Republic of the Philippines
Supreme Court
Manila

EN BANC

BANCO DE ORO, BANK OF COMMERCE, CHINA BANKING CORPORATION, METROPOLITAN BANK & TRUST COMPANY, PHILIPPINE BANK OF COMMUNICATIONS, PHILIPPINE NATIONAL BANK, PHILIPPINE VETERANS BANK, AND PLANTERS DEVELOPMENT BANK,
Petitioners,

RIZAL COMMERCIAL BANKING CORPORATION AND RCBC CAPITAL CORPORATION,
Petitioners-Intervenors,

CAUCUS OF DEVELOPMENT NGO NETWORKS,
Petitioner-Intervenor,

-versus-

REPUBLIC OF THE PHILIPPINES, COMMISSIONER OF INTERNAL REVENUE, BUREAU OF INTERNAL

G.R. No. 198756

Present:

SERENO, *C.J.*,
CARPIO,*
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,**
PERALTA,
BERSAMIN,
DEL CASTILLO,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,*** and
CAGUIOA, *JJ.*

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* No part.
** On leave.
*** No part.

REVENUE, SECRETARY OF FINANCE, DEPARTMENT OF FINANCE, THE NATIONAL TREASURER, AND BUREAU OF TREASURY,
Respondents.

Promulgated:
August 16, 2016

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RESOLUTION

LEONEN, *J.*:

This resolves separate motions for reconsideration and clarification filed by the Office of the Solicitor General[1] and petitioners-intervenors Rizal Commercial Banking Corporation and RCBC Capital Corporation[2] of our Decision dated January 13, 2015, which: (1) granted the Petition and Petitions-in-Intervention and nullified Bureau of Internal Revenue (BIR) Ruling Nos. 370-2011 and DA 378-2011; and (2) reprimanded the Bureau of Treasury for its continued retention of the amount corresponding to the 20% final withholding tax that it withheld on October 18, 2011, and ordered it to release the withheld amount to the bondholders.

In the notice to all Government Securities Eligible Dealers (GSEDs) entitled Public Offering of Treasury Bonds[3] (Public Offering) dated October 9, 2001, the Bureau of Treasury announced that "₱30.0 [billion] worth of 10-year Zero[-]Coupon Bonds [would] be auctioned on October 16, 2001[.]"[4] It stated that "the issue being limited to 19 lenders and while taxable shall not be subject to the 20% final withholding [tax]."[5]

On October 12, 2001, the Bureau of Treasury released a memo on the Formula for the Zero-Coupon Bond.[6] The memo stated in part that the

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1 *Rollo*, pp. 2193–2239.
2 Id. at 2253–2309.
3 Id. at 130.
4 Id.
5 Id.
6 Id. at 131. The memo states:

Below is the formula in determining the purchase price and settlement amount of the P30B Zero-Coupon Bond to be auctioned on October 16, 2001. Please be advised that this is only applicable to the zeroes that are not subject to the 20% final withholding due to the 19 buyer/lender limit.

1. SA = PP * FV
2. $PP = 1/[1 + i/m]^n$

$n = (MP * m) - E/x$
$x = 360/m$
E = Settlement Date – Original Issue Date
(Y2 – Y1) 360 + (M2 – M1) 30 + (D2 – D1)

Where:
Y2 M2 D2 = Settlement Date/Value Date
Y1 M1 D1 = Original Issue Date

Note:

formula, in determining the purchase price and settlement amount, "is only applicable to the zeroes that are not subject to the 20% final withholding due to the 19 buyer/lender limit."[7]

On October 15, 2001, one (1) day before the auction date, the Bureau of Treasury issued the Auction Guidelines for the 10-year Zero-Coupon Treasury Bond to be Issued on October 16, 2001 (Auction Guidelines).[8] The Auction Guidelines reiterated that the Bonds to be auctioned are "[n]ot subject to 20% withholding tax as the issue will be limited to a maximum of 19 lenders in the primary market (pursuant to BIR Revenue Regulation No. 020 2001)."[9]

At the auction held on October 16, 2001, Rizal Commercial Banking Corporation (RCBC) participated on behalf of Caucus of Development NGO Networks (CODE-NGO) and won the bid.[10] Accordingly, on October 18, 2001, the Bureau of Treasury issued ₱35 billion worth of Bonds at yield-to-maturity of 12.75% to RCBC for approximately ₱10.17 billion,[11] resulting in a discount of approximately ₱24.83 billion.

Likewise, on October 16, 2001, RCBC Capital entered into an underwriting agreement[12] with CODE-NGO, where RCBC Capital was appointed as the Issue Manager and Lead Underwriter for the offering of the PEACe Bonds.[13] RCBC Capital agreed to underwrite[14] on a firm basis the offering, distribution, and sale of the ₱35 billion Bonds at the price of ₱11,995,513,716.51.[15] In Section 7(r) of the underwriting agreement, CODE-NGO represented that "[a]ll income derived from the Bonds, inclusive of premium on redemption and gains on the trading of the same, are exempt from all forms of taxation as confirmed by [the] Bureau of

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a) Based on 30/360 days count, compounded semi[-]annually
b) If D1 – 31 change it to 30
c) Up to at least 10 decimal places

Where:
SA = Settlement Amount → Cash Out
PP = Purchase Price
FV = Face Value
i = Yield to Maturity
x = days in the present compounding period
m = no. of conversion per year
(1 = annual, 2 = semi-annual, 4 = quarterly)
MP = Maturity Period (or tenor) in years
E = Bond Lapsed Days

7 Id.
8 Id. at 132.
9 Id.
10 Id. at 27.
11 Id. at 27 and 497.
12 Id. at 1060–1074.
13 Id. at 1060.
14 Id. at 1066. Section 5 of the underwriting agreement provides that the "underwriting fee and selling commission [shall be] in such amount as may be agreed upon between CODE NGO and [RCBC Capital] but not to exceed two percent (2%) of the total issue price of the total Bonds sold[.]"
15 Id. at 1062.

Internal Revenue . . . letter rulings dated 31 May 2001 and 16 August 2001, respectively."[16]

RCBC Capital sold and distributed the Government Bonds for an issue price of ₱11,995,513,716.51.[17] Banco de Oro, et al. purchased the PEACe Bonds on different dates.[18]

On October 7, 2011, barely 11 days before maturity of the PEACe Bonds, the Commissioner of Internal Revenue issued **BIR Ruling No. 370-2011**[19] declaring that the PEACe Bonds, being deposit substitutes, were subject to 20% final withholding tax.[20] Under this ruling, the Secretary of Finance directed the Bureau of Treasury to withhold a 20% final tax from the face value of the PEACe Bonds upon their payment at maturity on October 18, 2011.[21]

On October 17, 2011, replying to an urgent query from the Bureau of Treasury, the Bureau of Internal Revenue issued **BIR Ruling No. DA 378-2011**[22] clarifying that the final withholding tax due on the discount or interest earned on the PEACe Bonds should "be imposed and withheld not only on RCBC/CODE NGO but also [on] 'all subsequent holders of the Bonds.'"[23]

On October 17, 2011, petitioners filed before this Court a Petition for Certiorari, Prohibition, and/or Mandamus (with urgent application for a temporary restraining order and/or writ of preliminary injunction).[24]

On October 18, 2011, this Court issued a temporary restraining order[25] "enjoining the implementation of BIR Ruling No. 370-2011 against the [PEACe Bonds,] . . . subject to the condition that the 20% final withholding tax on interest income therefrom shall be withheld by the petitioner banks and placed in escrow pending resolution of [the] petition."[26]

RCBC and RCBC Capital, as well as CODE-NGO separately moved for leave of court to intervene and to admit the Petition-in-Intervention. The Motions were granted by this Court.[27]

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16 Id. at 1069.
17 Id. at 28.
18 Id.
19 Id. at 217–230.
20 Id. at 222.
21 Id. at
22 Id. at 634–637.
23 Id. at 637.
24 Id. at 13–83.
25 Id. at 235–237.
26 Id. at 236.
27 Id. at 1164–1166.

Meanwhile, on November 9, 2011, petitioners filed their Manifestation with Urgent Ex Parte Motion to Direct Respondents to Comply with the TRO.[28]

On November 15, 2011, this Court directed respondents to: "(1) show cause why they failed to comply with the October 18, 2011 resolution; and (2) comply with the Court's resolution in order that petitioners may place the corresponding funds in escrow pending resolution of the petition."[29]

On December 6, 2011, this Court noted respondents' compliance.[30]

On November 27, 2012, petitioners filed their Manifestation with Urgent Reiterative Motion [To Direct Respondents to Comply with the Temporary Restraining Order].[31]

On December 4, 2012, this Court noted petitioners' Manifestation with Urgent Reiterative Motion and required respondents to comment.[32]

Respondents filed their Comment,[33] to which petitioners filed their Reply.[34]

On January 13, 2015, this Court promulgated the Decision[35] granting the Petition and the Petitions-in-Intervention. Applying Section 22(Y) of the National Internal Revenue Code, we held that the number of lenders/investors at every transaction is determinative of whether a debt instrument is a deposit substitute subject to 20% final withholding tax. When at any transaction, funds are simultaneously obtained from 20 or more lenders/investors, there is deemed to be a public borrowing and the bonds at that point in time are deemed deposit substitutes. Consequently, the seller is required to withhold the 20% final withholding tax on the imputed interest income from the bonds. We further declared void BIR Rulings Nos. 370-2011 and DA 378-2011 for having disregarded the 20-lender rule provided in Section 22(Y). The Decision disposed as follows:

> **WHEREFORE**, the petition for review and petitions-in-intervention are **GRANTED**. BIR Ruling Nos. 370-2011 and DA 378-2011 are **NULLIFIED**.

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28 Id. at 1094–1109.
29 Id. at 1164.
30 Id. at 1346–1347.
31 Id. at 1938–1964.
32 Id. at 1965.
33 Id. at 1995–2010.
34 Id. at 2044–2060.
35 Id. at 2072–2116.

> Furthermore, respondent Bureau of Treasury is **REPRIMANDED** for its continued retention of the amount corresponding to the 20% final withholding tax despite this court's directive in the temporary restraining order and in the resolution dated November 15, 2011 to deliver the amounts to the banks to be placed in escrow pending resolution of this case.
>
> Respondent Bureau of Treasury is hereby **ORDERED** to immediately release and pay to the bondholders the amount corresponding to the 20% final withholding tax that it withheld on October 18, 2011.[36]

On March 13, 2015, respondents filed by registered mail their Motion for Reconsideration and Clarification.[37]

On March 16, 2015, petitioners-intervenors RCBC and RCBC Capital moved for clarification and/or partial reconsideration.[38]

On July 6, 2015, petitioners Banco de Oro, et al. filed their Consolidated Comment[39] on respondents' Motion for Reconsideration and Clarification and petitioners-intervenors RCBC and RCBC Capital Corporation's Motion for Clarification and/or Partial Reconsideration.

On October 29, 2015, petitioners Banco de Oro, et al. filed their Urgent Reiterative Motion [to Direct Respondents to Comply with the Temporary Restraining Order].[40]

The issues raised in the motions revolve around the following:

First, the proper interpretation and application of the 20-lender rule under Section 22(Y) of the National Internal Revenue Code, particularly in relation to issuances of government debt instruments;

Second, whether the seller in the secondary market can be the proper withholding agent of the final withholding tax due on the yield or interest income derived from government debt instruments considered as deposit substitutes;

Third, assuming the PEACe Bonds are considered "deposit substitutes," whether government or the Bureau of Internal Revenue is estopped from imposing and/or collecting the 20% final withholding tax

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36 Id. at 2115.
37 Id. at 2193–2239.
38 Id. at 2253–2309.
39 Id. at 2566-2603.
40 Id. at 2675-2684.

from the face value of these Bonds. Further:

(a) Will the imposition of the 20% final withholding tax violate the non-impairment clause of the Constitution?

(b) Will it constitute a deprivation of property without due process of law?

Lastly, whether the respondent Bureau of Treasury is liable to pay 6% legal interest.

