as Sociologist. SGV did impose rules on De Raedt, but these were necessary to ensure SGV's faithful compliance with the terms and conditions of the Sub-Consultancy Agreement it entered into with TMI. *Sycip, Gorres, Velayo, & Company vs. Carol De Raedt*, **G.R. No. 161366, June 16, 2009**.

Ground for dismissal; abandonment. The rule is that the burden of proof lies with the employer to show that the dismissal was for a just cause. In the present case, the petitioner claims that there was no illegal dismissal since the respondent abandoned his job. The petitioner points out that it wrote the respondent various memoranda requiring him to explain why he incurred absences without leave, and requiring him as well to report for work; the respondent, however, never bothered to reply in writing.

In evaluating a charge of abandonment, the jurisprudential rule is that abandonment is a matter of intention that cannot be lightly presumed from equivocal acts. To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intent, manifested through overt acts, to sever the employer-employee relationship. The employer bears the burden of showing a deliberate and unjustified refusal by the employee to resume his employment without any intention of returning. We agree with the CA that the petitioner failed to prove the charge of abandonment. *Pentagon Steel Corporation vs. Court of Appeals, et al.*, **G.R. No. 174141, June 26, 2009**.

Ground for dismissal; gross negligence. Respondent's actions, at their worse, reveal his negligence, but said negligence can hardly be deemed gross and habitual, as to constitute a just ground for his dismissal under Article 282(b) of the Labor Code.

Gross negligence under Article 282 of the Labor Code connotes want of care in the performance of one's duties, while habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. Gross negligence has been defined as the want or absence of even slight care or diligence as to amount to a reckless disregard of the safety of person or property. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. To constitute a just cause for termination of employment, the neglect of duties must not only be gross but habitual as well. The single or isolated act of negligence does not constitute a just cause for the dismissal of the employee. *AMA Computer College-East Rizal, et al. vs. Allan Raymond R. Ignacio*, **G.R. No. 178520. June 23, 2009.**

Ground for dismissal; gross negligence. Gross negligence is characterized by want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected.

Mateo was undisputedly negligent when he left the motorcycle along Burke Street in Escolta, Manila without locking it despite clear, specific instructions to do so. His argument that he stayed inside the LBC office for only three to five minutes was of no moment. On the contrary, it only proved that he did not exercise even the slightest degree of care during that very short time. Mateo deliberately did not heed the employer's very important precautionary measure to ensure the safety of company property. Regardless of the reasons advanced, the exact evil sought to be prevented by LBC (in repeatedly directing its customer associates to lock their motorcycles) occurred, resulting in a substantial loss to LBC. *LBC Express Metro Manila, Inc. and Lorenzo A. Niño vs. James Mateo*, **G.R. No. 168215, June 9, 2009.**

Ground for dismissal; lost of confidence. Recent decisions of this Court have distinguished the treatment of managerial employees from that of the rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be

sufficient. But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required. It is sufficient that there is some basis for the employer's loss of trust and confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position. Nonetheless, the evidence must be substantial and must establish clearly and convincingly the facts on which the loss of confidence rests and not on the employer's arbitrariness, whims, and caprices or suspicion. *Triumph International (PHILS.), Inc., vs. Ramon L. Apostol, et al.*, **G.R. No. 164423, June 16, 2009**.

Ground for dismissal; loss of confidence. To be a valid ground for dismissal, loss of trust and confidence must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. Further, the act complained of must be work-related and must show that the employee concerned is unfit to continue working for the employer. *Sarabia Optical and Vivian Sarabia-Orn vs. Jeanet B. Camacho*, **G.R. No. 155502, June 18, 2009**.

Ground for dismissal; loss of confidence. Nissan failed to prove that Tagulao and Serrano were responsible for the loss of two rolls of tint. The records of the case show that there was a discrepancy between the dates of pick up and delivery as alleged by Nissan and as alleged by Tagulao and Serrano. Even Catudio, Nissan's employee, stated that she changed the dates on the delivery receipt of the two rolls of tint on the instruction of her boss.

Loss of trust and confidence, to be a valid ground for an employee's dismissal, must be based on a willful breach and founded on clearly established facts. The burden of proof of dismissal rests entirely upon the employer. In the present case, Nissan illegally dismissed Tagulao and Serrano because Nissan failed to prove that Tagulao and Serrano were



terminated for a valid cause. Tagulao and Serrano are thus entitled to reinstatement and to receive backwages. *Nissan North Edsa Balintawak, Quezon City vs. Angelito Serrano, Jr. and Edwin Tagulao*, G.R. No. 162538, June 4, 2009

Ground for dismissal; loss of confidence. The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be one holding a position of trust and confidence.

The second requisite of terminating an employee for loss of trust and confidence is that there must be an act that would justify the loss of trust and confidence. To be a valid cause for dismissal, the loss of confidence must be based on a willful breach of trust and founded on clearly established facts.

We find that it was not established that respondent used her authority to influence her subordinates to stage a “no work day”; and assuming that she performed this act as alleged by petitioners, it does not satisfy the jurisprudential requirements for valid termination due to loss of trust and confidence.

Loss of trust and confidence stems from a breach of trust founded on a dishonest, deceitful or fraudulent act. In the case at bar, respondent did not commit any act which was dishonest or deceitful. She did not use her authority as the Administration Manager to misappropriate company property nor did she abuse the trust reposed in her by petitioners with respect to her responsibility to implement company rules. The most that can be attributed to respondent is that she influenced a single subordinate, without exerting any force or making any threats, not to report to work. This does not constitute dishonest or deceitful conduct which would justify the conclusion of loss of trust and confidence. *M+W Zander Philippines, Inc. and Rolf Wiltschek vs. Trinidad M. Enriquez*, G.R. No. 169173, June 5, 2009.

Grounds for dismissal; serious misconduct. Under the circumstances, our conclusion can only be for Salon’s dismissal for two counts of valid causes – i.e., for serious violation of TIP’s Memorandum No. P-66, for unauthorized selling of examination papers, and for serious misconduct, for falsifying Manalo’s grade and violating the grading rules under the Manual of

Regulations for Private Schools. *Technological Institute of the Philippines Teachers and Employees Organization and its member Magdalena T. Salon vs. the Honorable Court of Appeals, et al.*, G.R. No. 158703, June 26, 2009.

Ground for dismissal; willful disobedience. Willful disobedience of the employer's lawful orders, as a just cause for dismissal of an employee, requires the concurrence of two (2) elements: (1) the employee's assailed conduct must have been willful, i.e., characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.

Gilles' resignation from CBI and sudden departure from India was not approved by SKI. When he asked the company's permission to return to Manila, the management instructed him to stay in India until a suitable replacement was found. He knew of the critical stage of the Project due to the accelerated period of its completion. Thus, when he left the Project, despite the clear and lawful instructions of the management for him to stay, his act constituted willful disobedience and gross neglect of duty under Article 282 of the Labor Code.

Gilles' departure from India, despite the instruction of SKI for him to stay, was impelled by the financial difficulties he encountered thereat. The money given to him before he left for India was already spent. Rickie Sarque, the Chief Accountant of SKI, admitted on the witness stand that Gilles was paid his salaries for the 3 ½ months when he was already back in Manila. Added to this were the problems he encountered due to the acceleration of the job completion period, the obligations he had to meet at home for his aged mother at that time, now deceased, and the relatives who needed his financial support. Clearly, Gilles had a valid reason to leave India.

SKI's failure to pay Gilles' salary on time was intolerable. For neglecting its duties as an employer, SKI may, thus, be considered to have acted in bad faith. It may be deemed as utter disregard by SKI of the welfare and well-being of its employee, especially at a time when he was far away from home.

We, therefore, find that Gilles was constructively dismissed from

employment. Constructive dismissal exists when the employee involuntarily resigns due to the harsh, hostile, and unfavorable conditions set by the employer. It arises when there is clear discrimination, insensibility, or disdain by an employer and this becomes unbearable to the employee.

Invariably, the law recognizes and resolves such a situation in favor of the employees in order to protect their rights from the coercive acts of the employer. Resignation contemplates a voluntary act; thus, an employee who is forced to relinquish his position due to the employer's unfair or unreasonable treatment is deemed to have been illegally terminated or discharged. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. *Bienvenido C. Gilles vs. Court of Appeals, Schema Konsult and Edgardo Abores*, [G.R. No. 149273, June 5, 2009](#).

Illegal dismissal; attorney's fees. Attorney's fees may be awarded only when the employee is illegally dismissed in bad faith and is compelled to litigate or incur expenses to protect his rights by reason of the unjustified acts of his employer. In the case at bar, respondent's unjustified and unwarranted dismissal prompted her to engage the professional services of a counsel and she is thus entitled to an award of attorney's fees. *M+W Zander Philippines, Inc. and Rolf Wiltschek vs. Trinidad M. Enriquez*, [G.R. No. 169173, June 5, 2009](#).

