

SUMMARY OF SIGNIFICANT SC DECISIONS (April, May and June 2011)

1. Once the carry-over option is chosen for excess income tax payment, it becomes irrevocable and no refund is available.

Taxpayer's income tax return for the year 1997 showed excess income tax payments arising from taxes withheld on its professional fees. Taxpayer signified to claim it as tax credit in the succeeding taxable year. Due to its net loss position in 1998, it was not able to claim the taxes withheld on its income in 1997 as tax credit. It then filed a claim for the refund of the unutilized creditable withholding tax for taxable year 1997. The Supreme Court ruled that inasmuch as the taxpayer already opted to carry over its unutilized creditable withholding tax 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 NIRC of 1997. However, in view of its irrevocable choice, the taxpayer remained entitled to utilize the amount as tax credit in succeeding taxable years until fully exhausted. (*Commissioner of Internal Revenue vs. PL Management International Philippines, Inc.*, G.R. No. 160949, April 4, 2011¹)

2. Failure to print the word "zero-rated" on the sales invoices is fatal to a claim for refund of input VAT.

Taxpayer rendered services to affiliated non-resident foreign corporations. These services were paid for in acceptable foreign currency and therefore qualify as zero-rated sales for VAT purposes. Taxpayer then filed a claim for tax credit of VAT input taxes attributable to these zero-rated sales. In upholding the decision of the CTA denying the claim of the taxpayer, the Supreme Court said that 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 attributable to zero-rated sales. An invoice, lacking the word "zero-rated," is not a "VAT invoice," and thus cannot give rise to any input tax. 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. (*Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 180173, April 6, 2011)

¹ The same decision was made in the case of Mirant (Philippines Operations Corporation, G.R. No. 176175, June 15, 2011)

3. Requisites to be complied with in a claim for refund of unutilized withholding taxes.

The requisites for claiming a tax credit or a refund of creditable withholding taxes are:

- 1) The claim must be filed with the BIR 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 the tax withheld.

In the third requisite, the taxpayer need not prove the fact of remittance to the BIR of the taxes withheld by the various payors (withholding agents). (**Commissioner of Internal Revenue vs. Mirant (Philippines) Operations Corporation**, G.R. Nos. 171742 and 176165, June 156, 2011)