I

Before going into the substance of the motions for reconsideration, we find it necessary to clarify on the procedural aspects of this case. This is with special emphasis on the jurisdiction of the Court of Tax Appeals in view of the previous conflicting rulings of this Court.

Earlier, respondents questioned the propriety of petitioners' direct resort to this Court. They argued that petitioners should have challenged first the 2011 Bureau of Internal Revenue rulings before the Secretary of Finance, consistent with the doctrine on exhaustion of administrative remedies.

In the assailed Decision, we agreed that interpretative rulings of the Bureau of Internal Revenue are reviewable by the Secretary of Finance under Section 4[41] of the National Internal Revenue Code. However, we held that because of the special circumstances availing in this case—namely: the question involved is purely legal; the urgency of judicial intervention given the impending maturity of the PEACe Bonds; and the futility of an appeal to the Secretary of Finance as the latter appeared to have adopted the challenged Bureau of Internal Revenue rulings—there was no need for petitioners to exhaust all administrative remedies before seeking judicial relief.

We also stated that:

> [T]he jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals. The questioned BIR Ruling Nos. 370-2011 and DA 378-2011 were issued in connection with the implementation of the 1997 National Internal Revenue Code on the

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41 TAX CODE, sec. 4 provides:
SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

taxability of the interest income from zero-coupon bonds issued by the government.

Under Republic Act No. 1125 (An Act Creating the Court of Tax Appeals), as amended by Republic Act No. 9282, such rulings of the Commissioner of Internal Revenue are appealable to that court, thus:

> SEC. 7. *Jurisdiction.* - The CTA shall exercise:
>
> a. *Exclusive appellate jurisdiction to review by appeal*, as herein provided:
>
> 1. *Decisions of the Commissioner of Internal Revenue in* cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other *matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue*;
>
> . . . .
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue*, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts *may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling* or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> . . . .
>
> SEC. 18. *Appeal to the Court of Tax Appeals En Banc. - No civil proceeding involving matters arising under the National Internal Revenue Code*, the Tariff and Customs Code or the Local Government Code *shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.*

In *Commissioner of Internal Revenue v. Leal*, citing *Rodriguez v. Blaquera,* this court emphasized the jurisdiction of the Court of Tax Appeals over rulings of the Bureau of Internal Revenue, thus:

> While the Court of Appeals correctly took cognizance of the petition for *certiorari*, however, *let it be stressed that the jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals, not to the RTC.*
>
> *The questioned RMO No. 15-91 and RMC No. 43-91 are actually rulings or opinions of the Commissioner implementing the Tax Code on the taxability of pawnshops.*

. . .

. . . .

Such revenue orders were issued pursuant to petitioner's powers under Section 245 of the Tax Code, which states:

> "SEC. 245. *Authority of the Secretary of Finance to promulgate rules and regulations.* — The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.
>
> The authority of the Secretary of Finance to determine articles similar or analogous to those subject to a rate of sales tax under certain category enumerated in Section 163 and 165 of this Code shall be without prejudice to *the power of the Commissioner of Internal Revenue to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws, including ruling on the classification of articles of sales and similar purposes.*"

. . . .

The Court, in *Rodriguez, etc. vs. Blaquera, etc.*, ruled:

> "Plaintiff maintains that this is not an appeal from a ruling of the Collector of Internal Revenue, but merely an attempt to nullify General Circular No. V-148, which does not adjudicate or settle any controversy, and that, accordingly, this case is not within the jurisdiction of the Court of Tax Appeals.
>
> We find no merit in this pretense. General Circular No. V-148 directs the officers charged with the collection of taxes and license fees to adhere strictly to the interpretation given by the defendant to the statutory provisions abovementioned, as set forth in the Circular. The same incorporates, therefore, a decision of the Collector of Internal Revenue (now Commissioner of Internal Revenue) on the manner of enforcement of the said statute, the administration of which is entrusted by law to the Bureau of Internal Revenue. As such,

> it comes within the purview of Republic Act No. 1125, Section 7 of which provides that the Court of Tax Appeals 'shall exercise exclusive appellate jurisdiction to review by appeal . . . decisions of the Collector of Internal Revenue in . . . matters arising under the National Internal Revenue Code or other law or part of the law administered by the Bureau of Internal Revenue.'"[42]

In *Commissioner of Internal Revenue v. Leal,*[43] the Commissioner issued Revenue Memorandum Order (RMO) No. 15-91 imposing 5% lending investors tax on pawnshops, and Revenue Memorandum Circular (RMC) No. 43-91 subjecting the pawn ticket to documentary stamp tax.[44] Leal, a pawnshop owner and operator, asked for reconsideration of the revenue orders, but it was denied by the Commissioner in BIR Ruling No. 221-91.[45] Thus, Leal filed before the Regional Trial Court a petition for prohibition seeking to prohibit the Commissioner from implementing the revenue orders.[46] This Court held that Leal should have filed her petition for prohibition before the Court of Tax Appeals, not the Regional Trial Court, because "the questioned RMO No. 15-91 and RMC No. 43-91 are actually rulings or opinions of the Commissioner implementing the Tax Code on the taxability of pawnshops."[47] This Court held that such rulings in connection with the implementation of internal revenue laws are appealable to the Court of Tax Appeals under Republic Act No. 1125, as amended.[48]

Likewise, in *Asia International Auctioneers, Inc. v. Hon. Parayno, Jr.,*[49] this Court upheld the jurisdiction of the Court of Tax Appeals over the Regional Trial Courts, on the issue of the validity of revenue memorandum circulars.[50] It explained that "the assailed revenue regulations and revenue memorandum circulars [were] actually rulings or opinions of the [Commissioner of Internal Revenue] on the tax treatment of motor vehicles sold at public auction within the [Subic Special Economic Zone] to implement Section 12 of [Republic Act] No. 7227." This Court further held that the taxpayers' invocation of this Court's intervention was premature for its failure to first ask the Commissioner of Internal Revenue for reconsideration of the assailed revenue regulations and revenue memorandum circulars.

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42 *Banco de Oro v. Republic*, G.R. No. 198756, January 13, 2015, 745 SCRA 361, 400–403 [Per J. Leonen, En Banc], *citing Commissioner of Internal Revenue v. Leal*, 440 Phil. 477, 485–487 (2002) [Per Sandoval-Gutierrez, Third Division], *as, in turn, cited in Asia International Auctioneers, Inc. v. Hon. Parayno, Jr.,* 565 Phil. 255, 268–269 (2007) [Per C.J. Puno, First Division]; *Rodriguez v. Blaquera,* 109 Phil. 598 (1960) [Per J. Concepcion, En Banc].

43 440 Phil. 477 (2002) [Per Sandoval-Gutierrez, Third Division].

44 Id. at 480.

45 Id. at 481.

46 Id.

47 Id. at 485.

48 Id.

49 565 Phil. 255 (2007) [Per C.J. Puno, First Division].

50 Id. at 269.

However, a few months after the promulgation of *Asia International Auctioneers, British American Tobacco v. Camacho*[51] pointed out that although Section 7 of Republic Act No. 1125, as amended, confers on the Court of Tax Appeals jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. Thus:

> The jurisdiction of the Court of Tax Appeals is defined in Republic Act No. 1125, as amended by Republic Act No. 9282. Section 7 thereof states, in pertinent part:
>
> . . . .
>
> While the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. 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.
>
> In *Drilon v. Lim*, it was held:
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> > We stress at the outset that the lower court had jurisdiction to consider the constitutionality of Section 187, this authority being embraced in the general definition of the judicial power to determine what are the valid and binding laws by the criterion of their conformity to the fundamental law. Specifically, B.P. 129 vests in the regional trial courts jurisdiction over all civil cases in which the subject of the litigation is incapable of pecuniary estimation, even as the accused in a criminal action has the right to question in his defense the constitutionality of a law he is charged with violating and of the proceedings taken against him, particularly as they contravene the Bill of Rights. Moreover, Article X, Section 5(2), of the Constitution vests in the Supreme Court appellate jurisdiction over final judgments and orders of lower courts in all cases in which the constitutionality or validity of any

[51] 584 Phil. 489 (2008) [Per J. Ynares-Santiago, En Banc].

> treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
>
> The petition for injunction filed by petitioner before the RTC is a direct attack on the constitutionality of Section 145(C) of the NIRC, as amended, and the validity of its implementing rules and regulations. In fact, the RTC limited the resolution of the subject case to the issue of the constitutionality of the assailed provisions. The determination of whether the assailed law and its implementing rules and regulations contravene the Constitution is within the jurisdiction of regular courts. The Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. Petitioner, therefore, properly filed the subject case before the RTC.[52] (Citations omitted)

British American Tobacco involved the validity of: (1) Section 145 of Republic Act No. 8424; (2) Republic Act No. 9334, which further amended Section 145 of the National Internal Revenue Code on January 1, 2005; (3) Revenue Regulations Nos. 1-97, 9-2003, and 22-2003; and (4) RMO No. 6-2003.[53]

A similar ruling was made in *Commissioner of Customs v. Hypermix Feeds Corporation.*[54] Central to the case was Customs Memorandum Order (CMO) No. 27-2003 issued by the Commissioner of Customs. This issuance provided for the classification of wheat for tariff purposes. In anticipation of the implementation of the CMO, Hypermix filed a Petition for Declaratory Relief before the Regional Trial Court. Hypermix claimed that said CMO was issued without observing the provisions of the Revised Administrative Code; was confiscatory; and violated the equal protection clause of the 1987 Constitution.[55] The Commissioner of Customs moved to dismiss on the ground of lack of jurisdiction.[56] On the issue regarding declaratory relief, this Court ruled that the petition filed by Hypermix had complied with all the requisites for an action of declaratory relief to prosper. Moreover:

> Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments.[57]

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52 Id. at 510–512.
53 Id. at. 498.
54 680 Phil. 681 (2012) [Per J. Sereno, Second Division].
55 Id. at 686.
56 Id.
57 Id. at 689, *citing Smart Communications v. National Telecommunications Commission*, 456 Phil. 145 (2003) [Per J. Ynares-Santiago, First Division].

We revert to the earlier rulings in *Rodriguez, Leal*, and *Asia International Auctioneers, Inc.* The Court of Tax Appeals has exclusive jurisdiction to determine the constitutionality or validity of tax laws, rules and regulations, and other administrative issuances of the Commissioner of Internal Revenue.

Article VIII, Section 1 of the 1987 Constitution provides the general definition of judicial power:

> ARTICLE VIII
> JUDICIAL DEPARTMENT
>
> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> 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.* (Emphasis supplied)

Based on this constitutional provision, this Court recognized, for the first time, in *The City of Manila v. Hon. Grecia-Cuerdo*,[58] the Court of Tax Appeals' jurisdiction over petitions for *certiorari* assailing interlocutory orders issued by the Regional Trial Court in a local tax case. Thus:

> [W]hile there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, 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 the above 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.[59] (Emphasis in the original)

This Court further explained that the Court of Tax Appeals' authority to issue writs of certiorari is inherent in the exercise of its appellate

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[58] 726 Phil. 9 (2014) [Per J. Peralta, En Banc].
[59] Id. at 24.

jurisdiction:

> A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.
>
> Lastly, it would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction. These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process.
>
> In this regard, Section 1 of RA 9282 states that the CTA shall be of the same level as the CA and shall possess all the inherent powers of a court of justice.
>
> Indeed, courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or are essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.
>
> Thus, this Court has held that "while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates." Hence, demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance.[60] (Citations omitted)

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[60] Id. at 26–28.

Judicial power likewise authorizes lower courts to determine the constitutionality or validity of a law or regulation in the first instance.[61] This is contemplated in the Constitution when it speaks of appellate review of final judgments of inferior courts in cases where such constitutionality is in issue.[62]

On, June 16, 1954, Republic Act No. 1125 created the Court of Tax Appeals not as another superior administrative agency as was its predecessor—the former Board of Tax Appeals—but as a part of the judicial system[63] with exclusive jurisdiction to act on appeals from:

> (1) Decisions of the Collector of Internal Revenue 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 or other law or part of law administered by the Bureau of Internal Revenue;
>
> (2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; and
>
> (3) Decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto.