Illegal dismissal; moral damages. There is sufficient basis to award moral damages and attorney's fees to respondent. We have consistently ruled that in illegal dismissal cases, moral damages are recoverable only where the dismissal of the employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy. Such an award cannot be justified solely upon the premise that the employer fired his employee without just cause or due process. Additional facts must be pleaded and proven to warrant the grant of moral damages under the Civil Code, i.e., that the act of dismissal was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy; and, of course, that social humiliation, wounded feelings, grave anxiety, and similar injury resulted therefrom.

In previous cases where moral damages and attorney's fees were awarded, the manner of termination was done in a humiliating and insulting manner, such as in the case of *Balayan Colleges v. National Labor Relations Commission* where the employer posted copies of its letters of termination to the teachers inside the school campus and it also furnished copies to the town mayor and Parish Priest of their community for the purpose of maligning the teachers' reputation. So also in the case of *Chiang Kai Shek School v. Court of Appeals*, this Court awarded moral damages to a teacher who was flatly, and without warning or a formal notice, told that she was dismissed.

In the case at bar, we see it fit to award moral damages to respondent because the manner in which respondent was treated upon petitioners' suspicion of her involvement in drafting and in circulating the letter of appeal and the alleged staging of the "no work day" is contrary to good morals because it caused unnecessary humiliation to respondent. *M+W Zander Philippines, Inc. and Rolf Wiltschek vs. Trinidad M. Enriquez*, [G.R. No. 169173, June 5, 2009](#).

Illegal dismissal; liability of corporate officer. The general manager of a corporation should not be made personally answerable for the payment of an illegally dismissed employee's monetary claims arising from the dismissal unless he had acted maliciously or in bad faith in terminating the services of the employee. The employer corporation has a separate and distinct personality from its officers who merely act as its agents.

The exception noted is where the official "had acted maliciously or in bad faith," in which event he may be made personally liable for his own act. That exception is not applicable in the case at bar, because it has not been proven that Wiltschek was impleaded in his capacity as General Manager of petitioner corporation and there appears to be no evidence on record that he acted maliciously or in bad faith in terminating the services of respondent. His act, therefore, was within the scope of his authority and was a corporate act for which he should not be held personally liable for. *M+W Zander Philippines, Inc. and Rolf Wiltschek vs. Trinidad M. Enriquez*, [G.R. No. 169173, June 5, 2009](#); see also *Bienvenido C. Gilles vs. Court of Appeals, Schema Konsult and Edgardo Abores*, [G.R. No. 149273, June 5, 2009](#).

Illegal dismissal; procedural due process. Procedural due process in the dismissal of employees requires notice and hearing. The employer must furnish the employee two written notices before termination may be effected. The first notice apprises the employee of the particular acts or omissions for which his dismissal is sought, while the second notice informs the employee of the employer's decision to dismiss him. The requirement of a hearing, on the other hand, is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted. *Herminigildo Inguillom, et al. vs. First Philippine Scales, Inc., et al.*, **G.R. No. 165407, June 5, 2009.**

Illegal dismissal; reinstatement. The respondent's illegal dismissal carries the legal consequence defined under Article 279 of the Labor Code: the illegally dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time his compensation was withheld from him up to the time of his actual reinstatement. The imposition of this legal consequence is a matter of law that allows no discretion on the part of the decision maker, except only to the extent recognized by the law itself as expressed in jurisprudence. *Pentagon Steel Corporation vs. Court of Appeals, et al.*, **G.R. No. 174141, June 26, 2009.**

Reinstatement; union shop steward. A shop steward leads to the conclusion that it is a position within the union, and not within the company. A shop steward is appointed by the union in a shop, department, or plant and serves as representative of the union, charged with negotiating and adjustment of grievances of employees with the supervisor of the employer. He is the representative of the union members in a building or other workplace. Black's Law Dictionary defines a shop steward as a union official elected to represent members in a plant or particular department. His duties include collection of dues, recruitment of new members and initial negotiations for the settlement of grievances.

A judgment of reinstatement of the petitioner to the position of union Shop Steward would have no practical legal effect since it cannot be enforced. Based on the requirements imposed by law and the APCWU-ATI CBA, and in the nature of things, the subsequent separation of the petitioner from employment with respondent ATI has made his reinstatement to union Shop

Steward incapable of being enforced. *Teodoro S. Miranda, Jr. vs. Asian Terminals, Inc. and Court of Appeals*, *G.R. No. 174316, June 23, 2009*.

Resignation; separation pay. No provision in the Labor Code grants separation pay to voluntarily resigning employees. Separation pay may be awarded only in cases when the termination of employment is due to (a) installation of labor-saving devices, (b) redundancy, (c) retrenchment, (d) closing or cessation of business operations, (e) disease of an employee and his continued employment is prejudicial to himself or his co-employees, or (f) when an employee is illegally dismissed but reinstatement is no longer feasible. In fact, the rule is that an employee who voluntarily resigns from employment is not entitled to separation pay, except when it is stipulated in the employment contract or collective bargaining agreement (CBA), or it is sanctioned by established employer practice or policy.

Here, the primary consideration that impelled respondent to tender his resignation letter was the assurance that he would be paid his separation pay. It is thus unlikely for someone to just leave his employer for whom he has worked for twelve (12) years without any expectation of financial assistance. Hence, the former employee is entitled to receive separation pay. *“J” Marketing Corporation, represented by its Branch Manager Elmundo Dador*, *G.R. No. 163924, June 18, 2009*.

Strike; requisites for validity. The requisites for a valid strike are: (a) a notice of strike filed with the DOLE 30 days before the intended date thereof or 15 days in case of ULP; (b) a strike vote approved by a majority of the total union membership in the bargaining unit concerned obtained by secret ballot in a meeting called for that purpose; and (c) a notice to the DOLE of the results of the voting at least seven (7) days before the intended strike. The requirements are mandatory and failure of a union to comply therewith renders the strike illegal. *Hotel Enterprises of the Philippines, Inc., etc. vs. Samahan ng mga Manggagawa sa Hyatt-National Union of Workers in the Hotel Restaurant, etc.*, *G.R. No. 165756, June 5, 2009*.

Union security. “Union security” is a generic term, which is applied to and comprehends “closed shop,” “union shop,” “maintenance of membership” or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment.



There is union shop when all new regular employees are required to join the union within a certain period as a condition for their continued employment. There is maintenance of membership shop when employees, who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit or the agreement is terminated. A closed-shop, on the other hand, may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part.

In terminating the employment of an employee by enforcing the Union Security Clause, the employer needs only to determine and prove that: (1) the union security clause is applicable; (2) the union is requesting for the enforcement of the union security provision in the CBA; and (3) there is sufficient evidence to support the union's decision to expel the employee from the union or company. *Herminigildo Inguillom, et al. vs. First Philippine Scales, Inc., et al.*, **G.R. No. 165407, June 5, 2009**.

## Stamp tax on deposit on future subscription

Posted on **July 1, 2009** by **Hector M. de Leon Jr.** • Posted in **Tax Law** • Tagged **stamp tax** •

The Tax Code subjects the original issuance of shares by a Philippine corporation to documentary stamp tax (DST), which must be paid by either the corporation or the stockholder. If the shares have par value, the DST payable is PhP1 for every PhP200 of par value. Thus, if 1,000,000 shares with a par value of PhP1 each are issued, DST of PhP5,000 is payable. If the DST is not paid on time, the BIR will impose a surcharge of 25% (plus interest).

Shares of stock are usually represented by stock certificates. The stock certificates constitute clear evidence that the shares have been issued (and therefore, that DST is due). On the other hand, there may be instances when the stock certificate has not yet been issued by the corporation, such as the following: (a) the corporation forgot to issue the stock certificates or may have run out of stock certificates; (b) the corporation has not yet issued the stock certificate because the stockholder has not yet fully paid the subscription price for the shares. In these cases, DST is already due even if the stock certificates covering the shares have not yet been issued. The rationale for this is that in situations (a) and (b) above, the person who subscribes to the shares is already a stockholder of the corporation (notwithstanding the non-issuance of the stock certificates) and is entitled to dividends, voting rights or other prerogatives of a stockholder.

In *Compagnie Financiere Sucre et Denrees vs. Commissioner of Internal Revenue*, G.R. No. 133834, 499 SCRA 664, 669 (2006), the Supreme Court ruled that the transfer or assignment of a deposit on stock subscription is subject to DST. What if the person made a deposit on future subscription? Is DST due? The Supreme Court faced this issue in *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*, **G.R. Nos. 172045-46, June 16, 2009.**

The Supreme Court held in the negative. According to the Supreme Court:

Sections 175 and 176 [now Section 174 and 175] of the Tax Code contemplate a subscription agreement in order for a taxpayer to be liable to pay the DST. A subscription contract is defined as any contract for the acquisition of unissued stocks in an existing corporation or a corporation still to be formed. A stock subscription is a contract by which the subscriber agrees to take a certain number of shares of the capital stock of a corporation, paying for the same or expressly or impliedly promising to pay for the same.

