SUMMARY OF SIGNIFICANT SC TAX DECISIONS (July to December 2015)

1. A petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure may be invoked only against a tribunal, board of officer exercising judicial of quasi-judicial functions.

On February 17, 2012, the Department of Finance, upon the recommendation of the BIR, issued Revenue Regulations No. 2-2012, which imposed VAT and excise tax on the importation of petroleum and petroleum products from abroad and into the Freeport and Economic Zones. The Petitioner, which represents the businesses and enterprises within the Clark Freeport Zone, filed a petition for certiorari with the Supreme Court under Rule 65 of the Rules of Civil Procedure, alleging that the Secretary of Finance acted with grave abuse of discretion in issuing RR 2-2012. It argued that by imposing VAT and excise tax on the importation of petroleum and petroleum products from abroad and into the Freeport and Economic Zones, RR 2-2012 unilaterally revoked the tax exemption granted by RA No. 7227 and RA No. 9400 to the businesses and enterprises operating within the Subic Special Economic Zone and Clark Freeport Zone.

The respondent argued, among others, that the petition must be denied outright because the special civil action for certiorari cannot be used to assail RR 2-2012 which was issued by the respondent in the exercise of their quasi-legislative or rule-making power.

The Court agreed with the respondent. According to the Court, a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure is a special civil action that may be invoked only against a tribunal, board or officer exercising judicial or quasi-judicial functions. Respondents do not fall within the ambit of a tribunal, board, or officer exercising judicial or quasi-judicial functions. They issued RR 2-2012 in the exercise of their quasi-legislative or rule-making powers, and not judicial or quasi-judicial functions. Respondents did not adjudicate the rights of the parties. RR 2-2012 was issued by the Secretary of Finance based on Section 244 of the NIRC. The application of Section 244 of the NIRC is an exercise of quasi-legislative or rule-making powers of the Secretary of Finance. And since RR 2-2012 was issued by the Secretary of Finance based on Section 244 of the NIRC, such administrative issuance is therefore quasi-legislative in nature which is outside the scope of petition for certiorari. ***(Clark Investors and Locators Association, Inc. vs. Secretary of Finance and Commissioner of Internal Revenue, G.R. No. 200670, July 6, 2015)***

2. Transfer of real property is subject to documentary stamp taxes only in cases of sale.

Respondent La Tondena Distillers, Inc. entered into a Plan of Merger with Sugarland Beverage Corporation and Metro Bottled Water Corporation, with the respondent as the surviving corporation. The respondent requested from the BIR for a confirmation of the tax-free nature of the merger. On September 26, 2001, the BIR issued a ruling stating that pursuant to Section 40(C)(2) and (6)(b) of the 1997 NIRC, no gain or loss shall be recognized by the absorbed corporations. However, the transfer of assets, such as real properties, shall be subject to DST imposed under Section 196 of the NIRC. Consequently, on various dates, the respondent paid DST to the BIR. Later, claiming that it is exempt from paying the DST, respondent filed a claim for the refund for the DST allegedly paid erroneously.

The Court, citing the earlier case of Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation, ruled that Section 196 of the NIRC pertains only to transactions where real property is conveyed to a purchaser for a consideration. The phrase “granted, assigned, transferred or otherwise conveyed” is qualified by the word “sold” which means that documentary stamp tax under Section 196 is imposed on the transfer of real property by way of sale and does not apply to all conveyances of real property. Thus, respondent is not liable to DST as the transfer of real properties from the absorbed corporations to respondent was pursuant to a merger. ***(Commissioner of Internal Revenue vs. La Tondena Distillers, Inc., G.R. Nos. 175188, July 05, 2015)***

3. The CIR’s interpretation of a tax provision involves an exercise of her quasi-legislative functions, the proper recourse against it is a review by the Secretary of Finance and ultimately to the regular courts.