Republic Act No. 1125 transferred to the Court of Tax Appeals jurisdiction over all matters involving assessments that were previously cognizable by the Regional Trial Courts (then courts of first instance).[64]

In 2004, Republic Act No. 9282 was enacted. It expanded the jurisdiction of the Court of Tax Appeals and elevated its rank to the level of a collegiate court with special jurisdiction. Section 1 specifically provides that the Court of Tax Appeals is of the same level as the Court of Appeals and possesses "all the inherent powers of a Court of Justice."[65]

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61 *Ynot v. IAC*, 232 Phil. 615, 621 (1987) [Per J. Cruz, En Banc]. *See also Garcia v. Drilon,* 712 Phil. 44, 78–80 (2013) [Per J. Perlas-Bernabe, En Banc].

62 CONST., art. VIII, sec. 5.

63 *Ursal v. Court of Tax Appeals*, 101 Phil. 209, 211 (1957) [Per J. Bengzon, En Banc].

64 *See Republic v. Abella,* 190 Phil. 630 (1981) [Per C.J. Fernando, Second Division], *citing Good Day Trading v. Board of Tax Appeals*, 95 Phil. 569, 575 (1954) [Per J. Montemayor, En Banc]; *Millarez v. Amparo*, 97 Phil. 282, 284 (1955) [J. Bengzon, En Banc]; *Ollada v. Court of Tax Appeals,* 99 Phil. 604, 608–609 (1956) [Per J. Bautista Angelo, En Banc]; *Castro v. David,* 100 Phil. 454, 457 (1956) [Per J. Padilla, En Banc]; and *Ledesma v. Court of Tax Appeals,* 102 Phil. 931, 934 (1955) [Per J. Montemayor, En Banc].

65 Rep. Act No. 1125 (1954), sec. 1, as amended by Rep. Act No. 9282 (2004).

Section 7, as amended, grants the Court of Tax Appeals the exclusive jurisdiction to resolve all tax-related issues:

> Section 7. *Jurisdiction* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> 2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
>
> 3) 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;
>
> 4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;
>
> 5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;
>
> 6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;
>
> 7) Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.

This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).

Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies[66] (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought *exclusively* to the Court of Tax Appeals.

In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.[67]

Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129[68] provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.

Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the

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66 *Metro Construction, Inc. v. Chatham Properties, Inc.*, 418 Phil. 176, 202–203 (2001) [Per C.J. Davide, Jr., First Division]: "A quasi-judicial agency or body has been defined as an organ of government other than a court and other than a legislature, which affects the rights of private parties through either adjudication or rule-making. The very definition of an administrative agency includes its being vested with quasi-judicial powers. The ever increasing variety of powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts."

67 We apply by analogy the ruling *In National Water Resources Board v. A. L. Ang Network, Inc.*, 632 Phil. 22, 28–29 (2010) [Per J. Carpio Morales, First Division], which states that "[s]ince the appellate court has *exclusive* appellate jurisdiction over quasi-judicial agencies under Rule 43 of the Rules of Court, petitions for writs of *certiorari*, prohibition or *mandamus* against the acts and omissions of quasi-judicial agencies, like petitioner, should be filed with it."

68 An Act Reorganizing the Judiciary, Appropriating Funds Therefor, and for Other Purposes (1981).

Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations.[69] Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7(1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424.[70]

We now proceed to the substantive aspects.

II

Respondents contend that the 20-lender rule should not strictly apply to issuances of government debt instruments, which by nature, are borrowings from the public.[71] Applying the rule otherwise leads to an absurd result.[72] They point out that in BIR Ruling No. 007-04[73] dated July 16, 2004 (the precursor of BIR Ruling Nos. 370-2011 and DA 378-2011), the Bureau of Treasury's admitted intent to make the government securities freely tradable to an unlimited number of lenders/investors in the secondary market was considered in place of an actual head count of lenders/investors due to the limitations brought about by the absolute confidentiality of investments in government bonds under Section 2 of Republic Act No. 1405, otherwise known as the Bank Secrecy Law.[74]

Considering that the PEACe Bonds were intended to be freely tradable in the secondary market to 20 or more lenders/investors, respondents contend that they, like other similarly situated government securities—awarded to 19 or less GSEDs in the primary market but freely tradable to 20 or more lenders/investors in the secondary market—should be treated as deposit substitutes subject to the 20% final withholding tax.[75]

Petitioners and petitioners-intervenors RCBC and RCBC Capital counter that Section 22(Y) of the National Internal Revenue Code applies to all types of securities, including those issued by government. They add that

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69 Revenue Memorandum Order No. 9-2014 (2014).

70 TAX CODE, sec. 4 provides:
SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

71 *Rollo*, p. 2207.

72 Id. at 2210.

73 BIR Ruling No. 007-04 (2004), signed by Commissioner Guillermo L. Parayno, Jr. essentially held that government debt instruments are deposit substitutes irrespective of the number of lenders at the time of origination.

74 *Rollo*, p. 2209.

75 Id. at 2211.

under this provision, it is the actual number of lenders at any one time that is material in determining whether an issuance is to be considered a deposit substitute and not the intended distribution plan of the issuer.

Moreover, petitioners and petitioners-intervenors RCBC and RCBC Capital argue that the real intent behind the issuance of the PEACe Bonds, as reflected by the representations and assurances of government in various issuances and rulings, was to limit the issuance to 19 lenders and below. Hence, they contend that government cannot now take an inconsistent position.

We find respondents' proposition to consider the intended public distribution of government securities—in this case, the PEACe Bonds—in place of an actual head count to be untenable.

The general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication.[76]

The definition of deposit substitutes in Section 22(Y) specifically defined "public" to mean "twenty (20) or more individual or corporate lenders at any one time."[77] The qualifying phrase for public introduced[78] by the National Internal Revenue Code shows that a change in the meaning of the provision was intended, and this Court should construe the provision as to give effect to the amendment.[79] Hence, in light of Section 22(Y), the reckoning of whether there are 20 or more individuals or corporate lenders is

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[76] *Commissioner of Internal Revenue v. Philippine American Accident Insurance Co., Inc.,* 493 Phil. 785, 793–794 (2005) [Per J. Carpio, First Division]: "Unless a statute imposes a tax clearly, expressly and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed. Where there is doubt, tax laws must be construed strictly against the government and in favor of the taxpayer. This is because taxes are burdens on the taxpayer, and should not be unduly imposed or presumed beyond what the statutes expressly and clearly import."
Commissioner of Internal Revenue v. Court of Appeals, 338 Phil. 322 (1997) [Per J. Panganiban, Third Division]; *Marinduque Lion Mines Agents, Inc. vs. Hinabangan Samar,* 120 Phil. 413, 418 (1964) [Per J. Reyes, J.B.L., En Banc].

[77] TAX CODE, sec. 22(Y).

[78] The 20% final tax treatment of interest from bank deposits and yield from deposit substitutes was first introduced in the 1977 Tax Code through Presidential Decree No. 1739 issued in 1980. Later, Presidential Decree No. 1959, effective on October 15, 1984, formally added the definition of deposit substitutes, *viz*:

> (y) **'Deposit substitutes'** shall mean **an alternative form of obtaining funds from the public, other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purchasing of receivables and other obligations, or financing their own needs or the needs of their agent or dealer.** These promissory notes, repurchase agreements, certificates of assignment or participation and similar instrument with recourse as may be authorized by the Central Bank of the Philippines, for banks and non-bank financial intermediaries or by the Securities and Exchange Commission of the Philippines for commercial, industrial, finance companies and either non-financial companies: *Provided, however,* that only debt instruments issued for inter-bank call loans to cover deficiency in reserves against deposit liabilities including those between or among banks and quasi-banks shall not be considered as deposit substitute debt instruments.

[79] *Commissioner of Customs v. Court of Tax Appeals,* G.R. Nos. 48886–88, July 21, 1993, 224 SCRA 665 [Per J. Melo, Third Division].

crucial in determining the tax treatment of the yield from the debt instrument. In other words, if there are 20 or more lenders, the debt instrument is considered a *deposit substitute* and subject to 20% final withholding tax.

II.A

The definition of deposit substitutes under the National Internal Revenue Code was lifted from Section 95 of Republic Act No. 7653, otherwise known as the New Central Bank Act:

> SEC. 95. *Definition of Deposit Substitutes. The term "deposit substitutes" is defined as an alternative form of obtaining funds from the public, other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purchasing of receivables and other obligations.* These instruments may include, but need not be limited to, bankers' acceptances, promissory notes, participations, certificates of assignment and similar instruments with recourse, and repurchase agreements. The Monetary Board shall determine what specific instruments shall be considered as deposit substitutes for the purposes of Section 94 of this Act: Provided, however, That deposit substitutes of commercial, industrial and other nonfinancial companies issued for the limited purpose of financing their own needs or the needs of their agents or dealers shall not be covered by the provisions of Section 94 of this Act. (Emphasis supplied)

Banks are entities engaged in the lending of funds obtained from the public in the form of deposits.[80] Deposits of money in banks and similar institutions are considered simple loans.[81] Hence, the relationship between a depositor and a bank is that of creditor and debtor. The ownership of the amount deposited is transmitted to the bank upon the perfection of the contract and it can make use of the amount deposited for its own transactions and other banking operations. Although the bank has the obligation to return the *amount deposited,* it has no obligation to return or deliver the *same money* that was deposited.[82]

The definition of deposit substitutes in the banking laws was brought about by an observation that banks and non-bank financial intermediaries have increasingly resorted to issuing a variety of debt instruments, other than bank deposits, to obtain funds from the public. The definition also laid down the groundwork for the supervision by the Central Bank of quasi-banking functions.[83]

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80 Rep. Act No. 8791 (2000), secs. 3 and 8.

81 CIVIL CODE, art. 1980; *Guingona, Jr. v. City Fiscal of Manila,* 213 Phil. 516, 523 (1984) [Per J. Makasiar, Second Division].

82 *Guingona, Jr. v. City Fiscal of Manila,* 213 Phil. 516, 523 (1984) [Per J. Makasiar, Second Division].

83 I THE NEW CENTRAL BANK ACT ANNOTATED, 328 (2010).

As defined in the banking sector, the term "public" refers to 20 or more lenders.[84] "What controls is the actual number of persons or entities to whom the products or instruments are issued. If there are at least twenty (20) lenders or creditors, then the funds are considered obtained from the public."[85]

If a bank or non-bank financial intermediary sells debt instruments to 20 or more lenders/placers at any one time, irrespective of outstanding amounts, for the purpose of relending or purchasing of receivables or obligations, it is considered to be performing a quasi-banking function and consequently subject to the appropriate regulations of the Bangko Sentral ng Pilipinas (BSP).

II.B

Under the National Internal Revenue Code, however, deposit substitutes include not only the issuances and sales of banks and quasi-banks for relending or purchasing receivables and other similar obligations, but also debt instruments issued by commercial, industrial, and other non-financial companies to finance their own needs or the needs of their agents or dealers. This can be deduced from a reading together of Section 22(X) and (Y):

> **Section 22.** *Definitions* - When used in this Title:
>
> . . . .
>
> (X) The term *'quasi-banking activities' means borrowing funds* from twenty (20) or more personal or corporate lenders at any one time, through the issuance, endorsement, or acceptance of debt instruments of any kind other than deposits for the borrower's own account, or through the issuance of certificates of assignment or similar instruments, with recourse, or of repurchase agreements *for purposes of re-lending or purchasing receivables and other similar obligations*: *Provided, however*, That *commercial, industrial and other non-financial companies, which borrow funds through any of these means for the limited purpose of*

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[84] Pres. Decree No. 71 (1972), sec. 2-D provides:
Sec. 2-D. For purposes of Sections Two, Two-A, Two-B, and Two-C the following definition or terms shall apply:
(a) 'Public' shall mean twenty or more lenders;
(b) 'Quasi-Banking Functions' shall mean borrowing funds, for the borrower's own account, through the issuance, endorsement or acceptance of debt instruments of any kind other than deposits, or through the issuance of participations, certificates of assignment, or similar instruments with recourse, trust certificates, or of repurchase agreements, from twenty or more lenders at any one time, for purposes of relending or purchasing of receivables and other obligations: Provided, however, That commercial, industrial, and other non-financial companies, which borrow funds through any of these means for the limited purpose of financing their own needs or the needs of their agents or dealers, shall not be considered as performing quasi-banking functions.