The Supreme Court noted that the Stockholder's Equity section of the taxpayer's balance sheet as of 31 December 1998 showed the following entries:

ATTY. RESCI ANGELLI RIZADA  
Lexoterica: Compilation of SC Rulings

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	1998	1997
Authorized Capital Stock	<u>P2,000,000.00</u>	<u>P2,000,000.00</u>
Paid-up Capital Stock	250,000.00	250,000.00
Deposit on Subscription	800,000.00	
Retained Earnings	62,820.34	209,607.20
Net Income	<u>(858,498.38)</u>	<u>(146,786.86)</u>
TOTAL	<u>P254,321.96</u>	<u>P312,820.34</u>

On the other hand, the taxpayer's General Information Sheet (GIS) states:

B. Financial Profile

1. Capital Structure :

AUTHORIZED – P2,000,000.00

SUBSCRIBED – 500,000.00

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Based on the taxpayer's audited financial statements and the testimony of its external auditor, the Supreme Court stated that there was no agreement to subscribe to unissued shares, and on this basis, the Supreme Court ruled that no DST was due:

Here, the deposit on stock subscription refers to an amount of money received by the corporation as a deposit with the possibility of applying the same as payment for the future issuance of capital stock . . .

Clearly, the deposit on stock subscription as reflected in respondent's Balance Sheet as of 1998 is not a subscription agreement subject to the payment of DST. There is no P800,000 worth of subscribed capital stock that is reflected in respondent's GIS. The deposit on stock subscription is merely an amount of money received by a corporation with a view of applying the same as payment for additional issuance of shares in the future, an event which may or may not happen. The person making a deposit on stock subscription does not have the standing of a stockholder and he is not

entitled to dividends, voting rights or other prerogatives and attributes of a stockholder. Hence, respondent is not liable for the payment of DST on its deposit on subscription for the reason that there is yet no subscription that creates rights and obligations between the subscriber and the corporation.

## May 2009 Decisions on Commercial, Tax and Labor Laws

Posted on [June 8, 2009](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#), [Labor Law](#), [Tax Law](#) • Tagged [abandonment](#), [appeal](#), [compensable illness](#), [due process](#), [employer-employee relationship](#), [independent contractor](#), [intra-corporate controversy](#), [loss of trust and confidence](#), [negotiable instruments](#), [serious misconduct](#), [tax evasion](#) •

Here are selected May 2009 decisions of the Supreme Court on commercial, tax and labor laws.

### Commercial Law

Collecting bank; liability. A collecting bank where a check is deposited, and which endorses the check upon presentment with the drawee bank, is an endorser. Under Section 66 of the Negotiable Instruments Law, an endorser warrants “that the instrument is genuine and in all respects what it purports to be; that he has good title to it; that all prior parties had capacity to contract; and that the instrument is at the time of his endorsement valid and subsisting.” The Supreme Court has repeatedly held that in check transactions, the collecting bank or last endorser generally suffers the loss because it has the duty to ascertain the genuineness of all prior endorsements considering that the act of presenting the check for payment to the drawee is an assertion that the party making the presentment has done its duty to ascertain the genuineness of the endorsements.

When Associated Bank stamped the back of the four checks with the phrase “all prior endorsements and/or lack of endorsement guaranteed,” that bank had for all intents and purposes treated the checks as negotiable instruments and, accordingly, assumed the warranty of an endorser. Being so, Associated Bank cannot deny liability on the checks. *Bank of America, NT and SA Vs. Associated Citizens Bank, et al./Associated Citizens Bank vs. BA Finance Corporation, et al.*, [G.R. Nos. 141001/141018, May 21, 2009](#). □ □ Crossed

check. Among the different types of checks issued by a drawer is the crossed check. The Negotiable Instruments Law is silent with respect to crossed checks, although the Code of Commerce makes reference to such instruments. The Supreme Court has taken judicial cognizance of the practice that a check with two parallel lines in the upper left hand corner means that it could only be deposited and could not be converted into cash. Thus, the effect of crossing a check relates to the mode of payment, meaning that the drawer had intended the check for deposit only by the rightful person, i.e., the payee named therein. The crossing may be “special” wherein between the two parallel lines is written the name of a bank or a business institution, in which case the drawee should pay only with the intervention of that bank or company, or “general” wherein between two parallel diagonal lines are written the words “and Co.” or none at all, in which case the drawee should not encash the same but merely accept the same for deposit. In *Bataan Cigar v. Court of Appeals*, the Supreme Court enumerated the effects of crossing a check as follows: (a) the check may not be encashed but only deposited in the bank; (b) the check may be negotiated only once – to one who has an account with a bank; and (c) the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose; otherwise, he is not a holder in due course. *Bank of America, NT and SA vs. Associated Citizens Bank, et al./Associated Citizens Bank vs. BA Finance Corporation, et al.*, [G.R. Nos. 141001/141018, May 21, 2009.](#)

Drawee bank; liability. The bank on which a check is drawn, known as the drawee bank, is under strict liability, based on the contract between the bank and its customer (drawer), to pay the check only to the payee or the payee’s order. The drawer’s instructions are reflected on the face and by the terms of the check. When the drawee bank pays a person other than the payee named on the check, it does not comply with the terms of the check and violates its duty to charge the drawer’s account only for properly payable items. Thus, the Supreme Court ruled in *Philippine National Bank vs. Rodriguez* that a drawee should charge to the drawer’s accounts only the payables authorized by the latter; otherwise, the drawee will be violating the instructions of the drawer and shall be liable for the amount charged to the drawer’s account. *Bank of America, NT and SA vs. Associated Citizens Bank, et al./Associated Citizens Bank Vs. BA Finance Corporation, et al.*, [G.R. Nos. 141001/141018, May 21, 2009.](#)

Intra-corporate controversy. There is no question that the prayers for the appointment of a management receiver, the nullification and amendment of certain provisions of PEAC's articles of incorporation and by-laws, the recognition of the election of respondent Filchart's directors, as well as the inspection of the corporate books, are intra-corporate in nature as they pertain to the regulation of corporate affairs.

Even the issue of respondent Filchart's status as stockholder in PEAC and, concomitantly, its capacity to file SEC Case No. 08-97-5746 must be threshed out in the intra-corporate proceedings. Petitioner GD Express' allegation that respondent Filchart has not fully paid its subscription to the shares in PEAC and, thus, cannot claim to be a stockholder in PEAC does not oust the SCC of its jurisdiction over the case. For the purpose of determining whether SEC Case No. 08-97-5746 should be heard as an intra-corporate proceeding, the allegation in respondent Filchart's petition that it is a stockholder in PEAC is deemed hypothetically admitted. It is only after a full-blown hearing that the SCC may determine whether respondent Filchart's may be considered a bona fide stockholder of PEAC and is entitled to the reliefs prayed for in its petition.

However, in view of the transfer of jurisdiction over intra-corporate disputes from the SEC to the SCCs, which are the same RTCs exercising general jurisdiction, the question of jurisdiction is no longer decisive to the resolution of the instant case. *GD Express Worldwide N.V., et al. vs. Court of Appeals, et al.*, **G.R. No. 136978, May 8, 2009.**

## **Tax Law**

Tax evasions; tax assessment. A tax assessment is not required before the Department of Justice can file a criminal complaint for tax evasion. *Lucas G. Adamson, et al. vs. Court of Appeals, et al./Commissioner of Internal Revenue vs. Court of Appeals, et al.*, **G.R. Nos. 120935/124557, May 21, 2009.**

## **Labor Law**

Abandonment. It is well settled that abandonment as a just and valid ground for dismissal requires the deliberate and unjustified refusal of the employee



to return for work. Two elements must be present, namely: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship. The second element is more determinative of the intent and must be evinced by overt acts. Mere absence, not being sufficient, the burden of proof rests upon the employer to show that the employee clearly and deliberately intended to discontinue her employment without any intention of returning. In *Samarca v. Arc-Men Industries, Inc.*, the Supreme Court held that abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts.

To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. Clearly, the operative act is still the employee's ultimate act of putting an end to his employment. However, an employee who takes steps to protest her layoff cannot be said to have abandoned her work because a charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal, more so when it includes a prayer for reinstatement. When Eleonor filed the illegal dismissal complaint, it totally negated petitioner's theory of abandonment.