In June 2012, Petron imported liters of alkylate and paid VAT as evidenced by the Import Entry and Internal Revenue Declaration. Based on the Final Computation, said importation was subjected by the Collector of Customs of Limay, Bataan, upon instruction of the Commissioner of Customs (COC), to excise taxes. The imposition of excise taxes was supposedly premised on Customs Memorandum Circular (CMC) No. 164-2012, dated July 18, 20120, implementing the Letter dated June 29, 2012 issued by the Commissioner of Internal Revenue, which states that alkylate is a product of distillation similar to naphta and is subject to excise tax under Section 148(e) of the NIRC. Petron filed before the CTA a petition for review raising the issue of whether its importation of alkylate as a blending component is subject to excise tax as contemplated under Section 148(e) of the NIRC. The CIR asserts that the interpretation of the subject tax provision, i.e, Section 148(e) of the NIRC, embodied in CMC No. 164-2012, is an exercise of her quasi-legislative function which is reviewable by the Secretary of Finance, whose decision in turn, is appealable to the Office of the President and, ultimately, to the regular courts, and that only her quasi-judicial function or authority to decide disputed assessment, refund, penalties and the like are subject to the exclusive appellate jurisdiction of the CTA.

The Court agreed with the CIR. According to the Court, the CTA is a court of special jurisdiction, with power to review by appeal decision involving tax disputes rendered either by the CIR or the COC. Conversely, it has no jurisdiction to determine the validity of a ruling issued by the CIR or the COC in the exercise of their quasi-legislative powers to interpret tax laws. In this case, Petron’s tax liability was premised on the COC’s issuance of CMC No. 164-2012, which gave effect to the CIR’s June 29, 2012 Letter interpreting Section 148(e) of the NIRC as to include alkylate among the articles subject to customs duties, hence, Petron’s petition before the CTA

ultimately challenging the legality and constitutionality of the CIR's interpretation of a tax provision. The CTA had no jurisdiction to take cognizance of the petition as its resolution would necessarily involve declaration of the validity or constitutionality of the CIR's interpretation of Section 148(e) of the NIRC, which is subject to the exclusive review by the Secretary of Finance and ultimately by the regular courts. Hence, as the CIR's interpretation of a tax provision involves an exercise of her quasi-legislative functions, the proper recourse against the subject tax ruling expressed in RMC No. 164-2102 is a review by the Secretary of Finance and ultimately to the regular courts. (***Commissioner of Internal Revenue vs. Court of Tax Appeals and Petron Corporation, G.R. No. 207843, July 15, 2015)***

4. The duty to withhold tax on compensation arises upon its accrual.

Taxpayer accrued bonuses in the taxable years 1996 and 1997, although no withholding taxes were withheld in the year of accrual. The taxpayer was then assessed for deficiency withholding taxes in the year of accrual. Taxpayer maintained that the liability of the employer to withhold the tax does not arise until such bonus is actually distributed, citing Section 72 of the 1977 NIRC which states that every employer *making payment of wages* shall deduct and withhold upon such wages. Since the supposed bonuses were not distributed to the officers and employees in 1996 and 1997 but were distributed in the succeeding year when the amounts of bonuses were finally determined, taxpayer asserts that its duty to withhold tax during those years did not arise.

The Court agrees with the assessment. The Court ruled that the taxpayer is liable for the withholding tax on the bonuses since it claimed the same as expense in the year they were accrued. (***ING Bank N.V. vs. Commissioner of Internal Revenue, G.R. No. 167679, July 22, 2015)***

5. Excise taxes paid on imported petroleum products and subsequently sold to Clark Development Corporation may be refunded to the taxpayer.

Chevron sold and delivered petroleum products to Clark Development Corporation (CDC). Chevron did not pass on to CDC the excise taxes paid on the importation of the petroleum products sold to CDC. Hence, it filed a claim for refund.

The CTA denied the claim for refund. The Supreme Court, however, granted the refund. According to the Supreme Court, the excise taxes that Chevron paid on its importation of petroleum products subsequently sold to CDC were illegal and erroneous, and should be credited or refunded to Chevron in accordance with Section 204 of the NIRC. Section 135(C) of the NIRC should be construed as an exemption in favor of the petroleum products on which the excise tax was levied in the first place. The exemption cannot be granted to the buyers – that is, the entities that are by law exempt from direct and indirect taxes – because they are not under any legal duty to pay the excise tax. The payment of excise tax by Chevron upon its importation of petroleum products was deemed illegal and erroneous upon the sale of the petroleum products to CDC. Section 204 of the NIRC explicitly allowed Chevron as the statutory taxpayer to claim the refund or the credit of the excise taxes paid. (***Chevron Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 210836, September 1, 2015)***

6. A waiver of the statute of limitations that does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO 01-05 is generally invalid, but may still be valid due to peculiar circumstances.