[85] II THE NEW CENTRAL BANK ACT ANNOTATED 75 (2010).

> *financing their own needs or the needs of their agents or dealers, shall not be considered as performing quasi-banking functions.*
>
> (Y) The term *'deposit substitutes'* shall mean *an alternative form of obtaining funds from the public* ***(the term 'public' means borrowing from twenty (20) or more individual or corporate lenders at any one time)***, other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, ***for the purpose of*** re-lending or purchasing of receivables and other obligations, or ***financing their own needs or the needs of their agent or dealer.*** (Emphasis supplied)

For internal revenue tax purposes, therefore, even debt instruments issued and sold to 20 or more lenders/investors by commercial or industrial companies to finance their own needs are considered deposit substitutes, taxable as such.

II.C

The interest income on bank deposits was subjected for the first time to the withholding tax system under Presidential Decree No. 1156,[86] which was promulgated in 1977. The whereas clauses spell the reasons for the law:

> [I]nterest on bank deposit is one of the items includible in gross income. . . . [M]any bank depositors fail to declare interest income in their income tax returns. . . . [I]n order to maximize the collection of the income tax on interest on bank deposits, it is necessary to apply the withholdings system on this type of fixed or determinable income.

In the same year, Presidential Decree No. 1154[87] was also promulgated. It imposed a 35% transaction tax (final tax) on interest income from every commercial paper issued in the primary market, regardless of whether they are issued to the public or not.[88] Commercial paper was

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[86] Amending Section 30 and 53 of the National Internal Revenue Code.

[87] Further Amending Certain Sections of the National Internal Revenue Code, as amended, so as to impose a final tax on the interests derived from every commercial paper issued in the primary market. Issued on June 3, 1977.

[88] 1977 TAX CODE, sec. 210 provides:
SEC. 210. *Percentage tax on certain transactions.* — (a) *Stock transactions.*—. . . .
(b) Commercial paper transactions.—There shall be levied, assessed, collected and paid on every commercial paper issued in the primary market as principal instrument, a transaction tax equivalent to thirty-five per cent (35%) based on the gross amount of interest thereto as defined hereunder, which shall be paid by the borrower/ issuer: *Provided, however*, That in the case of a long-term commercial paper whose maturity exceeds one year, the borrower shall pay the tax based on the amount of interest corresponding to one year, and thereafter shall pay the tax upon accrual or actual payment (whichever is earlier) of the untaxed portion of the interest which corresponds to a period not exceeding one year. The transaction tax imposed in this section shall be a final tax to be paid by the borrower and shall be allowed as a deductible item for purposes of computing the borrower's taxable income, For purposes of this tax—
(1) "Commercial paper" shall be defined as an instrument evidencing indebtedness of any person or entity, including banks and non-banks performing quasi-banking functions, which is issued, endorsed, sold, transferred or in any manner conveyed to another person or entity, either with or

defined as "an instrument evidencing indebtedness of any person or entity, including banks and non-banks performing quasi-banking functions, which is issued, endorsed, sold, transferred or in any manner conveyed to another person or entity, either with or without recourse and irrespective of maturity." The imposition of a final tax on commercial papers was "aimed primarily to improve the administrative provisions of the National Internal Revenue Code to ensure the collection on the tax on interest on commercial papers used as principal instruments issued in the primary market."[89] It was reported that "the [Bureau of Internal Revenue had] no means of enforcing strictly the taxation on interest income earned in the money market transactions."[90]

These presidential decrees, as well as other new internal revenue laws and various laws and decrees that have so far amended the provisions of the 1939 National Internal Revenue Code were consolidated and codified into the 1977 National Internal Revenue Code.[91]

In 1980, Presidential Decree No. 1739[92] was promulgated, which further amended certain provisions of the 1977 National Internal Revenue Code and repealed Section 210 (the provision embodying the percentage tax on commercial paper transactions). The Decree imposed a final tax of 20% on interests from yields on deposit substitutes issued to the public.[93] The tax was required to be withheld by banks and non-bank financial intermediaries and paid to the Bureau of Internal Revenue in accordance with Section 54 of the 1977 National Internal Revenue Code. Presidential Decree No. 1739, as amended by Presidential Decree No. 1959 in 1984 (which added the

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without recourse and irrespective of maturity. Principally, commercial papers are promissory notes and/ or similar instruments issued in the primary market and shall not include repurchase agreements, certificates of assignments, certificates of participations, and such other debt instruments issued in the secondary market.

(2) The term "interest" shall mean the difference between what the principal borrower received and the amount it paid upon maturity of the commercial paper which shall, in no case, be lower than the interest rate prevailing at the time of the issuance or renewal of the commercial paper. Interest shall be deemed synonymous with discount and shall include all fees, commissions, premiums and other payments which form integral parts of the charges imposed as a consequence of the use of money.

In all cases, where no interest rate is stated or if the rate stated is lower than the prevailing interest rate at the time of the issuance or renewal of commercial paper, the Commissioner of Internal Revenue, upon consultation with the Monetary Board of the Central Bank of the Philippines, shall adjust the interest rate in accordance herewith, and assess the tax on the basis thereof.

The tax herein imposed shall be remitted by the borrower to the Commissioner of Internal Revenue or his Collection Agent in the municipality where such borrower has its principal place of business within five (5) working days from the issuance of the commercial paper. In the case of long term commercial paper, the tax upon the untaxed portion of the interest which corresponds to a period not exceeding one year shall be paid upon accrual payment, whichever is earlier.

89 Pres. Decree No. 1154 (1977).

90 Pres. Decree No. 1154 (1977).

91 Pres. Decree No. 1158 (1977), A Decree to Consolidate and Codify all the Internal Revenue Laws of the Philippines.

92 Providing Fiscal Incentives by Amending Certain Provisions of the National Internal Revenue Code, and for Other Purposes.

93 *Western Minolco Corporation v. Commissioner of Internal Revenue*, 209 Phil. 90, 101 (1983) [Per J. Gutierrez, Jr., En Banc].

definition of deposit substitutes) was subsequently incorporated in the National Internal Revenue Code.

These developments in the National Internal Revenue Code reflect the rationale for the application of the withholding system to yield from deposit substitutes, which is essentially to maximize and expedite the collection of income taxes by requiring its payment at the source,[94] as with the case of the interest on bank deposits. When banks sell deposit substitutes to the public, the final withholding tax is imposed on the interest income because it would be difficult to collect from the public. Thus, the incipient scheme in the final withholding tax is to achieve an effective administration in capturing the interest-income windfall from deposit substitutes as a source of revenue.

It must be emphasized, however, that withholding tax is merely a method of collecting income tax in advance. The perceived tax is collected at the source of income payment to ensure collection. Consequently, those subjected to the final withholding tax are no longer subject to the regular income tax.

III

Respondents maintain that the phrase "at any one time" must be given its ordinary meaning, i.e. "at any given time" or "during any particular point or moment in the day."[95] They submit that the correct interpretation of Section 22(Y) does not look at any specific transaction concerning the security; instead, it considers the existing number of lenders/investors of such security at any moment in time, whether in the primary or secondary market.[96] Hence, when during the lifetime of the security, there was any one instance where twenty or more individual or corporate lenders held the security, the borrowing becomes "public" in character and is ipso facto subject to 20% final withholding tax.[97]

Respondents further submit that Section 10.1(k) of the Securities Regulation Code and its Implementing Rules and Regulations may be applied by analogy, such that if at any time, (a) the lenders/investors number 20 or more; or (b) should the issuer merely offer the securities publicly or to 20 or more lenders/investors, these securities should be deemed deposit substitutes.[98]

On the other hand, petitioners-intervenors RCBC and RCBC Capital

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94 *Commissioner v. Court of Appeals*, G.R. No. 95022, March 23, 1992, 207 SCRA 487 [Per J. Melencio-Herrera, En Banc].
95 *Rollo*, pp. 2609–2610.
96 Id. at 2611.
97 Id. at 2610.
98 Id. at 2215–2219.

insist that the phrase "at any one time" only refers to transactions made in the primary market. According to them, the PEACe Bonds are not deposit substitutes since CODE-NGO, through petitioner-intervenor RCBC, is the sole lender in the primary market, and all subsequent transactions in the secondary market merely pertain to a sale and/or assignment of credit and not borrowings from the public.[99]

Similarly, petitioners contend that for a government security, such as the PEACe Bonds, to be considered as deposit substitutes, it is an indispensable requirement that there is "borrowing" between the issuer and the lender/investor in the primary market and between the transferee and the transferor in the secondary market. Petitioners submit that in the secondary market, the transferee/buyer must have recourse to the selling investor as required by Section 22(Y) of the National Internal Revenue Code so that a borrowing "for the borrower's (transferor's) own account" is created between the buyer and the seller. Should the transferees in the secondary market who have recourse to the transferor reach 20 or more, the transaction will be subjected to a final withholding tax.[100]

Petitioners and petitioners-intervenors RCBC and RCBC Capital contend that respondents' proposed application of Section 10.1(k) of the Securities Regulation Code and its Implementing Rules is misplaced because: (1) the National Internal Revenue Code clearly provides the conditions when a security issuance should qualify as a deposit substitute subject to the 20% final withholding tax; and (2) the two laws govern different matters.

III.A

Generally, a corporation may obtain funds for capital expenditures by floating either shares of stock (equity) or bonds (debt) in the capital market. Shares of stock or equity securities represent ownership, interest, or participation in the issuer-corporation. On the other hand, bonds or debt securities are evidences of indebtedness of the issuer-corporation.

New securities are issued and sold to the investing public for the first time in the primary market. Transactions in the primary market involve an actual transfer of funds from the investor to the issuer of the new security. The transfer of funds is evidenced by a security, which becomes a financial asset in the hands of the buyer/investor.

New issues are usually sold through a registered underwriter, which may be an investment house or a bank registered as an underwriter of

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[99] Id. at 2258–2265.
[100] Id. at 2582–2583.

securities.[101] An underwriter helps the issuer find buyers for its securities. In some cases, the underwriter buys the whole issue from the issuer and resells this to other security dealers and the public.[102] When a group of underwriters pool together their resources to underwrite an issue, they are called the "underwriting syndicate."[103]

On the other hand, secondary markets refer to the trading of outstanding or already-issued securities. In any secondary market trade, the cash proceeds normally go to the selling investor rather than to the issuer.

To illustrate: *A* decides to issue bonds to raise capital funds. *X* buys and is issued *A* bonds. The proceeds of the sale go to *A*, the issuer. The sale

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[101] Pres. Decree No. 129 (1973), The Investment Houses Law, secs. 2 and 7 provide:
SECTION 2. *Scope.* — Any enterprise which engages in the underwriting of securities of other corporations shall be considered an "Investment House" and shall be subject to the provisions of this Decree and of other pertinent laws.
SECTION 7. Powers. — In addition to the powers granted to corporations in general, an Investment House is authorized to do the following:
(1) Arrange to distribute on a guaranteed basis securities of other corporations and of the Government or its instrumentalities;
(2) Participate in a syndicate undertaking to purchase and sell, distribute or arrange to distribute on a guaranteed basis securities of other corporations and of the Government or its instrumentalities;
(3) Arrange to distribute or participate in a syndicate undertaking to purchase and sell on a best-efforts basis securities of other corporations and of the Government or its instrumentalities;
(4) Participate as soliciting dealer or selling group member in tender offers, block sales, or exchange offering or securities; deal in options, rights or warrants relating to securities and such other powers which a dealer may exercise under the Securities Act (Act No. 83), as amended);
(5) Promote, sponsor, or otherwise assist and implement ventures, projects and programs that contribute to the economy's development;
(6) Act as financial consultant, investment adviser, or broker;
(7) Act as portfolio manager, and/or financial agent, but not as trustee of a trust fund or trust property as provided for in Chapter VII of Republic Act No. 337, as amended;
(8) Encourage companies to go public, and utilities and/or promote, whenever warranted, the formation, merger, consolidation, reorganization, or recapitalization of productive enterprises, by providing assistance or participation in the form of debt or equity financing or through the extension of financial or technical advice or service;
(9) Undertake or contract for researches, studies and surveys on such matters as business and economic conditions of various countries, the structure of financial markets, the institutional arrangements for mobilizing investments;
(10) Acquire, own, hold, lease or obtain an interest in real and/or personal property as may be necessary or appropriate to carry on its objectives and purposes;
(11) Design pension, profit-sharing and other employee benefits plans; and
(12) Such other activities or business ventures as are directly or indirectly related to the dealing in securities and other commercial papers, unless otherwise governed or prohibited by special laws, in which case the special law shall apply.