Also, to effectively dismiss an employee for abandonment, the employer must comply with the due process requirement of sending notices to the employee. In *Brahm Industries, Inc. vs. NLRC*, the Supreme Court ruled that this requirement is not a mere formality that may be dispensed with at will. Its disregard is a matter of serious concern since it constitutes a safeguard of the highest order in response to man's innate sense of justice. Petitioner was not able to send the necessary notice requirement to Eleonor. Petitioner's belated claim that it was not able to send the notice of infraction prior to the filing of the illegal dismissal case cannot simply be unacceptable. Based on the foregoing, Eleonor did not abandon her work. *South Davao Development Company, Inc., et al. vs. Sergio L. Gamo, et al.*, [G.R. No. 171814, May 8, 2009.](#)

Appeal to DOLE Secretary; appeal bond. The purpose of an appeal bond is to ensure, during the period of appeal, against any occurrence that would defeat or diminish recovery by the aggrieved employees under the judgment if subsequently affirmed. The Deed of Assignment in the instant case, like a cash or surety bond, serves the same purpose. First, the Deed of Assignment constitutes not just a partial amount, but rather the entire award in the

appealed Order. Second, it is clear from the Deed of Assignment that the entire amount is under the full control of the bank, and not of petitioner, and is in fact payable to the DOLE Regional Office, to be withdrawn by the same office after it had issued a writ of execution. For all intents and purposes, the Deed of Assignment in tandem with the Letter Agreement and Cash Voucher is as good as cash. Third, the execution of the Deed of Assignment, the Letter Agreement and the Cash Voucher were made in good faith, and constituted clear manifestation of petitioner's willingness to pay the judgment amount. *People's Broadcasting vs. The Secretary of the Department of Labor and Employment, et al.*, [G.R. No. 179652, May 8, 2009](#).

Appeal; private carrier. In this case, petitioner availed of the services of LBC, a private carrier, to deliver its notice of appeal to the NLRC. Had petitioner sent its notice of appeal by registered mail, the date of mailing would have been deemed the date of filing with the NLRC. But petitioner, for reasons of its own, chose to send its notice of appeal through a private letter-forwarding agency. Therefore, the date of actual receipt by the NLRC of the notice of appeal, and not the date of delivery to LBC, is deemed to be the date of the filing of the notice of appeal. Since the NLRC received petitioner's notice of appeal on 26 February 2001, the appeal was clearly filed out of time. Petitioner had thus lost its right to appeal from the decision of the Labor Arbiter and the NLRC should have dismissed its notice of appeal. *Charter Chemical and Coating Corporation vs. Herbert Tan and Amalia Sonsing*, [G.R. No. 163891, May 21, 2009](#).

Compensable illness; definition. P.D. No. 626, as amended, defines compensable sickness as "any illness definitely accepted as an occupational disease listed by the Commission, or any illness caused by employment subject to proof by the employee that the risk of contracting the same is increased by the working conditions." Under Section 1 (b), Rule III, of the Amended Rules on Employees' Compensation, for the sickness and the resulting disability or death to be compensable, the same must be an "occupational disease" included in the list provided (Annex "A"), with the conditions set therein satisfied; otherwise, the claimant must show proof that the risk of contracting it is increased by the working conditions. Otherwise stated, for sickness and the resulting death of an employee to be compensable, the claimant must show either: (1) that it is a result of an occupational disease listed under Annex "A" of the Amended Rules on

Employees' Compensation with the conditions set therein satisfied; or (2) if not so listed, that the risk of contracting the disease is increased by the working conditions.

Here, the CA correctly considered Cardiopulmonary Arrest T/C Fatal Arrhythmia in this case a cardiovascular disease – a listed disease under Annex “A” of the Amended Rules on Employees' Compensation. The Death Certificate of Judge Vicencio clearly indicates that the cause of his death is Cardiopulmonary Arrest T/C Fatal Arrhythmia. Whether, however, the same was a mere complication of his lung cancer as contended by petitioner GSIS or related to an underlying cardiovascular disease is not established by the records of this case and, thus, remains uncertain. The Supreme Court held that Cardiopulmonary Arrest T/C Fatal Arrhythmia, the cause of death stated in Judge Vicencio's Death Certificate, should be considered as a cardiovascular disease – a listed disease under Annex “A” of the Amended Rules on Employees' Compensation. *Government Service Insurance System vs. Marian T. Vicencio*, [G.R. No. 176832, May 21, 2009.](#)

Compensable illness; evidence. The degree of proof required under P.D. No. 626 is merely substantial evidence, or “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” The Supreme Court has repeatedly held that to prove compensability, the claimant must adequately show that the development of the disease is brought largely by the conditions present in the nature of the job. What the law requires is a reasonable work-connection and not a direct causal relation. It is enough that the hypothesis on which the workmen's claim is based is probable. Medical opinion to the contrary can be disregarded especially where there is some basis in the facts for inferring a work-connection. Probability, not certainty, is the touchstone. *Government Service Insurance System (GSIS) vs. Teresita S. De Guzman*, [G.R. No. 173049, May 21, 2009.](#)

Due process. Respondent was given ample opportunity to explain and rebut the evidence against him. A full adversarial hearing was not required. The essence of due process is simply the opportunity to be heard. As applied in administrative proceedings, it is merely an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.

Petitioners complied with the twin-notice requirement. The notice dated October 17, 2000 served on respondent was the written notice specifying the charges against him. The subsequent notice dated February 7, 2001 (notice of adjudication specifying therein the causes for respondent's termination and the decision to dismiss him) served as the written notice of termination. In view of respondent's valid dismissal due to serious misconduct and loss of trust and confidence, respondent is not entitled to separation pay. *Telecommunications Distributors Specialist, Inc., et al. vs. Raymund Garriel*, [G.R. No. 174981, May 25, 2009.](#)

Employer-employee relationship; evidence. It has long been established that in administrative and quasi-judicial proceedings, substantial evidence is sufficient as a basis for judgment on the existence of employer-employee relationship. Substantial evidence, which is the quantum of proof required in labor cases, is "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." No particular form of evidence is required to prove the existence of such employer-employee relationship. Any competent and relevant evidence to prove the relationship may be admitted. Hence, while no particular form of evidence is required, a finding that such relationship exists must still rest on some substantial evidence. Moreover, the substantiality of the evidence depends on its quantitative as well as its qualitative aspects.

In the instant case, save for respondent's self-serving allegations and self-defeating evidence, there is no substantial basis to warrant the Regional Director's finding that respondent is an employee of petitioner. *People's Broadcasting vs. The Secretary of the Department of Labor and Employment, et al.*, [G.R. No. 179652, May 8, 2009.](#)

Employer-employee relationship; existence. In order to determine the existence of an employer-employee relationship, the Court has frequently applied the four-fold test: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so called "control test," which is considered the most important element.

From the time they were hired by petitioner corporation up to the time that they were reassigned to work under Gamo's supervision, their status as

petitioner corporation's employees did not cease. Likewise, payment of their wages was merely coursed through Gamo. As to the most determinative test—the power of control, it is sufficient that the power to control the manner of doing the work exists, it does not require the actual exercise of such power. In this case, it was in the exercise of its power of control when petitioner corporation transferred the copra workers from their previous assignments to work as copraceros. It was also in the exercise of the same power that petitioner corporation put Gamo in charge of the copra workers although under a different payment scheme. Thus, it is clear that an employer-employee relationship has existed between petitioner corporation and respondents since the beginning and such relationship did not cease despite their reassignments and the change of payment scheme. *South Davao Development Company, Inc., et al. vs. Sergio L. Gamo, et al.*, [G.R. No. 171814, May 8, 2009.](#)

Employer-employee relationship; power of DOLE to determine. The DOLE in the exercise of its visitorial and enforcement power somehow has to make a determination of the existence of an employer-employee relationship. Such prerogative determination, however, cannot be coextensive with the visitorial and enforcement power itself. Indeed, such determination is merely preliminary, incidental and collateral to the DOLE's primary function of enforcing labor standards provisions. The determination of the existence of employer-employee relationship is still primarily lodged with the NLRC. This is the meaning of the clause “in cases where the relationship of employer-employee still exists” in Art. 128 (b).

Thus, before the DOLE may exercise its powers under Article 128, two important questions must be resolved: (1) Does the employer-employee relationship still exist, or alternatively, was there ever an employer-employee relationship to speak of; and (2) Are there violations of the Labor Code or of any labor law? The existence of an employer-employee relationship is a statutory prerequisite to and a limitation on the power of the Secretary of Labor, one which the legislative branch is entitled to impose.

The rationale underlying this limitation is to eliminate the prospect of competing conclusions of the Secretary of Labor and the NLRC, on a matter fraught with questions of fact and law, which is best resolved by the quasi-judicial body, which is the NRLC, rather than an administrative official of the executive branch of the government. If the Secretary of Labor proceeds

to exercise his visitorial and enforcement powers absent the first requisite, as the dissent proposes, his office confers jurisdiction on itself which it cannot otherwise acquire. *People's Broadcasting vs. The Secretary of the Department of Labor and Employment, et al.*, [G.R. No. 179652, May 8, 2009.](#)

Independent contractor. There is permissible job contracting when a principal agrees to put out or farm out with a contractor or a subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job or work service is to be performed within or outside the premises of the principal. To establish the existence of an independent contractor, we apply the following conditions: first, the contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except to the result thereof; and second, the contractor has substantial capital or investments in the form of tools, equipment, machineries, work premises and other materials which are necessary in the conduct of his business.