The general rule is that a waiver of the statute of limitations that does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO 01-05 is generally invalid and ineffective to extend the prescriptive period to assess taxes. However, due to peculiar circumstances and as exception to the general rule, the supposedly invalid waivers may be considered valid for the following reasons:

a. The parties in the case are *in pari delicto* or "in equal fault". *In pari delicto* connotes that the two parties to a controversy are equally guilty and they shall have no action against each other.
b. Parties must come to Court with clean hands. Parties who do not come to Court with clean hand cannot be allowed to benefit from their own wrongdoing. Taxpayer should not be allowed to benefit from the flaws in its own waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.

c. Taxpayer is estopped from questioning the validity of its waivers. While it is true that the Court had repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine in this case is justified. Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong. The taxpayer executed 5 waivers and delivered them to the BIR and did not raise any objection against their validity until the BIR assessed taxes against it. Moreover, the application of the estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of the BIR's assessment of taxpayer's tax liabilities.

d. The Court cannot tolerate a highly suspicious situation. In this case, after the taxpayer voluntarily executing the waivers, insisted on their invalidity by raising the very same defects it caused. On the other hand, the BIR miserably failed to exact from the taxpayer compliance with its rules. The BIR's negligence in the compliance of its duties was so gross such that it seemed that it consented to the mistakes in the waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities.

The BIR's right to assess and collect taxes should not be jeopardized merely because of the mistakes and lapses of its officers, especially in cases like this where the taxpayer is obviously in bad faith. ***(Commissioner of Internal Revenue vs. Next Mobile, Inc. G.R. No. 212825, December 07, 2015)***

7. The reckoning of the 120-day period within which the BIR to decide on a claim for refund/tax credit is the last submission of the supporting documents. Starting June 14, 2014, the 120-day period shall be counted from the filing of the administrative claim.

On May 15, 2008, taxpayer filed an administrative claim for refund of unutilized input VAT for the first semester of 2007, including supporting documents. On August 28, 2008, taxpayer submitted additional documents to the BIR. It elevated the matter to the CTA on January 23, 2009, in view of the inaction of the BIR. The CTA denied the claim. Among others, the CTA En Banc ruled that the taxpayer failed to seasonably file its petition. Counting from the date it filed its administrative claim on May 15, 2008, the CTA En Banc ruled that the BIR had 120 days to act on the claim (until September 12, 2008), and the taxpayer had 30 days from then, or until October 12, 2008 to question the inaction before the CTA. Considering that the taxpayer only filed its petition for review in January 23, 2009, the *CTA En Banc* concluded that the petition for review was belatedly filed. For the tax court, the 120-day period could not commence on the day the taxpayer filed its last supporting document on August 28, 2008, because to allow such would give the taxpayer unlimited discretion to indefinitely extend the 120-day period by simply filing the required documents piecemeal.

On appeal to the Supreme Court, the SC reversed the CTA En Banc's decision and ruled in favor of the taxpayer. According to the SC, the CIR had 120 days from the date of submission of complete documents to decide a claim for tax credit or refund. The rule, as summarized by the SC, is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has 30 days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the BIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the BIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of filing, manifest that he no longer wishes to submit any other additional documents to complete his administrative claim, the 120-day period allowed to the BIR begins to run from the date of filing. In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the 2-year period under Section 112(A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the BIR to the CTA must be respected.

The foregoing rules should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014. As it now stands, RMC 54-2014, dated June 11, 2014, mandates that the claimant has to submit complete documents upon filing of the administrative claim. The reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014. It is now required that at the time he files his administrative claim, he has to complete his supporting documents and attest that he will no longer submit any other documents to prove his claim. The taxpayer is barred from submitting additional documents after he had filed his administrative claim. Thus, the 120-day has to be counted from the filing of the administrative claim. (***Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue, G.R. No. 207112, December 08, 2015)***