[102] Pres. Decree No. 129, sec. 3(a) provides:
(a) "Underwriting" is defined as the act or process of guaranteeing the distribution and sale of securities of any kind issued by another corporation.
The Omnibus Rules and Regulations for Investment Houses and Universal Banks Registered as Underwriters of Securities (July 23, 2002) defines underwriting as follows:
Underwriting of Securities is the act or process of guaranteeing by an Investment House duly licensed under P.D. 129 or a Universal Bank registered as an Underwriter of Securities with the Commission, the distribution and sale of securities issued by another person or enterprise, including securities of the Government or its instrumentalities. The distribution and sale may be on a public or private placement basis: Provided, That nothing shall prevent an Investment House or Universal Bank registered as Underwriter of Securities from entering into a contract with another entity to further distribute securities that it has underwritten.

[103] HERBERT B. MAYO, BASIC INVESTMENTS 15–27 (2006).

between *A* and *X* is a primary market transaction.

Before maturity, *X* trades its *A* bonds to *Y*. The *A* bonds sold by *X* are not *X*'s indebtedness. The cash paid for the bonds no longer go to *A*, but remains with *X*, the selling investor/holder. The transfer of *A* bonds from *X* to *Y* is considered a secondary market transaction. Any difference between the purchase price of the assets (*A* bonds) and the sale price is a trading gain subject to a different tax treatment, as will be explained later.

When *Y* trades its *A* bonds to *Z*, the sale is still considered a secondary market transaction. In other words, the trades from *X* to *Y*, *Y* to *Z*, and *Z* to subsequent holders/investors are considered secondary market transactions. If *Z* holds on to the bonds and the bonds mature, *Z* will receive from *A* the face value of the bonds.

A bond is similar to a bank deposit in the sense that the investor lends money to the issuer and the issuer pays interest on the invested amount. However, unlike bank deposits, bonds are marketable securities. The market mechanism provides quick mobility of money and securities.[104] Thus, bondholders can sell their bonds before they mature to other investors, in turn converting their financial assets to cash. In contrast, deposits, in the form of savings accounts for instance, can only be redeemed by the issuing bank.

III.B

An investor in bonds may derive two (2) types of income:

First, the interest or the amount paid by the borrower to the lender/investor for the use of the lender's money.[105] For interest-bearing bonds, interest is normally earned at the coupon date. In zero-coupon bonds,

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[104] *Perez v. Court of Appeals,* 212 Phil. 587, 596–597 (1984) [Per J. Melencio-Herrera, First Division] discusses the nature of a money market transaction: "As defined by Lawrence Smith, 'the money market is a market dealing in standardized short-term credit instruments (involving large amounts) where lenders and borrowers do not deal directly with each other but through a middle man or dealer in the open market.' It involves 'commercial papers' which are instruments 'evidencing indebtedness of any person or entity . . . which are issued, endorsed, sold or transferred or in any manner conveyed to another person or entity, with or without recourse.' The fundamental function of the money market device in its operation is to match and bring together in a most impersonal manner both the 'fund users' and the 'fund suppliers.' The money market is an 'impersonal market,' free from personal considerations. The market mechanism is intended 'to provide quick mobility of money and securities.'
"The impersonal character of the money market device overlooks the individuals or entities concerned. The issuer of a commercial paper in the money market necessarily knows in advance that it would be expeditiously transacted and transferred to any investor/lender without need of notice to said issuer. In practice, no notification is given to the borrower or issuer of commercial paper of the sale or transfer to the investor."

[105] CIVIL CODE, art. 1956; *China Banking Corporation v. Court of Appeals*, 451 Phil. 772 (2003) [Per J. Carpio, First Division].

the discount is an interest amortized up to maturity.

Second, the gain, if any, that is earned when the bonds are traded before maturity date or when redeemed at maturity.

The 20% final withholding tax imposed on interest income or yield from deposit substitute does not apply to the gains derived from trading, retirement, or redemption of the instrument.

It must be stressed that interest income, derived by individuals from long-term deposits or placements made with banks in the form of deposit substitutes, is exempt from income tax. Consequently, it is likewise exempt from the final withholding tax under Sections 24(B)(1) and 25(A)(2) of the National Internal Revenue Code. However, when it is pre-terminated by the individual investor, graduated rates of 5%, 12%, or 20%, depending on the remaining maturity of the instrument, will apply on the entire income, to be deducted and withheld by the depository bank.

With respect to gains derived from long-term debt instruments, Section 32(B)(7)(g) of the National Internal Revenue Code provides:

> Sec. 32. *Gross Income.* -
>
> . . . .
>
> (B) Exclusions from Gross Income. - The following items shall not be included in gross income and shall be exempt from taxation under this title:
>
> . . . .
>
> (7) Miscellaneous Items. -
>
> . . . .
>
> (g) Gains from the Sale of Bonds, Debentures or other Certificate of Indebtedness. - Gains realized from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than five (5) years.

Thus, trading gains, or gains realized from the sale or transfer of bonds (*i.e.*, those with a maturity of more than five years) in the secondary market, are exempt from income tax. These "gains" refer to the difference between the selling price of the bonds in the secondary market and the price at which the bonds were purchased by the seller. For discounted instruments such as the zero-coupon bonds, the trading gain is the excess of the selling price over the book value or accreted value (original issue price plus

accumulated discount from the time of purchase up to the time of sale) of the instruments.[106]

Section 32(B)(7)(g) also includes gains realized by the last holder of the bonds when the bonds are redeemed at maturity, which is the difference between the proceeds from the retirement of the bonds and the price at which the last holder acquired the bonds.

On the other hand, gains realized from the trading of short-term bonds (*i.e.*, those with a maturity of less than five years) in the secondary market are subject to regular income tax rates (ranging from 5% to 32% for individuals, and 30% for corporations) under Section 32[107] of the National Internal Revenue Code.

III.C

The Secretary of Finance, through the Bureau of Treasury,[108] is authorized under Section 1 of Republic Act No. 245, as amended, to issue evidences of indebtedness such as treasury bills and bonds to meet public expenditures or to provide for the purchase, redemption, or refunding of any obligations.

These treasury bills and bonds are issued and sold by the Bureau of Treasury to lenders/investors through a network of licensed dealers (called Government Securities Eligible Dealers or GSEDs).[109] GSEDs are classified

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106 *See* BIR Ruling No. 026-02 (2002).

107 TAX CODE, sec. 32 provides:
SEC. 32. *Gross Income.* -
(A) ***General Definition.*** - Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:
(1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;
(2) Gross income derived from the conduct of trade or business or the exercise of a profession;
(3) Gains derived from dealings in property;
(4) Interests;
(5) Rents;
(6) Royalties;
(7) Dividends;
(8) Annuities;
(9) Prizes and winnings;
(10) Pensions; and
(11) Partner's distributive share from the net income of the general professional partnership.

108 Exec. Order No. 449 (1997), sec. 1.

109 Bureau of the Treasury, About Government Securities <http://www.treasury.gov.ph/?page_id=1430> (last visited on August 1, 2016). A Government Securities Eligible Dealer (GSED) is a Securities and Exchange Commission-licensed securities dealer belonging to a service industry regulated by the government (Securities and Exchange Commission, Bangko Sentral ng Pilipinas or Insurance Commission) and accredited by the Bureau of Treasury as eligible to participate in the primary auction of government securities. It must meet the following requirements:
(a) P100 million unimpaired capital and surplus account;
(b) Statutory ratios prescribed for the industry; and

into primary and ordinary dealers.[110] A primary dealer enjoys certain privileges such as eligibility to participate in the competitive bidding of regular issues, eligibility to participate in the issuance of special issues such as zero-coupon treasury bonds, and access to tap facility window.[111] On the other hand, ordinary dealers are only allowed to participate in the non-competitive bidding.[112] Moreover, primary dealers are required to meet the following obligations:

> a. Must submit at least one competitive bid in each scheduled auction.
> b. Must have total awards of at least 2% of the total amount of bills or bonds awarded within a particular quarter. This requirement does not cover special issues.
> c. Must be active in the trading of GS [government securities] in the secondary market.[113]

A primary dealer who fails to comply with its obligations will be dropped from the roster of primary dealers and classified as an ordinary dealer.

The auction method is the main channel used for originating government securities.[114] Under this method, the Bureau of Treasury issues a public notice offering treasury bills and bonds for sale and inviting tenders.[115] The GSEDs tender their bids electronically;[116] after the cut-off time, the Auction Committee deliberates on the bids and decide on the award.[117]

The Auction Committee then downloads the awarded securities to the winning bidders' Principal Securities Account in the Registry of Scripless Securities (RoSS). The RoSS, an electronic book-entry system established by the Bureau of Treasury, is the official Registry of ownership of or interest in government securities.[118] All government securities floated/originated by the National Government under its scripless policy, as well as subsequent transfers of the same in the secondary market, are recorded in the RoSS in the Principal Securities Account of the GSED.[119]

(c) Infrastructure for an electronic interface with the Automated Debt Auction Processing System (ADAPS) and the official Registry of Scripless Securities (RoSS) of the Bureau of the Treasury using Bridge Information Systems (BIS).

The List of GSEDs are mostly banks with a few non-banks with quasi-banking license.

110 Treasury Memo. Circ. No. 2-2004 (2004), sec. 1.

111 Treasury Memo. Circ. No. 2-2004 (2004), sec. 1.

112 Treasury Memo. Circ. No. 2-2004 (2004), sec. 1.

113 Treasury Memo. Circ. No. 2-2004 (2004), sec. 3.

114 Other selling arrangements provided in DOF Department Order No. 141-95 are over the counter (Section 15) and tap method (Section 26).

115 DOF Department Order No. 141-95, sec. 9.

116 DOF Department Order No. 141-95, sec. 10.

117 DOF Department Order No. 141-95, sec. 11 and 12.

118 DOF Department Order No. 141-95, sec. 29.

119 Handbill on Eligibility to Bid for Government Securities in the Primary Market: Oath of Undertaking for Registry of Scripless Securities <http://www.treasury.gov.ph/wp-content/uploads/2014/04/handbill.pdf> (visited August 1, 2016).

A GSED is required to open and maintain Client Securities Accounts in the name of its respective clients for segregating government securities acquired by such clients from the GSED's own securities holdings. A GSED may also lump all government securities sold to clients in one account, provided that the GSED maintains complete records of ownership/other titles of its clients in the GSED's own books.[120]

Thus, primary issues of treasury bills and bonds are supposed to be issued only to GSEDs. By participating in auctions, the GSED acts as a channel between the Bureau of Treasury and investors in the primary market. The winning GSED bidder acquires the privilege to on-sell government securities to other financial institutions or final investors who need not be GSEDs.[121] Further, nothing in the law or the rules of the Bureau of Treasury prevents the GSED from entering into contract with another entity to further distribute government securities.

In effecting a sale or distribution of government securities, a GSED acts in a certain sense as the "agent" of the Bureau of Treasury. In *Doles v. Angeles,*[122] the basis of an agency is representation.[123] The question of whether an agency has been created may be established by direct or circumstantial evidence.[124] For an agency to arise, it is not necessary that the principal personally encounter the third person with whom the agent interacts.[125] The law contemplates impersonal dealings where the principal need not personally know or meet the third person with whom the agent transacts: precisely, the purpose of agency is to extend the personality of the principal through the facility of the agent.[126] It was also stressed that the manner in which the parties designate the relationship is not controlling.[127] If an act done by one person on behalf of another is in its essential nature one of agency, the former is the agent of the latter, notwithstanding he or she is not so called.[128]

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120 Handbill on Eligibility to Bid for Government Securities in the Primary Market: Oath of Undertaking for Registry of Scripless Securities <http://www.treasury.gov.ph/wp-content/uploads/2014/04/oathrossgsed.pdf> (visited August 1, 2016).