The Implementing Rules and Regulation of the Labor Code defines investment—as tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work, or service contracted out. The investment must be sufficient to carry out the job at hand.

In the case at bar, Gamo and the copra workers did not exercise independent judgment in the performance of their tasks. The tools used by Gamo and his copra workers like the karit, bolo, pangbunot, panglugit and pangtapok are not sufficient to enable them to complete the job. Reliance on these primitive tools is not enough. In fact, the accomplishment of their task required more expensive machineries and equipment, like the trucks to haul the harvests and the drying facility, which petitioner corporation owns. *South Davao Development Company, Inc., et al. vs. Sergio L. Gamo, et al.*, [G.R. No. 171814, May 8, 2009.](#)

Loss of trust and confidence. Petitioner cites Article 282 of the Labor Code,



specifically loss of trust and confidence as the ground for validly dismissing respondent. Under the law, loss of confidence must be based on “fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.” In this regard, the Supreme Court has ruled that ordinary breach does not suffice. A breach of trust is willful if it is done intentionally, knowingly and purposely, without any justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.

Here, respondent was investigated on and dismissed for misappropriation of company funds through falsification of company documents, as shown in the termination letter. Records, nevertheless, neither showed nor convinced us that there was misappropriation of funds that benefited anybody which warranted the dismissal of respondent for the first offense. Respondent admittedly committed padding of accounts and/or paper renewal, which respondent claims to be a practice among salesmen and such claim was not disputed by petitioner. The paper renewal committed by respondent may be considered as falsification, but we agree with the Labor Arbiter and the CA that such paper renewal did not amount to misappropriation that could justify outright dismissal for the first offense, as what petitioner did to respondent. Otherwise, the company rules would not have separated these two offenses under Rule Nos. 15 and 16. Besides, we agree with the CA that although petitioner did in fact violate company Rule No. 15 by falsifying company records and documents through paper renewal, such falsification has to be qualified. *San Miguel Corporation vs. NLRC, et al.*, [G.R. No. 153983, May 26, 2009.](#)

Serious misconduct. Respondent’s acts of forging subscribers’ signatures, attempting to cover up his failure to secure their signatures on the coverage waivers, selling a personally owned mobile phone to a company customer (a defective one at that) and attempting to connive with other employees to cover up his illicit schemes were serious acts of dishonesty. Respondent’s acts clearly constituted serious misconduct which is a ground for termination of employment by an employer. Respondent’s acts were likewise grounds for loss of trust and confidence, another valid cause for termination of employment. Only employees occupying positions of trust and confidence or those who are routinely charged with the care and custody of the employer’s money or property may be validly dismissed for this reason. *Telecommunications Distributors Specialist, Inc., et al. vs. Raymund*

*Garriel*, [G.R. No. 174981](#), [May 25, 2009](#).

## Formal tax assesssment as a pre-requisite to a criminal complaint for tax evasion

Posted on [June 4, 2009](#) by [Hector M. de Leon Jr.](#) • Posted in [Tax Law](#) • Tagged [assessment](#), [Court of Tax Appeals](#), [tax evasion](#) •

Is a tax assessment required before the Department of Justice can file a criminal complaint for tax evasion against a taxpayer?

In the May 21, 2009 case of *Lucas G. Adamson, et al. vs. Court of Appeals, et al./Commissioner of Internal Revenue vs. Court of Appeals, et al.*, the Supreme Court, citing Section 222 of the Tax Code, ruled in the negative. Section 222 provides:

Exceptions as to period of limitation of assessment and collection of taxes.-

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court after the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for collection thereof...

The Supreme Court ruled:

The law is clear. When fraudulent tax returns are involved as in the cases at bar, a proceeding in court after the collection of such tax may be begun without assessment. Here, the private respondents had already filed the capital gains tax return and the VAT returns, and paid the taxes they have

declared due therefrom. Upon investigation of the examiners of the BIR, there was a preliminary finding of gross discrepancy in the computation of the capital gains taxes due from the sale of two lots of AAI shares, first to APAC and then to APAC Philippines, Limited. The examiners also found that the VAT had not been paid for VAT-liable sale of services for the third and fourth quarters of 1990. Arguably, the gross disparity in the taxes due and the amounts actually declared by the private respondents constitutes badges of fraud.

Citing Mertens, the Supreme Court stated:

An assessment of a deficiency is not necessary to a criminal prosecution for willful attempt to defeat and evade the income tax. A crime is complete when the violator has knowingly and willfully filed a fraudulent return, with intent to evade and defeat the tax. The perpetration of the crime is grounded upon knowledge on the part of the taxpayer that he has made an inaccurate return, and the government's failure to discover the error and promptly to assess has no connections with the commission of the crime.

On the issue of whether a letter of the Commissioner of Internal Revenue addressed to the Secretary of the DOJ recommending the filing of criminal complaints against the taxpayers for fraudulent returns and tax evasion constitutes a formal assessment, the Supreme Court also ruled in the negative. According to the Supreme Court:

In the context in which it is used in the NIRC, an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed. A written communication containing a computation by a revenue officer of the tax liability of a taxpayer and giving him an opportunity to contest or disprove the BIR examiner's findings is not an assessment since it is yet indefinite.

We rule that the recommendation letter of the Commissioner cannot be considered a formal assessment. Even a cursory perusal of the said letter would reveal three key points:

1. It was not addressed to the taxpayers.

2. There was no demand made on the taxpayers to pay the tax liability, nor a period for payment set therein.

3. The letter was never mailed or sent to the taxpayers by the Commissioner.

In fine, the said recommendation letter served merely as the prima facie basis for filing criminal informations that the taxpayers had violated Section 45 (a) and (d), and 110, in relation to Section 100, as penalized under Section 255, and for violation of Section 253, in relation to Section 252 9(b) and (d) of the Tax Code.

On the issue of whether the CTA has jurisdiction to take cognizance of both the criminal and civil cases, the Supreme Court ruled that Republic Act No. 1125, as amended by Republic Act No. 8424 and Republic Act No. 9282 “expanded the jurisdiction of the CTA” but “they did not change the jurisdiction of the CTA to entertain an appeal only from a final decision or assessment of the Commissioner, or in cases where the Commissioner has not acted within the period prescribed by the NIRC. In the cases at bar, the Commissioner has not issued an assessment of the tax liability of private respondents.”

*Lucas G. Adamson, et al. vs. Court of Appeals, et al./Commissioner of Internal Revenue vs. Court of Appeals, et al., [G.R. Nos. 120935/124557, May 21, 2009.](#)*

## April 2009 Decisions on Commercial, Labor and Tax Laws

Posted on [May 26, 2009](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#), [Constitutional Law](#), [Labor Law](#), [Tax Law](#) • Tagged [abandonment](#), [backwages](#), [bidding](#), [breach of trust](#), [CBA](#), [dividends](#), [due process](#), [equal protection](#), [excise tax](#), [holdover](#), [illegal dismissal](#), [insurance](#), [intra-corporate controversy](#), [intra-union dispute](#), [loss of confidence](#), [non-stock corporation](#), [pawnshop](#), [prescription](#), [real property tax](#), [resignation](#), [security of tenure](#), [SSS](#), [stamp tax](#), [unfair competition](#), [unfair labor practice](#), [value added tax](#) •

Here are selected April 2009 decisions of the Supreme Court on commercial, labor and tax laws:

## Commercial Law

BOT; public bidding. In a situation where there is no other competitive bid submitted for the BOT project, that project would be awarded to the original proponent thereof. However, when there are competitive bids submitted, the original proponent must be able to match the most advantageous or lowest bid; only when it is able to do so will the original proponent enjoy the preferential right to the award of the project over the other bidder. These are the general circumstances covered by Section 4-A of Republic Act No. 6957, as amended. In the instant case, AEDC may be the original proponent of the NAIA IPT III Project; however, the Pre-Qualification Bids and Awards Committee (PBAC) also found the People's Air Cargo & Warehousing Co., Inc. Consortium (Paircargo), the predecessor of PIATCO, to be a qualified bidder for the project. Upon consideration of the bid of Paircargo/PIATCO, the PBAC found the same to be far more advantageous than the original offer of AEDC. It is already an established fact in *Agan* that AEDC failed to match the more advantageous proposal submitted by PIATCO by the time the 30-day working period expired on 28 November 1996; and since it did not exercise its right to match the most advantageous proposal within the prescribed period, it cannot assert its right to be awarded the project. *Asia's Emerging Dragon Corp. vs. DOTC, et al./Republic of the Philippines etc. et al. vs. Hon. CA, et al.*, **G.R. No. 169914/G.R. No. 174166**, April 7, 2009.

