SUMMARY OF SIGNIFICANT SC DECISIONS (July 2011)

1. Withdrawal of a case is not a matter of right.

On March 30, 2007, the CTA En Banc denied taxpayer's appeal against a BIR assessment for lack of merit. Taxpayer sought reconsideration but later moved to withdraw the same in view of its availment of the Improved Voluntary Assessment Program (IVAP) pursuant to RR 18-2006. The CTA En Banc denied taxpayer's motion to withdraw for non-compliance with the requirements for abatement. It found that the amount paid for purposes of the abatement program was not in accordance with RMC 66-2006, which provides that the amount to be paid should be based on the original assessment or the court's decision, whichever is higher. Also, the taxpayer failed to comply with RMO 23-2006, specially the requirement to submit the letter or termination and authority to cancel assessment signed by the Commissioner. On appeal to the Supreme Court, the latter affirmed the CTA En Banc since the taxpayer failed to submit the letter of termination and authority to cancel assessment. ***(Prudential Bank vs. Commissioner of Internal Revenue,*** *G.R. No. 180390, July 27, 2011)*

2. Inter-company advances not subject to interest.

On various dates during the years 1996 and 1997, taxpayer, a holding company, extended advances in favor of its affiliates. These advances were duly evidenced by instructional letters as well as cash and journal vouchers. The taxpayer received assessment for income tax for imputed interests on the advances extended by the taxpayer to its affiliates. The Supreme Court ruled that the Commissioner's power of distribution, apportionment or allocation of gross income and deductions under Section 43 of the 1993 NIRC (*now Section 50 of the 1997 Tax Code*) and Section 179 of Revenue Regulat*ions* No. 2 does not include the power to impute "theoretical interests" to the controlled taxpayer's transactions. 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 items of gross income sought to be distributed, apportioned or allocated by the Commissioner. There is no evidence of actual or possible showing that the advances extended to affiliates had resulted to interests subsequently assessed by the Commissioner. The Commissioner had adduced no evidence that the advances extended to affiliates were sourced from the borrowings made by the taxpayer from the commercial banks. The Court further said that pursuant to Article 1956 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)*

3. Inter-company advances subject to DST.

In relation to the previous number, the taxpayer was also assessed by the BIR for non-payment of documentary stamp taxes on the advances. The Supreme Court ruled that the instructional letters as well as the journal vouchers evidencing advances extended to affiliates qualify 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)*

4. A BIR ruling can be invoked only the taxpayer who requested the same.

Still in relation to the previous number, the taxpayer invoked a previous BIR Ruling issued to another taxpayer which ruled that inter-office memo covering advances granted by an affiliate company is neither a form of promissory note nor evidence of indebtedness, hence, not subject to DST. The Court ruled that in keeping with the caveat attendant in every ruling to the effect that it is valid only if the facts claimed by the taxpayer are correct, the said BIR ruling could be invoked only by the taxpayer who sought the same. The Court further ruled that not being the taxpayer who, in the first instance, sought ruling from the BIR, the taxpayer cannot invoke the principle on non-retroactivity of BIR rulings. *(**Commissioner of Internal Revenue vs. Filinvest Development Corporation,** G.R. No. 163653, July 19, 2011)*

5. Toll fees are subject to VAT.

The law imposes VAT on "all kinds of services" rendered in the Philippines for a fee. The enumeration in the law of the affected services is not exclusive. Thus, every activity that can be imagined as a form of "service" rendered for a fee should be deemed included unless some provisions of law specifically 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. And not only do tollway operators come under the broad term "all kinds of services", they also come under the specific class as "all other franchise grantees, who are subject to VAT. Tollway operators are, owing to the nature of their business, "franchise grantees". The Court also said that toll fees collected by tollway operators are not taxes. So the VAT on toll fees is not considered tax on tax. These are service fees and therefore covered by "all kinds of services" and "other franchise grantees" subject to VAT. ***(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)*