121 *See Bank of Commerce v. Nite,* G.R. No. 211535, July 22, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/211535.pdf> [Per Acting C.J. Carpio, Second Division].

122 525 Phil. 673 (2006) [Per J. Austria-Martinez, First Division].
The case was cited in *Bank of the Philippine Islands v. Laingo,* G.R. No. 205206, March 16, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/march2016/205206.pdf> [Per J. Carpio, Second Division], where this Court held that BPI acted as agent of FGU Insurance with respect to the insurance feature of its own marketed product, and consequently obligated to give proper notice of the existence of the insurance coverage and the stipulation in the insurance contract for filing a claim to the beneficiary, upon the insured's death.

123 Id. at 688.

124 Id.

125 Id.

126 Id.

127 Id.

128 Id.

Through the use of GSEDs, particularly primary dealers, government is able to ensure the absorption of newly issued securities and promote activity in the government securities market. The primary dealer system allows government to access potential investors in the market by taking advantage of the GSEDs' distribution capacity. The sale transactions executed by the GSED are indirectly for the benefit of the issuer. An investor who purchases bonds from the GSED becomes an indirect lender to government. The financial asset in the hand of the investor represents a claim to future cash, which the borrower-government must pay at maturity date.[129]

Accordingly, the existence of 20 or more lenders should be reckoned at the time when the successful GSED-bidder distributes (either by itself or through an underwriter) the government securities to final holders. When the GSED sells the government securities to 20 or more investors, the government securities are deemed to be in the nature of a deposit substitute, taxable as such.

On the other hand, trading of bonds between two (2) investors in the secondary market involves a purchase or sale transaction. The transferee of the bonds becomes the new owner, who is entitled to recover the face value of the bonds from the issuer at maturity date. Any profit realized from the purchase or sale transaction is in the nature of a trading gain subject to a different tax treatment, as explained above.

Respondents contend that the literal application of the "20 or more lenders at any one time" to government securities would lead to: (1) impossibility of tax enforcement due to limitations imposed by the Bank Secrecy Law; (2) possible uncertainties[130]; and (3) loopholes.[131]

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[129] *Constantino, Jr. v. Cuisia*, 509 Phil. 486, 509–510 (2005) [Per J. Tinga, En Banc] holds that "[b]onds are interest-bearing or discounted government or corporate securities that obligate the issuer to pay the bondholder a specified sum of money, usually at specific intervals, and to repay the principal amount of the loan at maturity. An investor who purchases a bond is lending money to the issuer, and the bond represents the issuer's contractual promise to pay interest and repay principal according to specific terms."

[130] *Rollo*, pp. 2213–2214. Respondents contend that the application of the 20-lender rule as per the court's decision creates an uncertainty due to the possibility that regular government securities may be held by less than 20 investors at any one time as reflected in the Registry of Scripless Securities (ROSS). Respondents provide two illustrations:

[a] . . . In the case of T-Bills, there have been instances before that only one (1) GSED was awarded the full volume issued. Given that transactions in T-bills attract non-resident investors, there could be an instance where there would apparently only be a few transfers in ownership from a ROSS records standpoint despite an actual transfer of beneficial ownership to 20 or more (foreign or combination of foreign and local investors). This is because these non-resident lenders/investors together with resident lenders/investors may be lumped together in a common custodian account in the ROSS.

[b] . . . In the case of T-Bonds, during auctions, most of the time, if not all the time, the Auction Committee awards to less than 20 GSEDs. While technically these GSEDs redistribute these bonds in the secondary market to a wider pool of investors, the settlement convention in the market (T+1 or T+2) may create a lag or delay in the actual transfers of the bonds from one registered holder to another. Hence, the ROSS records may technically reflect 19 or less lenders/investors at a given time, when the beneficial owners of the government securities may in fact be 20 or more depending

These concerns, however, are not sufficient justification for us to deviate from the text of the law.[132] Determining the wisdom, policy, or expediency of a statute is outside the realm of judicial power.[133] These are matters that should be addressed to the legislature. Any other interpretation looking into the purported effects of the law would be tantamount to judicial legislation.

IV

Section 57 prescribes the withholding tax on interest or yield on deposit substitutes, among others, and the person obligated to withhold the same. Section 57 reads:

> **Section 57. *Withholding of Tax at Source.* —**
> (A) **Withholding of Final Tax on Certain Incomes.** — Subject to rules and regulations, the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24(B)(1), 24(B)(2), 24(C), 24(D)(1); 25(A)(2), 25(A)(3), 25(B), 25(C), 25(D), 25(E); 27(D)(1), 27(D)(2), 27(D)(3), 27(D)(5); 28(A)(4), 28(A)(5), 28(A)(7)(a), 28(A)(7)(b), 28(A)(7)(c), 28(B)(1), 28(B)(2), 28(B)(3), 28(B)(4), 28(B)(5)(a), 28(B)(5)(b), 28(B)(5)(c), 33 and 282 of the Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code.

Likewise, Section 2.57 of Revenue Regulations No. 2-98 (implementing the National Internal Revenue Code relative to the Withholding on Income subject to the Expanded Withholding Tax and Final Withholding Tax) states that the liability for payment of the tax rests primarily on the payor as a withholding agent. Section 2.57 reads:

> **Sec. 2.57. WITHHOLDING OF TAX AT SOURCE. —**
> (A) **Final Withholding Tax** — Under the final withholding tax system the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee of said income. *The liability for payment of the tax rests primarily on the payor as a withholding agent. Thus, in case of his failure to withhold*

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on the number of "lagging" or not-yet-settled transactions.

[131] Id. at 2215. Respondents argue that the requirement that "funds are *simultaneously* obtained from 20 or more lenders/investors" provides a loophole in that a bondholder may conveniently turn around and sell his holdings in several tranches to 19 or less investors for each tranche. Thus, even if he eventually sold his entire stock to 1000 investors, as long as there is no element of simultaneous sale to 20 people, there is no deposit substitute.

[132] *See Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch),* 500 Phil. 586, 608 (2005) [Per J. Panganiban, Third Division].

[133] *Abakada Guro Party List v. Ermita,* 506 Phil. 1, 120 (2005) [Per J. Austria-Martinez, En Banc].

> *the tax or in case of under withholding, the deficiency tax shall be collected from the payor/withholding agent*[.] (Emphasis supplied)

From these provisions, it is the payor-borrower who primarily has the duty to withhold and remit the 20% final tax on interest income or yield from deposit substitutes.

This does not mean, however, that only the payor-borrower can be constituted as withholding agent. Under Section 59 of the National Internal Revenue Code, any person who has control, receipt, custody, or disposal of the income may be constituted as withholding agent:

> **SEC. 59. Tax on Profits Collectible from Owner or Other Persons.** - The tax imposed under this Title upon gains, profits, and income not falling under the foregoing and not returned and paid by virtue of the foregoing or as otherwise provided by law shall be assessed by personal return under rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner. The intent and purpose of the Title is that all gains, profits and income of a taxable class, as defined in this Title, shall be charged and assessed with the corresponding tax prescribed by this Title, and said tax shall be paid by the owners of such gains, profits and income, *or the proper person having the receipt, custody, control or disposal of the same.* For purposes of this Title, ownership of such gains, profits and income or liability to pay the tax shall be determined as of the year for which a return is required to be rendered. (Emphasis supplied)

The intent and purpose of the National Internal Revenue Code provisions on withholding taxes is also explicitly stated, *i.e.*, that all gains, profits, and income "are charged and assessed with the corresponding tax"[134] and said tax paid by "the owners of such gains, profits and income, or the proper person having the receipt, custody, control or disposal of the same."[135]

The obligation to deduct and withhold tax at source arises at the time an income subject to withholding is paid or payable, whichever comes first.[136] In interest-bearing bonds, the interest is taxed at every instance that interest is paid (and income is earned) on the bond. However, in a zero-coupon bond, it is expected that no periodic interest payments will be made. Rather, the investor will be paid the principal and interest (discount) together when the bond reaches maturity.

As explained by respondents, "the discount is the imputed interest earned on the security, and since payment is made at maturity, there is an

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[134] TAX CODE, sec. 59.
[135] TAX CODE, sec. 59.
[136] Revenue Regulations No. 2-98, sec. 2.57.4.

accreted interest that causes the price of a zero coupon instrument to accordingly increase with time, all things being constant."[137]

In a 10-year zero-coupon bond, for instance, the discount (or interest) is not earned in the first period, *i.e.*, the value of the instrument does not equal par at the end of the first period. The total discount is earned over the life of the instrument. Nonetheless, the total discount is considered earned on the year of sale based on current value.[138]

In view of this, the successful GSED-bidder, as agent of the Bureau of Treasury, has the primary responsibility to withhold the 20% final withholding tax on the interest valued at present value, when its sale and distribution of the government securities constitutes a deposit substitute transaction. The 20% final tax is deducted by the buyer from the discount of the bonds and included in the remittance of the purchase price.

The final tax withheld by the withholding agent is considered as a "full and final payment of the income tax due from the payee on the said income [and the] payee is not required to file an income tax return for the particular income."[139] Section 10 of Department of Finance Department Order No. 020-10[140] in relation to the National Internal Revenue Code also provides that no other tax shall be collected on subsequent trading of the securities that have been subjected to the final tax.

V

In this case, the PEACe Bonds were awarded to petitioners-intervenors RCBC/CODE-NGO as the winning bidder in the primary auction. At the same time, CODE-NGO got RCBC Capital as underwriter, to distribute and sell the bonds to the public.

The Underwriting Agreement[141] and RCBC Term Sheet[142] for the sale of the PEACe bonds show that the settlement dates for the issuance by the Bureau of Treasury of the Bonds to petitioners-intervenors RCBC/CODE-NGO and the distribution by petitioner-intervenor RCBC Capital of the

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137 *Rollo*, pp. 2626–2627.

138 *See* BIR Ruling No. 177-95.

139 Revenue Regulations No. 2-98, sec. 2.57(A).

140 Omnibus Revised Rules and Regulations Implementing Rep. Act No. 245, as amended, and Rep. Act No. 1000, as amended, in Relation to Rep. Act No. 7653 (2010). The Order superseded and repealed DOF Dep. O. No. 141-95.

141 *Rollo*, pp. 560–575. Under the *Definitions and Interpretation*, Issue Date shall be on October 18, 2001; Offering Period shall mean the period commencing on 9:00 a.m. of October 17, 2001 and ending on 12:00 noon of October 17, 2001. (p. 561); Under *Terms and Conditions of Application and Payment for the Bonds*, RCBC Capital will submit to CODE NGO a consolidated report on sales made not later than 4:00 p.m. of the last day of the Offering Period; and remittance of the purchase price for the bonds should be made not later than 10:00 a.m. of the Issue Date.

142 Id. at 576.

PEACe Bonds to various investors fall on the same day, October 18, 2001. This implies that petitioner-intervenor RCBC Capital was authorized to perform a book-building process,[143] a customary method of initial distribution of securities by underwriters, where it could collate orders for the securities ahead of the auction or before the securities were actually issued. Through this activity, the underwriter obtains information about market conditions and preferences ahead of the auction of the government securities.

The reckoning of the phrase "20 or more lenders" should be at the time when petitioner-intervenor RCBC Capital sold the PEACe bonds to investors. Should the number of investors to whom petitioner-intervenor RCBC Capital distributed the PEACe bonds, therefore, be found to be 20 or more, the PEACe Bonds are considered deposit substitutes subject to the 20% final withholding tax. Petitioner-intervenors RCBC/CODE-NGO and RCBC Capital, as well as the final bondholders who have recourse to government upon maturity, are liable to pay the 20% final withholding tax.

We note that although the originally intended negotiated sale of the bonds by government to CODE-NGO did not materialize, CODE-NGO, a private entity—still through the participation of petitioners-intervenors RCBC and RCBC Capital—ended up as the winning bidder for the government securities and was able to use for its projects the profit earned from the sale of the government securities to final investors.