Dividends. Dividends are payable to the stockholders of record as of the date of the declaration of dividends or holders of record on a certain future date, as the case may be, unless the parties have agreed otherwise. A transfer of shares which is not recorded in the books of the corporation is valid only as between the parties; hence, the transferor has the right to dividends as against the corporation without notice of transfer but it serves as trustee of the real owner of the dividends, subject to the contract between the transferor and transferee as to who is entitled to receive the dividends. *Imelda O. Cojuangco, Prime Holdings, Inc., and the Estate of Ramon U. Cojuangco vs. Sandiganbayan, Republic of the Philippines and the Sheriff of Sandiganbayan*, G.R. No. 183278, April 24, 2009.

Holdover. As a general rule, officers and directors of a corporation hold over after the expiration of their terms until such time as their successors are elected or appointed. Sec. 23 of the Corporation Code contains a provision

to this effect. The holdover doctrine has, to be sure, a purpose which is at once legal as it is practical. It accords validity to what would otherwise be deemed as dubious corporate acts and gives continuity to a corporate enterprise in its relation to outsiders.

Authorities are almost unanimous that one who continues with the discharge of the functions of an office after the expiration of his or her legal term—no successor having, in the meantime, been appointed or chosen—is commonly regarded as a *de facto* officer, even where no provision is made by law for his holding over and there is nothing to indicate the contrary. By fiction of law, the acts of such *de facto* officer are considered valid and effective. *Dr. Hans Christian M. Señeres vs. Commission on Elections and Melquiades A. Robles*, G.R. No. 178678, April 16, 2009.

Insurance Contract. It is settled that where the insurance contract provides for indemnity against liability to third persons, the liability of the insurer is direct and such third persons can directly sue the insurer. The direct liability of the insurer under indemnity contracts against third party liability does not mean, however, that the insurer can be held solidarily liable with the insured and/or the other parties found at fault, since they are being held liable under different obligations. The liability of the insured carrier or vehicle owner is based on tort, in accordance with the provisions of the Civil Code; while that of the insurer arises from contract, particularly, the insurance policy. The third-party liability of the insurer is only up to the extent of the insurance policy and that required by law; and it cannot be held solidarily liable for anything beyond that amount. Any award beyond the insurance coverage would already be the sole liability of the insured and/or the other parties at fault. *The Heirs of George Y. Poe vs. Malayan Insurance Co. Inc.*, **G.R. No. 156302, April 7, 2009.**

Intra-corporate controversy. A corporate officer's dismissal or removal is always a corporate act and/or an intra-corporate controversy, over which the Securities and Exchange Commission [SEC] (now the Regional Trial Court) has original and exclusive jurisdiction. *Atty. Virgilio R. Garcia vs. Eastern Telecommunications Philippines, Inc. et al./Eastern Telecommunications Philippines Inc. vs. Atty. Virgilio R. Garcia*, **G.R. No. 173115/G.R. No.**



173163-64, April 16, 2009.

Non-stock corporations. A non-stock corporation may seize and dispose of the membership share of a fully-paid member on account of its unpaid debts to the corporation when it is authorized to do so under the corporate by-laws (even if not so provided in the Articles of Incorporation). *Valley Golf & Country Club, Inc. vs. Rosa O. Vda. Caram*, G.R. No. 158805, April 16, 2009.

Liability of corporate officers. Article 212(e) of the Labor Code, by itself, does not make a corporate officer personally liable for the debts of the corporation because Section 31 of the Corporation Code is still the governing law on personal liability of officers for the debts of the corporation. There was no showing of David willingly and knowingly voting for or assenting to patently unlawful acts of the corporation, or that David was guilty of gross negligence or bad faith. *Armando David vs. National Federation of Labor Union, et al.*, G.R. No. 148263 and 148271-72, April 21, 2009.

## **Labor Law**

Backwages. The Court agrees with the NLRC's conclusion that petitioner is not entitled to backwages. He never bothered to redeem his driver's license at the soonest possible time when there was no showing that he was unlawfully prevented by respondent from doing so. Thus, petitioner should not be paid for the time he was not working. The Court has held that where the failure of employees to work was not due to the employer's fault, the burden of economic loss suffered by the employees should not be shifted to the employer. Each party must bear his own loss. It would be unfair to allow petitioner to recover something he has not earned and could not have earned, since he could not discharge his work as a driver without his driver's license. Respondent should be exempted from the burden of paying backwages. *Bernardino V. Navarro vs. P.V. Pajarillo Liner and NLRC*, G.R. No. 164681, April 24, 2009.

Breach of trust. The documentary evidence of petitioner indubitably establishes that respondent committed payroll padding, sold canepoints without the knowledge and consent of management and misappropriated the

proceeds thereof, and rented tractor to another farm and misappropriated the rental payments therefor. These acts constitute willful breach by the employee of the trust reposed in him by his employer – a ground for termination of employment. *Bacolod-Talisay Realty and Development Corp., et al. vs. Romeo Dela Cruz*, **G.R. No. 179563, April 30, 2009**.

CBA. Just like any other contract, a CBA is the law between the contracting parties and compliance therewith in good faith is required by law. *HFS Philippines, Inc., Ruben T. Del Rosario and IUM Ship Management vs. Ronaldo R. Pilar*, **G.R. No. 168716, April 16, 2009**.

Due process. The Court of Appeals correctly held that petitioners did not comply with the proper procedure in dismissing respondent. In other words, petitioners failed to afford respondent due process by failing to comply with the twin notice requirement in dismissing him, viz: (1) a first notice to apprise him of his fault, and (2) a second notice to him that his employment is being terminated. The letter dated June 3, 1997 sent to respondent was a letter of suspension. It did not comply with the required first notice, the purpose of which is to apprise the employee of the cause for termination and to give him reasonable opportunity to explain his side. The confrontation before the *barangay* council did not constitute the first notice – to give the employee ample opportunity to be heard with the assistance of counsel, if he so desires. Hearings before the *barangay* council do not afford the employee ample opportunity to be represented by counsel if he so desires because Section 415 of the Local Government Code mandates that “[i]n all *katarungang pambarangay* proceedings, the parties must appear in person without the assistance of counsel or his representatives, except for minors and incompetents who may be assisted by their next-of-kin who are not lawyers.” The requirement of giving respondent the first notice not having been complied with, discussions of whether the second notice was complied with is rendered unnecessary. *Bacolod-Talisay Realty and Development Corp., et al. vs. Romeo Dela Cruz*, **G.R. No. 179563, April 30, 2009**.

Due process; lack of jurisdiction. The proceedings before the Labor Arbiter deprived David of due process. MACLU and NAFLU filed their complaint against MAC on 12 August 1993. Arbiter Ortiguerra’s decision shows that MACLU, NAFLU, and MAC were the only parties summoned to a conference for a possible settlement. Because of MAC’s failure to

appear, Arbiter Ortiguerra deemed the case submitted for resolution. David's resignation from MAC took effect on 15 October 1993. NAFLU and MACLU moved to implead Carag and David for the first time only in their position paper dated 3 January 1994. David did not receive any summons and had no knowledge of the decision against him. The records of the present case fail to show any order from Arbiter Ortiguerra summoning David to attend the preliminary conference. Despite this lack of summons, in her Decision dated 17 June 1994, Arbiter Ortiguerra not only granted MACLU and NAFLU's motion to implead Carag and David, she also held Carag and David solidarily liable with MAC. *Armando David vs.. National Federation of Labor Union, et al*, G.R. No. 148263 and 148271-72, April 21, 2009.

Hearing. The guiding principles in connection with the hearing requirement in dismissal cases are:

(a) “ample opportunity to be heard” means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way;

(b) a formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it;

(c) the “ample opportunity to be heard” standard in the Labor Code prevails over the “hearing or conference” requirement in the implementing rules and regulations. *Felix B. Perez, et al. Vs. Philippine Telegraph and Telephone Company*, G.R. No. 152048, April 7, 2009.

Illegal dismissal; abandonment. Petitioner insists that there cannot be any illegal dismissal because in the first place, there was no dismissal to speak of, as it was respondent who abandoned his work, after finding out that he was being investigated for theft. It is a basic principle that in the dismissal of employees, the burden of proof rests upon the employer to show that the dismissal is for a just cause and failure to do so would necessarily mean that the dismissal is not justified. Petitioner failed to discharge the burden of

proof that complainant was guilty of abandonment. It did not adduce any proof to show that petitioner clearly and unequivocally intended to abandon his job. It has been repeatedly stressed that for abandonment to be a valid cause for dismissal there must be a concurrence of intention to abandon and some overt act from which it may be inferred that the employee had no more interest to continue working in his job. An employee who forthwith takes steps to protest his layoff cannot by any logic be said to have abandoned his work. Otherwise stated, one could not possibly abandon his work and shortly thereafter vigorously pursue his complaint for illegal dismissal. In the instant case, save for the allegation that respondent did not submit him to the investigation and the latter's failure to return to work as instructed in the 8 February 1999 letter, petitioner was unable to present any evidence which tend to show respondent's intent to abandon his work. Neither is the Court convinced that the filing of the illegal dismissal case was respondent's way to avoid the charge of theft. On the contrary, the filing of the complaint a few days after his alleged dismissal signified respondent's desire to return to work, a factor which further militates against petitioner's theory of abandonment. *Harbor View Restaurant vs. Reynaldo Labro*, G.R. No. 168273, April 30, 2009.

Illegal dismissal; burden of proof. Under the Labor Code, as amended, the requirements for the lawful dismissal of an employee are two-fold, the substantive and the procedural. Not only must the dismissal be for a valid or authorized cause, the rudimentary requirements of due process – notice and hearing – must, likewise, be observed before an employee may be dismissed. One does not suffice; without their concurrence, the termination would, in the eyes of the law, be illegal.

As the employer, petitioner has the burden of proving that the dismissal of petitioner was for a cause allowed under the law and that petitioner was afforded procedural due process. Petitioner failed to discharge this burden. Indeed, it failed to show any valid or authorized cause under the Labor Code which allowed it to terminate the services of individual respondents. Neither did petitioner show that individual respondents were given ample opportunity to contest the legality of their dismissal. No notice of such impending termination was ever given to them. Individual respondents were definitely denied due process. Having failed to establish compliance with the requirements on termination of employment under the Labor Code, the dismissal of individual respondents was tainted with

illegality. *Iligan Cement Corporation vs. Iliascor Employees and Workers Union-Southern Philippines Federation of Labor, et al.*, G.R. No. 158956, April 24, 2009.

Illegal dismissal; penalty. The worst that respondent committed was an inadvertent infraction. For that, the extreme penalty of dismissal imposed on him by petitioners was grossly disproportionate. Taking into account the managerial position he held and the prior warning issued to him for failing to communicate with his superiors, the penalty commensurate to the violation he committed should be suspension for three months. *Gulf Air Jassim Hindri Abdullah, et al. vs. NLRC, et al.*, G.R. No. 159687, April 24, 2009.

Intra-union dispute. Pending the final resolution of the intra-union dispute, respondent's officers remained duly authorized to conduct union affairs. *De La Salle University, et al. vs. De La Salle University Employees Association (DLSUEA-NAFTEU)*, G.R. No. 177283, April 7, 2009.

Labor only contracting. We are not convinced that Vedali is an independent contractor. Petitioner failed to present any service contract with Vedali in the proceedings with the Labor Arbiter. There is nothing on record that Vedali has a substantial capital or investment to actually perform the service under its own account and responsibility. Petitioner is a mere labor-only contractor because it only supplied workers to petitioner to work at its pier. In a labor-only contract, there are three parties involved: (1) the "labor-only" contractor; (2) the employee who is ostensibly under the employ of the "labor-only" contractor; and (3) the principal who is deemed the real employer. Under this scheme, the "labor-only" contractor is the agent of the principal. *Iligan Cement Corporation vs. Iliascor Employees and Workers Union-Southern Philippines Federation of Labor, et al.*, G.R. No. 158956, April 24, 2009.

Liability of corporate officers. Article 212(e) of the Labor Code, by itself, does not make a corporate officer personally liable for the debts of the corporation because Section 31 of the Corporation Code is still the governing law on personal liability of officers for the debts of the corporation. There was no showing of David willingly and knowingly voting for or assenting to patently unlawful acts of the corporation, or that David was guilty of gross negligence or bad faith. *Armando David vs.*

*National Federation of Labor Union, et al*, G.R. No. 148263 and 148271-72, April 21, 2009.

Loss of confidence. Loss of trust and confidence, as a valid ground for dismissal, must be based on willful breach of the trust reposed in the employee by his employer. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. Elsewise stated, it must be based on substantial evidence and not on the employer's whims or caprices or suspicions; otherwise, the employee would eternally remain at the mercy of the employer. A condemnation of dishonesty and disloyalty cannot arise from suspicion spawned by speculative inferences. *Adam B. Garcia vs. NLRC (Second Division) Legazpi Oil Company, Inc. Romeo F. Mercado and Gus Zuluaga*, G.R. No. 172854, April 16, 2009.

Loss of Confidence. Without undermining the importance of a shipping order or request, the respondents' evidence is insufficient to clearly and convincingly establish the facts from which the loss of confidence resulted. Other than their bare allegations and the fact that such documents came into petitioners' hands at some point, respondents should have provided evidence of petitioners' functions, the extent of their duties, the procedure in the handling and approval of shipping requests and the fact that no personnel other than petitioners were involved. There was, therefore, a patent paucity of proof connecting petitioners to the alleged tampering of shipping documents. The alterations on the shipping documents could not reasonably be attributed to petitioners because it was never proven that petitioners alone had control of or access to these documents. Unless duly proved or sufficiently substantiated otherwise, impartial tribunals should not rely only on the statement of the employer that it has lost confidence in its employee. *Felix B. Perez, et al. vs. Philippine Telegraph and Telephone Company*, G.R. No. 152048, April 7, 2009.

Prescription. Articles 1139 to 1155 of the Civil Code provide the general law on prescription of actions. Under Article 1139, actions prescribe by the mere lapse of time prescribed by law. That law may either be the Civil Code or special laws as specifically mandated by Article 1148. In labor cases, the special law on prescription is Article 291 of the Labor Code. The Labor Code has no specific provision on when a monetary claim accrues. Thus,



again the general law on prescription applies – Article 1150 of the Civil Code. *Juanaria A. Rivera vs. United Laboratories, Inc.*, G.R. No. 155639, April 22, 2009.

Resignation. Resignation is defined as the voluntary act of an employee who finds himself in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service and he has no other choice but to disassociate himself from his employment. Respondent's resignation can be gleaned from the unambiguous terms of his letter to Captain Cristino. Respondent's bare claim that he was forced to execute his resignation letter deserves no merit. Bare allegations of threat or force do not constitute substantial evidence to support a finding of forced resignation. That such claim was proffered a year later all the more renders his contention bereft of merit. *Virgen Shipping Corporation, et al. vs. Jesus B. Barraquio*, G.R. No. 178127, April 16, 2009.

Resignation. Petitioner voluntarily resigned. Her employer cannot be held liable for constructive dismissal. *Gloria Artiaga vs. Siliman University and Siliman University Medical Center*, G.R. No. 178453, April 16, 2009.

Security of Tenure. Security of tenure in the career executive service, which presupposes a permanent appointment, takes place upon passing the CES examinations administered by the CES Board. It is that which entitles the examinee to conferment of CES eligibility and the inclusion of his name in the roster of CES eligibles. Under the rules and regulations promulgated by the CES Board, conferment of the CES eligibility is done by the CES Board through a formal board resolution after an evaluation has been done of the examinee's performance in the four stages of the CES eligibility examinations. Upon conferment of CES eligibility and compliance with the other requirements prescribed by the Board, an incumbent of a CES position may qualify for appointment to a CES rank. Appointment to a CES rank is made by the President upon the Board's recommendation. It is this process which completes the official's membership in the CES and confers on him security of tenure in the CES. Petitioner does not seem to have gone through this definitive process.

At this juncture, what comes unmistakably clear is the fact that because petitioner lacked the proper CES eligibility and therefore had not held the

subject office in a permanent capacity, there could not have been any violation of petitioner's supposed right to security of tenure inasmuch as he had never been in possession of the said right at least during his tenure as Deputy Director for Hospital Support Services. Hence, no challenge may be offered against his separation from office even if it be for no cause and at a moment's notice. Not even his own self-serving claim that he was competent to continue serving as Deputy Director may actually and legally give even the slightest semblance of authority to his thesis that he should remain in office. Be that as it may, it bears emphasis that, in any case, the mere fact that an employee is a CES eligible does not automatically operate to vest security of tenure on the appointee inasmuch as the security of tenure of employees in the career executive service, except first and second-level employees, pertains only to rank and not to the office or position to which they may be appointed. *Jose Pepito M. Amores M.D. vs. Civil Service Commission, Board of Trustees of the Lung Center of the Philippines as represented by Hon. Manuel M. Dayrit and Fernando A. Melendres, M.D., G.R. No. 170093, April 29, 2009*

SSS. The claim for funeral benefits under P.D. No. 626, as amended, which was filed after the lapse of 10 years by the therein petitioner who had earlier filed a claim for death benefits, had *not* prescribed. *Soledad Muños Mesa vs. Social Security System, et al., G.R. No. 160467, April 7, 2009.*

Transfer. Jurisprudence recognizes the exercise of management prerogative to transfer or assign employees from one office or area of operation to another, provided there is no demotion in rank or diminution of salary, benefits, and other privileges, and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause. To determine the validity of the transfer of employees, the employer must show that the transfer is not unreasonable, inconvenient, or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal.

We have long stated that the objection to the transfer being grounded solely upon the personal inconvenience or hardship that will be caused to the employee by reason of the transfer is not a valid reason to disobey an order of transfer. Such being the case, petitioner cannot adamantly refuse to abide

by the order of transfer without exposing herself to the risk of being dismissed. Hence, her dismissal was for just cause in accordance with Article 282(a) of the Labor Code. *Aileen G. Herida vs. F4C Pawnshop and Jewelry Store/Marcelino Florete, Jr.*, G.R. No. 172601, April 16, 2009.

Unfair labor practice; burden of proof. Petitioner makes several allegations that UST committed ULP. The *onus probandi* falls on the shoulders of petitioner to establish or substantiate such claims by the requisite quantum of evidence. In labor cases as in other administrative proceedings, substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required. In the petition at bar, petitioner miserably failed to adduce substantial evidence as basis for the grant of relief. *UST Faculty Union vs. University of Sto. Tomas, Rev. Fr. Rolando De la Rosa, Rev Fr. Rodelio Aligan, Domingo Legaspi, and Mercedes Hinayon*, G.R. No. 180892, April 7, 2009.

## **Tax**

Excise tax. Section 145 of the Tax Code, as amended by RA 9334: (1) does not violate the equal protection and uniformity of taxation clauses; (2) does not violate the constitutional prohibition on unfair competition; and (3) does not violate the constitutional prohibition on regressive and inequitable taxation. *British American Tobacco vs. Jose Isidro N. Camacho, et al.* **G.R. No. 163583, April 15, 2009.**

Real Property Tax. The NAIA Pasay properties of the Manila International Airport Authority is exempt from real property tax imposed by the City of Pasay. MIAA is not a government-owned or controlled corporation but a government instrumentality which is exempt from any kind of tax from the local governments. Indeed, the exercise of the taxing power of local government units is subject to the limitations enumerated in Section 133 of the Local Government Code. Under Section 133(o) of the Local Government Code, local government units have no power to tax instrumentalities of the national government like the MIAA. Hence, MIAA is not liable to pay real property tax for the NAIA Pasay properties. Furthermore, the airport lands and buildings of MIAA are properties of public dominion intended for public use, and as such are exempt from real property tax under Section 234(a) of the Local

Government Code. However, under the same provision, if MIAA leases its real property to a taxable person, the specific property leased becomes subject to real property tax. In this case, only those portions of the NAIA Pasay properties which are leased to taxable persons like private parties are subject to real property tax by the City of Pasay. *Manila International Airport Authority vs. City of Pasay, et al.*, [G.R. No. 163072, April 2, 2009](#).

Real Property Tax. Marcopper Mining's siltation dam and decant system are not machineries but improvements subject to real property tax. *The Provincial Assesor of Marinduque vs. Hon. Court of Appeals, et al.*, [G.R. No. 170532, April 30, 2009](#).

Stamp tax. Pawnshop transactions evidenced by pawn tickets are subject to documentary stamp taxes. *H. Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue*, [G.R. No. 171138, April 7, 2009](#).

Value-added tax. There is nothing in Section 105 of the old Tax Code that prohibits the inclusion of real properties, together with the improvements thereon, in the beginning inventory of goods, materials and supplies, based on which inventory the transitional input tax credit is computed. *Fort Bonifacio Development Corp. vs. Commissioner of Internal Revenue, et al./Fort Bonifacio Development Corp. vs. Commissioner of Internal Revenue et al.*, [G.R. No. 158885/G.R. No. 170680, April 2, 2009](#).

## Optional Standard Deduction for Individuals

Posted on [April 13, 2009](#) by [Hector M. de Leon Jr.](#) • Posted in [Tax Law](#) • Tagged [optional standard deduction](#) •

Many of us will be filing our income tax returns for 2008 on Wednesday, April 15, 2009.

An individual entitled to claim optional standard deduction (and who opts to not avail of itemized deductions against gross income) should note that a 10% optional standard deduction applies for the period January to June 2008

while a 40% optional standard deduction applies for the period July to December 2008. The Bureau of Internal Revenue limited the optional standard deduction to 10% for the first half of 2008 since Republic Act No. 9504, which increased the optional standard deduction from 10% to 40%, became effective on July 6, 2008 only.

For more details, check [Revenue Regulations No. 16-2008](#) dated November 16, 2008 and consult your tax advisors.

## February 2009 Decisions on Tax and Labor Laws

Posted on [April 4, 2009](#) by [Hector M. de Leon Jr.](#) • Posted in [Labor Law](#), [Tax Law](#) • Tagged [importation](#), [labor-only contracting](#), [lending investor](#), [local tax](#), [probationary employment](#) •

Here are some decisions promulgated by the Supreme Court in February 2009 on tax and labor laws.

### **NIRC**

Lending Investors. Pawnshops are not lending investors that are subject to the 5% lending investors tax imposed under the National Internal Revenue Code. *Agencia Exquisite of Bohol, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 150141, February 10, 2009.

### **Local Government Code**

Local taxes. Under its franchise, SMART is not exempt from local business and franchise taxes. Moreover, Section 23 of the Public Telecommunications Act does not provide legal basis for Smart's exemption from local business and franchises taxes. The term "exemption" in Section 23 of the Public Telecommunications Act does not mean tax exemption; rather, it refers to exemption from certain regulatory or reporting requirements imposed by government agencies such as the National Telecommunications Commission. The thrust of the Public Telecoms Act is to promote the gradual deregulation of entry, pricing, and operations of all public telecommunications entities, and thus to level the playing field in the

telecommunications industry. The language of Section 23 and the proceedings of both Houses of Congress are bereft of anything that would signify the grant of tax exemptions to all telecommunications entities. Intent to grant tax exemption cannot therefore be discerned from the law; the term “exemption” is too general to include tax exemption and runs counter to the requirement that the grant of tax exemption should be stated in clear and unequivocal language too plain to be beyond doubt or mistake. *The City of Iloilo, Mr. Romeo V. Manikan etc. Vs. Smart Communications Inc.*, G.R. No. 167260, February 27, 2009.

## **Tariff and Customs Code**

Fraud; importation. Section 2301 of the Tariff and Customs Code of the Philippines (TCCP) states that seized articles may not be released under bond if there is prima facie evidence of fraud in their importation. Fraud is a “generic term embracing all multifarious means which human ingenuity can devise and which are resorted to by one individual to secure an advantage and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated.” Since fraud is a state of mind, its presence can only be determined by examining the attendant circumstances.

Under Section 1202 of the TCCP, importation takes place when merchandise is brought into the customs territory of the Philippines with the intention of unloading the same at port.

An exception to this rule is transit cargo entered for immediate exportation. For an entry for immediate exportation to be allowed under this provision, the following must concur: (a) there is a clear intent to export the article as shown in the bill of lading, invoice, cargo manifest or other satisfactory evidence; (b) the Collector must designate the vessel or aircraft wherein the articles are laden as a constructive warehouse to facilitate the direct transfer of the articles to the exporting vessel or aircraft; (c) the imported articles are directly transferred from the vessel or aircraft designated as a constructive warehouse to the exporting vessel or aircraft and (d) an irrevocable domestic letter of credit, bank guaranty or bond in an amount equal to the ascertained duties, taxes and other charges is submitted to the



Collector (unless it appears in the bill of lading, invoice, manifest or satisfactory evidence that the articles are destined for transshipment). *Commissioner of Customs vs. Court of Tax Appeals, Las Islas Filipinas Food Corp. & Pat-Pro Overseas Co. Ltd.*, G.R. 171516, February 13, 2009.

## **Labor Code**

Probationary employment; acting appointment; resignation. The Supreme Court ruled that: (a) the employment of the respondent as teacher was probationary in character, as she has not completed the requisite three-year period of probationary employment for teachers: (b) the respondent's appointment as acting principal was merely temporary, or one that is good until another appointment is made to take its place; as such, the appointment is revocable at will; and (c) the resignation of the respondent is not valid, not only because there was no express acceptance thereof by the employer, but because there is a cloud of doubt as to the voluntariness of respondent's resignation. According to the Supreme Court, resignation is inconsistent with the filing of a complaint for illegal dismissal. To be valid, the resignation must be unconditional, with the intent to operate as such; there must be a clear intention to relinquish the position. In this case, respondent actively pursued her illegal dismissal case against petitioner, such that she cannot be said to have voluntarily resigned from her job. *Magis Young Achievers' Learning Center/Mrs. Violeta T. Carino Vs. Adelaida P. Manalo*, G.R. No. 178835, February 13, 2009.

Labor-only contracting. The law clearly establishes an employer-employee relationship between the principal employer and the contractor's employee upon a finding that the contractor is engaged in "labor-only" contracting. Article 106 of the Labor Code categorically states: "There is 'labor-only' contracting where the person supplying workers to an employee does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer." Thus, performing activities directly related to the principal business of the employer is only one of the two indicators that "labor-only" contracting exists; the other is lack of substantial capital or investment. *Coca-Cola Bottlers Phils., Inc. Vs. Alan M. Agito Regolo S. Oca III, et al*, G.R. No.

179546, February 13, 2009.