Giving unwarranted benefits, advantage, or preference to a party and causing undue injury to government expose the perpetrators or responsible parties to liability under Section 3(e) of Republic Act No. 3019. Nonetheless, this is not the proper venue to determine and settle any such liability.

VI

Petitioners-intervenors RCBC and RCBC Capital contend that they cannot be held liable for the 20% final withholding tax for two (2) reasons. First, at the time the required withholding should have been made, their obligation was not clear since BIR Ruling Nos. 370-2011 and DA 378-2011 stated that the 20% final withholding tax does not apply to PEACe Bonds.[144] Second, to punish them under the circumstances (*i.e.*, when they secured the PEACe Bonds from the Bureau of Treasury and sold the Bonds to the lenders/investors, they had no obligation to remit the 20% final withholding tax) would violate due process of law and the constitutional proscription on

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[143] *See* Omnibus Rules and Regulations for Investment Houses and Universal Banks Registered as Underwriters of Securities (2002), sec. 8.

[144] *Rollo*, pp. 2271 and 2274–2275.

ex post facto law.[145]

Petitioner-intervenor RCBC Capital further posits that it cannot be held liable for the 20% final withholding tax even as a taxpayer because it never earned interest income from the PEACe Bonds, and any income earned is deemed in the nature of an underwriting fee.[146] Petitioners-intervenors RCBC and RCBC Capital instead argue that the liability falls on the Bureau of Treasury and CODE-NGO, as withholding agent and taxpayer, respectively, considering their explicit representation that the PEACe Bonds are exempt from the final withholding tax.[147]

Petitioners-intervenors RCBC and RCBC Capital add that the Bureau of Internal Revenue is barred from assessing and collecting the 20% final withholding tax, assuming it was due, on the ground of prescription.[148] They contend that the three (3)-year prescriptive period under Section 203, rather than the 10-year assessment period under Section 222, is applicable because they were compliant with the requirement of filing monthly returns that reflect the final withholding taxes due or remitted for the relevant period. No false or fraudulent return was made because they relied on the 2001 BIR Rulings and on the representations made by the Bureau of Treasury and CODE-NGO that the PEACe Bonds were not subject to the 20% final withholding tax.[149]

Finally, petitioners-intervenors RCBC and RCBC Capital argue that this Court's interpretation of the phrase "at any one time" cannot be applied to the PEACe Bonds and should be given prospective application only because it would cause prejudice to them, among others. They cite Section 246 of the National Internal Revenue Code on *non-retroactivity of rulings*, as well as *Commissioner of Internal Revenue v. San Roque Power Corporation*,[150] which held that taxpayers may rely upon a rule or ruling issued by the Commissioner from the time it was issued up to its reversal by the Commissioner or the court. According to them, the retroactive application of the court's decision would impair their vested rights, violate the constitutional prohibition on non-impairment of contracts, and constitute a substantial breach of obligation on the part of government.[151] In addition, the imposition of the 20% final withholding tax on the PEACe Bonds would allegedly have pernicious effects on the integrity of existing securities that is contrary to the state policies of stabilizing the financial system and of developing the capital markets.[152]

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145 Id. at 2276–2277.
146 Id. at 2280–2281.
147 Id. at 2281–2284.
148 Id. at 2277.
149 Id. at 2277–2279 and 2288–2291.
150 703 Phil. 310 (2013) [Per J. Carpio, En Banc].
151 *Rollo*, pp. 2292–2304.
152 Id. at 2304–2306.

CODE-NGO likewise contends that it merely relied in good faith on the 2001 BIR Rulings confirming that the PEACe Bonds were not subject to the 20% final withholding tax.[153] Therefore, it should not be prejudiced if the BIR Rulings are found to be erroneous and reversed by the Commissioner or this court.[154] CODE-NGO argues that this Court's Decision construing the phrase "at any one time" to determine the phrase "20 or more lenders" to include both the primary and secondary market should be applied prospectively.[155]

Assuming it is liable for the 20% final withholding tax, CODE-NGO argues that the collection of the final tax was barred by prescription.[156] CODE-NGO points out that under Section 203 of the National Internal Revenue Code, internal revenue taxes such as the final tax, should be assessed within three (3) years after the last day prescribed by law for the filing of the return.[157] It further argues that Section 222(a) on exceptions to the prescribed period for tax assessment and collection does not apply.[158] It claims that there is no fraud or intent to evade taxes as it relied in good faith on the assurances of the Bureau of Internal Revenue and Bureau of Treasury the PEACe Bonds are not subject to the 20% final withholding tax.[159]

We find merit on the claim of petitioners-intervenors RCBC, RCBC Capital, and CODE-NGO for prospective application of our Decision.

The phrase "at any one time" is ambiguous in the context of the financial market. Hence, petitioner-intervenor RCBC and the rest of the investors relied on the opinions of the Bureau of Internal Revenue in BIR Ruling Nos. 020-2001, 035-2001[160] dated August 16, 2001, and DA-175-01[161] dated September 29, 2001 to vested their rights in the exemption from the final withholding tax. In sum, these rulings pronounced that to determine whether the financial assets, *i.e.*, debt instruments and securities, are deposit substitutes, the "20 or more individual or corporate lenders" rule must apply. Moreover, the determination of the phrase "at any one time" to determine the "20 or more lenders" is to be determined at the time of the original issuance. This being the case, the PEACe Bonds were not to be treated as deposit substitutes.

In *ABS-CBN Broadcasting Corp. v. Court of Tax Appeals*,[162] the Commissioner demanded from petitioner deficiency withholding income tax

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153 Id. at 2389.
154 Id. at 2390.
155 Id. at 2395.
156 Id.
157 Id. at 2395–2396.
158 Id. at 2397.
159 Id. at 2398.
160 Id. at 138–140.
161 Id. at 141–143.
162 195 Phil. 33 (1981) [Per J. Melencio-Herrera, First Division].

on film rentals remitted to foreign corporations for the years 1965 to 1968. The assessment was made under Revised Memo Circular No. 4-71 issued in 1971, which used *gross income* as tax basis for the required withholding tax, instead of one-half of the film rentals as provided under General Circular No. V-334. In setting aside the assessment, this Court ruled that in the interest of justice and fair play, rulings or circulars promulgated by the Commissioner of Internal Revenue have no retroactive application where applying them would prove prejudicial to taxpayers who relied in good faith on previous issuances of the Commissioner. This Court further held that Section 24(b) of then National Internal Revenue Code sought to be implemented by General Circular No. V-334 was neither too plain nor simple to understand and was capable of different interpretations. Thus:

> The rationale behind General Circular No. V-334 was clearly stated therein, however: "It ha[d] been determined that the tax is still imposed on income derived from capital, or labor, or both combined, in accordance with the basic principle of income taxation . . . and that a mere return of capital or investment is not income. . . ." "A part of the receipts of a non-resident foreign film distributor derived from said film represents, therefore, a return of investment." The circular thus fixed the return of capital at 50% to simplify the administrative chore of determining the portion of the rentals covering the return of capital.
>
> ***Were the "gross income" base clear from Sec. 24(b), perhaps, the ratiocination of the Tax Court could be upheld. It should be noted, however, that said Section was not too plain and simple to understand. The fact that the issuance of the General Circular in question was rendered necessary leads to no other conclusion than that it was not easy of comprehension and could be subjected to different interpretations.***
>
> In fact, Republic Act No. 2343, dated June 20, 1959, *supra*, which was the basis of General Circular No. V-334, was just one in a series of enactments regarding Sec. 24(b) of the Tax Code. Republic Act No. 3825 came next on June 22, 1963 without changing the basis but merely adding a proviso (in bold letters).
>
> > *(b) Tax on foreign corporation.* — (1) *Non-resident corporations.* — There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by the preceding paragraph, upon the amount received by every foreign corporation not engaged in trade or business within the Philippines, from all sources within the Philippines, as interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits and income, a tax equal to thirty *per centum of such amount*: PROVIDED, HOWEVER, THAT PREMIUMS SHALL NOT INCLUDE REINSURANCE PREMIUMS." (double emphasis ours)
>
> Republic Act No. 3841, dated likewise on June 22, 1963, followed after, omitting the proviso and inserting some words (also in bold letters).

> "(b) *Tax on foreign corporations.* — (1) *Non-resident corporations.* — There shall be levied, collected and paid for each taxable year, in lieu of the tax imposed by the preceding paragraph, upon the amount received by every foreign corporation not engaged in trade or business within the Philippines, from all sources within the Philippines, as interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical OR CASUAL gains, profits and income, AND CAPITAL GAINS, a tax equal to thirty *per centum of such amount.*"
>
> The principle of legislative approval of administrative interpretation by re-enactment clearly obtains in this case. It provides that "the re-enactment of a statute substantially unchanged is persuasive indication of the adoption by Congress of a prior executive construction." Note should be taken of the fact that this case involves not a mere opinion of the Commissioner or ruling rendered on a mere query, but a Circular formally issued to "all internal revenue officials" by the then Commissioner of Internal Revenue.
>
> It was only on June 27, 1968 under Republic Act No. 5431, *supra*, which became the basis of Revenue Memorandum Circular No. 4-71, that Sec. 24(b) was amended to refer specifically to 35% of the "*gross income.*"[163] (Emphasis supplied)

San Roque has held that the 120-day and the 30-day periods under Section 112 of the National Internal Revenue Code are mandatory and jurisdictional. Nevertheless, *San Roque* provided an exception to the rule, such that judicial claims filed by taxpayers who relied on BIR Ruling No. DA-489-03—from its issuance on December 10, 2003 until its reversal by this Court in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[164] on October 6, 2010—are shielded from the vice of prematurity. The BIR Ruling declared that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the C[ourt] [of] T[ax] A[ppeals] by way of Petition for Review." The Court reasoned that:

> *Taxpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law.* The abandonment of the Atlas doctrine by Mirant and Aichi is proof that the reckoning of the prescriptive periods for input VAT tax refund or credit is a difficult question of law. The abandonment of the Atlas doctrine did not result in Atlas, or other taxpayers similarly situated, being made to return the tax refund or credit they received or could have received under Atlas prior to its abandonment. This Court is applying Mirant and Aichi prospectively. Absent fraud, bad faith or misrepresentation, the reversal by this Court of a general interpretative rule issued by the Commissioner, like

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[163] Id. at 42–43.

[164] 646 Phil. 710 (2010) [Per J. Del Castillo, First Division].

> the reversal of a specific BIR ruling under Section 246, should also apply prospectively. . . .
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> . . . .
>
> Thus, the only issue is whether BIR Ruling No. DA-489-03 is a general interpretative rule applicable to all taxpayers or a specific ruling applicable only to a particular taxpayer.
>
> 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. 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 Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner 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.
>
> 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 Aichi on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional.[165] (Emphasis supplied)

The previous interpretations given to an ambiguous law by the Commissioner of Internal Revenue, who is charged to carry out its provisions, are entitled to great weight, and taxpayers who relied on the same should not be prejudiced in their rights.[166] Hence, this Court's construction should be prospective; otherwise, there will be a violation of due process for failure to accord persons, especially the parties affected by it, fair notice of the special burdens imposed on them.

VII

Urgent Reiterative Motion [to Direct Respondents to Comply with the Temporary Restraining Order]

Petitioners Banco de Oro, et al. allege that the temporary restraining order issued by this Court on October 18, 2011 continues to be effective under Rule 58, Section 5 of the Rules of Court and the Decision dated January 13, 2015. Thus, considering respondents' refusal to comply with their obligation under the temporary restraining order, petitioners ask this Court to issue a resolution directing respondents, particularly the Bureau of Treasury, "to comply with its order by immediately releasing to the petitioners during the pendency of the case the 20% final withholding tax"

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[165] *Commissioner of Internal Revenue v. San Roque Power Corporation*, 703 Phil. 310, 375–376 (2013) [Per J. Carpio, En Banc].

[166] *See Everett v. Bautista*, 69 Phil. 137, 140–141 (1939) [Per J. Diaz, En Banc].

so that the monies may be placed in escrow pending resolution of the case.[167]

We recall that in its previous pleadings, respondents remain firm in its stance that the October 18, 2011 temporary restraining order could no longer be implemented because the acts sought to be enjoined were already *fait accompli.*[168] They allege that the amount withheld was already remitted by the Bureau of Treasury to the Bureau of Internal Revenue. Hence, it became part of the General Fund, which required legislative appropriation before it could validly be disbursed.[169] Moreover, they argue that since the amount in question pertains to taxes alleged to be erroneously withheld and collected by government, the proper recourse was for the taxpayers to file an application for tax refund before the Commissioner of Internal Revenue under Section 204 of the National Internal Revenue Code.[170]

In our January 13, 2015 Decision, we rejected respondents' defense of *fait accompli.* We held that the amount withheld were yet to be remitted to the Bureau of Internal Revenue, and the evidence (journal entry voucher) submitted by respondents was insufficient to prove the fact of remittance. Thus:

> The temporary restraining order enjoins the entire implementation of the 2011 BIR Ruling that constitutes both the *withholding* and *remittance* of the 20% final withholding tax to the Bureau of Internal Revenue. Even though the Bureau of Treasury had already withheld the 20% final withholding tax when they received the temporary restraining order, it had yet to remit the monies it withheld to the Bureau of Internal Revenue, a remittance which was due only on November 10, 2011. The act enjoined by the temporary restraining order had not yet been fully satisfied and was still continuing.
>
> Under DOF-DBM Joint Circular No. 1-2000A dated July 31, 2001 which prescribes to national government agencies such as the Bureau of Treasury the procedure for the remittance of all taxes they withheld to the Bureau of Internal Revenue, a national agency shall file before the Bureau of Internal Revenue a Tax Remittance Advice (TRA) supported by withholding tax returns on or before the 10th day of the following month after the said taxes had been withheld. The Bureau of Internal Revenue shall transmit an original copy of the TRA to the Bureau of Treasury, which shall be the basis in recording the remittance of the tax collection. The Bureau of Internal Revenue will then record the amount of taxes reflected in the TRA as tax collection in the Journal of Tax Remittance by government agencies based on its copies of the TRA. Respondents did not submit any withholding tax return or TRA to prove that the 20% final withholding tax was indeed remitted by the Bureau of Treasury to the Bureau of Internal Revenue on October 18, 2011.

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167 *Rollo*, pp. 2677–2678.
168 Id. at 394.
169 Id. at 396 and 2228–2235.
170 Id. at 2235.

Respondent Bureau of Treasury's Journal Entry Voucher No. 11-10-10395 dated October 18, 2011 submitted to this court shows:

	Account Code	Debit Amount	Credit Amount
Bonds Payable-L/T, Dom-Zero	442-360	35,000,000,000.00	
Coupon T/Bonds (Peace Bonds) – 10 yr Sinking Fund-Cash (BSF)	198-001	30,033,792,203.59	
Due to BIR	412-002		4,966,207,796.41
To record redemption of 10yr Zero coupon (Peace Bond) net of the 20% final withholding tax pursuant to BIR Ruling No. 378-2011, value date, October 18, 2011 per BTr letter authority and BSP Bank Statements.			

The foregoing journal entry, however, does not prove that the amount of ₱4,966,207,796.41, representing the 20% final withholding tax on the PEACe Bonds, was disbursed by it and remitted to the Bureau of Internal Revenue on October 18, 2011. The entries merely show that the monies corresponding to 20% final withholding tax was set aside for remittance to the Bureau of Internal Revenue.[171]

Respondents did not submit any withholding tax return or tax remittance advice to prove that the 20% final withholding tax was, indeed, remitted by the Bureau of Treasury to the Bureau of Internal Revenue on October 18, 2011, and consequently became part of the general fund of the government. The corresponding journal entry in the books of both the Bureau of Treasury and Bureau of Internal Revenue showing the transfer of the withheld funds to the Bureau of Internal Revenue was likewise not submitted to this Court. The burden of proof lies on them to show their claim of remittance. Until now, respondents have failed to submit sufficient supporting evidence to prove their claim.

In *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation,*[172] this Court upheld the right of a withholding agent to file a claim for refund of the withheld taxes of its foreign parent company. This Court, citing *Philippine Guaranty Company, Inc. v. Commissioner of Internal Revenue,*[173] ruled that inasmuch as it is an agent of government for the withholding of the proper amount of tax, it is also an agent of its foreign parent company with respect to the filing of the necessary income tax return and with respect to actual payment of the tax to the government. Thus:

> The term "taxpayer" is defined in our NIRC as referring to "any person subject to tax imposed by the Title [on Tax on Income]." It thus becomes important to note that under Section 53(c) of the NIRC, the withholding agent who is "required to deduct and withhold any tax" is made "personally liable for such tax" and indeed is indemnified against any

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171 *Banco de Oro v. Republic*, G.R. No. 198756, January 13, 2015, 745 SCRA 361, 428–430 [Per J. Leonen, En Banc].

172 281 Phil. 425 (1991) [Per J. Feliciano, En Banc].

173 121 Phil. 755 (1965) [Per J. Bengzon, En Banc].

claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. The withholding agent, P&G-Phil., is directly and independently liable for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent is, moreover, subject to and liable 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 law.

A "person liable for tax" has been held to be a "person subject to tax" and properly considered a "taxpayer." The terms "liable for tax" and "subject to tax" both connote legal obligation or duty to pay a tax. It is very difficult, indeed conceptually impossible, to consider a person who is statutorily made "liable for tax" as not "subject to tax." By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him.

In *Philippine Guaranty Company, Inc. v. Commissioner of Internal Revenue*, this Court pointed out that a withholding agent is in fact the agent both of the government and of the taxpayer, and that the withholding agent is not an ordinary government agent:

> The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. Thus, the withholding agent is constituted the agent of both the Government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government's agent. In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer. The withholding agent, therefore, is no ordinary government agent especially because under Section 53 (c) he is held personally liable for the tax he is duty bound to withhold; whereas the Commissioner and his deputies are not made liable by law.

If, as pointed out in *Philippine Guaranty, the withholding agent is also an agent of the beneficial owner of the dividends with respect to the filing of the necessary income tax return and with respect to actual payment of the tax to the government, such authority may reasonably be held to include the authority to file a claim for refund and to bring an action for recovery of such claim.* This implied authority is especially warranted where, as in the instant case, the withholding agent is the wholly owned subsidiary of the parent-stockholder and therefore, at all times, under the effective control of such parent-stockholder. In the circumstances of this case, it seems particularly unreal to deny the implied authority of P&G-Phil. to claim a refund and to commence an action for such refund.

. . . .

> We believe and so hold that, under the circumstances of this case, P&G-Phil. is properly regarded as a "taxpayer" within the meaning of Section 309, NIRC, and as impliedly authorized to file the claim for refund and the suit to recover such claim.[174] (Emphasis supplied, citations omitted)

In Commissioner of Internal Revenue v. Smart Communication, Inc.:[175]

> [W]hile 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 his 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.[176]

Since respondents have not sufficiently shown the actual remittance of the 20% final withholding taxes withheld from the proceeds of the PEACe bonds to the Bureau of Internal Revenue, there was no legal impediment for the Bureau of Treasury (as agent of petitioners) to release the monies to petitioners to be placed in escrow, pending resolution of the motions for reconsideration filed in this case by respondents and petitioners-intervenors RCBC and RCBC Capital.

Moreover, Sections 204 and 229 of the National Internal Revenue Code are not applicable since the Bureau of Treasury's act of withholding the 20% final withholding tax was done after the Petition was filed.

Petitioners also urge[177] us to hold respondents liable for 6% legal interest reckoned from October 19, 2011 until they fully pay the amount corresponding to the 20% final withholding tax.

This Court has previously granted interest in cases where patent arbitrariness on the part of the revenue authorities has been shown, or where the collection of tax was illegal.[178]

In *Philex Mining Corp. v. Commissioner of Internal Revenue*:[179]

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[174] *Commissioner of Internal Revenue v. Procter & Gamble Phil. Mfg. Corp.*, 281 Phil. 425, 441–444 (1991) [Per J. Feliciano, En Banc].

[175] 643 Phil. 550 (2010) [Per J. Del Castillo, First Division].

[176] Id. at 563–564.

[177] *Rollo*, pp. 2593–2597.

[178] *Blue Bar Coconut Co. v. City of Zamboanga,* 122 Phil. 929, 930 (1965) [Per J. J.B.L. Reyes, En Banc]; *Carcar Electric & Ice Plant Co., Inc. v. Collector of Internal Revenue,* 100 Phil. 50, 56 and 59 (1956) [Per J. J.B.L. Reyes, En Banc].

[179] 365 Phil. 572 (1999) [Per J. Quisumbing, Second Division].

> [T]he rule is that no interest on refund of tax can be awarded unless authorized by law or the collection of the tax was attended by arbitrariness. An action is not arbitrary when exercised honestly and upon due consideration where there is room for two opinions, however much it may be believed that an erroneous conclusion was reached. *Arbitrariness presupposes inexcusable or obstinate disregard of legal provisions.*[180] (Emphasis supplied, citations omitted)

Here, the Bureau of Treasury made no effort to release the amount of ₱4,966,207,796.41, corresponding to the 20% final withholding tax, when it could have done so.

In the Court's temporary restraining order dated October 18, 2011,[181] which respondent received on October 19, 2011, we "enjoin[ed] the implementation of BIR Ruling No. 370-2011 against the [PEACe Bonds,] . . . subject to the condition that *the 20% final withholding tax on interest income therefrom shall be withheld by the petitioner banks and placed in escrow pending resolution of [the] petition.*"[182]

Subsequently, in our November 15, 2011 Resolution, we directed respondents to "show cause why they failed to comply with the [temporary restraining order]; and [to] comply with the [temporary restraining order] *in order that petitioners may place the corresponding funds in escrow pending resolution of the petition.*"[183]

Respondent did not heed our orders.

In our Decision dated January 13, 2015, we reprimanded the Bureau of Treasury for its continued retention of the amount corresponding to the 20% final withholding tax, in wanton disregard of the orders of this Court.

We further ordered the Bureau of Treasury to immediately release and pay the bondholders the amount corresponding to the 20% final withholding tax that it withheld on October 18, 2011.

However, respondent remained obstinate in its refusal to release the monies and exhibited utter disregard and defiance of this Court.

As early as October 19, 2011, petitioners could have deposited the amount of ₱4,966,207,796.41 in escrow and earned interest, had respondent

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180 Id. at 580.
181 *Rollo*, pp. 235–237.
182 Id. at 236.
183 Id. at 1164.

Bureau of Treasury complied with the temporary restraining order and released the funds. It was inequitable for the Bureau of Treasury to have withheld the potential earnings of the funds in escrow from petitioners.

Due to the Bureau of Treasury's unjustified refusal to release the funds to be deposited in escrow, in utter disregard of the orders of the Court, it is held liable to pay legal interest of 6% per annum[184] on the amount of ₱4,966,207,796.41 representing the 20% final withholding tax on the PEACe Bonds.

WHEREFORE, respondents' Motion for Reconsideration and Clarification is **DENIED,** and petitioners-intervenors RCBC and RCBC Capital Corporation's Motion for Clarification and/or Partial Reconsideration is **PARTLY GRANTED**.

Respondent Bureau of Treasury is hereby **ORDERED** to immediately release and pay the bondholders the amount of ₱4,966,207,796.41, representing the 20% final withholding tax on the PEACe Bonds, with legal interest of 6% per annum from October 19, 2011 until full payment.

SO ORDERED.

MARVIC M.V.F LEONEN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

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[184] Circ. No. 799 (2013), of the Bangko Sentral ng Pilipinas Monetary Board effective July 1, 2013, states in part:
The Monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905, Series of 1982:
Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) *per annum.*
Section 2. In view of the above, Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions are hereby amended accordingly.
This Circular shall take effect on 1 July 2013.
See Nacar v. Gallery Frames, 716 Phil. 267 (2013) [Per J. Peralta, En Banc].

No part
ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

On leave
ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

No part
FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the court.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED XEROX COPY:
FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT